

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

OAKLAND CARES COALITION,

Plaintiff,

v

Case No. 22-195672-AW

LOREE ZELENOCK as Village Clerk of
The Village of Leonard, in her official
capacity, VILLAGE COUNCIL OF LEONARD,
and LISA BROWN, in her official capacity
as Oakland County Clerk,

Defendants./

MOTION HEARING

BEFORE THE HONORABLE YASMINE I. POLES, CIRCUIT JUDGE

Pontiac, Michigan - Wednesday, August 24, 2022

APPEARANCES:

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WITNESSES

None

EXHIBITS

None offered.

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Pontiac, Michigan

Wednesday, August 24, 2022 - 10:14 a.m.

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(Proceeding conducted via Zoom videoconference.)

THE CLERK: Your Honor, now calling number 29 on the docket, Oakland Cares Coalition versus Zelenock, case number 2022-195672-AW.

MR. KUMMER: Good morning, Your Honor. John Kummer appearing on behalf of the defendants Loree Zelenock and Village Council of Leonard.

MR. GRANDSTAFF: Good morning, Your Honor. Anderson Grandstaff appearing on behalf of the plaintiff - - of the plaintiff in this case, Oakland Cares Coalition.

MR. BUCK: Good morning, Your Honor. Brandon Buck appearing on behalf of Oakland County Clerk, Lisa Brown.

THE COURT: All right. Good morning, to all of you.

Mr. Kummer, your motion. Go ahead.

MR. KUMMER: I apologize. I did place my appearance first. It is Mr. Grandstaff's motion.

THE COURT: Oh, okay. All right. Go ahead please.

MR. GRANDSTAFF: Good morning, Your Honor. This is a motion filed by plaintiff in regards to a ballot

1 initiative that was submitted last month. This ballot
2 initiative was submitted to the Village of -- of Leonard
3 in order to open one specific marijuana establishment,
4 namely a marijuana retailer. After gathering the
5 requisite number of signatures to this petition, the
6 petition was submitted to the County on July 7th and the
7 County then certified -- then drafted ballot language on
8 July 25th.

9 The ballot language drafted by the County was
10 prejudicial in several respects that are spelled out in
11 our brief. But, put briefly they use misleading language
12 the suggests that multiple marijuana establishments of
13 varying types would be implemented throughout the Village
14 and they also falsely imply that this ordinance would
15 somehow impact the zoning powers afforded to the Village
16 under Michigan law.

17 Now, I can tell from the responses that have
18 been submitted there's some confusion as to what happened
19 next and I address these arguments in our reply brief.
20 But, what essentially happened is that despite repeated
21 efforts by the plaintiff to follow up with the County, the
22 plaintiff was never apprised of the ballot language that
23 was submitted to the Oakland County Clerk until August 15th
24 of 2022 after business hours.

25 Now, as soon as they found out about this

1 prejudicial and misleading language counsel for plaintiff,
2 my predecessor, sent an email trying to stop the
3 certification and laying out the reasons for doing so.
4 Now, after that we engaged in negotiations to try to find
5 a -- a middle road in terms of the language but these
6 negotiations where ultimately unsuccessful and the core
7 issues remain as to those two points; the multiple
8 marijuana establishments and the zoning references.

9 Now, we're requesting a writ of mandamus in this
10 case because we have no effective other recourse. The
11 election is coming up very soon, the ballots will very
12 soon be printed, and we believe that all the elements for
13 writ of mandamus have been completed here. There's a
14 clear right that we have to the performance of a legal
15 duty. There's a clear right for the defendant to perform
16 that duty. They must submit non-prejudicial -- submit and
17 certify non-prejudicial ballot language and they have not
18 done so in this case. This act is ministerial because
19 there's no discretion allowed. The language used is
20 shall, they shall submit non-prejudicial language. And,
21 finally we have no other adequate recourse as explained
22 before.

23 Now, having -- having read over the arguments
24 presented by the defendants in this case, I believe a core
25 misunderstanding is that defendants appear to believe that

1 we were aware of the certification immediately after the
2 meeting on July 25th of 2022. That is not the case. We
3 certainly didn't rest on our laurels and wait for -- until
4 we had no other option. So, the -- any appeal to the
5 doctrine of laches is inapplicable in this case.

6 As to the rest of it, Your Honor, I -- we will
7 rest on the arguments presented in our brief but we do
8 believe that this language is -- is prejudicial and does
9 not reflect the intent of Michigan voters and would
10 severely prejudice the outcome of this ballot initiative
11 so we would request a writ of mandamus be issued to
12 correct this language.

13 THE COURT: Okay. Thank you.

14 Response?

15 MR. KUMMER: Thank you, Your Honor. If defendant
16 Zelenock and Village Council may go first.

17 I'm happy to address the merits of plaintiff's
18 argument with respect to the alleged prejudicial language.
19 It's plaintiff's -- or defendants' contention it's not
20 prejudicial. It's objectively factual with respect to
21 MRTMA as applied to Leonard as well as the operation of
22 Michigan law.

