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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-1427
Johnson County No. CVCV07149

HEATHER YOUNG, DEL HOLLAND, AND BLAKE HENDRICKSON
Plaintiffs-Appellants

v.

THE IOWA CITY COMMUNITY SCHOOL DISTRICT; CHRIS LYNCH, INDIVIDUALLY AND IN HIS CAPACITY AS PRESIDENT OF THE BOARD OF DIRECTORS AND DIRECTOR OF THE IOWA CITY COMMUNITY SCHOOL DISTRICT; LATASHA DELOACH, INDIVIDUALLY AND IN HER CAPACITY AS DIRECTOR OF THE IOWA CITY COMMUNITY SCHOOL DISTRICT; BRIAN KIRSCHLING, INDIVIDUALLY AND IN HIS CAPACITY AS DIRECTOR OF THE IOWA CITY COMMUNITY SCHOOL DISTRICT; AND PAUL ROESLER, INDIVIDUALLY AND IN HIS CAPACITY AS DIRECTOR OF THE IOWA CITY COMMUNITY SCHOOL DISTRICT
Defendants-Appellees

APPEAL FROM THE IOWA DISTRICT COURT
FOR JOHNSON COUNTY
HONORABLE SEAN MCPARTLAND, DISTRICT COURT JUDGE

REPLY BRIEF FOR APPELLEE/CROSS-APPELLANT

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. "Demolition" Does Not Constitute a "Disposition"

Iowa Code § 278.1
Iowa Code § 278.1(2)
Iowa Code § 278.1(b)
Iowa Code § 279.11
Iowa Code § 297.22
Black's Law Dictionary (2017)
Merriam Webster Law Dictionary (2017)

II. The School Board Acted Properly in Deciding Whether the Referendum Petition was "Authorized by Law"

Berent v. City of Iowa City, 738 N.W.2d 193 (Iowa 2007)

III. A Private Right of Action Does Not Exist Under Section 278

IV. Petitioners' Reply Brief Mischaracterizes the Record and Applicable Law

Iowa Code § 278.2
City of Greensboro v. Guilford Cty. Bd. of Elections, 120 F. Supp. 3d 479 (M.D. N.C. 2015)
City of Phoenix, Ariz. v. Kolodziejski, 399 U.S. 204 (1970)
Friends of Congress Square Park v. City of Portland, 91 A.3d 601 (Me. 2014)
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Semple v. Williams, 290 F. Supp. 3d 1187 (D. Colo. 2018)

ARGUMENT

I. "Demolition" Does Not Constitute a "Disposition"

A. The School District Preserved This Issue for Appeal

Petitioners argue the School District failed to preserve error on the issue of whether the term "demolition" constitutes a "disposition" for purposes of sections 278.1 and 279.22 because it "was required to have an objection filed, have an objections committee formed, and to then timely pursue a declaratory judgment action if its disputed whether a demolition is a type of disposition." Petitioners Reply at 31. Petitioners cite no applicable authority for their argument that the School District's failure to file an objection and form an objections committee somehow bars the School District's argument to the District Court and this Court on appeal.

Petitioners also state the District Court "determined that it need not address" the issue of whether a demolition constitutes a disposition. *Id.* The District Court considered the issue twice—first in its ruling on the petition for injunction and again in the ruling on the motions for summary judgment. Appendix (App.) 262-65; 925. The District Court never found that the School District had "failed to preserve error," or otherwise failed to comply with some unidentified administrative exhaustion requirement. Therefore, the issue is clearly preserved for appeal.

B. “Demolition” is Separate and Distinct from “Disposition”

The School District’s Brief sets forth the majority of its arguments regarding the distinction between demolition and disposition and it will not needlessly re-state those arguments here. *See* School District Brief at 63-67.

