

STATE OF MICHIGAN
COURT OF APPEALS

3 IS ENOUGH,

Plaintiff-Appellant,

v

CITY OF MOUNT PLEASANT CLERK,

Defendant-Appellee.

UNPUBLISHED
September 13, 2021

No. 358405
Isabella Circuit Court
LC No. 21-017193-AW

Before: MICHELLE M. RICK, P.J., and STEPHEN L. BORRELLO and Amy Ronayne Krause, JJ.

PER CURIAM.

Plaintiff, 3 Is Enough, a ballot question committee formed for the purpose of opposing a proposed initiative to increase the number of marijuana establishments in the City of Mount Pleasant, appeals by right the August 31, 2021 order of the Isabella Circuit Court, which denied its request for a writ of mandamus. We reverse and direct defendant, the City of Mount Pleasant Clerk, to immediately rescind her certification of the ballot language to the Isabella County Clerk.

In September 2019, the City of Mount Pleasant adopted an ordinance that authorized the operation of marijuana establishments within the city. The ordinance also limited the number of marijuana establishments.

In the summer of 2021, Safer Mt Pleasant circulated a petition for the initiation of an ordinance that increased the number of marijuana facilities permitted in the city from 3 establishments to 10 establishments. On July 7, 2021, Safer Mt Pleasant submitted the signed petition to defendant. Defendant verified that 339 signatures on the petition were valid. This number was greater than 5% of the votes cast for governor by qualified electors in the city in the last gubernatorial election. At a July 26, 2021 meeting, the Mount Pleasant City Commission accepted the petition submitted by Safer Mt Pleasant, approved a resolution to approve ballot language, and ordered defendant to promptly certify the ballot language to the Isabella County Clerk. Defendant certified the ballot language to the Isabella County Clerk on August 10, 2021.

On August 13, 2021, plaintiff filed a complaint for mandamus relief, along with an ex parte motion for an order to show cause why a writ of mandamus should not issue. Plaintiff alleged that the petition submitted by Safer Mt Pleasant was facially defective because it did not conform to

the requirements in MCL 168.482 and MCL 168.544c(1). According to plaintiff, because the petition was facially defective, the proposed ordinance could not appear on the November 2021 ballot, and defendant should be ordered to rescind her certification of the ballot language. The trial court issued an order to show cause and held a hearing on August 31, 2021. Following the hearing, the trial court entered an order that denied plaintiff's request for a writ of mandamus.

A writ of mandamus is an extraordinary remedy. *Lansing Sch Ed Ass'n v Lansing Bd of Ed (On Remand)*, 293 Mich App 506, 519; 810 NW2d 95 (2011). To obtain this extraordinary remedy, a plaintiff must show that (1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result. *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014).

This Court reviews for an abuse of discretion a trial court's decision regarding a writ of mandamus. *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42, 59; 921 NW2d 247 (2018). However, it reviews de novo, as questions of law, whether a defendant has a clear legal duty to perform and whether the plaintiff has a clear legal right to performance of such duty. *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016). It also reviews de novo questions of statutory interpretation. *TCF Nat'l Bank v Dep't of Treasury*, 330 Mich App 596, 605; 950 NW2d 469 (2019).

One purpose of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq.*, is to control the commercial production and distribution of marijuana under a system that licenses, regulates, and taxes the businesses involved. MCL 333.27952. A municipality may prohibit, or limit the number of, marijuana establishments within its boundaries. MCL 333.27956(1). Additionally, individuals may petition for an ordinance regarding marijuana establishments. *Id.* MCL 333.27956(1) provides:

Except as provided in section 4, a municipality may completely prohibit or limit the number of marihuana establishments within its boundaries. Individuals may petition to initiate an ordinance to provide for the number of marihuana establishments allowed within a municipality or to completely prohibit marihuana establishments within a municipality, and such ordinance shall be submitted to the electors of the municipality at the next regular election when a petition is signed by qualified electors in the municipality in a number greater than 5% of the votes cast for governor by qualified electors in the municipality at the last gubernatorial election. A petition under this section is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488.

MCL 168.488(2) provides that MCL 168.482(1), (4), (5), and (6) “apply to a petition to place a question on the ballot before the electorate of a political subdivision under a statute that refers to this section, and to the circulation and signing of the petition.” MCL 168.482 provides, in pertinent part:

- (1) each petition under this section must be 8-½ inches by 14 inches in size.