23 But, first I'd really like to just focus on the
24 primary point which is a writ of mandamus is improper in
25 this case. The statutory authority, the case law cited by

1 plaintiff is all of that case law which is requesting that
2 any ballot question be certified to the County.

3 In those cases, like Turner versus Royal Oak
4 Township, rather Oakland Cares Coalition versus Gwendolyn
5 Turner, there wasn't language that was certified. The
6 ministerial act was the certification of the language. In
7 this case there was language that was certified. That
8 ministerial act has occurred, MRTMA has been satisfied.
9 The clear legal duty that plaintiff is entitled as been
10 satisfied and he's not entitled to any current new legal
11 duty for new language to be drafted for language to be
12 decertified and recertified.

13 This entire case, this -- plaintiff's entire
14 argument is premised upon the -- the claim that the
15 language is allegedly prejudicial. If the Court is to
16 accept this preposition then that's, you know, an
17 admission by plaintiff that the writ of mandamus is
18 seeking a act of discretion and judgment. It requires
19 discretion and judgment to decide of language is
20 prejudicial or not. It decides -- it requires discretion
21 and judgment to draft specific language. And, the relief
22 that's being requested and sought by plaintiff is that new
23 language be drafted by defendant Zelenock and the Village
24 Council, defendant Village Council. And, it's an improper
25 function of a writ of mandamus to order such.

1 I'll -- I'll leave the statutory deadline
2 argument to counsel for Lisa Brown as I believe it's more
3 aptly briefed within their pleadings, but as far as the
4 idea that there's some legal duty that still exists that
5 plaintiff is owed or some legal duty that's still to be
6 performed, those elements fail as most significantly the
7 third which is that this is a ministerial act, it's simply
8 not a ministerial act.

9 For those reasons it should be -- the motion and
10 claims should be dismissed and denied.

11 As far as the arguments -- well actually I will
12 add in reviewing the reply brief, I don't know if the
13 Court accepted it for purposes of its, you know, review,
14 but this is not contested. Plaintiff does not address
15 these arguments that are made by defendants. There's no
16 reply to those arguments which in my opinion is an
17 admission by plaintiff that a mandamus is improper here.
18 He can, you know, respond to that but there doesn't seem
19 to be any new authority cited based on the absence of such
20 being highlighted by defendants.

21 As far as the prejudicial allegations, this
22 language that was used as certified accurately states
23 Michigan law. And, that is also -- seems to be
24 acknowledged by plaintiff in the reply brief. Reading
25 from plaintiff's brief reply, they could have used

1 language that more clearly indicated that multiple
2 marijuana establishment could only operate if they were
3 based in the same physical location.

4 He's not saying that the reference that Michigan
5 law, as applied to the Village, would allow for multiple
6 establishments. He's not saying that's false. He's
7 requesting further context to have been provided. If you
8 look at MCL 168, section 485, it reads,

9 "The question shall be worded so as to apprise
10 the voters of the subject matter of the proposal or
11 issue but need not be legally precise."

12 Defendants have certified language that
13 summarizes MRTMA as it operates, as it would be applied
14 were this proposal to pass. It does so without
15 specifically performing any legal analysis of the proposal
16 which would be argued by plaintiff in an alternative
17 pleading as, you know, a pre-election judicial
18 determination which is not what's occurring here. So,
19 they're -- they're under no obligation to cite the entire
20 statutory provisions with respect to co-location, but
21 plaintiff seems to acknowledge in his reply brief that
22 multiple establishments would exist.

23 With respect to the reference or rather
24 plaintiff's claim that we're suggesting -- defendants' are
25 suggesting that there's some zoning function that's

1 occurring through the passage of this proposal, that's not
2 the case. It's simply acknowledging what affect any
3 ordinance that's passed authorizing any number of
4 marijuana establishments could be located.

5 Plaintiff doesn't deny that they could be
6 located in any area within Leonard, only that he believes,
7 once again, additional language should have been added to
8 be more legally precise. It appears that on both of these
9 issues plaintiff concedes that the language isn't
10 inherently wrong it's just not detailed enough. The
11 Clerk, Zelenock, certified the entire ballot proposal
12 along with the language that's been provided and cited in
13 our brief to be able to provide any answer for any voter
14 with any question specific to the ballot proposal.

15 So, you know, with that, I'll be happy to answer
16 any questions that the Court has with respect to any
17 arguments but I'd rely for the other argues as stated in
18 our brief.

19 Thank you.

20 THE COURT: Okay, thank you.

21 Mr. Buck?

22 MR. BUCK: Just to reiterate on what Mr. Kummer
23 said, you know the elephant in the room is whether the
24 relief being sought is discretionary. And, you know, if
25 you just read the plaintiff's reply brief throughout they

1 recite pages and pages of facts relating to negotiations
2 between Zelenock and themselves and discussions and what
3 language would be good enough and what language isn't good
4 enough and what's accurate enough and what isn't accurate
5 enough. All that signals that it's the death now of
6 mandamus. We all know that the case law is absolutely
7 clear that you cannot get mandamus on a discretionary
8 function.

