Order

Michigan Supreme Court
Lansing, Michigan

September 7, 2022

Bridget M. McCormack,
Chief Justice

164747 & (3)(4)(8)(9)

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

PATRICK ANDERSON, TERRI LYNN LAND, and THOMAS McMILLIN,
Plaintiffs,

v SC: 164747

BOARD OF STATE CANVASSERS, SECRETARY OF STATE, and DIRECTOR OF ELECTIONS,
Defendants,
and

VOTERS FOR TRANSPARENCY AND TERM LIMITS,
Intervening Defendant.
_____/

On order of the Court, the motions for immediate consideration, the motion to expedite, and the motion to intervene are GRANTED. The complaint for mandamus and declaratory relief is considered, and relief is DENIED, because the Court is not persuaded that it should grant the requested relief.

VIVIANO, J. (*concurring*).

Plaintiffs have raised various challenges to a constitutional amendment proposed by the Legislature under Const 1963, art 12, § 1. I agree with the Court's denial order because I believe plaintiffs' challenges fail. But I write because one of their arguments relates to an issue that has come before the Court before. Specifically, plaintiffs contend that an amendment proposed by the Legislature under Const 1963, art 2, § 1 must be limited to a single purpose and that the amendment here fails that test because it relates to two purposes, i.e., term limits and financial disclosures by legislators. The text of Const 1963, art 12, § 1, however, does not establish a single-purpose test:

> Amendments to this constitution may be proposed in the senate or house of representatives. Proposed amendments agreed to by two-thirds of the members elected to and serving in each house on a vote with the names and vote of those voting entered in the respective journals shall be submitted, not less than 60 days thereafter, to the electors at the next general election or special election as the legislature shall direct. If a majority of electors voting on a proposed amendment approve the same, it shall become part of the constitution and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved.

No express or implicit single-purpose requirement is evident in this language.

Plaintiffs might have presented a better argument if the amendment here was being proposed via an initiative petition. Those amendments are governed by Const 1963, art 12, § 2. In *Citizens Protecting Michigan's Constitution v Secretary of State*, we noted the possibility that § 2 prohibited amendments containing multiple purposes, but we did not decide the issue because the plaintiffs there had not made the argument.[1] I believe that a strong argument could be made that § 2 does, in fact, require that amendments proposed by initiative be limited to a single purpose. The relevant text provides:

> Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.
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> Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.
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> The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and

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[1] *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42, 82 n 96 (2018). The dissent in *Citizens* did more fully address the issue and concluded that "[b]ecause 'the' is a definite article and 'purpose' is a singular noun, it seems reasonably clear that this phrase 'statement of the purpose of the proposed amendment' likely contemplates a single purpose." *Id*. at 120 (MARKMAN, C.J., dissenting).

> impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

The first indication that this provision establishes a single-purpose limitation arises from the fact that a petition under § 2 can contain only a single amendment: "Every petition shall include the full text of the proposed amendment . . . ."[2] The reference to only a single amendment is meaningful, and it contrasts with the language in § 3 permitting constitutional conventions to propose and adopt multiple "amendments."[3] In other words, the Constitution differentiates between the number of amendments that can be proposed through the various procedures—a petition can contain one amendment, while a convention can offer multiple amendments. Arguably, a restriction to a single amendment could not be honored if the single amendment contained changes that were the equivalent of multiple amendments.[4]

Other language in § 2 strongly suggests that the single amendment allowed in an initiative petition must be limited to a single purpose. This limitation most directly appears to follow from the requirement that a ballot containing a petition-initiated amendment "shall contain a statement of *the* purpose of the proposed amendment, expressed in not more than 100 words," which "shall consist of a true and impartial statement of *the* purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment."[5] Indeed, the text refers to only one purpose—"*the* purpose"—multiple times and requires that this purpose be expressible in relatively few words.[6] This requirement of expressing "the purpose" could not be satisfied if the

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[2] Const 1963, art 12, § 2; see *id*. ("Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed . . . .").