Petitioners reference the legislature’s intent with respect to the use of the terms “schoolhouse or site” in section 278.1 and argue there is “clear legislative intent that the voters have the power to **retain** not just school land but also a school building” under the statute. Petitioners Brief at 32 (emphasis added). That argument is completely unsupported by the express language of the statute (or any other authority). Section 278.1 provides:

> Except when restricted by section 297.25, **direct the sale, lease, or other disposition** of any schoolhouse or school site or other property belonging to the corporation, **and the application to be made of the proceeds thereof**. However, nothing in this section shall be construed to prevent the sale, lease, exchange, gift, or grant and acceptance of any interest in real or other property of the corporation to the extent authorized in section 297.22.

Iowa Code § 278.1(b). The statute contains no language regarding “retention,” “preservation,” or any other word indicating the voters have the power to require a school district to keep and maintain a schoolhouse or site, nor do Petitioners cite any authority for this interpretation. *See* Petitioners Brief at 32. Presumably, this is because the school board, not the voters, has the power to determine “the particular school each child shall attend” in the school district. *See* Iowa Code § 279.11 (empowering the school board to “determine the number of schools to

be taught, divide the corporation into such wards or other divisions for school purposes as may be proper and determine the particular school each child shall attend"). Instead, section 278.1 references only "sale, lease, or other disposition." The meaning of the term "disposition" is therefore the real question of statutory interpretation in this matter.

Petitioners argue the dictionary definitions of "disposition" include "demolition." However, the statute's use of "disposition" cannot include merely demolition because the voters have the power to "direct the sale, lease, or other disposition of any schoolhouse or school site . . . **and** the application to be made of the proceeds **thereof**." Iowa Code § 278.1(b) (emphasis added). Therefore, the "disposition" is assumed to generate "proceeds" which will need to be directed somewhere by the voters. *Id.* Demolition alone does not garner proceeds; there is no transfer of property. *See* Merriam Webster Law Dictionary (2017) (defining "disposition" as "transfer to the care or possession of another" and "dispose of" as "to transfer to the control or ownership of another"); Black's Law Dictionary (2017) (defining "disposition" as "act of disposing; transferring to the care or possession of another" and "dispose of" as "to alienate or direct the ownership of property, as disposition by will. . . . to exercise finally, in any manner, one's power of control over; to pass into control of someone else; to alienate, relinquish, part with, or get rid of; to put out of the way; to finish with; to bargain away").

Finally, as noted in the School District's brief, the legislature expressed its intent to remove the term "demolition" from sections 278.1 and 297.22 by first including a definition for the term disposition in 2008 and then removing that definition in March 2009. *Compare* Iowa Code § 278.1(2) (2008) ("For the purposes of this subsection, "dispose" or "disposition" includes the exchange, transfer, **demolition**, or destruction of any real or other property of the corporation." (emphasis added)), *with* Iowa Code § 278.1(2) (2009) (removing the definition of disposition from the statute). If disposition is interpreted to include demolition despite the legislative change, this would potentially bar school districts across the state from engaging in various remodeling or renovation projects through referendum petitions. For example, if a school district planned to demolish an old classroom or wing of a high school and replace it with an updated, modern structure, Petitioners' interpretation would mean that such a decision could be stopped through the ballot box. There is no indication the legislature intended to usurp the authority of a school board in this manner.

Therefore, because the terms demolition and disposition are not synonymous with each other, the legislature removed a prior definition that included the term demolition, the statute contemplates the transfer of property, and for the reasons set forth in the School District's Brief, the District Court erred in ruling that demolition constitutes a disposition under section 278.1 and 297.22.

II. The School Board Acted Properly in Deciding Whether the Referendum Petition was "Authorized by Law"

A. This Issue is Preserved for Appeal

Petitioners argue the School District failed to preserve error on the issue of whether the referendum petition was authorized by law because the School District was required to file an objection, form a committee, and pursue a declaratory judgment action, "not simply reject the referendum petition." Petitioners' Reply Brief at 35. Petitioners cite no applicable authority for their argument that the School District's failure to follow the objections process bars the School District from raising the issue to the District Court and this Court on appeal.

