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## LEGAL UPDATE

Legal Services Division



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### IOWA SUPREME COURT DECISION — NUMBER OF SIGNATURES REQUIRED TO TRIGGER A REFERENDUM RELATED TO SCHOOL INFRASTRUCTURE FUNDING

**Purpose.** *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

**Save Our Stadiums v. Des Moines Indep. Cmty. Sch. Dist.**  
**Filed November 18, 2022, as amended January 23, 2023**  
**No. 21-0999**

[www.iowacourts.gov/courtcases/15757/embed/SupremeCourtOpinion%20](http://www.iowacourts.gov/courtcases/15757/embed/SupremeCourtOpinion%20)

**Factual and Procedural Background.** On November 13, 2019, the Des Moines Independent Community School District (district) announced plans to partner with Drake University to build an athletic stadium on Drake's campus. The district planned to contribute to the project \$15 million in sales tax revenue under the Secure an Advanced Vision for Education (SAVE) program.

On May 19, 2020, the district's board passed a resolution approving the project. The resolution informed voters that they could file a petition pursuant to Iowa Code section 423F.4(2)(b) challenging this use of SAVE moneys. To be valid, "[t]he petition must be signed by eligible electors equal in number to not less than [100] or [30] percent of the number of voters at the last preceding election of school officials under [Iowa Code] section 277.1, whichever is greater." Iowa Code §423F.4(2)(b). If voters did submit a valid petition, the district's board would be required to either rescind the resolution or direct the county commissioner of elections to submit the question to the registered voters of the district in a referendum. Iowa Code §423F.4(2)(b).

The November 5, 2019, election was the last preceding election of school officials. That election included voting for school board positions and city council positions. There were contested races for city council seats and district-based school board seats. There was also an uncontested race for an at-large school board position in which all eligible voters could vote. A total of 25,009 people residing in the district voted in the election, and the number of votes cast in the at-large school board election was 17,843.

Residents of the district organized Save Our Stadiums (SOS) to gather signatures for a petition seeking a referendum. On May 29, 2020, Daniel Pardock, a plaintiff in this case, contacted Thomas Ahart, the district's superintendent, to discuss requirements related to the petition. Mr. Pardock asked how many signatures were needed. Mr. Ahart replied that 7,501 signatures were needed and noted that the petition needed to be submitted by 5:00 p.m. on June 2, 2020.

On June 2, 2020, at 4:30 p.m., SOS presented a petition to the district. The petition contained 7,120 signatures. SOS took the position that it only needed to obtain signatures for an amount that was greater than or equal to 30 percent of the votes cast in the at-large school board election, not an amount of signatures that was greater than or equal to 30 percent of the total number of voters at the election. Subsequently, the district reviewed the petition, determined it did not contain the minimum number of signatures required to trigger a referendum, and did not accept the petition for filing. The district did not return the petition to SOS, despite the directive to do so contained in Iowa Code section 277.7(1).

SOS sought a declaratory judgment that its petition contained enough signatures to trigger a referendum, that the district failed to abide by the procedural requirements of Iowa Code section 277.7(1), and that the district violated its due process rights. SOS also sought a writ of mandamus and an injunction to force the referendum. SOS and the district filed cross-motions for summary judgment. The district court granted the district's motion for summary judgment, ruling that "[t]he [d]istrict correctly refused to accept the petition because the number of signatures did not reach the amount needed to trigger a special election." The district court found that although the district violated Iowa Code section 277.7(1) by failing to return the petition to SOS, no relief was warranted because SOS could not show any resulting prejudice. The district court rejected SOS's due process claim because SOS could not show the district's conduct shocked the conscience, a finding that is required in order for a party to recover under a substantive due process theory. SOS appealed, and the Iowa Supreme Court (Court) retained the appeal.

### Issues.

1. Whether the district court correctly calculated the number of signatures required to trigger a referendum.
2. Whether the district court correctly denied SOS relief for the district's violation of Iowa Code section 277.7(1).
3. Whether the district court correctly rejected SOS's due process claim.

**Holding.** The Court held that the district court correctly calculated the number of signatures required to trigger a referendum, denied SOS relief for the district's violation of Iowa Code section 277.7(1), and rejected SOS's due process claim.

### Analysis.

**Calculation of the Number of Signatures Required to Trigger a Referendum.** The Court determined that the district court correctly calculated the number of signatures required to trigger a referendum, and that Iowa Code section 423F.4(2)(b) required SOS's petition to contain an amount of signatures that was greater than or equal to 30 percent of the total number of voters at the election. In arriving at this determination, the Court first had to determine how to interpret the applicable statutes—either liberally in favor of the right for the public to vote in the referendum or by giving the words within the statutes their ordinary meaning—and then interpret the statutes accordingly.

