Summary of SC97695, *In re: Trenton Farms RE LLC, Permit No. MOGS10520; Missouri Department of Natural Resources and Missouri Clean Water Commission v. Hickory Neighbors United Inc.*

Petition for review from the clean water commission
Argued and submitted September 25, 2019; opinion issued June 16, 2020

Attorneys: Hickory Neighbors United was represented by Stephen G. Jeffery of Jeffery Law Group LLC in Chesterfield, (855) 915-9500. Trenton Farms was represented by Robert J. Brundage and Alicia Embly Turner of Newman, Comley & Ruth PC in Jefferson City, (573) 634-2266. The department was represented by Solicitor General D. John Sauer and Timothy P. Duggan of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A challenger seeks review of the clean water commission's decision affirming a permit issued allowing a concentrated animal feeding operation (CAFO) for swine. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the commission's decision. Although the challenger is not barred from raising its claims, the claims fail. The bill amending the commission's composition does not violate the state constitution's original purpose, single subject or clear title requirements, and sufficient evidence supports the commission's decision regarding the CAFO's protection from a 100-year flood.

Facts: The state's department of natural resources issued Trenton Farms RE LLC a permit to operate a swine CAFO in Grundy County. Hickory Neighbors United Inc. appealed. Ultimately, the state's clean water commission reversed the department's decision, and the court of appeals affirmed the commission's decision. The department again issued Trenton Farms a permit to establish a swine CAFO in Grundy County. Hickory Neighbors again challenged the permit's issuance. The day before the clean water commission was scheduled to hear the case, the governor appointed three new commissioners in accordance with House Bill No. 1713, which amended the requirements in section 644.021.1, RSMo, regarding the commission's composition. The commission postponed consideration of the case, and Hickory Neighbors moved to disqualify three commissioners, including two of the newly appointed commissioners. The commission overruled the motion, voting 4-0 (with two commissioners not voting) to affirm the permit's issuance. Hickory Neighbors seeks review.

AFFIRMED.

Court en banc holds: (1) Hickory Neighbors properly challenged the constitutional validity of the commission's composition. Because an administrative agency is not empowered to determine the constitutional validity of statutes, Hickory Neighbors preserved the issue adequately by raising it at the appellate level. The challenge is to the bill amending the commission's composition, not to the individual commissioners' title to their offices; therefore, the procedure Hickory Neighbors used for its challenge is appropriate. Hickory Neighbors had standing (legal

ability to sue) because the commission adjudicated its rights with respect to its challenge of Trenton Farms' CAFO permit, making it subject to the commission's authority.

(2) HB 1713 does not violate the original purpose, single subject or clear title requirements of the state constitution. When introduced, the bill's purpose was to add statutory sections relating to wastewater treatment systems. Membership of the commission, which regulates wastewater treatment systems and other treatment facilities, is germane to the regulation of the matters it has the power and duty to oversee; therefore, the bill's inclusion of a provision changing the criteria for commission membership does not violate the original purpose requirement of article III, section 21. When passed, the bill's title indicates its subject related to the regulation of water systems. The composition of the commission, which regulates the state's waters, fairly relates to the regulation of water systems; therefore, the bill does not violate the single subject requirement of article III, section 23. When passed, the bill's title related to the regulation of water systems. The commission regulates the waters of the state; therefore, the bill does not violate the clear title requirement of article III, section 23.

(3) Given the evidence presented regarding the Trenton Farms CAFO's protection from a 100-year flood, the commission did not err in finding the CAFO's manure storage structures complied with a state regulation. A certified flood manager's report concluded the CAFO would be above the base flood elevation, and, based on that report, an engineer opined the CAFO would be protected from inundation and damage from a 100-year flood event.