

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION**

ROBERT I. SHERMAN,)	
CELESTE S. SHERMAN, MARY F. DAY)	
ROBERT B. DINNEMAN, and)	No. 2011 COEL 0066
RONALD P. MRAZ)	
)	
Petitioners,)	
)	
vs.)	
)	
INDIAN TRAILS PUBLIC LIBRARY)	
DISTRICT, a body politic; DAVID D. ORR,)	
as Cook County Clerk; WILLARD R.)	
HELANDER as Lake County Clerk)	
)	
Respondents.)	

MEMORANDUM OPINION AND ORDER

This cause comes before the court on Petitioners' Motion to Reconsider the Court's July 29 Ruling granting Respondent Library Board's Motion to Dismiss under Section 2-615 of the Illinois Code of Civil Procedure.

Background

In the April 5, 2011 Election, the voters of the Indian Hills Library District voted on a referendum question about property tax increases designated for the Library District. Petitioners filed an Election Contest Petition alleging that the election was corrupted by the Library Board's alleged violation of Illinois campaign finance and disclosure laws and therefore the election must be declared null and void.

Respondents filed a Section 2-615 Motion to Dismiss, arguing that Petitioners had failed to state a claim upon which relief could be granted because the proper relief for the type of violations claimed by the Petitioners would be civil and/or criminal penalties, not voiding the election results. Judgment in favor of Respondents' Motion to Dismiss was granted on July 29, 2011.

Petitioners have filed this Motion to Reconsider arguing that the Court, in its July 29, 2011 decision, failed to address the Petitioners constitutional claims. Petitioners argue that the acts undertaken by the Library District to influence the voters are so significant as to have violated the basic right of choice of the voters and have, therefore, reached constitutional dimensions, requiring the voiding of the election results.

Discussion

A motion to reconsider serves the purpose of bringing the trial court's attention to newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the court's previous application of existing law. *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248 (4th Dist. 1991).

Petitioners base their Motion to Reconsider on the Court's alleged failure to take into consideration that the allegations of campaign financing and disclosure violations triggers a constitutional inquiry with higher level of scrutiny and, potentially, a different outcome.

This Court, in its July 29, 2011 Order, found that Petitioners in their Election Contest Petition had failed to allege facts showing either 1) a mistake or fraud in the counting or return of the votes or 2) some other specified irregularities in the conduct of the election as required to invalidate election results by Article 23 of the Election Code. 10 ILCS 5/23-20; 10 ILCS 5/23-24.

Article 17 of the Election Code, defines the term "conduct of the election". 10 ILCS 5/17-1 *et seq.* Conduct of the election is the actual procedure followed by election officials in their administration of the elections in their district and deals with such things as; the manner of voting, the handling and marking of ballots, opening and closing of the polls, and proclamation of results in precincts. *Id.* The language in this section clearly limits the meaning of conduct to actions taken by election officials during the administration of an election. There is no reference in this section to invalidating an

election result based on the pre-election activities of an entity with no responsibility for conducting elections.

Petitioners argue that there should be an expansion of the meaning of “conduct of the election” under Article 23, to include the types of activities the Library District has alleged to have committed, and that such conduct rises to a level to trigger the invalidation of election results as allowed under Article 23.

The Court disagrees. The Library District had no role in the conduct of the election, and by law can never be an election authority or an election judge that has a role in the conduct of an election. Illinois case law is clear and consistent that the proper basis of an election contest petition is irregularity in the conduct and administration of an election by an election judge or an election authority, not a third party such as the Library District. *See Craig v. Peterson*, 39 Ill. 2d 191 (1968); *O’Neal v. Shaw*, 248 Ill. App. 3d 632 (1st Dist. 1993); *Andrews v. Powell*, Ill. App. 3d 513 (4th Dist. 2006). The Library District’s alleged illegal conduct does not meet the definition of “conduct of the election” as required under Article 17 and Article 23.

The invalidation of election results is a remedy that courts have recognized as extremely drastic in nature. *See Andrews*, Ill. App. 3d 513. What is constitutionally required in an election is that each voter has the right and opportunity to cast his or her vote without any restraint and that his or her vote has the same influence as the vote of any other voter. *Goree v. LaVelle*, 169 Ill. App. 3d 696, 699 (1st Dist. 1988). Infringements of voting rights found to have risen to this constitutional level include dilution of votes by reasons of malapportioned voting districts or weighted voting systems, purposeful or systematic discrimination against voters of a certain class or political affiliation, and other “willful conduct which undermines the organic process by which candidates are elected.” *Hennings v. Grafton*, 523 F.2d 861, 864 (7th Cir. 1975).

