

CASE NO. A09-1948

State of Minnesota

IN COURT OF APPEALS

MIKE HOUCK, ET AL.,

Appellants,

v.

EASTERN CARVER COUNTY SCHOOLS
CHASKA, MINNESOTA

Respondent.

APPELLANT'S REPLY BRIEF

EDUCATION MINNESOTA

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ARGUMENT

I. RESPONDENT WAS OBLIGATED TO PROVIDE FOR THE ELECTION CONVERSION WITHIN THE CONFINES OF THE LAW.

Appellants have never opposed the conversion to an even-year election cycle, not have they disagreed with moving to three-year terms in the transition. Appellants have simply argued that Respondent is obligated to make the transition under the restrictions of the law, an issue over which Respondent has no discretion.

The main restriction is not extending terms without an election. Appellants do not disagree that Respondent had the discretion to transition to a new election schedule (as the issue is stated in Respondent's brief). Appellants do, however, dispute that Respondent had any discretion over whether to follow the laws regarding using appointment authority to accomplish such a transition. The statute allowing for election conversion in no way provides a specific exemption to allow the extension of an existing term without submitting to a public election. Certainly, a plan is not "orderly" if it offends existing law. Respondent's argument that any other transition plan would "take significantly more time," is absolutely false. (Resp. Br. at 14)¹. Respondent could still have held an even year election as early as 2010 had it held a 2009 election for one-year terms. If the speed of transition were a priority for Respondent, it had a lawful method to accomplish it without failing to require sitting Board members to submit to an election.

¹ Resp Br refers to Respondent's Brief submitted in this appeal

Importantly, reliance on advice from the Minnesota School Boards Association (MSBA) provides no excuse for this failure. What the MSBA advice was or whether Respondent relied on such advice is irrelevant to this Court. MSBA is owed no deference, and Respondent is provided no protections for having relied on MSBA advice.

II. THIS COURT REVIEWS DECISIONS CAPABLE OF REPETITION YET EVADING REVIEW, EVEN IF IT IS MOST LIKELY TO BE REPEATED WITH ANOTHER PARTY.

Respondent attempts to argue that in order for this Court to accept review of the questions presented by Appellants, the issue must be capable of repetition with these particular Appellants. That specific issue, however, has been addressed by a series of Minnesota Supreme Court decisions, and the precedent is clear that such particularity is not required by the Court. In the first case in this series, the Court agreed to review the constitutionality of a statute and relied on the United States Supreme Court's decision in Roe v. Wade, to do so. Davis v. Davis, 210 N.W.2d 221, 223, FN 1 (Minn. 1973). The Court found that simply because the one-year mark for residency has passed (like the time period for gestation in Roe), the case was not moot. Id. The Court relied on this specific language from Roe: "If that termination [of the gestation period: birth] makes a case moot, pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied. Our law should not be that rigid." Id., citing Roe v. Wade, 410 U.S. 113, 125 (1973). That reasoning is equally applicable to this case. If this Court does not accept review, appellate review of

this issue will effectively be denied, as school districts can simply wait to make their decision until they are on the brink of the election they intend to cancel.

A few short years after Davis, the Court reviewed the constitutionality of an election rule after the election had already passed (and the appellant had lost), justifying that decision because the timelines involved in the election process resulted in the “problems presented [being] likely to reoccur without an opportunity for resolution.” Klaus v. Minnesota State Ethics Comm’n, 244 N.W.2d 672, 675 (Minn. 1976). Because recurrence is the precise problem presented here, Appellants request that this Court similarly agree to reach the issues presented.

In the next related case, a respondent attempted to argue that the possibility of repetition must lie with the particular plaintiff, but the Court cited Davis when it held that this particularity was not necessary to reach an exception to the mootness doctrine. See State ex rel. Doe v. Madonna, 295 N.W.2d 356, 361 (Minn. 1980) also citing Moore v. Ogilve, 394 U.S. 814 (1969) (“complaint alleging unconstitutional refusal to certify electoral candidates not moot after election because procedure complained of remains and controls future elections”).

Similarly, in In re Schmidt, 443 N.W.2d 824, 826 (Minn. 1989), the Court also reached the issue of the constitutionality of a statute even though the appellant in that case had not actually been harmed by the statute at issue. The Court noted that other entities would undoubtedly be using the statute and the

controversy was even capable of being repeated with the current appellant. Id. The Court also held that if it did not review the statute in that case, there would be a method of continuing to evade review in the future. Id. In the instant matter, this Court is presented with a similar situation. Appellants have raised a constitutional issue, noting that the Constitution places limits on the interpretation of Minnesota Statutes. Like the Court feared in Schmidt, school districts could simply delay decisions on election conversions until a time when appellate review would be unavailable to a petitioning party, unless this Court accepts review of this question.

Minnesota precedent clearly allows review of a case that could be repeated with another appellant, making Respondent's reliance on Weinstein v. Bradford, 423 U.S. 147 (1975) misplaced. See Lynch v. U.S., 557 A.2d 580, 582 (D.C. 1989) reaching the merits over a mootness claim and limiting Weinstein by finding: "The parties in our present case agree that the decisions of the Supreme Court on the issue of mootness are not binding on this court."

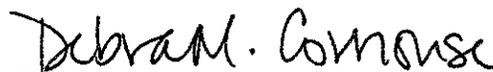
Respondent argues that it did not intentionally attempt to evade legal challenges and that somehow Appellants had "ample opportunity to litigate this case." (Resp. Br. at 10-11). However, even if Appellants had not waited until a second Board meeting to give the Board a chance to do the right thing, Appellants believe that there still would not have been time to have appellate review completed by the end of August when the filing period was to open or November when the election should have been held. Even if Respondent did not

intentionally try to avoid review by the timing of its decision, the practical result of its delayed decision and its mootness argument would be the denial of appellate review. There is also certainly no guarantee that another school district would not wait as long or longer to make a decision on conversion and once again eliminate the opportunity for appellate review. Thus, it is important for this Court to accept review of this matter.

CONCLUSION

For the foregoing reasons, Appellants respectfully requests this Court review this matter and hold that a school district does not have the authority to appoint board members rather than holding an election to bring that decision to the voters.

Dated: March 3, 2010



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