* * *

(4) The following statement must appear beneath the petition heading:

“We, the undersigned qualified and registered electors, residents in the _____ congressional district in the state of Michigan, respectively petition for (amendment to constitution) (initiation of legislation) (referendum of legislation) (other appropriate description).”.

(5) The following warning must be printed in 12-point type immediately above the place for signatures, on each part of the petition:

WARNING

A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

(6) Subject to subsections (7) and (8), the remainder of the petition form must be as provided following the warning to electors signing the petition in section 554c(1). In addition, the petition must comply with the requirements of section 544c(2).

MCL 168.544c(1) provides the form for a nominating petition, and it states that “[t]he petition must be in the following form.” The form, below the “warning to electors,” provides the following certificate of circulator:

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States Citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the city or township listed in the hearing of the petition, and the elector was qualified to sign the petition.

Circulator—Do not sign or date certificate until after circulating petition.

_____ If the circulator is not a resident of Michigan, the circulator shall make a cross or check mark on the line provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark on the line provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that

concerns a petition sheet executed by the circulator and agrees that legal process served on the secretary of state or a designated agent of the secretary of state has the same effect as if personally served on the circulator.

Below these paragraphs, there are lines for the name and signature of the circulator, the date of the circulator's signature, the circulator's address, and the circulator's county of registration if the circulator is not a resident of Michigan.

A petition submitted under the MRTMA to initiate an ordinance is subject to MCL 168.488. MCL 333.27956(1). Through MCL 168.488(2), certain requirements in MCL 168.482 are applicable to a petition submitted under the MRTMA. There must be strict compliance with those requirements. See *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 601-602; 822 NW2d 159 (2012) (opinion by M.B. KELLY, J.); *id.* at 620 (YOUNG, C.J., concurring in part and dissenting in part); *id.* at 639-640 (MARKMAN, J., concurring in part and dissenting in part). The word "must," which is included in the applicable provisions, MCL 168.488(1), (4), (5), and (6), indicates a mandatory directive. *Vyletel-Rivard v Rivard*, 286 Mich App 13, 25; 777 NW2d 722 (2009). There is no language in any of the pertinent statutes, those being MCL 333.27956, MCL 168.482, and MCL 168.488, indicating that substantial compliance with the requirements is allowed. Compare, e.g., MCL 168.303(2) (stating that a nominating petition for a school board candidate must "be substantially in the form prescribed" in MCL 168.544c); MCL 168.590a (stating that a qualifying petition "shall be . . . in substantially the same form as provided in" MCL 168.590h).

The petition submitted by Safer Mt Pleasant failed to strictly comply with the applicable statutory requirements. First, the petition did not strictly comply with MCL 168.482(4). In the petition, the statement below the petition heading provided: "We, the undersigned qualified and registered electors, residents in the City of Mount Pleasant, in the County of Isabella, in the State of Michigan, respectively petition . . ." This statement did not indicate from which congressional district the registered electors were from. See MCL 168.482(4).¹ Second, the petition did not

¹ We recognize that MCL 168.482(4) was amended by 2018 PA 608. This public act also amended MCL 168.471, by requiring that "[n]ot more than 15% of the signatures to be used to determine the validity of a petition [to amend the Michigan Constitution or to initiate legislation] shall be of registered electors from any 1 congressional district." In 2019, the Attorney General opined that the amendments imposing the "15% distribution requirement," including those to MCL 168.471 and MCL 168.482(4), were unconstitutional. OAG, 2019-2020, No. 7,310, p ___ (May 22, 2019). The following year this Court held that the 15% geographic limit was unconstitutional. *League of Women Voters of Mich v Secretary of State*, 331 Mich App 156, 185; 952 NW2d 491 (2020), *aff'd* in part, *vacated* in part 506 Mich 561 (2020). Neither of these opinions are binding on the Court. The Supreme Court vacated this Court's analysis because the issue whether the 15% geographic limit was unconstitutional had become moot, *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 589-590; 957 NW2d 731 (2020), and the Attorney General's opinion has no force of law and is not binding on the Court, *East Grand Rapids Sch Dist v Kent Co Tax Allocation Bd*, 415 Mich 381, 394; 330 NW2d 7 (1982); *Martin v Murray*, 309 Mich App 37, 41 n 4; 867

strictly comply with MCL 168.482(6) and MCL 168.544c(1) because it did not include in the “Certificate of Circulator” the line “Circulator—Do not sign or date certificate until after circulating petition.” Third, the petition did not strictly comply with MCL 168.482(6) and MCL 168.544c(1) because it included an affidavit and notary block that are not included in the petition form in MCL 168.544c(1).

