

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellant,

UNPUBLISHED  
October 23, 2014

v

BRANDON MICHAEL HALL,  
  
Defendant-Appellee.

No. 321045  
Ottawa Circuit Court  
LC No. 13-037857-AR

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Before: BORRELLO, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

The prosecution appeals by delayed leave granted a February 6, 2014, circuit court order affirming an October 21, 2013, district court order, wherein the district court denied the prosecution’s motion to bind over defendant on 10 counts of felony election law forgery, MCL 168.937, and instead bound him over on 10 misdemeanor counts under MCL 168.544c. For the reasons set forth in this opinion, we affirm.

**I. BACKGROUND**

The essential facts of this case are not in dispute. Defendant was originally charged with 10 counts of “Election Law – Forgery,” contrary to MCL 168.937. Following defendant’s arraignment on those charges, and to facilitate the district court’s bindover determination, the parties stipulated to the essential facts of the case in lieu of taking testimony at a preliminary examination. Specifically, the parties stipulated that in 2012, defendant worked for Chris Houghtaling’s campaign for the office of judicial district court judge to obtain the necessary signatures on nominating petitions. On the night before the nominating petitions were due, realizing that he did not have enough signatures, defendant “worked all night writing names and addresses of individual[s] on the nominating petitions and signing their signatures to the petitions.” Defendant used different colored ink pens and used his left and right hand to fill in the signatures. Defendant continued filling in signatures on the way to Lansing the following morning and he was identified on the petitions as the circulator. Defendant submitted the petitions to the Secretary of State. Defendant stipulated that he put “false names and signatures

on the nominating petitions as alleged in the complaint and warranted as well as signed the petitions as the circulator.”

A separate count of forgery was charged for each of ten nominating petitions that defendant submitted to the Secretary of State containing forged signatures.<sup>1</sup> The district court accepted the stipulation, and the prosecution moved to bind over defendant on the 10 felony charges. Defendant objected, asserting that the stipulated facts established only a misdemeanor offense under MCL 168.544c, which proscribed acts of “falsifying electoral nominating petitions” including signing a petition “with a name other than his or her own.”

On September 5, 2013, the district court held a hearing on the prosecution’s motion for bind over. The parties agreed that, based on the stipulated facts, there was sufficient probable cause to bind defendant over on the 10 felony forgery charges, but identified the issue as whether the charged statute, MCL 168.937, was appropriate in light of the existence of the separate statute, MCL 168.544c.

Defendant argued that MCL 168.937, which proscribed “forgery,” was a general statute that did not specifically proscribe defendant’s conduct, and that MCL 168.544c, enacted after MCL 168.937, was a more specific statute, in that it specifically proscribed “acts of falsifying electoral nominating petitions,” which was the conduct alleged in this case. As a more specific statute, it controlled over the more general forgery statute. Defendant argued this was especially the case where the general forgery statute included the qualifying phrase “unless otherwise provided,” which alluded to the fact that there are other, more specific statutes proscribing election law misconduct. Defendant further pointed to the fact that the Legislature requires warnings on nominating petitions which advise that falsifying a petition constitutes a misdemeanor. Defendant asserted that it would be “unseemly” to advise a person that falsifying a petition is a misdemeanor, only to then allow for a felony prosecution. Defendant concluded that the stipulated facts made it “clear” that defendant’s conduct was “not a violation of the general forgery statute,” but rather fell within the scope of the misdemeanor statute.

The prosecution responded that the misdemeanor offense found in MCL 168.544c required no intent to defraud, whereas the general forgery statute did require such an intent, thereby demonstrating that they were two separate crimes. According to the prosecution, the stipulated facts in this case sufficiently demonstrated that defendant forged multiple signatures on multiple petitions with the intent to defraud the Michigan Secretary of State. Under such circumstances, defendant was properly charged under the felony forgery statute and not the misdemeanor unlawful signing statute.