[3] Const 1963, art 12, § 3 ("Any proposed constitution or *amendments* adopted by such convention . . . .") (emphasis added); *id*. ("Upon the approval of such constitution or *amendments* by a majority of the qualified electors voting thereon the constitution or *amendments* shall take effect as provided by the convention.").

[4] Cf. *Amador Valley Joint Union High Sch Dist v State Bd of Equalization*, 22 Cal 3d 208, 223 (1978) ("[A]n enactment which is so extensive in its provisions as to change directly the 'substantial entirety' of the Constitution by deletion or alteration of numerous existing provisions may well constitute a revision thereof.").

[5] Const 1963, art 12, § 2 (emphasis added).

[6] Const 1963, art 12, § 2 (emphasis added). In addition, the 1908 Address to the People referred to "the language, scope and purpose of the proposed amendment," "the immediate purpose intended" by an amendment, and "the purpose and terms, as well as the legal effect, of such amendments . . . ." 2 Official Record, Constitutional Convention 1907–1908, pp 1590-1591. Thus, the textual indications that an amendment is limited to a single purpose are consistent with the way in which "the purpose" was referred to in the Address.

proposed amendment had multifarious purposes.[7] Such reasoning properly provided the basis for the Court of Appeals' upholding the limited and focused initiative in *Protect Our Jobs v Bd of State Canvassers*.[8]

It remains possible that even if the amendment is limited to a single "purpose," that "purpose" may be broadly defined by the general end or objective of the amendment, such that the amendment contains various provisions all geared to effectuate the overriding purpose. It has been observed that " '[t]he word "amendment" is clearly susceptible to a construction which would make it cover several propositions, all tending to effect and carry out one general object or purpose, and all connected with one subject.' "[9]

We have a well-developed body of caselaw addressing nearly the identical issue—how to frame the "purpose" of a law—in our Constitution's Title-Object Clause, which provides in relevant part that "[n]o law shall embrace more than one object . . . ."[10] We have defined a law's object "as its general purpose or aim."[11] Our caselaw has explained that:

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[7] In past cases, however, we have suggested that an amendment by petition could have multiple purposes. In *City of Jackson v Comm'r of Revenue*, 316 Mich 694, 710-711 (1947), we summarily rejected the argument that an amendment was void because it contained more than one purpose. Instead of looking to the text of the Constitution—or even examining whether the amendment truly contained multiple purposes—we merely declared that "[w]e [found] no defects in the petitions or in the manner of submitting the proposed amendment . . . ." *Id*. at 711. Instead, we observed that the voters had already passed the amendment and we expressed hesitance to rule in a manner that would nullify that vote. *Id*. This holding reflects the fact that once the people have adopted an amendment, a "postelection challenge[r] bear[s] a heavy burden of persuasion." *Massey v Secretary of State*, 457 Mich 410, 415 (1998). Similarly, in *Graham v Miller*, 348 Mich 684, 692 (1957), we simply cited *Jackson*, without any meaningful independent analysis, for the proposition that amendments could contain several purposes. And, in any case, that discussion was dictum, as we concluded that the amendment included only one overarching purpose. *Id*. Thus, our caselaw has not satisfactorily addressed this issue.

[8] *Protect Our Jobs v Bd of State Canvassers*, unpublished per curiam opinion of the Court of Appeals, issued August 27, 2012 (Docket No. 311828), pp 2-3 (noting that the ballot proposal was "limited to a single subject matter" and made two related changes to the Constitution).

[9] *People v Stimer*, 248 Mich 272, 277 (1929) (POTTER, J., dissenting), quoting *State ex rel Corry v Cooney*, 70 Mont 355, 362 (1924).

[10] Const 1963, art 4, § 24.

[11] *Pohutski v City of Allen Park*, 465 Mich 675, 691 (2002).

