

SYNOPSIS OF THE CASE

2014 MT 186, DA 13-0472: LYLE PHILLIPS, ANNE DEE RENO, TURNER ASKEW, and BEN WHITTEN, Plaintiffs and Appellees, v. **CITY OF WHITEFISH**, Defendant/Third-Party Plaintiff and Appellant, v. **BOARD OF COMMISSIONERS OF FLATHEAD COUNTY**, Defendant/Third-Party Defendant and Appellee, and **DAN WEINBERG and ED McGREW, individually and on behalf of LET WHITEFISH VOTE, a ballot committee lawfully organized under the laws of Montana; and MARY PERSON and MARILYN R. NELSON**, Intervenors and Appellants.¹

Following several decades of cooperation between the City of Whitefish and Flathead County concerning land-use planning and regulation over an area outside the city limits, commonly called the “donut,” the City and County entered a formal written agreement in 2005 granting the City exclusive authority in the donut in perpetuity. In 2008, the County delivered notice of its intent to withdraw from the written agreement and the City filed a lawsuit alleging the County could not unilaterally withdraw. The County countered with several arguments attacking the validity and enforceability of the agreement. The parties settled the 2008 lawsuit by entering into a new agreement in 2010, and dismissing the lawsuit. The new agreement provided a five-year term subject to renewal, and allowed either party to withdraw on one year’s notice. As both parties to the contract were government entities, the governing bodies of both the City and the County had to vote to approve entering the agreement. City residents unhappy with the City’s decision placed a referendum on the ballot to rescind the City’s authority to enter the agreement. The referendum passed, after which the City took the position that the new agreement was null and void, and the 2005 agreement was back in force. Residents of both the City and County (Plaintiffs) filed suit challenging the validity of the referendum.

Plaintiffs asserted that the referendum passed by the City voters was invalid. They argued that, because the power of citizen initiative and referendum under the Montana Constitution only extended to legislative acts, the decision to enter into the new agreement, and thereby settle the first lawsuit, was an administrative act not subject to referendum. The City and Intervenors argued that because the agreement impacted land-use planning and regulation, it was a legislative act validly rescinded by the referendum. The District Court determined that the decision to enter into the agreement was an administrative act that could not be rescinded through voter referendum.

¹ This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

The Supreme Court affirmed the District Court's decision in a 4-3 vote. The Court noted that local governments have the ability to act simultaneously with legislative and administrative powers, while state government was prohibited from doing so by the separation of powers clause of the Constitution. This ability of local government to act in multiple capacities requires the courts to look at all the facts and circumstances, and determine whether the local government's action was fully legislative, or predominately administrative. Upon review of all the facts, and resort to guidelines previously adopted, the Court determined that the City's decision to enter into the new agreement was a predominately administrative act not subject to referendum. The Court noted that, in particular, the new agreement only changed a small portion of the prior agreement, did not actually declare any land-use policies or changes, did not remove the City's power to regulate land use in the donut, and was entered after extensive negotiations for the purpose of settling already lengthy litigation in order to restore a cooperative relationship between the parties.

The dissenting opinion argued that resort to factors or guidelines was inappropriate because in any particular case the test previously relied on could well lead to the wrong result. It posited that since the agreement concerned land-use planning and regulation, the decision to enter it was unmistakably legislative, just as the adoption of any zoning ordinance would be. It also noted that the addition of the unilateral withdrawal and five-year duration provisions were significant policy changes, rendering the agreement legislative and therefore subject to referendum. The dissent further disagreed with the Court's consideration of the settlement of the 2008 lawsuit in determining the nature of the City's action.