“ ‘[A] clear, legal right’ is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.” *Rental Props Owners Assoc of Kent Co*, 308 Mich App at 519 (quotation marks and citation omitted). This Court has recognized the special nature of election cases, *Deleeuw v Bd of State Canvassers*, 263 Mich App 497, 505-506; 688 NW2d 847 (2004), and a person may enforce by mandamus a public right or duty relating to elections without showing a special interest distinct from the public, *Helmkamp v Livonia City Council*, 160 Mich App 442, 445; 408 NW2d 470 (1987). If defendant had a clear legal duty to reject the petition submitted by Safer Mt Pleasant because it did not strictly comply with statutory requirements made applicable through MCL 168.488, plaintiff had a clear legal right to have defendant reject the petition.

Defendant argues that she only had a duty to reject the petition submitted by Safer Mt Pleasant if the petition did not have the requisite number of signatures. She relies on the second sentence of MCL 333.27956(1), which provides that an ordinance petitioned for under the MRTMA “shall be submitted to the electors of the municipality at the next regular election when a petition is signed by qualified electors in the municipality in a number greater than 5% of the votes cast for governor by qualified electors in the municipality at the last gubernatorial election.”

Defendant’s argument ignores the last sentence of MCL 333.27956(1), which provides that “[a] petition under this subsection is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488.” A court must give effect to every word, phrase, and clause in a statute and avoid any interpretation that would render any part of the statute surplusage or nugatory. *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012). In order to give meaning to the last sentence in MCL 333.27956(1), the statute must be read as requiring that an ordinance be submitted to the electors of the municipality at the next regular election if the petition (1) complies with MCL 168.488 and (2) is signed by the requisite number of qualified electors. In other words, a petition must be rejected if either the petition does not comply with MCL 168.488 or the petition is not signed by the requisite number of qualified electors.

The MRTMA does not indicate who is to examine a petition to make sure that it complies with MCL 168.488 and is signed by the requisite number of qualified electors. We, therefore, look to MCL 168.646a(2), which concerns ballot questions of political subdivisions. MCL 168.646a(2) provides:

If a ballot question of a political subdivision of this state including, but not limited to, a county, city, village, township, school district, special use district, or other district is to be voted on at a regular election date or special election, the ballot

NW2d 444 (2015). Because the parties have done nothing more than bring to our attention these nonbinding opinions, we decline to address the constitutionality of the 15% geographic limit.

wording of the ballot question must be certified to the proper local or county clerk not later than 4 p.m. on the twelfth Tuesday before the election. If the wording is certified to a clerk other than the county clerk, the clerk shall certify the ballot wording to the county clerk at least 82 days before the election. *Petitions to place a county or local ballot question on the ballot at the election must be filed with the clerk at least 14 days before the date the ballot wording must be certified by the local clerk.* [Emphasis added.]

Because Safer Mt Pleasant had to file its petition with defendant, we hold that defendant was the person who had to determine whether the petition complied with MCL 168.488 and was signed by the requisite number of qualified electors.

“A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion.” *Hillsdale Co Senior Servs v Hillsdale Co*, 494 Mich 46, 58 n 11; 832 NW2d 728 (2013) (quotation marks and citation omitted). Defendant had to reject the petition submitted by Safer Mt Pleasant if it did not comply with MCL 168.488 or if it was not signed by the requisite number of qualified electors. In determining whether the petition complied with the statutory provisions made applicable through MCL 168.488, there was no discretion to be exercised by defendant. Strict compliance with those provisions was required. Because the petition did not strictly comply with the statutory provisions made applicable through MCL 168.488, defendant had a duty to reject the petition.

Plaintiff has no other legal or equitable remedy available. Mandamus is the appropriate remedy for a party seeking to compel action by election officials. *Attorney General v Bd of State Canvassers*, 318 Mich App 242, 248; 896 NW2d 485 (2016). Plaintiff has shown that it is entitled to mandamus relief.

We reverse the trial court’s order denying plaintiff’s request for a writ of mandamus. Defendant is directed to immediately rescind her certification of the ballot language to the Isabella County Clerk.

No costs may be taxed under MCR 7.219, a public question being involved. This opinion shall have immediate effect under MCR 7.215(F)(2).

/s/ Michelle M. Rick
/s/ Stephen L. Borrello
/s/ Amy Ronayne Krause