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STATE OF MICHIGAN

COURT OF APPEALS

ANN ARBOR RESPONSIBLE ENERGY COALITION,

Plaintiff-Appellant,

v

CITY OF ANN ARBOR CLERK and CITY OF ANN ARBOR,

Defendants-Appellees.

UNPUBLISHED
September 02, 2026
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No. 382186
Washtenaw Circuit Court
LC No. 26-001618-CZ

Before: ACKERMAN, P.J., and SWARTZLE and LETICA, JJ.

ACKERMAN, P.J. (*dissenting*).

The fundamental question presented in this appeal is whether, when a city clerk determines during canvassing that an initiatory petition to amend a city charter lacks the requisite number of signatures, the clerk may accept additional signatures from the proponent. Because I conclude that our statutes do not authorize that procedure, I respectfully dissent.

As the majority opinion explains, Ann Arbor for Public Power (A2P2) is a ballot committee seeking to amend the Ann Arbor city charter to create a publicly owned power utility. It filed its petition with the clerk on June 22, 2026. Plaintiff, Ann Arbor Responsible Energy Coalition (AAREC), alleges that after it did so, the defendant Ann Arbor city clerk advised A2P2 of the signature deficiency. In any event, A2P2 supplemented its petition on July 21 and again on July 27 with additional petition signatures, and after receiving those signatures, defendant city clerk certified the measure for the November 2026 ballot. The threshold question is whether defendant could accept these supplemental signatures after the petition was filed.[1]

The Home Rule City Act, MCL 117.1 *et seq*., lays out the process for citizen-initiated charter amendments. Under MCL 117.25(1), there are a variety of requirements for "[t]he

[1] In light of my position on this issue, I need not reach whether the other issues raised by AAREC provide an additional basis for keeping the proposal off the ballot.

petition," including that "[e]ach sheet of the petition shall be verified by the affidavit of the person who obtained the signatures to the petition," and "[t]he petition shall be signed by at least 5% of the qualified and registered electors of the municipality." In other words, the signature sheets are part of the petition. Under MCL 117.25(3), "[u]pon receipt of the petition, the city clerk shall canvass it to ascertain if it is signed by the requisite number of registered electors."

As the majority acknowledges, that language "foresees the filing of one petition" and "does not contemplate the filing of supplemental signatures." Because MCL 117.25(1) makes signature sheets part of a petition, the city clerk is to "canvass *it*"—the single petition, including its signature sheets, that was filed with the clerk—"to ascertain if it is signed by the requisite number of registered electors." Similarly, the event that triggers the clerk's duty is "receipt of the petition," but accepting supplemental signature sheets allows the clerk to canvass materials that were not part of the petition when it was received.

The majority relies on two considerations to reach a different conclusion. First, it notes that MCL 168.475(2) and MCL 168.961(1) expressly prohibit the consideration of additional signature sheets, concluding that "[t]he Legislature knows how to prohibit the filing of supplemental signatures for petitions and like documents." I disagree that those provisions are probative of the meaning of MCL 117.25. The prohibition on accepting additional initiative or referendum petition signatures in MCL 168.475(2) was added by 1999 PA 219, which was part of a broader package of reforms regarding the direct democracy process. In the absence of a definitive judicial construction that the Secretary of State *did* have the authority to accept supplemental signatures under MCL 168.475, it may well be that such action had been ultra vires and that MCL 168.475(2) was therefore superfluous; if so, adding MCL 168.475(2) would not change the meaning of MCL 117.25.[2] The prohibition on supplemental recall petition signatures in MCL 168.961(1) was added by 1978 PA 533 as part of the deletion of former MCL 168.962, which specifically *authorized* filing additional recall petition signatures. If anything, the Legislature's creation of this option solely for recall petitions in 1931 PA 114 supports the opposite inference: *only* recall petitions could be supported with supplemental signature sheets, and only for the 47 years between 1931 PA 114 and 1978 PA 533.[3]

Second, the majority observes that MCL 117.25 "does not expressly prohibit a clerk from accepting and canvassing supplemental signatures." From this, it concludes that plaintiff has failed to identify any legal authority that "defines the duty to reject supplemental signatures." In effect, the majority reads MCL 117.25 to establish a default that a clerk may do anything the statute does not forbid. I disagree, because the rule in Michigan is that municipal officers have only those powers expressly granted to them or necessarily implied from what is granted.

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[2] A contrary interpretation would, in effect, punish the Legislature for addressing its dissatisfaction with accepting supplemental signature sheets via the ordinary means available to the legislative branch—legislation—rather than running to the courts.

