

**519 P.3d 178**

**Nancy LORD, an individual; Alan Lord, an individual; and Kim Coleman, an individual, Petitioners,**

**v.**

**SALT LAKE COUNTY CLERK, Jordan School District, and Salt Lake County Tax Assessor, Respondent.**

**No. 20220758**

**Supreme Court of Utah.**

**Filed September 7, 2022**

Nancy Lord, Alan Lord, Bluffdale, and Kim Coleman, West Jordan, Pro se petitioners

Sim Gill, Bridget K. Ramano, D. Adam Miller, Melinda K. Bowen, Salt Lake City, for respondent Salt Lake County Clerk and Salt Lake County Assessor

Paul D. Van Komen, Patrick L. Tanner, West Jordan, for respondent Jordan School District

Per Curiam:

## INTRODUCTION

¶1 This matter is before the court on a petition for extraordinary relief seeking a declaration that a property tax increase approved by a school district is subject to a referendum. Salt Lake County and the Jordan School District have filed responses to the petition and motion for emergency relief. We have determined that petitioners have failed to meet their burden of demonstrating that the referendum they seek is constitutionally or statutorily authorized.

## BACKGROUND

¶2 The petition alleges that the Jordan School District (the School District) approved a tax increase on August 2, 2022.<sup>1</sup> Eight opponents of the increase then filed a referendum petition application with the Salt Lake County Clerk on

or about August 8. The Clerk denied the application on August 18 and supplied a letter from the Salt Lake County District Attorney's Office, which opined that school districts are not subject to referenda under the Utah Constitution or relevant statutes.

¶3 The referendum applicants protested that decision and asked for reconsideration. On August 25, the District Attorney's Office reaffirmed the denial in a letter and further

[519 P.3d 179]

elaborated the reasons it believed Salt Lake County was not the appropriate entity to which the application should have been submitted.

¶4 On August 29, three of the referendum applicants (Petitioners) filed this petition and a motion for emergency relief.<sup>2</sup> The petitioners ask us to decide whether "a property tax increase by a school district [is] subject" to a referendum and to fill "any statutory gaps that may exist." And they seek an order declaring that the School District's approval of the tax increase is subject to referendum.<sup>3</sup>

## ANALYSIS

¶5 The petition provides minimal analysis to support the Petitioners' claims for relief. They cite article VI, section 1, of the Utah Constitution for the general proposition that legislative power is vested in "the Legislature" and "the people." The Petitioners also argue that *Mawhinney v. City of Draper*, 2014 UT 54, 342 P.3d 262, "provides a strong framework and is very close" to the Petitioners' attempt to subject the School District's tax increase to a referendum. The Petitioners also cite sections 20A-7-601 and -613 of the Utah Code, but they concede "the applicable statute[s'] definitions ... fall a little short in addressing a school district."

¶6 Any litigant seeking affirmative relief bears the burden of demonstrating that she is entitled to that relief. It is perhaps understandable that the self-represented petitioners in this case encountered some difficulty in supplying a more detailed constitutional and statutory analysis

within the short time frame afforded by their receipt of the notice of denial of their referendum petition application. But, while we generally afford some leeway to self-represented litigants, we do not assume their " 'burden of argument and research.' " *Treff v. Hinckley* , 2001 UT 50, ¶ 11, 26 P.3d 212 (quoting *State v. Thomas* , 961 P.2d 299, 304 (Utah 1998) ); see also *Allen v. Friel* , 2008 UT 56, ¶ 17, 194 P.3d 903.

¶7 Consequently, the Petitioners have the obligation of demonstrating that either the constitution or a statute allows them to submit the School District's decision to referendum. The Petitioners' authority and argument fall short of satisfying that obligation.<sup>4</sup>

¶8 Article VI, section 1, of the Utah Constitution provides: "[t]he Legislative power of the State shall be vested in: (a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and (b) the people of the State of Utah *as provided in Subsection (2)* ." UTAH CONST . art. VI, § 1 (1) (emphasis added). That sweeping language is followed by a more precise articulation of the right to refer legislation to voters. Subsection (2) provides, in relevant part: "[t]he legal voters of any county, city, or town ... may ... require any law or ordinance passed by the law making body of the *county, city, or town* to be submitted to the voters thereof, as provided by statute, before the law or ordinance may take effect." *Id* . art VI, § 1(2)(b)(ii) (emphasis added).<sup>5</sup>

