

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

NO: D 202 CV 2016 2775

HAILEY ATYANI,
Et.al.

COPY
Plaintiff(s),

-vs-

DENNIS BONAFONTINE,
Et.al.

Defendant(s).

**ENDORSED
FILED IN MY OFFICE THIS**

MAY 30 2017

J. Cook
CLERK DISTRICT COURT

CATHY CHAVEZ

**ORDER ON DEFENDANT BONAFONTINES' MOTION TO DISMISS MINIMUM
WAGE ORDINANCE CLAIMS**

THIS MATTER having come before the Court upon Defendants' Motion to Dismiss; the Court having reviewed the parties' briefing and having conducted a hearing in open court on May 25, 2017, at which counsel for all parties attended and each argued on behalf of their client; the Court having reviewed the file in this case; and being sufficiently advised;

THE COURT FINDS:

1. There is jurisdiction over the parties and the subject matter ;
2. This case involves application of The Albuquerque Minimum Wage Ordinance which was enacted after adoption by 66% of participating City voters in November 2012 and became effective January 1, 2013. See: Albuquerque Code of Ordinances Section 13-12-1 et seq..
3. Defendants Bonafontine move for an Order dismissing Plaintiffs' action on the grounds the underlying Minimum Wage Ordinance is unconstitutional because it was

not properly enacted. Movants urge two bases for striking the Ordinance. First, that the ballot initiative was defectively drawn and improperly placed before the voters and, second, that equity requires its demise for essentially the same reasons.

4. Specifically, as to the claim the Ordinance is defective and fatally flawed as a matter of law, Defendants assert this “ direct legislation by voter initiative “ :

a) improperly appeared on the ballot via a summary as opposed to the full text;

b) contained a typographical error; and

c) encompassed multiple issues and was therefore illegal “ log rolling “.

5. Therefore, Defendants Bonafontine posit the initiative should never have been on the 2012 ballot in the first place and that the resulting Ordinance is void and unenforceable, leaving Plaintiffs without a claim.

6. Plaintiffs respond first that this Court has no jurisdiction to consider Defendant Bonafontines’ Motion as it is an untimely election challenge. See: Wilson –vs- Denver 1998 NMSC 016; Glaser –vs- LeBus 2012 NMCA 028. Plaintiff’s further dispute each of Defendant Bonafontines’ assignments of fatal error in the initiative asserting: 1) the full text is not in fact required and , even if it were required, is not a sufficiently serious flaw to over- rule the voice of the voters under Turner –vs- Barnhart, 1972 NMSC 036; 2) that the “ typographical error “ issue is similarly insignificant and insufficient to overturn a four year old election result under Turner, supra, and Helman –vs- Gallegos 1994 NMSC 023; and 3) the “ log rolling “ prohibition does not apply to municipal elections. Ackerman –vs- City of Carlsbad 1953 NMSC 053.

7. Real Party in Interest City of Albuquerque also urges denial of Defendant Bonafontines' Motion to Dismiss by pointing out the electorate's 2012 decision was not challenged for more than four (4) years after enactment and that the requirements of election laws should be interpreted to uphold the results of an election that has occurred before the challenge is brought. Turner –vs- Barnhart 1972 NMSC 036.

8. CABQ further argues that the summary –vs- full text issue, and the typographical error issue are both non substantive technical errors which do not provide a basis to undo the voters' choice. Turner, supra; Helman –vs- Gallegos, supra.

9. Lastly, CABQ points out that “ log rolling “ prohibitions only apply to issues of 1) governmental indebtedness; and 2) constitutional amendments, neither of which categories apply to this case. In fact , Defendants concede this point in their briefing, though they submit their appeal to the court's “ equitable jurisdiction “ provide for establishment of another more amorphous category- where the challenger believes the vote results were unfair or inappropriate- heretofore unrecognized by legislative action or judicial interpretation.

10. As to the timeliness issue, this is indeed “ an election challenge “. Glaser –vs- Lebus defines and election challenge as :

“ a challenge to the results of an election, as well as a challenge to the inherent validity of an election, when the challenge would necessarily require overturning the results...”

The Court rejects Defendant Bonafontines' assertion that this direct voter initiative is somehow qualitatively different from any other circumstance in which the populace is asked to express its

choice at the polling booth. Each and every exercise of voters' rights and expression of voters' choice involves our inherent and cherished rights and is entitled to the same degree of deference and protection whatever its source. See *Turner -vs- Barnhart*.

11.. Pursuant to CABQ's Municipal Election Code, Article II Section 3, any challenge to an election must: 1) be filed within thirty (30) days of the certification of results; 2) by a verified Complaint; and 3) representing 20 % of the voters. See also: Section 3-8-63 NMSA for challenges to statewide election results. Defendant Bonafontines' challenge to the Albuquerque Minimum Wage Ordinance fails on all three (3) points. The Motion is untimely.

12. Even if Defendant's challenge was timely, the " fatal flaws" claimed to arise because a summary was placed on the ballot, and because of a typographical error are not sufficiently serious failings to warrant overturning the voices of 66% of participating voters . *Turner, Id;* *Gallegos, Id.*

13. Similarly, even if Defendants' challenge were timely, the allegations of " log rolling " are inapplicable to the municipal election under scrutiny. N.M. Constitution Article IX Section 12 and Article XIX Section 1; *Ackerman -vs- City of Carlsbad, supra*.

14. As the Court finds Defendant Bonafontines' Motion to Dismiss is itself fatally flawed both procedurally and substantively , the Court does not address the remaining issues including whether " laches " is, or should be applicable to these facts and circumstances.

15. Defendant Bonafontines' Motion to Dismiss is not well taken and should be denied.

WHEREFORE it is Ordered:

Defendant Bonafontines' Motion to Dismiss is denied.

ALAN M. MALOTT

Alan M. Malott – District Judge

Copies of the foregoing were
Mailed to counsel of record
5/30/17 via USPS

ALAN M. MALOTT

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