Petitioners state that "[t]he School District concedes that the referendum petition met the statutory requirements for validity." Petitioners' Reply Brief at 35. The School District has never conceded this. What the School District did concede is that the referendum petition was timely filed with the School Board Secretary, contained the requisite number of signatures, addresses, and dates, and that no objections were filed. App. 853-54. The School District has always contended, and continues to argue, the referendum petition was not authorized by law, and, therefore, did not meet all the statutory requirements for validity. App. 17, 565-66, 828.

Finally, as discussed in the School District's Brief, *Berent v. City of Iowa City* should not control here because the *Berent* statute did not contain the phrase "authorized by law." School District Brief at 68-70 (discussing *Berent v. City of Iowa City*, 738 N.W.2d 193 (Iowa 2007)). Petitioners argue the School District never raised this contention to the District Court. Petitioners Reply Brief at 36. In fact, the School District raised this issue to the District Court twice, first in its brief in support of the motion for summary judgment, then in the resistance to Petitioners' motion for summary judgment. App. 565-66 (requesting the District Court reconsider its reliance on *Berent*, noting that the statute at issue in *Berent* did not contain the phrase "authorized by law" and the *Berent* Court did not address the issue of whether the petition was authorized by the city code), 828 ("*Berent* is distinguishable on the text of the relevant statutes…"). This issue is plainly preserved for consideration on appeal.

B. *Berent* Does Not Control

Petitioners then argue "there is no meaningful difference between the phrases "legally insufficient" and "authorized by law." Petitioners Reply Brief at 36. However, there is one, glaring distinction. The School Board here was considering the statutory text of Section 278.1 when it determined the referendum petition was not "authorized by law." *Berent* involved a city council making a determination that a petition was legally insufficient without any statutory direction to do so. The *Berent* Court, therefore, was faced with different

statutory text and its analysis should not control here. Otherwise, the text of section 278.2 that directs the school board to forward a petition "authorized by law" to the commissioner of elections is meaningless.

Petitioners also speculate that the purpose of *Berent* is "to require a neutral court to adjudicate the legal merit of a referendum petition and to prevent a governmental body from being able to reject referendum petitioners which threaten the same government body's chosen course of action." Petitioners Reply Brief at 36. This purpose is not stated in *Berent* and Petitioners' speculation is nothing more than their own interpretation of the case.

III. A Private Right of Action Does Not Exist Under Section 278

The School District's Brief sufficiently addresses the issues raised by Petitioners' response regarding the fact that Section 278 does not provide for a private right of action. *See* School District Brief at 70-72. The School District will not needlessly re-state its position here.

IV. Petitioners' Reply Brief Mischaracterizes the Record and Applicable Law

Petitioners' Reply Brief is rife with inaccuracies and mischaracterizations of the School District's positions. Although the School District is mindful that this is a reply brief to the cross-appeal, it would be remiss to simply ignore these matters.

First, the School District is not arguing "that allowing voters to vote for the bond proposal and school board candidates at the September 12th election somehow excuses [t]he School District's refusal to allow an election on the Hoover anti-demolition referendum." Petitioners Reply Brief at 12. The School District did not refuse to hold an election, or take any other action that implicated Petitioners' right to vote. Instead, the School District determined that the referendum petition submitted by Petitioners was not a petition "authorized by law" under Section 278.2.

The School District has likewise not argued that a referendum election, "as contrasted with a general election for office-seeking candidates, is not constitutionally protected." Petitioners Reply Brief at 12. The School District recognizes that citizens have constitutional rights that cannot be violated in the context of a referendum election. For example, equal protection may be implicated where a law excludes an otherwise-eligible citizen from the voting booth. *See, e.g., City of Phoenix, Ariz. v. Kolodziejski*, 399 U.S. 204, 213 (1970) (striking down a law excluding non-property owners from elections for issuance of general obligation bonds as violating the Equal Protection Clause). The distinction is that, in this matter, Petitioners' constitutional rights are either not implicated or have not been infringed. *See, e.g.,* School District Brief at 13, 35 ("This case involves Petitioners' ability to place a referendum proposition on an election ballot. This is a separate issue from the right to vote…. No one, to the

School District's knowledge, was prevented from or discouraged from participating in [the] election.").

