The Law Court recently addressed an issue of great importance to appellate practitioners: does a party need to cross-appeal a favorable judgment in order to preserve an argument providing alternate grounds for affirmance, when the lower court rejected that argument? The answer, per the Law Court’s decision, is “yes.” As the Law Court’s decision makes clear, and as my predecessor on this blog has noted, a cross-appeal is the only way to ensure that you will be able to raise the argument on appeal.

The decision, Reed v. Secretary of State, which is also very interesting substantively, involved a challenge to the Secretary of State’s determination that proponents of a citizen initiative had gathered enough signatures to place the initiative on the ballot. The petitioner’s challenge required the Superior Court to interpret statutes, 21-A M.R.S. § 903-E and 4 M.R.S. § 954-A, regulating the activities of notaries. Intervenors in the action argued in the Superior Court that the statutes were unconstitutional. The Superior Court declined to reach that argument, instead ruling in favor of the intervenors on other grounds.

Intervenors did not cross-appeal after the petitioner filed a notice of appeal. Instead, in the Law Court, intervenors argued that the statute was unconstitutional as an alternate grounds for affirmance.

The Law Court did not address intervenors’ argument. Instead, it wrote in a footnote:

We have no reason to address the constitutionality of [Section 903-E or Section 954-A] because . . . none of the parties who appealed from the
Secretary of State's decision ended up arguing that either provision is unconstitutional.

(emphasis added).

The take-away? If the trial court rules against you on any argument you make, cross-appeal if you want to raise that argument before the Law Court!

This is to some degree a peculiarity of Maine courts. Generally, you can raise any argument you want on appeal to sustain a judgment in your favor. The key to determining whether to cross-appeal is usually whether you want a part of the judgment changed. But the Law Court takes a different view. There is some question about whether this is the right rule – after all, usually there is no standing to appeal unless you have been adversely impacted by the judgment. But it is the rule.

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