On October 21, 2013, the district court issued its written opinion and order denying the prosecution’s motion to bind over defendant on the 10 felony counts of forgery. The court first

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<sup>1</sup> The prosecution states that each of the ten petitions contained multiple false signatures. However, since defendant was being charged with felony forgery, rather than with the misdemeanor of signing someone else’s name to a nominating petition, the charges were based on the number of forged documents rather than the number of false signatures.

acknowledged that the Michigan election law provisions do not define forgery, and therefore indicated its belief that the common law meaning of that term applied. Applying the common law elements of forgery, the court indicated that there was “probable cause to believe that the conduct set forth in the stipulated facts would constitute common law forgery” under MCL 168.937. The court then acknowledged that although MCL 168.544c specifically proscribes falsifying a signature on a nominating petition, that provision contains no intent requirement, and further acknowledged that the prosecution has “considerable discretion” in deciding under which statute to charge a defendant. Notwithstanding these acknowledgments, the district court noted that an exception to the prosecution’s charging discretion exists where a more specific statute is enacted after a general statute. Accepting the distinction raised by the prosecution between the intent elements of the two statutes, the court identified the question to be resolved as “whether a prosecution for forgery can take place for unlawful conduct under Section 937 of the Michigan Election Law where the conduct is not expressly identified as forgery and where, as here, that unlawful conduct is expressly punished as a misdemeanor.” The district court answered this question in the negative. The court reasoned in part as follows:

The Court must give meaning to all the words contained in a statute. Section 937 has express language that a person found guilty of forgery “. . . under the provisions of the act, shall unless herein otherwise provided be punished . . .” The designation of forgery as a felony is not expressly indicated but is presumed from the maximum possible penalty which takes the matter outside this Court’s jurisdiction.

It would appear to the Court that in order to give meaning to forgery “under the provisions of the act” that the prohibited conduct must be expressly identified as forgery in the provisions of the act prohibiting that conduct. Sections of the Act have in the past and do now expressly identify certain unlawful acts as forgery “under the provisions of the acts” in Section 544c or its statutory antecedents.

Similarly the language of Section 544c(14)<sup>[2]</sup> that “the provisions of this section, except as otherwise expressly provided apply to all petitions circulated under the authority of the election law” must be considered. Giving the normal meaning to that language suggests to the Court that the conduct prohibited by Section 544c must be punished in accordance with Section 554c, “unless otherwise expressly provided.” To hold that the language of Section 937 is an express provision providing for an enhanced punishment would be to infer what is in fact not expressed.

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<sup>2</sup> MCL 168.544c has been amended and renumbered since the time this case was decided. MCL 168.544c(14), referenced by the district court above, is now MCL 168.544c(18). See 2014 PA 94.

Finally, this would appear to the Court to be a case where the Rule of Lenity should apply. The Rule of Lenity operates in favor of an accused, mitigating punishment when punishment is unclear . . . In the two sections of the Act where forgery is expressly prohibited the penalty is a misdemeanor. Yet where Section 544c prohibits conduct without specifying it as forgery the People assert that the more severe penalty should apply. The People urge that forgery “under the provisions of this act,” means conduct prohibited by the election law can also be charged as forgery even if not so designated by the statute. Brandon Hall would argue that forgery “under the provisions of this act” means conduct expressly identified as forgery by the statute. The Court favors the latter interpretation. The People’s position as to the proper interpretation of the statute is not implausible, but it must be fairly said that at best the provisions of Section 937 can be interpreted either way. As a result, the statute is ambiguous in that regard so that the Rule of Lenity would dictate that the less severe penalty of Section 554c would apply.

Based on the above reasoning, the district court denied the prosecution’s motion to bind over defendant on the 10 felony counts. However, the court concluded that there was sufficient probable cause to bind over defendant on 10 misdemeanor violations of MCL 168.544c, and therefore expressed its intent to proceed to trial on those 10 misdemeanor counts in the absence of an appeal.

On October 31, 2013, the prosecution appealed the district court’s order to the circuit court. The prosecution argued that the district court erred in refusing to bind over on the felony charges. Specifically, the prosecution argued that the district court erred when it applied the rule of lenity in support of its decision because the felony and misdemeanor offenses do not involve the same conduct. The misdemeanor statute simply penalizes the signing of someone else’s name to a nominating petition, while the felony statute requires an additional finding that the signing of the document was done with the specific intent to defraud. Accordingly, while the prosecution could have charged defendant with a misdemeanor offense for every single false signature he signed, it decided instead to charge ten felony counts based upon the forging of 10 nominating petitions. The prosecution further argued that the language of MCL 168.937 would mean “absolutely nothing” if it could not be read to create a separate crime of forgery. The district court’s construction of the election law renders MCL 168.937 a nullity because it fails to recognize that the statute creates a “separate and distinct offense carrying additional elements over and above those required by the misdemeanor.”

