



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**HANCOCK, et al. v. BISNAR, et al.,
NO. CV-05-0381-AP/EL**

PARTIES AND COUNSEL:

Appellants: Andy Bisnar, Kenneth Griffin, and Lee Musick, represented by Lisa T. Hauser and Michella Abner, of Gammage & Burnham

Appellees: Joseph E. Hancock and Charles B. Sherrill, Jr., represented by Andrew S. Gordon and Lauren J. Weinzwieg, of Coppersmith Gordon Schermer Owens & Nelson.

FACTS:

The Mohave Valley Irrigation and Drainage District (MVIDD) contains 21,648 acres, only 3,273 of which are agricultural. MVIDD is divided into three divisions, although there is currently no agricultural land in division 1. The board is composed of one director elected from each division. On September 13, 2005, a recall election was held in all three divisions of MVIDD, resulting in the incumbent directors, Don McMurry, Joseph Hancock, and Clay Vanderslice, being ousted and replaced by Andy Bisnar, Kenneth Griffin, and Lee Musick. Director Hancock and Charles B. Sherrill, Jr. (Appellees) timely filed an election contest, alleging that the newly elected directors (Appellants) are not qualified electors of MVIDD because they do not own agricultural land.

In ruling on the election contest, the trial court held that MVIDD is a political subdivision of the state and a municipal corporation, so electors may contest a district election under either A.R.S. § 16-673, relating to elections of state offices, or § 16-674(A), relating to municipal corporations. The trial court rejected the Appellants' jurisdictional defenses related to the sufficiency of the Appellees' pleadings. The court found the Appellees were required to allege neither that they were electors of a specific division rather than District at large, nor that they held the requisite property qualifications for 90 days preceding the recall election.

Further, the trial court agreed with the Appellees' claim that Appellants were not eligible to hold office. A.R.S. § 48-2917 provides that, to qualify as an elector of an irrigation district, a person must be a "holder of title or evidence of title . . . to land in the district" for 90 days preceding the election. In *Post v. Wright*, 37 Ariz. 105, 289 P. 979 (1930), the supreme court interpreted the statute as requiring electors to be agricultural land owners because residential and business property is not susceptible to profitable crop cultivation, and the owners of such property would have no interest in an irrigation district. Although recognizing that domestic and industrial users now have a significant interest in MVIDD, the trial court nevertheless believed it was bound to follow *Post*, as only the legislature or the supreme court may change the law.

Finally, the trial court ordered that the incumbent directors remain in office until their successors are appointed and qualify. That order, however, was stayed pending the appeal.

ISSUES:

Issues as Framed by Appellants:

1. Was *Post v. Wright*, 37 Ariz. 105, 289 P.979 (1930), incorrectly decided when it held that only agricultural landowners can be qualified electors of irrigation districts and, if not, have changes to the irrigation district laws made *Post* inapplicable?

2. Is this election contest fatally defective because [Appellees] failed to allege: (a) the MVIDD divisions in which they are qualified electors; (b) that any [Appellant] is a qualified elector in District 1; and (c) that they possessed property qualifications for 90 days prior to the recall election?

3. If [Appellants] are not qualified to hold office as directors of MVIDD, did the trial court err by ordering the return of the recently-recalled directors to office until the vacancies are filled?

Additional Court-Ordered Issues:

1. To what extent, if any, does the MVIDD subject non-agricultural landowners to assessments or taxes?

2. Does any other special taxation district organized pursuant to Title 48, Arizona Revised Statutes, limit voting rights to only agricultural landowners while subjecting non-agricultural landowners to taxes or assessments?

3. Prior to the September 18, 2005, recall election, did the MVIDD limit voting rights to only agricultural landowners?

4. If the [Appellants] are ineligible to serve as directors, what is the appropriate remedy, given that there are only four agricultural landowners in the MVIDD?

RELEVANT STATUTES:

A.R.S. § 16-673(A), statement of contest of state election: “The elector contesting a state election shall, within five days after completion of the canvass of the election and declaration of the result thereof by the secretary of state or by the governor, file in the court in which the contest is commenced a statement in writing setting forth: 1. The name and residence of the party contesting the election, and that he is an elector of the state and county in which he resides. 2. The name of the person whose right to the office is contested . . . as it appeared upon the official ballot. 3. The office the election to which is contested. 4. The particular grounds of the contest. . . .”

A.R.S. § 16-674(A), contest of county or other election: “An elector of a county, city, town or a political subdivision of such county, city or town, may contest the right of a person declared elected to an office to be exercised therein . . . on the same grounds and in the same manner as contests of election to a state office”

A.R.S. § 48-2917(A)(1), qualification of electors: “No person shall be entitled to vote at any election, held under the provisions of this chapter unless . . . [h]e is a holder of title or evidence of title, including receipts or other evidence of the rights of entry-men on lands under any law of the United States or this state, to land in the district, and has possessed such qualifications for ninety days immediately preceding the date of such election.

A.R.S. § 48-2978, powers of board of directors: “In order to accomplish the purposes of the district the board may . . . [e]stablish tolls or charges for service of irrigation, domestic water, electricity and other commodities.”

A.R.S. § 48-3011(C), vacancies in director’s office: “If a vacancy occurs in the board of directors by death, removal from the district, resignation or inability from any cause to properly discharge the duties of director, the vacancy shall be filled by appointment made by the remaining members of the board of directors or, upon their failure or inability to appoint within thirty days after the vacancy occurs, upon petition of five electors of the district the board of supervisors of the county in which the office of the district is located shall by appointment fill the vacancy or vacancies. . . .”

A.R.S. § 48-3012, division of district into divisions: “If the district has been divided into divisions by the board of supervisors, the board of directors . . . shall establish, define and divide the district into three divisions as nearly equal in acreage as practicable to be known and designated as division no. one, division no. two and division no. three. In addition to any directors elected at large, . . . each division shall be represented by one director on the board, and unless the acreage of the division is substantially changed by the inclusion or exclusion of district lands, the divisions shall remain as so established. If a substantial change is made by such inclusion or exclusion, the board of directors shall redivide the district and define new divisions thereof, maintaining in the redivision as nearly as practicable the boundaries of each division as formerly established. Notice of such redivision shall be included in the notice of the next regular election.”

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