

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MGM GRAND DETROIT, L.L.C.,

Plaintiff/Counterdefendant-  
Appellee,

v

COMMUNITY COALITION FOR  
EMPOWERMENT, INC. and ERNEST  
JOHNSON,

Defendants/Counterplaintiffs-Third-  
Party Plaintiffs-Appellants,

and

ANTHONY D. GOUCH,

Defendant,

and

DETROIT CITY CLERK and DETROIT CITY  
COUNCIL,

Third-Party Defendants-Appellees.

UNPUBLISHED  
September 11, 2001

No. 217325  
Wayne Circuit Court  
LC No. 98-837681-AW

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Before: Griffin, P.J., and Jansen and Gage, JJ.

PER CURIAM.

The Community Coalition for Empowerment is a nonprofit corporation consisting of individuals and community based organizations that, according to its third-party and countercomplaints, “was organized to advocate and support minority black ownership of at least one of the casinos to be developed in Detroit.” Plaintiff/Counterdefendant MGM Grand Detroit, L.L.C. (MGM) identified itself in its complaint as “one of three developers selected by the City of Detroit to construct and operate casino gaming facilities in the City.” This case involves the validity of appellants’ petition for a referendum to nullify Detroit Ordinance 35-98, which provided for rezoning of the area where MGM intended to build its temporary casino facility and

also addressed certain funds that MGM was contractually obligated to pay the City. The trial court ultimately granted MGM and the third-party defendants, the Detroit City Clerk and City Council, summary disposition, from which appellants appealed as of right raising six claims of error.

After this Court examined the parties' legal positions, entertained oral arguments and conferred on this matter, the Supreme Court on its own motion removed the case from our consideration. 464 Mich 855 (2001). The Supreme Court considered only "the issues concerning whether city of Detroit ordinance 35-98 is exempt from the referendum provision of the city charter because it is an ordinance for the appropriation of money." 464 Mich 855. The entirety of the Supreme Court majority's reasoning regarding these issues appeared as follows in the Supreme Court's July 30, 2001 opinion:

(1) The power of referendum in the Detroit Charter does "not extend to the budget or any ordinance for the appropriation of money . . . ." Detroit Charter § 12-101.

(2) Detroit Ordinance 35-98 provides in pertinent part:

The Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$333,333.34) early advance heretofore paid by the developer to the City pursuant to the development agreement is hereby appropriated to the temporary casino site support and infrastructure improvement  
....

(3) An appropriation of \$333,333.34 is an "appropriation of money" and Ordinance 35-98 is "any ordinance."

(4) Therefore, the power of referendum in the Detroit Charter does not extend to ordinance 35-98. [*MGM Grand Detroit, LLC v Community Coalition for Empowerment, Inc.*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 119309, decided July 30, 2001), slip op at 2.]

The Supreme Court remanded to this panel "for resolution of the remaining issues."<sup>1</sup> *Id.*

The first appellate issue remaining for our determination involves appellants' claim that the Detroit Charter invalidly limits city residents' right to referendum more strictly than the Michigan Constitution, Const 1963, article 2, § 9, restricts state residents' right to referendum. Article 2, § 9 of the Constitution only addresses the power of referendum concerning acts passed by the state Legislature, however, and does not govern municipalities' provisions of referendum with respect to local ordinances. *Korash v Livonia*, 388 Mich 737, 742, n 3; 202 NW2d 803 (1972); *McKinley v City of Fraser*, 366 Mich 104, 106; 114 NW2d 341 (1962); *Renne v Oxford*

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<sup>1</sup> The Supreme Court's opinion answered appellants' first two questions presented, specifically whether the "circuit court err[ed] in determining that Ordinance 35-98 contains 'appropriations,'" and whether Ordinance 35-98 is "subject to referendum notwithstanding the purported 'appropriations' contained therein."

*Twp*, 5 Mich App 415, 421; 146 NW2d 819 (1966), *aff'd* 380 Mich 39; 155 NW2d 852 (1968). Section 4i of the Home Rule City Act provides in relevant part that a city “*may* provide” in its charter for “[t]he initiative and referendum on all matters within the scope of the powers of that city.” MCL 117.4i(g) (emphasis added). Because nothing in either the Michigan Constitution or the Home Rule City Act demands that cities in their charters strictly adhere to the scope of initiative and referendum set forth within article 2, § 9, we reject appellants’ arguments that the Detroit Charter’s narrow initiative and referendum provisions somehow violate the Michigan Constitution. *Detroit v Walker*, 445 Mich 682, 689-690; 520 NW2d 135 (1994), citing Const 1963 art 7, §§ 22, 34.

Appellants next contend that Ordinance 35-98 violates the city and village zoning act, MCL 125.581 *et seq.*, because the zoning act does not authorize a municipality to include appropriations within a zoning ordinance. Appellants cite no authority specifically precluding the Detroit City Council from including appropriations provisions within an ordinance also containing zoning provisions. Because nothing in either the Michigan Constitution or the city and village zoning act precludes the City Council from combining appropriations and zoning provisions within a single ordinance, we reject appellants’ contentions. *Detroit v Walker*, *supra*, 445 Mich 682, 689-690; *Detroit v Qualls*, 434 Mich 340, 364; 454 NW2d 374 (1990) (“It is well established in Michigan that ordinances are presumed valid and the burden is on the person challenging the ordinance to rebut the presumption.”).

Appellants further argue that the City Council’s “[r]epeal of Ordinance No. 24-98 and replacement with Ordinance No. 35-98 in order to avoid a referendum is an impermissible attempt to regulate political expression in violation of the Michigan and United States Constitutions.” We decline to address the merits of appellants’ constitutional claims, however, because the trial court did not address any constitutional issues, and because none of the cases cited by appellants support their suggestion that the rights of initiative and referendum implicate constitutional freedom of speech guarantees.<sup>2</sup> *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (“[A] mere statement without authority is insufficient to bring an issue before this Court.”).

Lastly, we note that in light of the Supreme Court’s conclusion that Ordinance 35-98 contained a valid appropriation and therefore was immune from referendum according to the Detroit Charter, we need not address appellants’ arguments defending the accuracy of their petition’s description of Ordinance 35-98.

In light of the Supreme Court’s conclusion that the trial court properly found that Ordinance 35-98 contained an appropriation immunizing the ordinance from referendum, and

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<sup>2</sup> Appellants acknowledge in their brief on appeal that “it appears that no court has held that there is a federal constitutional right to vote in a referendum election,” and cite inapposite cases regarding the political speech involved in soliciting petition signatures.

our conclusion that appellants' remaining arguments lack merit, we reaffirm the trial court's grant of summary disposition to appellees.

Affirmed.

/s/ Richard Allen Griffin

/s/ Kathleen Jansen

/s/ Hilda R. Gage