Order

Michigan Supreme Court
Lansing, Michigan

March 21, 2022

Bridget M. McCormack,
Chief Justice

164120 & (4)(5)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

RAISE THE WAGE MI,
Plaintiff,

v SC: 164120

BOARD OF STATE CANVASSERS,
Defendant.

_____/

On order of the Court, the motion for expedited consideration is GRANTED. The complaint is considered, and declaratory relief is GRANTED as follows: the form of an initiative petition is not improper or in violation of MCL 168.482 for bearing a union label or other printer's mark like the mark on the petition at issue in this case. The mark does not violate the type-size requirements of MCL 168.482, which neither expressly nor implicitly precludes the inclusion of a printer's mark. Cf. *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 608 n 37 (2012) (stating that "the petition must actually comply with the statutory mandates"); *Protect our Jobs v Bd of State Canvassers*, 492 Mich 763, 778 (2012) ("[A] petition must fully comply with mandatory statutory provisions that pertain to a petition's requirements regarding form."). In all other respects, the complaint for declaratory relief is DENIED, because the Court is not persuaded that it should grant the requested relief. The motion to intervene is DENIED.

VIVIANO, J. (*concurring in part and dissenting in part*).

I agree with the majority that MCL 168.482 does not establish any type-size requirements for the printer's mark at issue in this case.[1] But I would not reach the broader issue of whether printer's marks are permissible on petitions. Because no one has challenged the petition on the basis that the statute prohibits the mark, there is no reason to decide the issue now.[2] Justice ZAHRA has made a compelling case that the

[1] I also agree with the majority's decision to deny the complaint for declaratory relief in all other respects and to deny the motion to intervene.

[2] Even if I were inclined to hold that these printer's marks are acceptable on petitions, I would clarify that the ruling applies to printer's marks generally, not simply union-affiliation marks. That is, I would be cautious not to suggest that our ruling was based on

union label is not part of the petition and therefore is not allowed by the statute. As he explains, the statutory requirements are detailed and exact, and they make no mention of union labels, recycling symbols, or any other marks that might be placed on petitions. This statutory silence might reasonably imply that these marks are prohibited. *In re Morrow*, ___Mich___, ___ (2022) (Docket No. 161839) (VIVIANO, J., concurring); slip op at 6 (explaining the canon of *expressio unius est exlusio alterius*, under which a statute's " 'expression of one thing implies the exclusion of others' ") (citation omitted). As noted, however, this issue has not been raised or developed, and I would therefore not address it at this time.[3] For these reasons, I concur in part and dissent in part from the Court's order and would leave this additional issue for an appropriate future case.

BERNSTEIN, J. (*concurring in part and dissenting in part*).

I join the majority of this Court in granting plaintiff's motion for expedited consideration as well as declaratory relief. I believe it is clear that a union label on an initiative petition is not subject to type-size requirements as set forth in MCL 168.482. Unlike the majority, I would also grant the Governor's motion to intervene, as I believe it is clear that a union label on a candidate's *nominating* petition is similarly not subject to type-size requirements. See MCL 168.544c(1). A union label is simply not a part of the petition itself. Given pending election deadlines, I would grant the Governor's motion to

---

the political viewpoint expressed by the mark. Such a ruling would raise constitutional free-speech concerns. See *Iancu v Brunetti*, 588 US ___, ___; 139 S Ct 2294, 2299 (2019) ("The government may not discriminate against speech based on the ideas or opinions it conveys.").

[3] Of course, we are operating under tight deadlines. Legislative initiative petitions must be submitted by June 1, 2022, and constitutional initiative petitions by July 11, 2022. See MCL 168.471. Candidate petitions face an even tighter time frame for submission: April 19, 2022. See MCL 168.551. With the deadline this close, any decision that printer's marks are prohibited on candidate petitions could render it impossible for candidates who have followed what appears to be the historical practice of using petitions with these marks to timely collect and submit complying petitions. This might raise constitutional concerns about candidates' access to the ballot. See *Anderson v Celebrezze*, 460 US 780, 786-787 (1983) (explaining that the constitutional rights to vote and of freedom of association can be burdened by restrictions on candidates' eligibility for the ballot). At the very least, the time frame here should cause us to seriously consider limiting any ruling against printer's marks to prospective application only, as we did in a recent case involving initiative petitions. See *League of Women Voters of Mich v Secretary of State*, ___Mich___, ___ (2022) (Docket Nos. 163711, 163712, 163744, 163745, 163747, and 163748); slip op at 36 (" '[W]here injustice might result from full retroactivity [of a judicial decision], this Court has adopted a more flexible approach, giving holdings limited retroactive or prospective effect.' ") (citation omitted).

intervene and decide the issue presented there as well. To the extent that similar issues might arise in the context of other petitions not presently before this Court, declaratory relief can be sought in separate legal actions as necessary.

WELCH, J., joins the statement of BERNSTEIN, J.

ZAHRA, J. (*dissenting*).

