

The quest for control continues

Judge tosses RCSD referendum regarding state takeover of schools

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Voters will not be asked about the future of city schools come November, after State Supreme Court Justice J. Scott Odorisi ruled Friday that the referendum was illegal. Odorisi agreed with the Rochester City School District's contention that the ballot measure would be advisory, not substantive — concluding that the city's push for a referendum was “admirable, but not legally permissible.” The city filed a notice of appeal within four hours of the decision. Odorisi's decision is a political blow for Mayor Lovely Warren. He further found that Warren's July 12 letter to city voters purportedly explaining the rationale behind the referendum “smacks of prohibited advocacy.” The mailing cost taxpayers \$10,000.

The Monroe County District Attorney's Office is looking into the matter, a spokeswoman said. The city, through spokesman Justin Roj, declined to comment.

Warren had sought the referendum as a means of leveraging what she expected would be public support for a temporary state takeover of the district. The city planned to use amendments to the City Charter related to city schools to place the matter on the ballot. The referendum would not have triggered a takeover, but could have been used to force the state Legislature to act.

RCSD sued, arguing the referendum was illegal. Odorisi agreed.

Differing viewpoints

In a recorded statement, Warren called the decision “a grave injustice.” The mayor, at a conference in South Carolina, addressed her remarks to the city's children, deriding the district's lawsuit as protecting adults who profit from a failed education system and silencing citizens.

“We will appeal this

unjust court decision,” the mayor said. “We will take this fight to the halls of Albany and demand our legislators act. We will ensure that your voice is heard, and you are provided the education and opportunity that are your right.”

But School Board President Van White said Odorisi's ruling showed “the importance of citizens having a voice, even in difficult times.”

It was “good news,” he said, coupled with mostly positive feedback from the state Education Department on the district's latest revision to its



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Odorisi

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improvement plan.

The ruling cleared the board of accusations of “being self-centered, moneyhungry and not focused on children,” White said. “Enough with the courtroom energy. It’s time to focus on the classroom.”

School board member Willa Powell took to Facebook, celebrating the decision and concluding: “The City has no more grounds to attack us, and even if they did, it won’t do them any good. So, Madam Mayor and Honorable City Council ... shut up and let us do our job!”

Warren responded in turn, telling Powell her “problem” was “you see me and the Council President in the very way you look at the mothers and fathers of the children in our district. I will not ‘shut up.’”

Schools are a state issue

Odorisi found that the state, and thus the state Legislature, had sole control over education law and public schools, making any changes to the City Charter irrelevant. School board members are not city officials, but state agents, he wrote.

“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,” Odorisi wrote in his decision.

Gov. Andrew Cuomo and state Sen. Rich Funke, R-Perinton, had welcomed the vote as a signal of the community’s wishes. Funke and Sen. Joseph Robach both expressed regret over the ruling, and Funke encouraged the city to appeal.

“The people of the City of Rochester should have their say,” Funke said in a statement. “The least we can do is allow the voters of the City to make a decision as to whether to continue down this path or to choose a new one. ... I hope that the city will choose to appeal this ruling and fight to have a referendum on the ballot this fall.”

Harry Bronson, D-Rochester, had tried to push for a package of reforms last session that Warren opposed. He ultimately failed to garner support.

“I’ve always said, every time we just focus on governance of the school district, it’s a distraction (from) the reforms our children deserve,” Bronson said Friday. “This was yet another distraction.”

Former Mayor and one-time Lt. Gov. Robert Duffy had supported the referendum push in his role as president and CEO of the Greater Rochester Chamber of Commerce. But he said it was clear, after sitting through the court hearing Thursday, that Odorisi made the right decision. Odorisi “picked apart” the city’s argument, he said.

As for where things go from here: “There has to be a clarion call for change – and there clearly is not the political will to do that,” said Duffy, adding: “I don’t know that you can say anything was accomplished by this process.”

The onus now falls to Warren and others advocating for significant changes to build the political consensus, here and in Albany, to move forward, he said.

“I pushed for changes when I was mayor, with mayoral control,” Duffy said of the failed measure from a decade ago. “One thing I want to reinforce is I don’t blame anybody but the system. The system has to change, and the system is not going to change with the political resistance it has.

“There certainly is a strong, strong opposition to changing the status quo.”

On a final point, the city had argued in court that if a referendum was not necessary, the court should enter an order imposing the City Charter amendment that strips the school board members of any salary. Odorisi declined, on the grounds that would require severing one aspect of the local law that City Council approved to set up the referendum.

“In assessing severability, the Court of Appeals has warned against court actions that ‘invalidate the dog, while preserving the tail,’ ” Odorisi wrote.

Instead, he continued, that question must go back to City Council. There is no clear support on council to do so. Four of the five council members who voted for the referendum have said such a move would require further discussion.

Just as Odorisi released his ruling, the state Education Department gave its response to the district’s most recent draft action plan, based on the recommendations of former Distinguished Educator Jaime Aquino.

State Education Commissioner MaryEllen Elia knocked down a previous version, saying it lacked coherence. The district’s revised plan got a better reception, but Elia still asked for some greater

What's next

Warren jointly introduced the legislation that set this referendum in motion with City Council President Loretta Scott. Reached Friday, Scott said she remains committed to having parents and residents vote on the direction and structure of the City School District.

“I don't know where we go from here,” Scott said.

“Given the importance of the topic, I don't think it just dies with a whimper.”

specificity in the areas of financial oversight, parent engagement and the way English language learners are educated.

The district has until Aug. 30 to respond. White cheered the news, saying: “There is a plan. There is no need for unknown persons to come in and create a plan.”

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