

**STATE OF MICHIGAN  
37<sup>TH</sup> JUDICIAL CIRCUIT COURT  
CALHOUN COUNTY**

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COMMITTEE FOR MARSHALL NOT –  
THE MEGASITE, *et al*,

Plaintiffs,

vs.

CITY OF MARSHALL, MICHELLE EUBANKS

Respondents,

and

MARSHALL AREA ECONOMIC  
DEVELOPMENT ALLIANCE (MAEDA), a  
Michigan non-profit organization,

Intervenor.

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**OPINION AND ORDER**  
**RE: MOTION FOR PRELIMINARY INJUNCTION**

At a session of Court, in the  
37<sup>th</sup> Judicial Circuit Court for the City of Battle Creek,  
County of Calhoun, State of Michigan,  
On the 12<sup>th</sup> day of July, 2023

PRESENT: HON. WILLIAM C. MARIETTI  
Circuit Judge, sitting by assignment

The court has before it a motion for a preliminary injunction.<sup>1</sup> Prior to convening the hearing for oral arguments on this motion, the court rendered bench opinions and orders regarding four separate motions to intervene filed by five proposed intervenors. The court granted the motion for the Marshall Area Economic Development Alliance (MAEDA) and denied the motions without prejudice filed by the MEDC, MSF, Muskegon Committee for Jobs and Opportunities (MCJO) and the Ford Motor Company. In lieu of intervention the court agreed to consider the proposed intervenors' briefs as submitted *amicus curiae*.

At oral argument the petitioners announced that the relief they were seeking in this motion was the suspension of the operation of Marshall City Ordinance 2023-08 which rezoned a large parcel of property from township to industrial and included an appropriation for site review and building inspections. The respondents, the City of Marshall and its Clerk are opposed to the motion as is the intervenor.

The petitioners are individuals and the committee which they have organized to promote a referendum on the ordinance. The respondents are the City of Marshall that passed the ordinance and made a final determination that the referendum petition was insufficient. Respondents also include the Clerk who declined to certify the petitioners' petition for a referendum was sufficient to have the matter referred to the City Council for repeal on the ordinance or to be included on the ballot for the next city election. Ultimately, the petitioners seek to have the court order the clerk to certify the petition for placement on the ballot. There has been a final determination by the City Council that the referendum petition is insufficient and, thus, if any suspension of the ordinance was required, it is terminated by the Charter. Marshall City Charter, Sec. 5.505. Nevertheless, the petitioners ask the court to exercise its equitable powers to enjoin the operation of the ordinance during the pendency of this litigation, prohibit any actions taken in reliance on the provisions of the ordinance and order the City to repeal it or place the referendum on the ballot. *Id.*

To justify the grant of preliminary injunctive relief, the court must consider four factors, to wit: (1) the likelihood that the petitioners will prevail on the merits of the case, (2) the harm that will result for the petitioners in the absence of an injunction balanced against the harm suffered by the respondents if an injunction issues, (3) the harm to the public interest that would be generated by an injunction, and (4) the existence or absence of irreparable harm for the petitioners if relief is denied. *Vincent Johnson v Michigan Minority Purchasing Council*, \_\_ Mich App \_\_; 988 NW2d 800

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<sup>1</sup> The petitioners have filed a motion for a writ of mandamus., however, they are not seeking immediate action for the writ at this time. Although this motion references a temporary restraining order, this is not an ex parte proceeding, and, therefore, the appropriate remedy, should petitioners prevail, would be a preliminary injunction.

(2022). The petitioners bear the burden to demonstrate that these factors weigh in favor of granting preliminary injunctive relief. MCR 3.310(A)(4).

The purpose of a preliminary injunction is to preserve the *status quo* pending a final hearing on the parties' rights. *Michigan AFSCME Council 25 v Woodhaven-Brownstown Sch Dist.*, 293 Mich App 143; 809 NW2d 444 (2011). The *status quo* is a situation in which the subject ordinance remains in effect following the city council's final determination that the petition for a referendum is insufficient. The respondents, intervenor and *amicus curiae* are undertaking activities in reliance on the ordinance's validity. An order enjoining any such activity, suspending the operation of the ordinance, and requiring the council to repeal it or place the referendum on the ballot will alter the *status quo* instead of preserving it. For that reason alone, the motion should be denied.