Defendant responded that the conduct punished as a felony and the conduct punished as a misdemeanor was the same, i.e., the signing of someone else’s name on a nominating petition. Moreover, while MCL 168.937 proscribes “forgery” generally, it does not define the term “forgery.” However, MCL 168.544c specifically proscribes the conduct at issue, and is therefore more specific. Accordingly, it controls over MCL 168.937. Finally, defendant responded that his due process rights would be violated by charging him with a felony offense because each petition warns that signing someone else’s name constitutes a misdemeanor.

In response, the prosecution reiterated that the intent element present in the felony, but not in the misdemeanor, rendered the two provisions separate. Under the facts in this case,

defendant could properly be charged under either statute, but only because there was evidence of defendant's specific intent to defraud.

The circuit court rejected the prosecution's position and affirmed the district court's ruling. The circuit court first reasoned that MCL 168.544c, as a more recent and more specific statute governing defendant's conduct, controlled over MCL 168.937, the "general forgery statute." Next, the circuit court remarked that it was "relevant" that the Secretary of State had produced nominating petitions, in compliance with the election law, which "specifically state that violation of the statute is a misdemeanor." "That calls forth the argument and the rule cited by [the district court] called the rule of lenity[.]" which operates in favor of mitigating punishment when punishment is unclear. While recognizing the prosecution's argument that the two statutes are different inasmuch as one apparently contains the element of intent to defraud, the circuit court also acknowledged defense counsel's argument that "the conduct of signing a name not one's own is identical in each case."

Finally, the circuit court found a "valid due process argument" in the fact that the nominating petitions required a warning that the prohibited conduct is a misdemeanor. "One doesn't realize it's a felony unless one goes to the general forgery statute or the common law definition of forgery." The circuit court concluded:

I think there's logical arguments on both sides of the question here. But given that the state has mandated that the public be informed through its nominating petitions that the conduct at issue is a misdemeanor and doesn't clarify at all whether or not intent to defraud is a relevant consideration, it's simply the signing of a false name is a misdemeanor. I think that has to be relied upon whether one cites the rule of lenity or due process and hold the state to its public pronouncements as to what the crime is.

So, I'm going to affirm the decision of the district court. If the legislature wants to retain the right to allow prosecutors to charge those who sign false names on nominating petitions with forgery, it really ought to clarify the statute, and perhaps add to section 544(C) [sic] that the offense is a misdemeanor unless there is an intent to defraud, in which case it's a felony. They could certainly make that distinction, but they didn't when they adopted the misdemeanor penalty, so, the case is affirmed.

This Court granted the prosecution's delayed application for leave to appeal the circuit court's order and granted motions for immediate consideration and to stay the proceedings. *People v Hall*, unpublished order of the Court of Appeals, entered April 24, 2014.

## II. STANDARD OF REVIEW

"Whether conduct falls within the scope of a penal statute is a question of statutory interpretation" that we review de novo. *People v Flick*, 487 Mich 1, 8-9; 790 NW2d 295 (2010). We review a district court's decision whether to bind over a defendant for an abuse of discretion, but review the court's rulings concerning questions of law de novo. *Id.* at 9. "A circuit court's decision with respect to a motion to quash a bindover is not entitled to deference because this

Court applies the same standard of review to this issue as the circuit court. This Court essentially sits in the same position as the circuit court when determining whether the district court abused its discretion.” *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). An abuse of discretion occurs when “the court chooses an outcome that falls outside the range of reasonable and principled outcomes.” *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

A prosecutor has broad charging discretion and may charge any offense supported by the evidence. *People v Nichols*, 262 Mich App 408, 415; 686 NW2d 502 (2004). This Court “review[s] a prosecutor’s charging determination under an ‘abuse of power’ standard to determine if the prosecutor acted contrarily to the Constitution or law.” *People v Russell*, 266 Mich App 307, 316; 703 NW2d 107 (2005). Constitutional issues are reviewed de novo. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007).

### III. ANALYSIS

The first question that must be addressed is whether MCL 168.937 creates the substantive offense of forgery. More specifically, the question is whether MCL 168.937 can be fairly read as proscribing the broad offense of forgery that pertains to the falsifying a document governed by the Michigan election law, or whether it is merely a penalty provision for the specific forgery offenses set forth in other provisions of the Michigan election law.

