

Georgie ROBIE et al v. Lanita BOLTON

76-281

541 S.W. 2d 310

Opinion delivered October 4, 1976
(In Banc)

MUNICIPAL CORPORATIONS — ORDINANCES — INITIATIVE PETITIONS, VALIDITY OF. — A municipal ordinance requiring that initiative petitions be filed with the city clerk at least 90 days before the regular municipal election at which the proposed measure is to be voted upon *held* valid where the city fixed the last permissible date for filing the petition, which is in accordance with the constitution, proponents of the measure being at liberty to file their petition before that date.

Appeal from Sebastian Chancery Court, *Bernice Kizer*, Chancellor; affirmed.

Kenneth L. Schorr, for appellants.

Daily, West, Core & Coffman, for appellee.

GEORGE ROSE SMITH, Justice. A Fort Smith ordinance, adopted in 1972, requires that initiative petitions be filed with the city clerk "at least 90 days before the regular municipal election" at which the proposed measure is to be voted upon. The appellants tendered such a petition to the appellee, as city clerk, some 64 days before the next election (to be held in November). Upon the appellee's refusal to accept the petition the appellants brought this suit for a judgment declaring the tender to have been timely. This appeal is from a decree upholding the city clerk's refusal to accept the petition.

The Constitution provides that the time for filing a municipal initiative petition "shall not be fixed at less than sixty days nor more than ninety days" before the election. Ark. Const., 1874, Amendment 7. The appellants argue that the Fort Smith ordinance is contrary to the Constitution, because, they say, the municipal requirement that the petition be filed "at least 90 days" before the election fixed the filing date one day earlier than the constitutional mandate that it be not "more than ninety days" before the election.

The trial court's decision is right. What the Constitution contemplates is that the city fix the last permissible date for the filing of the petition. That is the only date that is involved, because the proponents of the measure are at liberty to file their petition before that date. *Fine v. City of Van Buren*, 237 Ark. 29, 371 S.W. 2d 132 (1963). Unquestionably the city of Fort Smith could have required that the petition be filed "at least 60 days" before the election, because that language is an accurate paraphrase of the constitutional reference to not less than 60 days. That being so, the city must be entitled to move the date forward to any point up to and including "at least 90 days" before the election, as in the ordinance actually in force. Otherwise the 30-day leeway allowed by the Constitution would be reduced to only 29 days. Hence the ordinance is valid.

Affirmed.