The parties have extensively briefed and advocated regarding the first factor. Petitioners contend that they need only demonstrate a likelihood that they will prevail on the issue of mandamus. To succeed on that request the petitioners would have to establish a clear right to have the respondents certify the petition as sufficient. *AG v Bd of State Canvassers & Dir of Elections*, 318 Mich App 242; 896 NW2d 485 (2016). In that regard, they take the position that there are several theories which will result in a grant of the writ. Initially, they note that the clerk's authority is limited to the ministerial function of ascertaining whether there are sufficient valid signatures to justify a certificate of sufficiency. They cite several cases limiting the authority of the Board of State Canvassers and Secretary of State as it relates to state-wide referendums. Thus, they reason that the Clerk's decision to certify the petition as insufficient based upon a finding that it addresses an ordinance that includes an appropriation is beyond the scope of her mandate.<sup>2</sup> Initially, the court notes that the finding of insufficiency was not exclusively the prerogative of the Clerk. The Charter provided the petitioners with the opportunity to have the City Council *en banc* make a final determination of the sufficiency of the petition. Marshall City Charter, Sec. 5.04(b). The final determination of insufficiency by the Council, not the Clerk, is the action that is under review by this court pursuant to subsection (c) of this provision.

Moreover, the ordinance under consideration herein contains an appropriation. The City Charter prohibits a referendum on an ordinance that relates to an appropriation. Marshall City Charter, Sec. 5.01(b). The Michigan Constitution contains a similar provision. Const 1963, art 2, sec 9. In *Michigan United Conservation Clubs v Sec'y of State*, the Supreme Court vacated a declaration of sufficiency by the Board of State Canvassers for a referendum petition involving a statute that included an appropriation.<sup>3</sup> The Court directed the Board and Secretary that the statute was not subject to a referendum and granted the relief requested which sought a writ of mandamus that ordered the defendants to reject the petition for referendum. The Supreme Court reached the same conclusion in *MGM Grand Detroit, LLC v Community Coalition for Empowerment, Inc*, 465 Mich 303; 633 NW2d 357 (2001). In that case, the Court applied the same reasoning to an attempt to petition for a

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<sup>2</sup> The petitioners also suggest that the Clerk's additional finding that the petition is insufficient because the signatures were improperly solicited by non- members of the referendum committee is erroneous. For reasons set forth, *infra*, this opinion will not adjudicate the merits of this claim.

<sup>3</sup> 464 Mich 359; 630 NW2d 297 (2001).

referendum on a Detroit city ordinance that included an appropriation. The City Clerk had denied certification of the referendum petition on the same basis as the Clerk has in the instant case, to wit: the ordinance was exempt from referendum because it contained an appropriation.

The petitioners in *MGM*, just as those petitioners herein, filed a complaint against the City Council and applied for a writ of mandamus ordering the Clerk to certify the petition for a referendum. The trial court granted the Council and Clerk's motion for summary disposition. The Supreme Court found that the Detroit City Charter prohibits a referendum on an ordinance that contains an appropriation and affirmed the trial court's grant of summary disposition in favor of the Clerk and the Council. Thus, petitioners are unlikely to be able to establish they have a clear right to have the Clerk issue a certification of sufficiency in this case. In the ultimate decision on the merits, the court would likely refrain from the exercise of its discretion to engage the extraordinary powers of chancery and grant petitioners a writ of mandamus to facilitate a scheme that is prohibited by Supreme Court precedent.

However, if the appropriation section in the ordinance is invalid, then the Council and Clerk could not have relied on that as a basis for declining to repeal the ordinance or place it on the ballot. In recognition of that, the petitioners take the position that the appropriation provision violates the restriction of the Charter that an ordinance be confined to a single purpose. Marshall City Ordinance, Sec. 4.02(a). In evaluating a single object challenge the court must examine the title as well as the body of the law. *Gillete Commercial Operations v Dep't of Treasury*, 312 Mich App 394; 878 NW2d 891 (2015). The title of 2023-08 designates it as an act to change the zoning of described property from township to industrial. It has a specific stated purpose to, *inter alia*, promote the safety and general welfare of the residents by regulating land use for safe use to meet their needs for industry and to reduce hazards to life and property. Marshall City Ordinance 2023-08. In *Kuhn v Dept of Treasury*, 384 Mich 378; 183 NW2d 796 (1971), the Michigan Supreme Court rejected a challenge to the inclusion in the Income Tax Act an appropriation for the administration and enforcement of the Act. The Court noted that a statute may authorize the doing of anything which is in furtherance of the general purpose of the statute without violating the single-object clause in the Michigan Constitution. Thus, the Court concluded that an appropriation to finance the administration of the Act did not violate the single-object clause.