This question presents an issue of statutory construction. As our Supreme Court stated in *People v Gillis*, 474 Mich 105, 114-115; 712 NW2d 419 (2006),

our primary task in construing a statute, is to discern and give effect to the intent of the Legislature. The words of a statute provide the most reliable evidence of its intent. The Court must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme . . . If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. [Internal quotation marks and citations omitted.]

The Michigan election law, MCL 168.1 *et seq.*, was enacted for the stated purpose of, among other things, regulating primaries and elections; providing for the “purity” of the election process; and guarding against “the abuse of the elective franchise.” 1954 PA 116. Chapter XXXV of the Michigan election law sets forth “Offenses and Penalties.” Included within that chapter is MCL 168.937, titled “Forgery; penalty.” This statute provides:

Any person found guilty of forgery under the provisions of this act shall, unless herein otherwise provided, be punished by a fine not exceeding \$1,000.00, or by imprisonment in the state prison for a term not exceeding 5 years, or by both such fine and imprisonment in the discretion of the court.

Reviewing this statute in the context of the Michigan election law as a whole, indicates that MCL 168.937 is not merely a penalty provision, but rather creates a substantive offense of forgery. Importantly, MCL 168.935, another statute contained within the “Offenses and Penalties” chapter of the Michigan election law, specifically sets forth the penalties to be imposed for felony offenses under the Michigan election law:

Any person found guilty of a felony under the provisions of this act shall, unless herein otherwise provided, be punished by a fine not exceeding \$1,000.00, or by imprisonment in the state prison for a term not exceeding 5 years, or by both such fine and imprisonment in the discretion of the court.

The language of MCL 168.937 and MCL 168.935 is identical, except that MCL 168.935 uses the word “felony” and MCL 168.937 uses the word “forgery.” Thus, because MCL 168.935 sets forth the penalties for a felony conviction under the provisions of the Michigan election law, reading MCL 168.937 also as merely a penalty provision would effectively render MCL 168.937 duplicative of MCL 168.935 and mere surplusage. “This Court must avoid a construction that would render any part of a statute surplusage or nugatory.” *People v Redden*, 290 Mich App 65, 76-77; 799 NW2d 184 (2010). In other words, there would be no need for MCL 168.937 to be limited to setting forth the penalty provisions for forgery if MCL 168.935 sets forth the penalty provisions for all felonies under election law. In addition, reading MCL 168.937 as merely a penalty provision, and not a provision creating a substantive offense of forgery, would contravene the expressed intent of the Legislature, which was to ensure the fairness and purity of the election process in part by proscribing misconduct that would foster such unfairness and impurity. See *Gillis*, 474 Mich at 114-115 (“our primary task in construing a statute, is to discern and give effect to the intent of the Legislature.”)

Having concluded that MCL 168.937 authorizes a forgery charge, we proceed to consider whether MCL 168.544c is nevertheless controlling in this case.

It is a well-settled principle that “statutes that relate to the same subject or that share a common purpose are *in para* [sic *pari*] *materia* and must be read together as one.” *People v Buehler*, 477 Mich 18, 26; 727 NW2d 127 (2007) (quotations and citation omitted). “When there is a conflict between statutes that are read *in par[i]* *materia*, the more recent and more specific statute controls over the older and more general statute.” *Id.* This is because “the Legislature is presumed to be aware of, and thus to have considered the effect on, all existing statutes when enacting new laws.” *People v Bragg*, 296 Mich App 433, 451; 824 NW2d 170 (2012) (quotation marks and citations omitted). And, while a prosecutor generally has discretion in determining under which of two possible applicable statutes a prosecution will be brought, that discretion is not unlimited; “where the Legislature carves out such an exception [to the general statute] and provides a lesser penalty for the more specific offense, a prosecutor must charge a defendant under the statute fitting the particular facts.” *People v Carter*, 106 Mich App 765, 769; 309 NW2d 33 (1981).

