

RCSD referendum hearing set for Thurs.

State Supreme Court rejects request to throw out lawsuit

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The Rochester City School District’s attempt to block a referendum on dissolving the school board is unfounded and places board members’ “individual interests in keeping their positions and salaries above the concerns for the education and welfare of our city’s children,” the city of Rochester argued in a court filing Monday.

State Supreme Court Justice J. Scott Odorisi declined the city’s request to throw the lawsuit out and set a hearing for 11 a.m. Thursday. Lawyers on both sides will attempt to sway the judge on two key points.

Is the referendum advisory?

State law prohibits placing “advisory” referenda on the ballot. That means, in essence, a referendum that would have no practical impact if it were passed.

The intent is to keep municipalities from asking thinly concealed poll questions for political purposes. RCSD argues this is exactly what the city referendum would do.

Technically speaking, the referendum asks residents whether they wish to remove language about school commissioners, including their salaries, from the city charter. But state law has parallel language establishing the role of a school board, and when local and state laws conflict, it is generally the state law that rules.

“The referendum would put a public poll on the ballot, which, if approved, would have no legal effect or consequences,” the district argued in its lawsuit.

The city responded by deriding the term “advisory referendum” as the district’s “mystical mantra.” The referendum is not only permissible but in fact mandatory for the purpose

of amending the charter, the city argued.

“The city is making these changes to the charter ... because it anticipates state action that has implications for the interaction of state law and these provisions of the city charter,” the city wrote. “To get ahead of

Mayor Lovely Warren said Friday the school district's attempts to block a November referendum on the future of city schools was 'a Hail Mary play.'

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this issue, the city is amending the charter so that these provisions will not stand in the way of reform on the state level.”

Even if the local and state laws were to conflict, it is not clear what legal problem that would cause. The city said only that it could result in “protracted litigation ... which could only slow much-needed reforms.”

Does the school district have standing to sue?

A basic legal premise is that, to initiate a legal action, a party must prove standing. In other words, it must show to a court that it would suffer a specific injury if the action in question were to proceed. That is why education-related lawsuits are usually brought on behalf of students.

In its response, the city called this the “great irony” on the lawsuit. If the district is correct that the referendum “would have no legal effect or consequences,” then by definition it would cause no harm, and the district

would lack standing.

Conversely, if the referendum would in fact have some significant consequence, then it would not be advisory.

RCSD believes it has an ironclad precedent for its standing to sue from a similar case in Utica in 2005. There, the mayor sued to stop a proposition that would have allowed elected city officials to be recalled.

The specifics of that case differed and the proposition was ultimately allowed, but the state Appellate Division did find that the mayor had standing “of particular importance” because it was “a matter of significant municipal concern.”

However Odorisi decides, he is expected to do so quickly. RCSD in its lawsuit said the matter must be settled by Monday to meet the county Board of Elections schedule for printing ballots.

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