Petitioners cite a litany of cases in their reply brief for the proposition that "all other courts which have addressed the constitutional issue have … concluded that the refusal to hold a statutorily required referendum election, even those which are unrelated to candidates, is a violation of constitutional rights actionable under 42 U.S.C. § 1983." Petitioners Reply Brief at 15 (citing cases). These cases are all distinguishable from the present matter. In *Friends of Congress Square Park v. City of Portland*, the Maine Supreme Court engaged in a detailed analysis of the applicable statutory language and ultimately concluded a referendum question should have been included on the ballot based on the terms of the statute. 91 A.3d 601, 606-07 (Me. 2014). Importantly, the only constitutional issue in that case was a section 1983 attorney fee claim and the parties had previously stipulated as to that fact so the court did not analyze its applicability. The three other cases cited are even less applicable to the instant matter. *See Montana Public Interest Research Grp. v. Johnson*, 361 F. Supp. 2d 1222 (D. Ct. Mt. 2005 (analyzing initiative and referendum provisions in the Montana state constitution); *Semple v. Williams*, 290 F. Supp. 3d 1187 (D. Colo. 2018) (analyzing the constitutionality of a Colorado law altering the requirements for ballot initiatives to amend the state constitution and finding a violation of Equal Protection); *City of Greensboro v. Guilford Cty. Bd. of Elections*, 120 F. Supp. 3d 479

(M.D. N.C. 2015) (granting a preliminary injunction where the State passed a law "depriving [plaintiffs] of referendum and other local control rights given to all other municipal voters in the State," finding the plaintiffs had demonstrated a likelihood of success on the merits of an equal protection challenge).

Petitioners argue the School District failed to respond to their argument that Petitioners' "constitutional right of association has been violated." Petitioners Reply Brief at 20. The School District responded to this argument, denying any violation of Petitioners' First Amendment rights occurred in this matter. *See* School District Brief at 37-39 (denying that the School District violated Referendum Petitioners First Amendment rights and distinguishing the case law cited by Referendum Petitions in support of their First Amendment arguments, including freedom of association). There has been no waiver of this issue.

Finally, Petitioners persist in stating that the District Court ruled the School District violated Petitioners' constitutional rights. The District Court could not have been clearer: "The Court has ruled, as a matter of law, that **there has been no violation of Plaintiffs' constitutional rights**." Ruling at 16 (emphasis added). Petitioners' continued insistence that the District Court "obviously determined" the School District violated their constitutional rights is baffling.

CONCLUSION

For the reasons stated above and in the School District's Brief, the School District respectfully requests the Court affirm the District Court's ruling on the issues raised in Petitioners' appeal and reverse the District Court only with respect to the following:

(1) Demolition does not constitute a disposition under Iowa Code Section 278.1;

(2) The School Board correctly determined the ballot petition proposition was not authorized by law; and

(3) Iowa Code Sections 278.1 and 278.2 do not create a private right of action for money damages.

/s/ *Andrew J. Bracken*
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CERTIFICATE OF FILING AND SERVICE

I certify that on January 25, 2018, the foregoing Reply Brief was electronically filed with the Iowa Supreme Court by using the EDMS system. I further certify that all parties or their counsel of record are registered as EDMS filers and will be served by the EDMS system.

/s/ *Andrew J. Bracken*

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOUME LIMITATION

This reply brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this reply brief has been prepared in a proportionally spaced typeface using Microsoft Word Garamond in size 14 font, and contains 2,462 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ *Andrew J. Bracken*

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