SOS, citing *Devine v. Wonderlich*, 268 N.W.2d 620 (Iowa 1978) (en banc), argued that the Court should interpret the applicable statutes liberally in favor of the right for the public to vote in the referendum. The Court acknowledged that *Devine* indicated the fundamental nature of the right to vote requires statutes to be construed liberally in favor of voters. However, the Court noted that *Devine* did not involve a referendum. The Court stated that, more recently, it has declined to apply a liberal construction to referendum statutes. *Young v. Iowa City Cmty. Sch. Dist.*, 934 N.W.2d 595, 601 (Iowa 2019). In *Young*, the Court held that a school district was not required to hold a referendum on the demolition of an elementary school building. The Court in *Young* applied a "straight up" interpretation of the applicable statutes because the school board members themselves are democratically elected officials who are empowered to conduct the district's business using a deliberative process. Relying on *Young*, the Court opted not to give Iowa Code section 423F.4(2)(b) a liberal construction. Instead, it would "give its words their ordinary meaning." *Com. Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021).

The Court then analyzed the text of Iowa Code sections 277.1 and 423F.4. The Court noted that the General Assembly combined the elections for school officials and city officials in 2017. 2017 Iowa Acts, ch. 155, §§8-9. In 2019, the General Assembly implemented the 30 percent requirement. 2019 Iowa Acts, ch. 166, §17. Accordingly, "there was never a time when the statutory minimum number of signatures required by [Iowa Code] section 423F.4(2)(b) would have been calculated at a stand-alone election of school officials."

The Court also analyzed the use of "voters" and "voters at" in Iowa Code section 423F.4(2)(b). The Court stated "it is telling that 'voters' is paired with the preposition 'at' before 'the last preceding election of school officials.'" The Court indicated "[t]his conveys a spatial meaning where we consider the people (voters) at a particular place (the election of school officials)." Voters who are at the election of city officials are also present at the election of school officials, and vice versa. The language used in Iowa Code section 423F.4(2)(b) "requires a count of 'voters at' [the] election, which includes those casting votes for city officials."

The Court indicated its interpretation avoids issues that would result if SOS's interpretation were adopted; SOS's interpretation would be problematic if there was an election of school officials that featured two or more at-large elections. In such a circumstance, a court would be required to determine which at-large election's vote total would be used to determine the number of signatures needed for a valid petition. Additionally, it is impossible to decouple

the number of voters in the school board races in this case because the tally books do not contain a ballot-by-ballot breakdown of how many voters voted in each race and, pursuant to Iowa Code section 50.13(1), the ballots cast in the election have been destroyed.

**The District's Violation of Iowa Code Section 277.7(1).** The Court determined that the district court correctly denied SOS relief for the district's violation of Iowa Code section 277.7(1). The Court acknowledged that Iowa Code section 277.7(1) imposes a duty on the district to return SOS's petition. However, the Court noted that duties can be either mandatory or directory. The Court explained in *Taylor v. Dep't of Transp.*, 260 N.W.2d 521, 523 (Iowa 1977), "statutory provisions fixing the time, form and mode of proceeding of public functionaries are directory because they are not of the essence of the thing to be done" but are instead "designed to secure system, uniformity and dispatch in public business." Statutes that impose directory duties "direct the thing to be done at a particular time but do not prohibit it from being done later when the rights of interested persons are not injuriously affected by the delay." *Id.* The Court found that Iowa Code section 277.7(1) imposes directory duties. The Court explained that the violation of a directory duty will not invalidate subsequent proceedings unless the violation causes the party to suffer prejudice. SOS could not demonstrate that the district's violation of Iowa Code section 277.7(1) caused SOS to suffer prejudice. Even if the district had returned the petition to SOS immediately, SOS did not have enough time to collect the additional signatures needed. SOS could not argue that it was prejudiced by being misinformed by the district because SOS knew the district would require more signatures based on communications with Mr. Ahart. The district's obligation to return SOS's petition was moot because the deadline expired the same day SOS submitted the petition with inadequate time to cure the petition's deficiencies.

SOS also argued that the district's failure to return the petition as required by Iowa Code section 277.7(1) acted as an acceptance of the petition for filing. The Court rejected this argument, noting that the district would have violated Iowa Code section 277.7(1) by accepting a deficient petition for filing.

**SOS's Due Process Claim.** The Court determined that the district court correctly rejected SOS's due process claim. SOS argued that a denial of the right to vote on the use of the SAVE moneys amounted to a denial of its individual residents' due process rights. The Court rejected this argument, stating that referendum cases are not "right to vote" cases. In doing so, the Court explained the difference between the right to participate in a representative government through a general election—a fundamental constitutional right—and the right to participate in direct democracy through a referendum—a right that is not fundamental to our Constitution. The Court held that SOS failed to show the district's conduct "shocks the conscience" because "[i]t hardly shocks the conscience to decline to act on a facially invalid petition for a public referendum."

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