

SUPREME COURT OF NEW JERSEY

Hon. Dana L. Redd v. Vance Bowman

223 N.J. 87 (2015) · No. A-71/72/73, September Term 2013; 073567 · Decided August 11, 2015

SUMMARY

The New Jersey Supreme Court considered whether a Faulkner Act initiative petition requiring Camden to maintain its own police department unlawfully restrained municipal legislative authority or was preempted by state fiscal and police statutes. The Court held that the initiative was neither an improper restraint on legislative power nor preempted, but concluded that the proposed ordinance was outdated, inaccurate, and misleading because Camden had already regionalized its police services. The Court affirmed in part, reversed in part, and remanded with instructions that the municipal clerk not certify the petition.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice Patterson; Chief Justice Rabner; Justice LaVecchia; Justice Albin; Justice Solomon; Judge Cuff, temporarily assigned
JURISDICTION	New Jersey
DECIDED	August 11, 2015
DOCKET	A-71/72/73, September Term 2013; 073567
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Certification review of an Appellate Division decision reversing the trial court's order barring certification of a Faulkner Act initiative petition and remanding for further consideration of preemption.
STANDARD OF REVIEW	De novo review of the legal determinations of the trial court and Appellate Division concerning the interplay among the Faulkner Act, MRERA, and the relevant state fiscal and police-force statutes.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Honorable Dana L. Redd, Camden City Mayor, Honorable Francisco Moran, Camden City Council President v. Vance Bowman, Larry Gilliams, Eulisis Delgado, Mary I. Cortes, Robert Davis

TOPICS

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mootness

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the appeal was moot after Camden disbanded its municipal police department and regionalized police services.
2. Whether the Faulkner Act initiative unlawfully restrained or divested the City's governing body of future legislative power.
3. Whether MRERA, SMAA, TAL, the Local Budget Law, or the Police Force Statute preempted the Faulkner Act initiative.
4. Whether MRERA's Commissioner of Community Affairs veto authority had to be incorporated into the initiative and referendum process.
5. Whether the outdated and misleading proposed ordinance could be certified or submitted to Camden voters.

HOLDINGS

1. The appeal was justiciable and was not moot because the validity of the proposed ordinance remained a live issue and the relief sought could still be granted or denied.
2. The Faulkner Act initiative did not constitute an unlawful restraint on the City's future exercise of legislative power.
3. The Faulkner Act initiative was not preempted by MRERA, SMAA, TAL, the Local Budget Law, or the Police Force Statute.
4. During Camden's economic recovery term, an initiated ordinance was subject to the Commissioner of Community Affairs' veto authority under MRERA, and voters considering an ordinance following a veto should be informed of the veto and its reasons.
5. The proposed ordinance could not be certified or submitted to Camden voters because it was outdated, inaccurate, and misleading after the police reorganization had been completed.

KEY QUOTATIONS

“The ultimate question is whether, upon a survey of all the interests involved in the subject, it can be said with confidence that the Legislature intended to immobilize the municipalities from dealing with local aspects otherwise within their power to act.” (at 24)

“Thus, in accordance with the standard set forth in Overlook, and in accord with this Court’s decisions in Ordinance 04-75 and Trenton Ordinance 09-02, the Legislature’s intent is clear -- to preserve the Faulkner Act procedures notwithstanding Camden’s status as a qualified municipality under N.J.S.A. 52:27BBB-3.” (at 37)

“The ordinance, in short, no longer reflects reality.” (at 43)

“In this case, the Committee’s challenge to the police reorganization must start anew with an ordinance that reflects the facts as they now stand.” (at 46)

FACTUAL BACKGROUND

Camden operated under the Faulkner Act and, after years of state fiscal oversight, entered agreements with the State and Camden County to regionalize its police services. The municipal police department was disbanded on April 30, 2013, and the Camden County Police Department's Metro Division began providing services on May 1, 2013. Before that reorganization was completed, Camden voters submitted a Faulkner Act initiative petition that would have required Camden to maintain its own police department and barred participation in a countywide or regional police force. By the time the Supreme Court reviewed the case, the proposed ordinance no longer accurately described existing circumstances.

