

Anita ZARUBA v. Levi PHILLIPS, Cindy George, and
Jack Mace as Members of the Board of Election Commission
of Carroll County, Arkansas; Shirley Doss, Clerk,
Carroll County; Don Wilson and Jr. Hill

94-1190

895 S.W.2d 544

Supreme Court of Arkansas
Opinion delivered April 3, 1995

ELECTIONS — ISSUE OF SUFFICIENCY OF PETITION MUST BE DECIDED BEFORE ILLEGAL EXACTION ISSUE MAY BE REACHED — CHANCERY COURT HAD NO JURISDICTION OVER THIS ISSUE. — The appellant's claim that the chancery court had jurisdiction over her attempt to obtain an injunction to prohibit the county from conducting a local election was meritless where the illegal exaction issue upon which her claim was founded could not be reached without first deciding the sufficiency of the election petition; the issue of the sufficiency of the petition for a local option election is one over which the chancery court has no jurisdiction and the chancellor properly dismissed the appellant's claim for lack of subject matter jurisdiction.

Murphy & Carlisle, by: *Marshall N. Carlisle*, for appellant.

Kenneth Elser, Deputy Prosecuting Attorney, for appellees.

DAVID NEWBERN, Justice. Anita Zaruba, the appellant, is a registered voter and taxpayer residing in Omega Township, Carroll County. She sought to enjoin the appellees, who are mem-

bers of the County Election Commission, and other county officials from conducting a local option (wet-dry) election in Omega Township. She contended those petitioning for the election had not presented a sufficient number of signatures prior to the deadline 60 days before the proposed election. The petition was certified by the County Clerk, and the election was held November 8, 1994. The dries won 110 to 32. We hold the Chancellor properly dismissed Ms. Zaruba's claim for lack of jurisdiction of the subject matter.

Ms. Zaruba claimed the Chancellor had jurisdiction because her claim was founded upon Ark. Const. Art. 16, § 13, which deals with illegal exactions. Her theory was that public funding of the election would constitute an illegal exaction.

[1] The illegal exaction issue cannot even be approached without first deciding the sufficiency of the petition. The issue of the sufficiency of the petition for a local option election is one over which chancery court has no jurisdiction. *McFerrin v. Knight*, 265 Ark. 658, 580 S.W.2d 463 (1979). We affirm the decision and decline to remand for transfer to the Circuit Court because the sufficiency of the petition cannot be questioned after the election has been held. *Herrington v. Hall*, 238 Ark. 156, 381 S.W.2d 529 (1964).

Affirmed.