
LEGAL UPDATE

Legal Services Division



Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

IOWA SUPREME COURT DECISION — REMEDY FOR UNCONSTITUTIONALLY ENACTED STATUTE

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LS Power Midcontinent, LLC, and Southwest Transmission, LLC v. State of Iowa, Iowa Utilities Board, and Geri D. Huser

June 12, 2025

No. 24-0641

www.iowacourts.gov/courtcases/23483/embed/SupremeCourtOpinion

Factual and Procedural Background. The Iowa Legislature passed Iowa Code section 478.16(2) in 2020 that gives incumbent electric transmission owners a right of first refusal (ROFR) to construct, own, and maintain a Regional Transmission Organization (RTO)-approved electric transmission line that will be connected to an existing electric facility. Shortly after the enactment of this statute, LS Power Midcontinent, LLC, and Southwest Transmission, LLC (collectively, LSP), sought injunctive relief until the constitutionality of the statute could be determined. The district court and Iowa Court of Appeals held that the nonresident would-be competitor to the incumbents lacked standing to challenge the statute, as no transmission projects had yet been approved. A few weeks later, multibillion dollar projects (Tranche 1 projects) were announced and the incumbents, MidAmerican Energy Company (MidAmerican) and ITC Midwest, LLC (ITC), exercised their ROFR rights. A few months later, the Iowa Supreme Court vacated the Iowa Court of Appeals decision, reversed the district court decision, and held that the nonresident competitor had standing to challenge the statute and the statute, as enacted, most likely violated the single-subject and title requirements of Article III, Section 29 of the Iowa Constitution. The Court also enjoined enforcement of the ROFR pending a final determination of its constitutionality.

After the Iowa Supreme Court decision, the district court found the ROFR statute unconstitutional and granted relief "to correct its earlier error" by enjoining MidAmerican and ITC from participating in the Tranche 1 projects awarded under the ROFR unless the projects are rebid competitively. The district court also entered a permanent injunction to prevent enforcement of the ROFR in any subsequent projects. The decision of the district court that related to the unconstitutionality of the ROFR statute in violation of the single-subject and title requirements of the Iowa Constitution was not appealed. However, MidAmerican Energy and ITC did appeal the applicability of the district court's injunction that applied retroactively to the Tranche 1 projects awarded in 2022 while litigation ensued over the constitutionality of the ROFR statute.

Issue. Whether the district court erred in issuing a permanent injunction retroactively enjoining MidAmerican and ITC from receiving the Tranche 1 projects awarded previously to them in 2022.

Holding. The Court upheld the district's court decision, finding that the parties were properly enjoined from participating in projects awarded by the ROFR while the injunction action was pending as MidAmerican and

ITC were on notice of the pending constitutional challenge and found that rebidding the Tranche 1 projects as the proper remedy.

Analysis. First, the Court stated that the statute enacted in violation of the title and single-subject requirement of the Iowa Constitution that granted MidAmerican and ITC an ROFR is void ab initio, or void from the beginning, due to its flawed method of enactment. *State v. Taylor*, 557 N.W.2d 523, 527 (Iowa 1996). The Court recognized that there has been a move away from strict application of this approach when there has been reliance on the statute in question, but found that the trend is not an absolute rejection of the void ab initio rule. Instead, it recognizes the court's power to temper the rule based on the "reasonableness and good-faith reliance on the purportedly valid statute" and to, in turn, use its power to ameliorate the doctrine's possible harsh results. *Perlstein v. Wolk*, 844 N.E.2d 923, 931 (Tenn. 2007).

The Court stated that typically when a party challenges the validity of a statute before any action is taken and injunctive relief is wrongfully denied, the remedy is to grant injunctive relief where possible dating back to the date of the challenge. Therefore, the Court found that a timely appeal that challenges the validity of the statute will defeat a claim that a right had vested under the law before the challenge succeeded. The Court compares this case to *Grandview Baptist v. Zoning Board of Adjustment*, 301 N.W.2d (Iowa 1981), where a church obtained a building permit, which was timely objected to by neighbors, was constructed anyway before the appeal was heard. The church argued that as the building was already constructed, they had obtained vested rights in the building. The Court disagreed, stating that if that were the case, the right of appeal was meaningless and found the remedy was to remove the building. Following this logic, the Court found that MidAmerican and ITC lacked vested rights in the Tranche 1 projects awarded under the ROFR in 2022 as they were on notice of LSP's constitutional challenge, and should have known their argument that LSP lacked standing because no projects were imminent was fatally inconsistent with the ongoing efforts to land the projects through the ROFR while litigation remained pending. The Court also notes that no physical construction had even begun. The Court found that any reliance the incumbents placed on the ROFR was misplaced, and asserts that MidAmerican and ITC took their chances on the ROFR's possible invalidity with a clear understanding of the situation.

A party seeking a permanent injunction must establish that "(1) an invasion or threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is no adequate legal remedy available." *City of Okoboji v. Parks*, 830 N.W.2d 300, 309 (Iowa 2013). The Court finds all three elements were established by LSP. First, the unconstitutionally enacted ROFR violated LSP's right to compete for the Tranche 1 projects. Second, the district court correctly determined that the injunction is necessary to prevent substantial injury and damage to LSP. Third, neither the State nor the intervenor argued LSP has an adequate remedy at law through a cause of action for money damages on projects where it was wrongfully prevented from bidding.

The Court goes further by stating it declines to reward MidAmerican and ITC's unfair delaying tactics by denying LSP injunctive relief for the Tranche 1 projects awarded in the interim. *Cf. Chicoine v. Wellmark, Inc.*, 2 N.W.3d 276, 286-87 (Iowa 2024). The Court discusses MidAmerican and ITC Midwest's reliance on their "no standing" litigation posture claiming a lack of standing due to no imminent projects, which led to delay; all the while they pursued these projects themselves. Additionally, the Court mentioned how ITC and MidAmerican argued in their first appeal that LSP could realize relief later, but are now arguing the opposite. When determining the remedy, the Court notes that it is well established that rebidding is the proper remedy when competitive bidding requirements are not followed. See, e.g., *O'Donnell Const. Co. v. District of Columbia*, 963 F.2d 420, 429 (D.C. Cir. 1992); *John W. Danforth Co. v. Veterans Admin.*, 461 F. Supp. 1062, 1072-73 (W.D.N.Y. 1978). The court also noted that ITC and MidAmerican can recover their costs under the Federal Energy Regulatory Commission's (FERC) abandoned plant incentive. Midcontinent Independent System Operator (MISO) could rebid the projects, and ITC or MidAmerican would be unharmed if they end up the winning bidders, and if they are not, it would suggest the public was indeed harmed by lack of competitive bidding on Tranche 1 projects in 2022.

LSA Staff Contact: Seth Bohstedt, 515.281.8871 or Seth.Bohstedt@legis.iowa.gov