[519 P.3d 180]

¶9 Those provisions notably omit school districts from the list of "law making bod[ies]" whose legislative acts are subject to referenda. School districts are independent of counties, cities, and towns.<sup>6</sup> See UTAH CODE § 53G-3-202(1)(a) (stating "[e]ach school district shall be controlled by its local school board and shall be independent of municipal and county governments"<sup>7</sup> ). Instead, the School District is "a political subdivision of the State." *Lovendahl v. Jordan School District* , 2002 UT 130, ¶ 4, 63 P.3d 705 ("Defendant Jordan School District ... [is] a political subdivision of the State of Utah.").

¶10 Prior to 2001, the referendum provisions in subsection (2) of article VI, section 1 applied broadly to "any legal subdivision of the State." But that language has been displaced by current constitutional reference to a "county, city, or town." See, e.g. , *Low v. City of Monticello* , 2002 UT 90, ¶ 23, 54 P.3d 1153 (citing and applying the prior version of article VI, section 1(2), of the Utah Constitution, and acknowledging an amendment of that provision following the events that gave rise to the dispute before it), *overruled on other grounds by Carter v. Lehi City* , 2012 UT 2, ¶ 15, 269 P.3d 141. This suggests that the intent of those who voted that amendment into law might have been to narrow the provision's scope to exclude State subdivisions such as school boards.

¶11 The School District cites other constitutional provisions expressly referencing school districts in addition to counties, cities, and towns, and it argues the inclusion of school districts in those provisions supports a strong inference that the omission of school districts from the referenda provision was intentional. See, e.g. , UTAH CONST . art. VI, § 29 (1) (imposing restrictions on authorization for lending of credit or subscribing to stocks or bonds by "the State, [ ] or any county, city, town, school district, or other political subdivision of the State"); *id* . art XI, § 8 (permitting the Legislature to "provide for the establishment of political subdivisions of the State, or other governmental entities, in addition to counties, cities, towns, school districts, and special service districts, to provide services and facilities"). This suggests that the framers of the constitution knew how to include school districts when they wanted to. And the failure to do so in the referendum right provision suggests a deliberate exclusion.

¶12 The statutory provisions the parties cite conform to the same approach of limiting challenges to legislation enacted by counties, cities, and towns. In particular, section 20A-7-102(3) of the Utah Code allows voters to "require any law or ordinance passed by a local legislative body to be referred to the voters for their approval or rejection before the law takes effect." And the term "local legislative body" is

defined in section 20A-7-101(16) as "the legislative body of a county, city, town, or metro township." Thus, as the Petitioners appear to concede, the employment of the same term in the statutory provisions it cites cannot be interpreted to incorporate school districts in the absence of some basis for deeming the term ambiguous in scope; and the Petitioners do not explain what that basis could be beyond speculating "that the Legislature likely did not intend to specifically leave ... school district[s] out of the statutory scheme."<sup>8</sup>

[519 P.3d 181]

¶13 Neither does the Petitioners' reliance on *Mawhinney* yield a basis for a broader interpretation of the relevant scope of the cited constitutional and statutory provisions. In relation to the Petitioners' discussion of that decision, they seek to characterize a school district as a "subjurisdiction" of the State.<sup>9</sup> But the challenged law of the subjurisdictional entity in *Mawhinney* had been enacted by "the 'City Council of Draper City, acting as the Board of Directors of the Traverse Ridge Special Service District.'" 2014 UT 54, ¶ 4, 342 P.3d 262. In other words, the tax may have applied to only a subset of property owners; but it was enacted by the "local legislative body" of a municipality, which is one of the entities specifically referenced in the cited constitutional and statutory provisions applicable to referenda.<sup>10</sup>

¶14 Here, setting of the tax rate by the School District (rather than any conforming action taken by the County) is the subject of the petition's challenge.

