

City appeals court ruling on schools referendum

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Rochester Democrat and Chronicle USA TODAY NETWORK

One week after a city schools referendum was yanked from the November ballot, the city has appealed — arguing to put it back on.

The city on Friday applied

for an expedited hearing when the state Supreme Court's appellate division reconvenes on Sept. 4, trying to beat a Monroe County Board of Elections deadline of Sept. 6.

“Both of those elements are really our hope,” said city Corporation Counsel Timothy Curtin. “If it goes our way maybe it will work out.”

At issue is Mayor Lovely Warren's push for a temporary state takeover of the City School District.

The referendum would not have triggered a takeover, but could have been used to force the state Legislature to act. The city planned to use amendments to the City Charter related to the school board in order to get the matter on the ballot.

The school district sued, arguing the referendum was illegal, being advisory and not substantive. State Supreme Court Justice J. Scott Odorisi agreed with the district in a decision filed last Friday.

In its appeal, the city argues that while school systems are largely controlled by state law, the City Charter still provides that school board members are “elective officers of the city,” and sets board members salaries.

Critical for the Board of Elections is a Sept. 20 deadline to mail military and overseas ballots, said Elections Commissioner Doug French. Staffers need about two weeks to assemble the ballots (there are 72 different ballot styles this year, across all election districts), program the election management system and otherwise get things in order.

The Sept. 6 date was set anticipating an appeal period, French said, but added: “If we don't hear on the sixth, we are going to work the hours to get it done.”

When it comes to the legal battle over the referendum, Odorisi wrote that, “What the whole preceding legal discussion boils down to, is that the city respondents' actions — although unquestionably well intended — are matters reserved for state consideration.”

Charter provides for salaries

“Thus, far from construing the Education Law as preempting the Rochester City Charter, the state legislature has continued to treat the Rochester City Charter as an independent source of law and has amended the City Charter as necessary to maintain consistency between these two coequal and complementary laws,” the city wrote in its filing.

The city's filing also claimed that Odorisi's decision “collected a series of sound bites from disparate appellate cases” and more than once faults the justice for a lack of “any real analysis.” The city highlights “glaring grammatical problems” in one section of the decision. And it argues that the court, being Odorisi, outlined a state law preemption “in broad strokes while turning a blind eye (or perhaps not turning an eye at all) to the history and present function of the laws here at issue.”

If the city prevails, but not in time to get on the ballot, Curtin said the state still could act and use the state law to amend the charter. But, he added: “We can't tell the state what they have to do.” So if the state were to act, and not address the charter sections, he said, the referendum still would be required to eliminate any conflict.

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The city argued in its appeal filing that Odorisi erred. The City Charter, “established through State legislative action and holding the authority of state law, complement and operate in conjunction with the Education Law,” the city argued.

Only the charter provides for the salaries board members receive, and have been receiving since 1907, according to the city. The fact board members continue to collect those salaries is evidence that the City Charter sections are not preempted.

And removal of an elective officer, or a change in elected term or salary, requires a referendum, the city claims.

In a statement released Friday, district spokesman Carlos Garcia said officials were evaluating the city’s arguments but were “confident in the merits of our case.”

The 28-page appeal is a methodical recitation of legal history, both of the City Charter and state education law. When the size of the school board was increased from five to seven members in 1971, the state law expressly amended the City Charter so that it would conform with the state action.



Mayor Lovely Warren said the school district’s attempts to block a November referendum on the future of city schools was “a Hail Mary play,” when speaking July 26 outside her office at City Hall.
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