In this case, MCL 168.937 and MCL 168.544c(11) concern the same subject matter. MCL 168.544c(11), provides in relevant part that “[a]n individual shall not . . . (a) [s]ign a petition with a name other than his own [or] (b) [m]ake a false statement in a certificate on a petition.” MCL 168.544c(11)(a)-(b). “An individual who violates subsection (11) is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for not more than 93 days, or both.” MCL 168.544c(12). Although MCL 168.937 creates the substantive offense of forgery, no provision of the Michigan election law defines the term “forgery” and where a common law offense is undefined in a statute, the common law definition of that offense applies. *Gillis*, 474 Mich at 118. “The common law definition of ‘forgery’ is a false making . . . of any

written instrument with intent to defraud.” *People v Nasir*, 255 Mich App 38, 42 n 2; 662 NW2d 29 (2003) (quotation marks and citation omitted).

The prosecution contends that the statutes do not conflict because forgery requires proof of intent to defraud whereas MCL 168.544c does not. However, considering the statutory definitions set forth above, proscribe the same conduct—i.e., the falsifying of documents (or signatures thereon) required to be submitted under the Michigan election law. In addition, there can be no doubt that the statutes share a common purpose—to ensure the fairness and purity of the election process and prevent abuse of the elective franchise. Thus, the statutes are “*in pari materia*,” such that they must be “read together as one.” *Buehler*, 477 Mich at 26. Moreover, because MCL 168.937 makes forgery a felony, while MCL 168.544c makes signing someone else’s name on a nominating petition a misdemeanor, the statutes conflict. Therefore, MCL 168.544c, as the more recent and specific statute, controls over MCL 168.937,<sup>3</sup> and the prosecution was bound to proceed on misdemeanor charges under MCL 168.544c. *People v LaRose*, 87 Mich App 298, 304; 274 NW2d 45 (1978); *Buehler*, 477 Mich at 26

Our conclusion that MCL 168.544c is controlling is further supported by language contained in MCL 168.544c(18) and MCL 168.937. MCL 168.544c(18) provides that “[t]he provisions of this section *except as otherwise expressly provided apply to all petitions* circulated under authority of the election law” (emphasis added). MCL 168.937 does not expressly provide that it, as opposed to 544(c), governs misconduct involving nominating petitions. In fact, MCL 168.937 contains a qualifying phrase that indicates that 544(c) governs offenses involving nominating petitions. Specifically, MCL 168.937 provides that “[a]ny person found guilty of forgery under the provisions of this act shall, *unless herein otherwise provided*, be punished . . .” (emphasis added). This qualifying provision indicates that, in the event that there is a more specific provision in the election law, the more specific provision applies and MCL 168.937 is not controlling. Here, although MCL 168.937 provides a five-year offense for forgery, MCL 168.544c(11) “otherwise provide[s]” that, in the event that a defendant falsifies a signature on a nominating provision, he or she is guilty of a misdemeanor. In short, language contained in MCL 168.544c(18) and the qualifying provision in MCL 168.937 further indicate that MCL 168.544c is controlling in this case.

Moreover, even if we were to conclude that MCL 168.937 does not conflict with MCL 168.544c, the lower courts did not err in applying the rule of lenity in this case.

“The ‘rule of lenity’ provides that courts should mitigate punishment when punishment in a criminal statute is unclear.” *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997). The rule of lenity applies only if the statute is ambiguous or “in absence of any firm indication of legislative intent.” *Id.* at 700 n 12 (quotation marks and citation omitted). An otherwise unambiguous statute may be “rendered ambiguous by its interaction with and its relation to other statutes.” *Id.* at 699 (quotation marks and citation omitted).

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<sup>3</sup> The parties do not dispute that MCL 168.544c was enacted after MCL 168.937.



In this case, the interaction between MCL 168.937 and MCL 168.544c renders unclear the punishment for falsifying a signature on a nominating petition. As noted, both statutes concern the same subject matter—i.e. falsifying a document required to be submitted under the Michigan election law. However, the statutes impose vastly different punishments. MCL 168.937 imposes a far harsher penalty for the same conduct that is proscribed in MCL 168.544c—a five year felony as opposed to a misdemeanor. In addition, pursuant to requirements set forth in MCL 168.544c(1), all nominating petitions contain a warning immediately following the space on the nominating petition where the circulator is to sign his name, which provides that “[a] circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.” MCL 168.544c(1) (emphasis added). Thus, the penalty for falsifying a signature on a nominating petition is stated to be a misdemeanor. Furthermore, as noted above, MCL 168.544c(18) indicates that MCL 168.544c governs all nominating petitions “except as otherwise provided,” and MCL 168.937 contains a qualifying provision that indicates it yields to other more specific statutes. In short, when these provisions are considered together as a whole, the punishment for falsifying a signature on a nominating petition is unclear, at worst, and at best indicates that the crime is a misdemeanor; therefore, the lower courts did not err in applying the rule of lenity. *Denio*, 454 Mich at 699.

