



Court Wrestles with Pot Decision

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Calling it "the most important thing I've done in my life so far," marijuana advocate Ryan Davidson argued Friday before the Idaho Supreme Court in Boise that the Sun Valley city clerk violated the law when she declined to process his organization's petition to allow citizens to vote on legalizing marijuana in Sun Valley.

"Our Constitution says we can propose and enact any initiative," said Davidson, head of a group called The Liberty Lobby of Idaho. "Initiatives often force cities to consider controversial issues."

Countering that argument was Sun Valley Assistant City Attorney Adam King, who said the petition had been "beyond the scope of the initiative process," and the city was justified in rejecting it.

The Supreme Court hearing Friday was the latest in a series of legal maneuvers that began Aug. 25, 2004, when Davidson filed a preliminary initiative with Sun Valley City Clerk Janis Wright asking for a vote to legalize the use and sale of marijuana in the city.

On the advice of City Attorney Rand Peebles, Wright rejected the initiative, leading the Liberty Lobby to file a lawsuit alleging that Wright did not follow established procedures for processing citizen-led ballot initiatives.

Soon after, Peebles filed a countersuit against Liberty Lobby, contending that the organization's proposal to legalize and regulate the sale of marijuana is "unconstitutional" and an election on the issue would be "in excess of the city's jurisdiction."

The competing lawsuits were consolidated by the 5th District Court and a summary judgment was issued in favor of the city, sanctioning the Liberty Lobby \$10,621 in attorney's fees.

Representing himself and the Liberty Lobby, Davidson on Friday was given 30 minutes to state his case, with much of that time being used to answer questions from the justices.

"Don't you remember the district court found your case was frivolous?" Justice Roger Burdick asked, referring to the judgment issued handed down by 5th District Court Judge Robert Elgee in February 2005.

"An examination of this case will show it's not frivolous," answered Davidson. He said he believes this case "may be the beginning of the end of the citizen initiative in Idaho."

Later, Chief Justice Gerald Schroeder asked, "Isn't this in direct conflict with state and federal laws?" Davidson answered, "To legalize marijuana? Yes it is."

Following Davidson, King began his statements by offering a definition of the word "examine," to illustrate the role city clerks have in thoroughly examining and approving initiatives. He was interrupted by Justice Burdick, who asked, "Where does it say they have a right to deny this initiative?"

Burdick continued, "How does this square with the language that the 'city clerk shall approve as to form,' not constitutionality?"

King replied, "This isn't your average petition. This petition is outside of the initiative process."

Later, Justice Linda Copple Trout asked King, "What's the harm in allowing this to go forward to see if enough signatures can be gathered?"

"In this case," said King, "the harm would be we'd be back here in a year or so."

"I don't want to speculate on the future," Trout shot back. "What goal is being served by the clerk examining and making substantive decisions?"

"We should have sought an injunction, but that didn't happen," King answered.

At the end of the hearing, the five justices, dressed in traditional black robes, came out from behind the bench and filed past Davidson and the city attorneys, shaking hands and greeting each other before leaving the courtroom.

Outside the courtroom, King said his side fared "very well" in the hearing. He described Davidson as "very articulate and a true believer in his cause to trigger public debate.

"The problem is that he is asking the court to overrule the Constitution," he added. "Cities don't have the power to enact laws in conflict with state laws."

After the hearing, Davidson also expressed confidence that he had made points. "I felt pretty good," he said. "They (justices) asked a lot of the right questions. Did you notice how they kept hammering them (the city)? They knew that Sun Valley broke the law.

"Without any exaggeration, Sun Valley didn't have a leg to stand on."

Davidson said he took on the marijuana initiative when Washington, D.C.-based Marijuana Policy Project offered him a \$60,000 grant. "They yanked the funding when the initiatives didn't make it," he said. "It would have been in my own best financial interest then to pack up and go home."

Instead, the litigation has bankrupted him, he said. "Even if I win, I lose," he said.

"If they decide for the city, the initiative petition process will be dead in the water because everyone will get sued," he added.

According to Supreme Court Clerk Steven Kenyon, the court will issue a decision that will either affirm or reverse the 5th District Court's decision. He said it will take approximately three to six months for the justices to issue an opinion.