> The "one object" provision must be construed reasonably, not in so narrow or technical a manner that the legislative intent is frustrated. *Kuhn v Dep't of Treasury*, 384 Mich 378, 387-388, 183 NW2d 796 (1971). We should not invalidate legislation simply because it contains more than one means of attaining its primary object; "[h]owever, if the act contains 'subjects diverse in their nature, and having no necessary connection,' " it violates the Title-Object Clause. [*City of Livonia v Dep't of Social Servs*, 423 Mich 466, 499 (1985)]. The act may include all matters germane to its object, as well as all provisions that directly relate to, carry out, and implement the principal object. [*Advisory Opinion re Constitutionality of 1972 PA 294*, 389 Mich 411, 465 (1973)]. The statute "may authorize the doing of all things which are in furtherance of the general purpose of the Act without violating the 'one object' limitation of art 4, § 24." *Kuhn*, [384 Mich at 388].[12]

These standards provide a possible framework for determining whether a proposed amendment under Const 1963, art 12, § 2 has a single purpose. The test is not rigid, and the purpose can be broadly conceived[13]—but not so broadly that it requires a reexamination of our entire Constitution. It must be narrow enough that it can be defined, in contrast to an undefined purpose of, say, reexamining the entire Constitution.[14] Further, a court's determination of the amendment's purpose must arise from its examination of the text, not the intentions of the drafters or the

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[12] *Id.*

[13] For example, in *Graham*, 348 Mich at 692, the proposal provided for distribution of sales tax proceeds to school districts and local governments and also provided an annual legislative grant to school districts. We found "the amendment in question to be in furtherance of but 1 purpose, namely, enabling school districts to finance the building of schools without placing oppressive burdens on taxpayers in any 1 year . . . ." *Id.* In a related context, we found that despite transferring to the Department of Agriculture various powers and duties from other agencies, the law that did so had but one object—"to promote the agricultural interests of the State[.]" *Stimer*, 248 Mich at 277.

[14] Jameson, A Treatise on Constitutional Conventions; Their History, Powers, and Modes of Proceeding (1887), § 574c, p 612 ("In other words, the legislative mode [i.e., amendments initiated by the legislature] is confined to a narrow and defined purpose, and that by Conventions to a broader and more general and undefined purpose, embracing within its scope the former, and possibly much more.").

individuals proposing the amendment.[15] It requires, in other words, a "fair reading" of the text.[16]

In an appropriate future case, I would consider whether Const 1963, art 12, § 2 limits initiative amendments to a single purpose. But none of the textual indications supporting such an interpretation in § 2 is present in § 1, which is at issue in this case. Although a single-purpose limitation in § 1 might prove salutary, the courts cannot fashion such a limitation, only the people can through ratification of an amendment to that end.[17] For these reasons, I concur in the denial.

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[15] Cf. Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West 2012), p 20 ("[T]he textualist routinely takes purpose into account, but in its concrete manifestations as deduced from close reading of the text.").

[16] *Id*. at 33 ("[The] 'fair reading' " interpretive approach "requires an ability to comprehend the *purpose* of the text, which is a vital part of its context. But the purpose is to be gathered only from the text itself, consistently with the other aspects of its context.").

[17] A single-subject requirement serves to prevent, among other things, "logrolling," which occurs when proposals are packaged together to ensure that there are enough votes to secure passage of an otherwise unpopular policy. See *Advisory Opinion to the Attorney General*, 132 So 3d 786, 795 (Fla, 2014); cf. *Yute Air Alaska, Inc v McAlpine*, 698 P2d 1173, 1184-1185 (Alas, 1985) (Moore, J., dissenting) ("Whenever a bill becomes law through the initiative process, all of the problems that the single-subject rule was enacted to prevent are exacerbated. There is a greater danger of logrolling, or the deliberate intermingling of issues to increase the likelihood of an initiative's passage, and there is a greater opportunity for 'inadvertence, stealth and fraud' in the enactment-by-initiative process. The drafters of an initiative operate independently of any structured or supervised process. They often emphasize particular provisions of their proposition, while remaining silent on other (more complex or less appealing) provisions, when communicating to the public. Indeed, initiative promoters typically use simplistic advertising to present their initiative to potential petition-signers and eventual voters. Many voters will never read the full text of the initiative before the election.").