Court of Appeals, State of Michigan

ORDER

Michigan Opportunity v Board of State Canvassers

Docket No. 344619

LC No.

Stephen L. Borrello
Presiding Judge

Jane M. Beckering

Michael J. Riordan
Judges

The Court orders that Michigan One Fair Wage's cross-complaint for mandamus is GRANTED, and Michigan Opportunity's complaint for mandamus is DISMISSED. The Court has concluded that the constitutional challenge presented by Michigan Opportunity is ripe for review. See *Citizens Protecting Michigan's Constitution v Sec'y of State*, ___ Mich App ___; ___ NW2d ___; slip op p 13 (Docket No. 343517, June 7, 2018). The Court has further concluded that the proposal sponsored by Michigan One Fair Wage does not violate the requirements of Const 1963, art 4, § 25. See *Advisory Opinion re Constitutionality of 1972 PA 294*, 389 Mich 441, 477; 208 NW2d 469 (1973), citing *People ex rel Drake v Mahaney*, 13 Mich 481 (1865). In addition, the Court has concluded that the challenges to the form of the petition do not preclude certification of the petition.

The Court orders the Michigan Secretary of State, the Board of State Canvassers, and the Director of Elections to take all necessary measures to place the proposal on the November 2018 general election ballot. This order is given immediate effect pursuant to MCR 7.215(F)(2).

RIORDAN, J., I respectfully dissent. I would have dismissed Michigan One Fair Wage's (MOFW) cross-complaint for mandamus because the petition signers that checked both the "Township" and "City" boxes were not protected by the safe-harbor provision of MCL 168.552a(1). That statute provides that, "a petition or a signature is not invalid solely because the designation of city or township has not been made on the petition form if a city and an adjoining township have the same name." MCL 168.552a(1). The majority surreptitiously concludes that when both boxes are checked "the designation of city or township has not been made." *Id.* However, if the statutory "language is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted." *Charter Twp of York v Miller*, 322 Mich App 648, 659; 915 NW2d 373 (2018) (quotation marks omitted). By checking both boxes, a "designation" has been made, but it is merely the wrong designation. The safe-harbor provision does not protect such errors, and extending it to do so is tantamount to adding language to the statute that the Legislature saw fit to leave out. MCL 168.552a(1). I would refuse to do so because "nothing may be read into a statute that is not within the intent of the Legislature apparent from the language of the statute itself." *Detroit Pub Sch v Conn*, 308 Mich App

234, 248; 863 NW2d 373 (2014). If the Legislature wanted MCL 168.552a(1) to protect signatures that marked both boxes, it would have included that language in the statute. Its decision not to is determinative. Therefore, by failing to properly identify the city or township in which they were registered to vote, the signatures of those individuals who checked both boxes were presumably invalid. MCL 168.552(13). The parties do not dispute that, absent those presumably invalid signatures, the proposal does not have sufficient signatures to be qualified for the ballot.

Thus, because the proposal did not satisfy the signature requirement to be placed on the ballot, mandamus is not required, and I would dismiss the cross-complaint seeking such. Given that conclusion, I would not consider the constitutional issues presented by the parties because "we generally avoid constitutional decisions if nonconstitutional grounds can resolve a case . . . ." *People v Smith (After Remand)*, ___ Mich ___, ___; ___ NW2d ___ (2018) (Docket No. 156353), slip op at 6. That being said, I believe the issue of whether the proposal violated Const 1963, art 4, § 25, warrants a more thorough review than that provided by the majority. For example, certain case law suggests the proposal at issue amounts to an attempt by MOFW to indirectly revise, alter, or amend the existing minimum wage statute in Michigan, which requires application of Const 1963, art 4, § 25. See *Alan v Wayne Co*, 388 Mich 210, 285; 200 NW2d 628 (1972). Additionally, there was evidence presented to suggest that the proposal arose from the intent to abrogate an existing, specific, statutory provision, which required compliance with the constitutional provision at issue. See *Nalbandian v Progressive Mich Ins Co*, 267 Mich App 7, 14-16; 703 NW2d 474 (2005). Consequently, I dissent.