[3] Having offered the option for almost five decades, it is unsurprising that the Legislature specifically disavowed it in 1978 rather than relying on a negative inference from merely deleting it.

The critical case in the election context is *Taylor v Currie*, 277 Mich App 85; 743 NW2d 571 (2007). Under the version of MCL 168.759 then in effect,[4] a city clerk was directed to "have absent voter ballot application forms available in the office of the clerk at all times and shall furnish an absent voter ballot application form to anyone upon a verbal or written request." The defendant had sent out unsolicited absent voter ballot applications, and the trial court had enjoined that practice in light of the statutory text. On appeal, we first observed that municipal officers have only the authority expressly conferred on them. See *Taylor*, 277 Mich App at 94-95. We then affirmed the trial court, saying that "the power to mail unsolicited ballot applications to qualified voters is not expressly stated anywhere in this statute," and that, further, it was not "implicitly authorized by statute" either. *Id*. at 95-96.[5]

This situation is, it appears to me, materially indistinguishable from *Taylor*. Here we have a statute that "foresees the filing of one petition" and "does not contemplate the filing of supplemental signatures," much as the statute in *Taylor*, 277 Mich App at 95, only expressly provided "that the clerk must have applications for absent voter ballots available in the clerk's office at all times and that the clerk 'shall' provide an application to anyone upon verbal or written request." I do not think the statute's failure to specifically prohibit this practice, or any argument relying on unstated authority held by the city clerk, matters any more than it did in *Taylor*. Just as "[t]he mass mailing of unsolicited ballot applications is not essential to the clerk's either making ballot applications available in the clerk's office or to providing them upon request," *id*., neither is accepting supplemental signature sheets essential to the clerk's duty to canvass the petition upon receipt.[6]

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[4] The statute has since been amended to abrogate *Taylor*'s construction of MCL 168.759 and broaden a clerk's authority. 2023 PA 82. The amendment, however, did not change what *Taylor* had to say about the nature of a clerk's authority under governing statutes, even if it changed the terms of the specific statute at issue in that case.

[5] That also distinguishes both this situation and *Taylor* from *Kennedy v Secretary of State*, 515 Mich 893 (2024). In *Kennedy*, a presidential candidate wanted to withdraw his name from the ballot after having been nominated. The Court noted that he had failed to identify any legal authority obliging the Secretary of State to perform that duty and denied a writ of mandamus. There, mandamus was denied because it would have compelled the performance of a duty not specified by statute; here, by contrast, mandamus enforces the boundaries provided by MCL 117.25 within which the city clerk must operate.

[6] This Court attempted to distinguish *Taylor* in *Davis v Secretary of State*, 333 Mich App 588; 963 NW2d 653 (2020). There, the Secretary of State had similarly sent out unsolicited absent-voter ballot applications in advance of the 2020 election during the COVID-19 pandemic. We distinguished *Taylor* by pointing out that the defendant in *Taylor* was a candidate in the election at issue and had mailed unsolicited absent-voter ballot applications to only 150,000 of the city's 500,000 registered voters, as opposed to *Davis*, where the defendant was not a candidate in the election and had not limited the mailing to a subset of voters. *Id*. at 600-601. As an initial matter, *Davis* involved the Secretary of State, a constitutional officer with different authority than a city clerk. See Const 1963, art 5, §§ 3, 9. Moreover, the distinguishing characteristics cited by *Davis*

It is textually inescapable that MCL 117.25 does not contemplate the filing of supplemental signature sheets. While it does not expressly forbid their consideration, nothing in the history of our election laws suggests that MCL 117.25 should be construed to allow that practice; if anything, the 47-year period during which it was specifically authorized for recall petitions points in the opposite direction. And regardless, under *Taylor*, a local official must operate within the authority conferred by statute and may not infer additional powers from statutory silence. As a result, I conclude that the city clerk lacked the authority to accept supplemental signature sheets, and because there is no dispute that "the petition" as filed contained insufficient signatures, the clerk has a clear duty not to certify the proposal for placement on the ballot. A writ of mandamus should issue to that effect.

/s/ Matthew S. Ackerman

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were not part of the reasoning on which *Taylor*'s holding rested. Under MCR 7.215(J)(1), the first published opinion issued after November 1, 1990, is binding, and when a later published opinion does not follow an earlier one that is otherwise binding under the rule, it must be disregarded. See *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 285-286; 769 NW2d 234 (2009). I conclude that *Taylor*'s reasoning still controls.