9 Now, what the plaintiff's trying to twist this
10 into is saying well the act of certification in and of
11 itself is ministerial, but they're overlooking the fact
12 that what they want -- what they're really asking for,
13 what they asked for in the complaint is sort of a
14 decertification of the language that we already have,
15 redrafting of language that they believe would be
16 appropriate and/or to comply with the statute or/and to be
17 non-prejudicial. There's a lot of judgment -- exercise of
18 judgment that would need to occur. Someone has to be the
19 arbitor of the language whether it's sufficient, so on and
20 so forth.

21 Now the County's sort of caught in the middle of
22 this. The County's only role in this is to accept timely
23 certification under the statute. There's been various
24 references about the County drafting language. The County
25 does not draft language. They have no function in that.

1 The Clerk doesn't have any role in that.

2 As to the statutory deadline set forth in 646a,
3 we've set forth that argument in the briefing. The County
4 does not engage in any substantive review of language
5 that's submitted to it. The 646a deadline is subject to
6 strict compliance under Supreme Court precedent, Stand Up
7 for Democracy, and, therefore, regardless of what's
8 certified to the County Clerk there's no substantive
9 review at our level. We just need to insure compliance
10 that it's done timely. We don't have any ability to waive
11 a deadline and the deadline is passed.

12 And, the last point I'll make is there are other
13 remedies available to this plaintiff. They can put this
14 language on a subsequent election at a later date. They
15 could have drafted their own language up front and avoided
16 this all together. But, in any event, we don't believe
17 that the Court can lawfully order the County Clerk to
18 accept a late, "late" certification after expiration of a
19 mandatory statutory deadline.

20 So, for all those reasons we ask that the Court
21 deny the relief sought by plaintiffs and dismiss their
22 complaint.

23 MR. GRANDSTAFF: Your Honor, may I please address
24 some of the arguments were raised?

25 THE COURT: Briefly.

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MS. GRANDSTAFF: Yes, Your Honor.

One of the points I would raise here is that pursuant to MCL 168.485, ballot language submitted shall not be pre -- prejudicial. There is no discretion there. This is not an act of discretion. They have violated a duty by certifying ballot language that is prejudicial.

Now, the reason that many of these arguments were not addressed in more detail in our reply brief is because we only have five pages to address 40 pages of arguments.

Now, if I can address the Township's [sic] main arguments regarding the phrasing of the initiatives. The main issue here is that they are not stating -- they may be stating -- providing definitions that are legally correct but they are doing so in an incredibly misleading fashion by selectively omitting necessary information.

No one is putting them under any obligation to describe these co-located marijuana business, but if they are in behooves them to describe them in a way that is not intentionally misleading. Not using a plural at least -- at the very least mentioning that they would only be operating in a single location.

Similarly with the zoning they are selectively focusing on the fact of -- of how their local zoning ordinances work without providing anyone who reads the

1 ballot with a context. And, it's not enough to say that
2 they can contact their township representative or
3 something like that, it has be clear to an average voter
4 what they are voting for and what they are voting against.
5 And, the language cannot be leading or prejudicial.

6 And, as a final matter, we are not seeking for
7 the passage of our approved language, we are merely
8 seeking the language that is not prejudicial on this
9 ballot initiative.

10 Thank you.

11 THE COURT: All right, thank you.

12 The Court having reviewed pleadings, hearing
13 oral argument on defendants' -- plaintiff's ex parte
14 motion for a writ of mandamus, emergency motion for
15 declaratory judgment, and motion for TRO, the Court will
16 cite that a writ of mandamus is properly granted when a
17 plaintiff has a clear legal right to performance of a
18 specific duty, defendant has a clear legal duty to
19 perform, the act is ministerial, and no other adequate
20 legal or equity remedy exists that might achieve the same
21 result. MCL 168.646a(2) provides in relevant part that
22 the ballot wording of the ballot question must be
23 certified to the proper local or county clerk no later
24 than 4:00 p.m. on the 12th Tuesday before the election.

25 Here the deadline was August 16th of 2022.

1 Plaintiff's complaint was not filed until August 18 of
2 2022, after the expiration of the deadline. Therefore,
3 plaintiff is not entitled to the relief sought and the
4 Court is without authority to grant this writ of mandamus.
5 Plaintiff does not have a clear legal duty -- legal right
6 to the requested performance and defendant does not have a
7 clear legal duty to perform.

8 The Court is also going to find that the
9 language here is a discretionary function and therefore
10 not ministerial.

11 So, therefore, your motion is denied. Thank
12 you.

13 MR. GRANDSTAFF: Thank you, Your Honor.

14 MR. KUMMER: Thank you, Your Honor.

15 (At 10:33 a.m., proceeding concluded.)

16 * * * * *

STATE OF MICHIGAN)
COUNTY OF OAKLAND)ss.

I certify that this transcript is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable YASMINE I. POLES, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: August 31, 2022

/s/ Kara L. Van Dam

Kara L. Van Dam, CER #7987