

referendum power, as Hotze did, in effect become legislators.² And legislators have a particularized interest in enforcing the effectiveness of their votes on a specific legislative act.³ In issuing the executive order, the mayor nullified Hotze's vote on the ordinance. Hotze therefore has standing to sue to protect that vote.⁴ The same reasoning applies to anyone who voted in the referendum, because all voters, whichever side they took, share an interest in protecting the results of a duly conducted election in which they participated.

The Court floats a variety of reasons to avoid this simple, and correct, result. But none of these reasons holds water.

First, the Court posits that Hotze's standing analysis is too broad because Hotze shares his injury with other voters.⁵ But the fact that a particular injury may be shared among several individuals doesn't deprive those who share it of standing. If that were true, no plaintiff in a class action or mass tort case would have standing. The injury here is peculiar to voters in the 1985 referendum. It does not extend to the general public at large, nor even to all registered voters in Houston. But those voters who are harmed, even if there are nearly 200,000 of them, have an interest they may sue to protect.⁶

² *Blum*, 997 S.W.2d at 262 (quoting *Glass v. Smith*, 244 S.W.2d 645 (Tex. 1951)).

³ See *Raines v. Byrd*, 521 U.S. 811, 823 (1997); *Coleman v. Miller*, 307 U.S. 433, 438 (1939).

⁴ *Raines*, 521 U.S. at 823; see also *deParrie v. Oregon*, 893 P.2d 541, 542 (Or. 1995).

⁵ __ S.W.3d at __.

⁶ See, e.g., *Baker v. Carr*, 369 U.S. 186, 206 (1962); see also *deParrie*, 893 P.2d at 542.

Furthermore, says the Court, in the past we have specifically recognized only a protected interest in the process of an election, not in its results.⁷ But what use is an interest in an election's process without a corresponding interest in enforcing the results? Of course, in two of the cases the Court cites, only the process and not the outcome was at issue.⁸ The third case the Court discusses actually does suggest that at least some interest exists in the results of a valid referendum election. In *Taxpayers' Association of Harris County v. City of Houston*,⁹ the Taxpayers' Association, along with individual taxpayers, sued to enjoin enforcement of two ordinances, enacted by referendum, fixing salaries for certain city officers and employees. The Court chose to protect the results of the valid referendum, in part out of deference to the legislative power that the City Charter reserves to the people.¹⁰ In this case, if the voters can't sue to protect the results of the referendum, who can?

The Court suggests that any interest in election results extends only to "a direct, contemporaneous nullification of votes," and that Hotze's vote was given effect in 1985 because the ordinance did not go into effect.¹¹ It seems to me that the mayor's executive order is just as effective a nullification, regardless of when it happened. It further seems to me that, under the City Charter, the results of the 1985 referendum must stand until the people choose to undo them. But that is not the question. The question, for standing

⁷ __ S.W.3d at __.

⁸ See *Blum*, 997 S.W.2d at 260; *Glass*, 244 S.W.2d at 647.

⁹ 105 S.W.2d 655 (Tex. 1937).

¹⁰ See *Taxpayers' Ass'n*, 105 S.W.2d at 657.

¹¹ __ S.W.3d at __.

purposes, must be whether there was a nullification at all, not whether it happened a day, a month, or a year after the original election. The length of time between the referendum and the executive order may be relevant to the merits of Hotze’s challenge, but it should not control whether Hotze, or any other voter, has a sufficient interest to bring a claim.

Finally, the Court incorrectly concludes that the U. S. Supreme Court’s decision in *Raines v. Byrd*¹² undermines Hotze’s position. In fact, *Raines* preserved the relevant holding in *Coleman v. Miller*¹³ that supports Hotze’s argument: “our holding in *Coleman* stands . . . for the proposition that legislators whose votes would have been sufficient to defeat (or enact) a specific legislative act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified.”¹⁴ Here, Hotze, acting as a legislator, voted on a specific legislative act. That act was defeated, but later revived by the mayor’s executive order. The substance of the defeated act went into effect. The mayor’s order thus completely nullified the referendum votes. Hotze’s claim falls squarely within those recognized by *Coleman* and *Raines*.

I agree that the Court has jurisdiction in this case. And I concur with the Court that city council member Rob Todd does not have standing. His is the type of injury *Raines* rejected as insufficient to establish standing - a general injury to the institutional effectiveness of the City Council.¹⁵

¹² 521 U.S. 811 (1997).

¹³ 307 U.S. 433 (1939).

¹⁴ *Raines*, 521 U.S. at 823.

¹⁵ *See id.* at 830.

I would, however, hold that Hotze has standing and remand his claim to the district court. Thus, as to the Court's opposite conclusion, I respectfully dissent.

Craig T. Enoch
Justice

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