Finally, we agree with the circuit court that charging defendant with 10 felonies as opposed to misdemeanor offenses violates defendant’s due process rights.

Defendant’s due process argument relates to the warnings provided on the nominating petitions, as required by the Michigan election law. MCL 168.544c sets forth very specific requirements regarding the appearance and content of nominating petitions. Relevant to this case, the statute requires that the nominating petitions contain two separate warnings: The first warning, which immediately precedes the space on the nominating petition where voters are to sign their name, provides that “[a] person who knowingly signs more petitions for the same office than there are persons to be elected to the office or signs a name other than his or her own is violating the provisions of the Michigan election law.” MCL 168.544c(1) (emphasis added). The second warning, which immediately follows the space on the nominating petition where the circulator is to sign his name, provides that “[a] circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.” MCL 168.544c(1) (emphasis added). As he did in the lower courts, defendant argues that it would be fundamentally unfair to allow a felony forgery prosecution when the nominating petition itself provides that the conduct at issue in this case is a misdemeanor.

The Fourteenth Amendment to the United States Constitution provides that no state shall “deprive any person of life, liberty, or property, without due process of law[.]” US Const, Amend XIV. Likewise, the Michigan Constitution provides that “[n]o person shall be . . . deprived of life, liberty or property, without due process of law.” Const 1963, art 1, § 17. Relevant to this case, “[i]n general, due process requires that a person know in advance what questionable behavior is prohibited.” *People v Bruce*, 102 Mich App 573, 577; 302 NW2d 238 (1980) (citations omitted). The United States Supreme Court has additionally held that due process requires notice of more than just what conduct is proscribed, but also of the severity of

the penalty. See *BMW of North America, Inc v Gore*, 517 US 559, 574; 116 S Ct 1589; 134 L Ed 2d 809 (1996) (“Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also the severity of the penalty that a state may impose.”); *United States v Batchelder*, 442 US at 114, 123; 99 S Ct 2198; 60 L Ed 2d 755 (1979) (“[V]ague sentencing provisions may pose constitutional questions if they do not state with sufficient clarity the consequences of violating a given criminal statute.”)

At the outset, defendant concedes that the warning provisions contained in MCL 168.544c(1) adequately convey that his conduct—i.e., signing someone else’s name on the nominating petition and making a false statement in the certificate—is illegal. However, United States Supreme Court precedent indicates that it is not enough that a defendant knows his conduct is illegal; he must also be aware of the consequences for that conduct—i.e. the severity of the penalty that a state might impose. *Gore*, 517 US at 574; *Batchelder*, 442 US at 123. Here, the nominating petitions indicated that signing a petition with a name other than one’s own constituted a misdemeanor offense. Defendant signed nominating petitions with names other than his own. On its face, the nominating petitions stated that this conduct constituted a misdemeanor. Notwithstanding, this warning the prosecution sought to charge defendant with 10 felonies. Yet defendant was not on notice that the severity of the penalty for signing another person’s name to a petition was a felony offense. Although the first warning required under MCL 168.544c(1) placed defendant on notice that his conduct violated “the provisions of the Michigan election law,” the second warning indicated that such violation constituted a misdemeanor offense. See MCL 168.544c(1). Furthermore, the plain language of MCL 168.544c(11) and (18) in conjunction with the qualifying provision in MCL 168.937 discussed above, did not place defendant on notice that signing a petition with a name other than one’s own constitutes a five-year felony offense.

In short, because defendant was only on notice that his conduct constituted a misdemeanor, and there was no other warning concerning the severity of the penalty imposed under MCL 168.937, fundamental elements of fairness mandated that defendant be charged under MCL 168.544c(1).

Affirmed. We do not retain jurisdiction.

/s/ Stephen L. Borrello

/s/ Deborah A. Servitto

/s/ Douglas B. Shapiro