

The Supreme Court of the State of Louisiana

CHARLES BRANTON

No. 2021-CC-01743

VS.

PARISH OF ST. TAMMANY AND ST.
TAMMANY PARISH COUNCIL

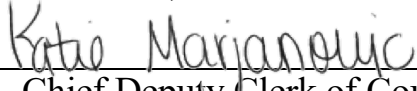
IN RE: Parish of St. Tammany - Applicant Defendant; St. Tammany Parish Council
- Applicant Defendant; Applying For Writ Of Certiorari, Parish of St. Tammany,
22nd Judicial District Court Number(s) 2021-12846 c/w 2021-12868, Court of
Appeal, First Circuit, Number(s) 2021-CW-1295;

November 29, 2021

Writ application granted. See per curiam.

JLW
JDH
SJC
JTG
WJC
JBM
PDG

Supreme Court of Louisiana
December 07, 2021



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2021-CC-1743

CHARLES BRANTON

V.

PARISH OF ST. TAMMANY AND ST. TAMMANY PARISH COUNCIL

Consolidated With

JOHN G. RAYMOND

V.

PARISH OF ST. TAMMANY AND ST. TAMMANY PARISH COUNCIL

On Writ of Certiorari to the Court of Appeal, First Circuit,
Parish of St. Tammany

PER CURIAM

This matter involves Act 362 of the 2021 legislative session (“Act 362”), which authorized a referendum election to allow the voters in St. Tammany Parish to decide whether to legalize a riverboat casino in Slidell. The referendum election is currently set for December 11, 2021.

Plaintiff, John G. Raymond, seeks injunctive and declaratory relief against St. Tammany Parish and the St. Tammany Parish Council (hereinafter collectively referred to as the “Parish”), alleging Act 362 was unconstitutionally enacted. Therefore, he sought to enjoin the election from being held.

In response, the Parish filed an exception of prematurity, asserting the district court should exercise judicial restraint and permit the election to proceed.

After a hearing, the district court sustained the Parish’s exception of prematurity as to the request for injunctive relief, but retained jurisdiction over the request for declaratory relief.

Upon plaintiff's application for supervisory review, a majority of the court of appeal reversed and held plaintiff "may petition the court for an injunction prior to the election, the merits of which should be determined prior to the election." One judge dissented, explaining, "[i]f the vote for the proposition fails, the issue is moot."

The Parish then applied to this court. We stayed all proceedings and now exercise our plenary supervisory authority to review the rulings of the lower courts.

In reversing the district court's ruling, the majority of the court of appeal relied on certain dicta in *Premier Games, Inc. v. State*, 99-1297 (La. App. 1 Cir. 6/7/99), 739 So.2d 852 (per curiam), *writs denied*, 99-1710, 99-1679 (La. 6/14/99), 745 So.2d 15, 604, *cert. denied*, 528 U.S. 1062 (1999), in which the appellate court suggested plaintiffs should have sought a pre-election injunction rather than seeking to nullify the election after it occurred. However, a careful examination of *Premier* shows the plaintiffs in that case alleged they were aggrieved by a provision which they claimed impacted their First Amendment right to participate in the election. Although plaintiffs in the instant case challenge the constitutionality of Act 362, they do not allege the Act places any improper limitations on their rights to participate in the upcoming election. Under these circumstances, we find the court of appeal's reliance on *Premier* was misplaced.¹

Our jurisprudence has consistently held that courts should refrain from reaching or determining the constitutionality of legislation unless, in the context of a particular case, the resolution of this issue is essential to the decision of the case or controversy. *Cat's Meow, Inc. v. City of New Orleans Through Dep't of Fin.*, 98-0601 (La. 10/20/98), 720 So. 2d 1186, 1199; *Louisiana Associated Gen. Contractors, Inc. v. New Orleans Aviation Bd.*, 97-0752 (La. 10/31/97), 701 So.2d 130; *Cameron Parish Sch. Bd. v. Acands, Inc.*, 96-0895 (La. 1/14/97), 687 So.2d 84;

¹ Similarly, we find the court of appeal erred in relying on certain language in our opinion in *Louisiana Paddlewheels v. Louisiana Riverboat Gaming Comm'n*, 94-2015 (La. 11/30/94), 646 So. 2d 885, 888, n.4. That case is factually distinguishable.

White v. West Carroll Hosp., Inc., 613 So.2d 150 (La. 1992). In determining whether a constitutional issue is ripe for determination, we have focused on two elements: (1) the hardship to the parties if a court does not decide; and (2) the fitness of the issues for decision. *Matherne v. Gray Ins. Co.*, 95-0975 (La. 10/16/95), 661 So. 2d 432, 435 (citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49, 87 S.Ct. 1507, 1515-1516, 18 L.Ed.2d 681 (1967)). In explaining the need for judicial restraint in addressing constitutional challenges, we have also observed that “there is a possibility that if the court waits for an actual controversy, the whole constitutional problem may be eliminated by later developments.” *Ring v. State, Dep't of Transp. & Dev.*, 2002-1367 (La. 1/14/03), 835 So. 2d 423, 427-28; *Matherne*, 661 So.2d at 436.

In the case at bar, we find plaintiff will suffer no significant hardship if the election proceeds prior to a hearing on his constitutional challenge. We further find the question of fitness of review must await the outcome of the election, as the dispute over the constitutionality of Act 362 could be rendered moot by the results of the referendum. Post-election review of plaintiff’s constitutional challenge will serve to properly balance the role of the courts to both respect legislative enactments and at the same time seek to provide substantial remedies to wrongly aggrieved persons. *Ring*, 835 So. 2d 423, 427; *Board of Com'rs of Orleans Levee Dist. v. Connick*, 94-3161 (La. 3/9/95), 654 So.2d 1073, 1076.

Accordingly, we find the district court properly dismissed plaintiff’s request for injunctive relief as premature. Without expressing any opinion on the merits of plaintiff’s arguments, we find his constitutional challenge to Act 362 is appropriately addressed after the election. Accordingly, we will reverse the judgment of the court of appeal and reinstate the judgment of the district court.

DECREE

For the reasons assigned, the writ is granted and made peremptory. The judgment of the court of appeal is reversed, and the judgment of the district court is reinstated. The November 24, 2021 stay order is lifted, and the case is remanded to the district court for further proceedings. Any rehearing application shall be filed no later than five days from the date of this judgment.