I dissent. The Court peremptorily holds that text on a petition that is printed in smaller than 8-point type is not prohibited seemingly because it is included in a symbol on a petition. A fair reading of the order also suggests agreement with plaintiff's position that any symbol shown on a petition is permissible under Michigan law. These are dubious conclusions of law resolving questions of public significance that are worthy of further review. I would order argument on the application and decide the case with the benefit of supplemental briefing from the parties and invited amicus. Pressed to decide this issue without additional briefing or oral argument, I would hold that the Board of State Canvassers is not authorized to approve initiative petitions that contain text smaller than 8-point type regardless whether that text is contained within a symbol on the petition. Further, at this point and without the benefit of full briefing, I am inclined to conclude that the Board of State Canvassers is not authorized to approve the placement of *any* symbol on the petition not otherwise permitted by statute.

MCL 168.482 addresses the form of initiative petitions and is highly specific in regard to the contents within a petition. For instance, "the heading of each part of the petition must be prepared in the [prescribed] form and printed in capital letters in 14-point boldfaced type[.]"[4] The petition also requires "[a] summary in not more than 100 words of the purpose of the proposed amendment or question proposed . . . and be printed in 12-point type."[5] Then, "[t]he full text of [an] amendment so proposed must follow the summary and be printed in 8-point type."[6] Lastly, a specific "warning [directed to a signatory of the petition] must be printed in 12-point type immediately above the place for signatures . . . ."[7]

In no way does MCL 168.482 suggest the petition may contain text that is smaller than 8-point type. Given the statute's specificity in regard to exacting capital letters and particular point types relating to every portion of the petition, there is simply no

---

[4] MCL 168.482(2).

[5] MCL 168.482(3).

[6] *Id.*

[7] MCL 168.482(5).

discretion the Board may exercise to approve any text in the petition that is smaller than 8-point type. This is true regardless of the message conveyed by the noncompliant text.

Plaintiff presents two arguments to support its claim that the petition may include text that is smaller than 8-point type. First, plaintiff directs our attention to a separate statute, MCL 168.544c(1), which governs nominating petitions. Specifically, this statute provides that "[t]he *balance* of the petition must be printed in 8-point type." Plaintiff argues that this phrase reflects how the Legislature intended to remove any possibility that a petition contain type that is smaller than 8 points with regard to nominating petitions. Since the Legislature failed to include a similar provision in MCL 168.482, plaintiff contends that a type size smaller than 8 points is permitted for initiative petitions. This argument is not persuasive. " 'If the language of the statute is clear, no further analysis is necessary or allowed.' "[8] MCL 168.482 is not ambiguous. Indeed, its specificity in regard to point type is the very opposite of ambiguous. In essence, plaintiff is suggesting that the *in pari materia* canon of construction requires these two statutes to be construed in light of one another. "The rule, *in pari materia*, cannot be invoked here for the reason that the language of the statute is clear and unambiguous."[9] Even if invoked, the rule does not compel a different result. The phrase "[t]he balance of the petition must be printed in 8-point type" is not needed to interpret MCL 168.482, which regulates every aspect of an initiating petition.

Second, plaintiff argues that the union "bug" is not really part of the petition at all, and there is no statutory requirement about what nonpetition language may or may not say or how it must be said. And the type-size requirements apply to text, not labels. Plaintiff claims that the union bug here is a trademark, sign, or symbol, not text. I agree with plaintiff that the union bug (and for that matter the recycling symbol that also appears on the petition) is not part of the petition at all. I simply disagree with plaintiff that anything that is not part of the petition should be placed on the petition. A petition is defined in terms of "formal written request."[10] MCL 168.482 highly regulates the text and form of a petition. As earlier described, the text must conform to letter-case requirements and point-type requirements. Nonformal indicia, such as symbols, are not included within the meaning of a "formal written request," i.e., a petition. This understanding resonates given that the statute itself already provides for neutral symbols, such as boxes to check or lines for filling in information. These symbols are not text but are expressly delineated by statute to facilitate the petition. The symbols in the instant case are entirely unnecessary and do not facilitate the petition. The union bug at issue in this case is improper because it contains type much smaller than an 8-point type. Further,

---

[8] *Coldwater v Consumers Energy Co*, 500 Mich 158, 167 (2017), quoting *Boyle v Gen Motors Corp*, 468 Mich 226, 229 (2003).

[9] *Voorhies v Recorder's Court Judge*, 220 Mich 155, 157 (1922).

[10] *Black's Law Dictionary* (11th ed).

the union bug and the recycling symbol are also improper because the statutory language does not sanction their placement. A petition posits serious questions to voters. Symbols in support of groups and causes are distractions at the very least. I would end the practice of allowing symbols of any kind on petitions.[11] Plaintiff would not suffer prejudice as a result because it had only sought a preliminary determination of the petition, which the Board is not even obligated to entertain. Plaintiff can circulate its petitions by simply removing the union bug and recycling symbol from its petition.

In sum, I would order argument on the application. Otherwise, I would affirm the Board's preliminary denial and hold that the text within the union label is noncompliant because it is smaller than 8-point type. I would further hold that symbols are not to be placed on a petition regardless of the content or text.

[11] In *Council About Parochiaid v Secretary of State*, 403 Mich 396, 397 (1978), this Court in an order "conclude[d] that the descriptive material attached to the petition at the time of circulation [was] not a part of the petition and, when considered with the summary paraphrase of the proposed amendment and the body of the petition, [was] not deceptive." I agree with *Council About Parochiaid*'s conclusion that material attached to the petition at the time of circulation is not a part of the petition. But I find *Council About Parochiaid* distinguishable because, unlike in this case, the material was not included on the petition itself.