Petitioners have argued that their constitutional rights with respect to elections have been impermissibly diluted by the illegal expenditure of public funds to advocate a substantive position on a referendum election. Petitioners cite to the case of *Smith v. Cherry*, 489 F. 2d 1098 (7th Cir. 1973), to support their contention that the level of misconduct of the Library District reaches the constitutional magnitude required to invalidate the election.

Petitioners' reliance on *Smith* is unpersuasive. In *Smith*, a candidate for Illinois Senate challenged the primary results, alleging that the winner was a "sham" candidate. *Id.* at 1100. The court in *Smith* noted that the fraud involved was intimately connected with the face of the ballot and had the purpose and effect of deceiving voters as to the actual effect of their votes because a vote for a sham candidate was really a vote for another undisclosed person. *Id.* at 1101. In contrast, the present case does not involve a facial fraud; the referendum question at issue was written plainly and unambiguously and was set out on the face of the ballot using prescribed wording required by Property Tax Extension Limitation Law. 35 ILCS 200/18-205. Unlike the ballot in *Smith*, there was no fraud on the face of the ballot and Library District voters were not deceived merely by looking at the ballot.

A more appropriate comparison is *Rudisill v. Flynn*, 619 F.2d 692 (7th Cir. 1980), a case where the plaintiffs, like Petitioners here, sought to set aside a revenue raising referendum. In *Rudisill*, the plaintiffs sought to set aside the election results of a sewer financing referendum based on constitutional arguments, alleging that the two defendants, who were members of the Village Board of Trustees, deliberately misrepresented the facts concerning the need for and the cost of a sewer system and alleged that the defendants failed to disclose material facts, including the personal interests of the defendants in the sewer system. *Id.* at 693. The court dismissed the

complaint, holding that the actions of the defendants were not intimately connected with the ballot itself or the right to vote. *Id.* at 694-95.

The *Rudisill* court further noted that even if the actions of the defendants had affected the fundamental right to vote, the actions were not a substantial burden upon the exercise of the right such that the election should be overturned. *Rudisill* at 695. The Petitioners in the present case are similarly situated to the plaintiffs in *Rudisill*, and their arguments are similarly unpersuasive that there was a sufficient connection between the actions of the Library District and the voters' rights to warrant the invalidation of the election results.

The Petitioners cite to Article VIII Section 1(a) of the Illinois Constitution for the general principle that “[p]ublic funds, property or credit shall be used only for public purposes.” ILCS Const., Art. VIII, §1(a). The principles regarding a public purpose under Article VIII, section 1(a), are well settled. To establish that a statute is unconstitutional “facts must be alleged indicating that governmental action has been taken which directly benefits a private interest without a corresponding public benefit.” *Empress Casino Joliet Corp. v. Giannoulis*, 231 Ill. 2d 62 (2008) (quoting *Paschen v. Village of Winnetka*, 73 Ill. App. 3d 1023, 1028-29 (1979)). Petitioners do not allege that the Library District has taken action for a private interest without a corresponding public benefit. Neither can they cite to a single case in which an election has been invalidated because of the use of public funds for advocacy, nor a statute, rule or regulation in Illinois that requires or authorizes an election to be invalidated for such a reason.

Even if a violation of Article VIII Section 1(a) was proved, there still would be no basis in law for the overturning of the election results. In *Elsenau v. City of Chicago*, 334 Ill. 78 (1929), plaintiff sought to enjoin the payment of money by the city of Chicago for advertisements in support of proposed bond measures. Unlike the Petitioners here, the plaintiff in *Elsenau* sought only to enjoin future illegal activities, not overturn the results

of an election. Petitioners cite Illinois Attorney General Opinion S-960; 5 ILCS 430/1-1 *et seq.*; *Stanson v. Mott*, 551 P.2d 1, 9 (Cal. 1976); *Kidwell v. City of Union*, 462 F.3d 620 (6th Cir. 2006), in support of their petition to overturn the election results. This authority merely serves to show that the unlawful advocacy of a governmental entity may be enjoined and fined, but there are none amongst these examples of an election being invalidated.

This matter coming to be heard on Petitioner' Motion to Reconsider, for the above reasons, IT IS HEREBY ORDERED THAT:

Plaintiff's Motion to Reconsider is DENIED

ENTER: _____ AUG 24 2011

JUDGE MARK J. BALLARD
DOOTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, ILL.
DEPUTY CLERK

August ____, 2011