#### CONCLUSION

¶15 The Petitioners have not provided an argument under the Utah Constitution, the Utah Code, or any relevant case law that demonstrates that a school district's tax increase is subject to referenda. We do not rule out the possibility that a more comprehensive evaluation of relevant constitutional or statutory provisions could generate a basis for deeming school district tax increases subject to referenda. We simply hold that the petition has not provided us

with a sound legal basis for affording the relief requested; and we find that conclusion buttressed by the arguments provided by the Respondents. The petition and requests for emergency relief are denied.

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#### Notes:

<sup>1</sup> The documentation attached to the petition consists of a copy of an email from the School District confirming that "it was moved to approve the tax rate increase as indicated on property tax notices" at a hearing held on August 2. The email does not specifically document approval of the motion, but the School District does not dispute the assertion that the tax increase was approved. We therefore accept the assertion as true for purposes of this opinion.

<sup>2</sup> The petition indicates the Utah State Tax Commission has confirmed that "the deadline for the Jordan School District to submit their new certified tax rate is September 15, 2022." And it references September 16 as "the approximate deadline for placing items on the ballot so that they can be printed and mailed." But the motion for emergency relief separately asserts "this Court must rule on or before Wednesday, September 7, 2022, in order that the referendum in question may appear on the Salt Lake County ballots."

<sup>3</sup> The Petitioners further seek to have the "time to gather signatures equitably extended" and references a possibility of directly enjoining any attempt to levy the increased tax.

<sup>4</sup> The Petitioners have suggested that we could afford them an opportunity to supply further briefing. While we retain the discretion to seek further briefing in support of a petition for extraordinary relief, the tight deadline for the relief they request would appear to foreclose that possibility. We sympathize with petitioners and understand that they needed to move quickly to file their petition to get a decision before ballots were finalized. But we must rule based on the arguments that are presented to us

and not on the promise of unspecified, additional arguments to be provided later.

<sup>5</sup> Similarly, subsection 2(a)(i)(b) protects the right to refer to voters "any law passed by the Legislature" by less than two-thirds vote. Utah Const. art. VI, § 1 (2)(a)(i)(B). In this case, the Legislature has not imposed the tax increase on behalf of the School District. *See id.* art. XIII, § 5(4) (prohibiting the State from imposing taxes "for the purpose of a political subdivision," except for guarantees of certain debts for school districts, as delineated in article X, section 5(5)(a)). And the Petitioners make no argument that the state referendum right applies.

<sup>6</sup> The Legislature has expressly provided for at least one aspect of direct citizen-legislative action pertaining to school districts. *See* Utah Code § 53G-3-301(2)(a) (allowing for the initiation of the process to create a new school district via a "citizens' initiative petition"). And the Utah Constitution requires voter approval of the creation of a debt "by a county, city, town, school district, or other political subdivision of the State," which is "directly payable from and secured by ad valorem property taxes ... in excess of the taxes for the current year." Utah Const. art. XIV, § 3 (1).

<sup>7</sup> It nonetheless appears local governments have specific statutory roles in creating school districts and redistricting local school board

districts. *See, e.g.*, Utah Code § 53G-3-301(2)(c), (8) (allowing municipalities to request creation of a new school district and requiring approval of the legislative body of each affected county for their creation); *id.* § 20A-14-201 (addressing establishment and redistricting of local school board districts within existing school districts).

<sup>8</sup> We certainly can construe ambiguous statutes to effectuate the intent of the Legislature. But we do not "fill gaps" in those statutes if doing so would simply substitute our view on best policy practices for that of the Legislature.

<sup>9</sup> We do not have occasion at this point to pass judgment on that characterization; but it appears a school district may be properly classified as a "political subdivision" of the State. *See, e.g.*, Utah Const. art. XI, § 8.

<sup>10</sup> Section 20A-7-601(1)(e)(i) of the Utah Code defines "[s]ubjurisdictional law" to mean "a local law or local obligation law passed by a *local legislative body* that imposes a tax or other payment obligation on property in an area that does not include all precincts and subprecincts under the jurisdiction of the county, city, town, or metro township." (Emphasis added). A "local legislative body" is defined as "the legislative body of a county, city, town, or metro township." Utah Code § 20A-7-101(16).

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