In *Livonia v DSS*, 423 Mich 466; 378 NW2d 402 (2002), the Court weighed in once again on the single-object clause and noted that it is violated if a statute contains subjects diverse in their nature and having no necessary connection. If these principles are applied to ordinance 2023-08, it is clear that an appropriation of funds for site review and building inspections on property reclassified from township to industrial will further the stated purpose to promote the safety and general welfare of the residents. Conducting site reviews and building inspections is directly related to regulating land for its safe use and reducing hazards to life and property. Accordingly, Section 3 of ordinance 2023-08 does not violate Section 4.02(a).

In addition to the single subject limitation, Sec. 4.02(a) requires that the ordinance title clearly express its subject. The title to 2023-08 indicates it is an ordinance to change zoning from township to industrial manufacturing. The petitioners assert that the body of the ordinance, insofar as it includes an appropriation for site review and building inspection services for the transition from township to industrial zoning exceeds the scope of the title. The purpose of the title-object limitation is to provide fair notice. *Pobutski v Allen Park*, 465 Mich 675; 641 NW2d 219 (2002). This purpose is not accomplished only when the challenged provision is so diverse from the subject in

the title that they have no necessary nexus. *People v Cynar*, 252 Mich App 82; 651 NW2d 136 (2002). The appropriation of funds for services to facilitate the transition from township to industrial zoning is incidental to the general purpose of rezoning and is not beyond the scope of the ordinance's title. *Livonia v DSS*, 423 Mich 466; 378 NW2d 402 (1985). There is no violation of the Charter's title-object requirements.

Finally, the petitioners challenge the validity of appropriating through the ordinance procedure instead of by resolution. The petitioners' position is that Section 9.04 of the Charter restricts the Council to appropriating funds exclusively by resolution. Indeed, that section provides that the council shall adopt the annual budget by resolution. It does not say the council is prohibited from making an appropriation by ordinance. In fact, the Charter places a limit on the power of the Council to act by resolution. Marshall City Charter, Sec. 4.01(c). It places no limitations on what an ordinance may encompass and states that all legislation shall be by ordinance or resolution. *Id.* Sec. 4.01(a). Moreover, the Charter obviously contemplates that appropriations can be made through ordinance since it specifically refers to ordinances relating to the appropriation of money. *Id.* Sec. 5.01.

The court finds there is no basis for severing Section 3 from Ordinance 2023-08. Thus, the principles announced in *MGM* and *Michigan United*, *supra*, render it likely that the petitioners will not prevail on the merits in this case.

In addition to demonstrating a likelihood of prevailing on the merits, the petitioners must also convince the court that they will suffer irreparable harm in the absence of an injunction. The petitioners allege that they are irreparably harmed because the actions of the Clerk in limiting the persons eligible to circulate petitions deny their rights to free speech, petition, and association as set forth in the United States and Michigan Constitutions. This court does not offer an opinion as to whether those allegations have merit since, as noted *supra*, it is likely that the court will ultimately conclude that the ordinance is exempt from referendum because it involves an appropriation. The petitioners offer no explanation of how the exclusion of an appropriation ordinance from the referendum procedure violates the rights to free speech, assembly, or petition.

Respondents make a generalized statement that the actions of the Clerk deny them their referendum rights. Whatever their referendum rights are, as Justice Markman noted in his concurring opinion in *Michigan United*, *supra*, there is no general power of referendum in Michigan except such as is specified by the Michigan Constitution of 1963 which excludes appropriation legislation.<sup>4</sup> The petitioners have failed to establish that they will suffer irreparable harm in the absence of an injunction.

The petitioners' argument regarding the balancing of harm to the respective parties and public interest factors rests on a fulcrum that assumes the court will find the referendum petition should be advanced to the council for repeal or placement on the ballot. Since the court has not made that finding, the petitioners have failed to persuade the court that the balancing of harm to the

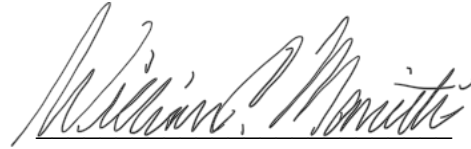
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<sup>4</sup> The same is true for the Marshall City Charter as well as the Detroit City Charter as the Supreme Court held in *MGM*.

respective parties and public interest weigh in favor of granting the relief requested. Accordingly, the motion is denied.

**IT IS SO ORDERED.**

Date: July 17, 2023

A handwritten signature in cursive script, reading "William P. Smith", is written over a horizontal line. The signature is positioned to the right of the "IT IS SO ORDERED." text.