PROCEDURAL HISTORY

The trial court prohibited the Camden municipal clerk from certifying the petition, holding that the proposed ordinance unlawfully restrained future legislative authority. The Appellate Division reversed that determination and remanded on preemption. The Supreme Court granted the parties' petitions and cross-petition for certification, declined to dismiss the matter as moot, affirmed the conclusion that the initiative was not an unlawful divestment of legislative power, rejected the preemption theory, and held that the outdated ordinance could not be certified or submitted to voters.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Affirmed in part and reversed in part; remanded to the trial court for entry of judgment directing the Camden Municipal Clerk not to certify the Committee's ordinance under N.J.S.A. 40:69A-187. The Committee may begin anew with a petition and revised ordinance reflecting the current status of Camden's police services.

CASES CITED

- Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011)
- Redd v. Bowman, 433 N.J. Super. 178 (App. Div. 2013)
- Overlook Terrace Management Corp. v. Rent Control Board of West New York, 71 N.J. 451, 461-62 (1976)
- In re Petition for Referendum on Trenton Ordinance 09-02, 201 N.J. 349, 359-68 (2010)
- In re Referendum Petition to Repeal Ordinance 04-75, 192 N.J. 446, 464-70 (2007)
- McCartney v. Franco, 82 N.J. Super. 570, 576 (Law Div. 1964), aff'd, 87 N.J. Super. 292 (App. Div. 1965)
- Rumson Estates, Inc. v. Mayor of Fair Haven, 177 N.J. 338, 351 (2003)
- United Bldg. & Constr. Trades Council v. Mayor of Camden, 88 N.J. 317, 343 (1982)

- Summer v. Twp. of Teaneck, 53 N.J. 548, 554-55 (1969)
- Maese v. Snowden, 148 N.J. Super. 7, 11, 13 (App. Div. 1977)
- City of Ocean City v. Somerville, 403 N.J. Super. 345, 352, 357, 359 (App. Div. 2008)
- Twp. of Sparta v. Spillane, 125 N.J. Super. 519, 523 (App. Div. 1973), certif. denied, 64 N.J. 493 (1974)
- Mack Paramus Co. v. Mayor of Paramus, 103 N.J. 564, 566, 573-74 (1986)
- Lake Valley Assocs. v. Twp. of Pemberton, 411 N.J. Super. 501, 505-06 (App. Div.), certif. denied, 202 N.J. 43 (2010)
- Crow-N.J. 32 Ltd. v. Twp. of Clinton, 718 F. Supp. 378, 385-86 (D.N.J. 1989)
- Tumpson v. Farina, 218 N.J. 450, 465, 468-72 (2014)
- Polillo v. Deane, 74 N.J. 562, 573 n.6 (1977)
- Bd. of Chosen Freeholders of Morris v. State, 159 N.J. 565, 582 (1999)
- Gormley v. Lan, 88 N.J. 26, 37 (1981)
- City of N. Wildwood v. N. Wildwood Taxpayers' Ass'n, 338 N.J. Super. 155, 163, 165 (Law Div. 2000)
- Stop the Pay Hikes Committee v. Town Council of Irvington, 166 N.J. Super. 197, 207, 210 (Law Div.), aff'd o.b., 170 N.J. Super. 393 (App. Div. 1979)
- In re An Initiative Petition for the Adoption of an Ordinance to Amend the Jackson Twp. Admin. Code, 437 N.J. Super. 203, 213, 216-17 (App. Div. 2014), certif. denied, 221 N.J. 218 (2015)
- Brundage v. New Jersey Zinc Co., 48 N.J. 450, 463 (1967)
- DeSimone v. Greater Englewood Hous. Corp., 56 N.J. 428, 434 (1970)
- State in Interest of S.T., 233 N.J. Super. 598, 606-07 (App. Div. 1989)
- Manalapan Realty L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)
- Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 553 (2009)
- St. Peter's Univ. Hosp. v. Lacy, 185 N.J. 1, 14 (2005)
- County of Morris v. Skokowski, 86 N.J. 419, 422-23 (1981)
- Camden City Bd. of Educ. v. McGreevey, 369 N.J. Super. 592, 607 (App. Div. 2004)