STATE OF MICHIGAN

COURT OF APPEALS

DETROIT COALITION FOR COMPASSIONATE CARE and TIMOTHY RAYMOND BECK,

Plaintiffs-Appellants,

v

DETROIT CITY CLERK and CITY OF DETROIT,

Defendants-Appellees.

UNPUBLISHED
October 22, 2002

No. 241648
Wayne Circuit Court
LC No. 02-211006-AW

Before: Saad, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

This case involves the sufficiency of an initiative petition that plaintiffs submitted to defendant city clerk regarding a proposed ordinance which would render the medicinal usage of marijuana the lowest possible law enforcement priority for the Detroit police. Defendant city clerk advised plaintiffs that their initiative would not be placed on the ballot because the initiative petition was facially defective. Plaintiffs sought an order of mandamus compelling defendant city clerk to place their initiative on the ballot, as well as declaratory and injunctive relief. The trial court granted defendants' motion for summary disposition and dismissed plaintiffs' complaint. Plaintiffs appeal as of right. We affirm.

Plaintiffs contend that the trial court erred in granting defendants' motion for summary disposition. Generally, we review de novo a trial court's ruling on a motion for summary disposition. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

As noted above, plaintiffs' complaint sought a writ of mandamus compelling defendant city clerk to place their initiative on the ballot. "'Issuance of a writ of mandamus is proper where (1) the plaintiff has a clear right to performance of the specific duty sought to be compelled, (2) the defendant has the clear legal duty to perform such act, and (3) the act is ministerial, involving no exercise of discretion or judgment.'" *Bingo Coalition for Charity—Not Politics v Bd of State Canvassers*, 215 Mich App 405, 413; 546 NW2d 637 (1996), quoting *Tuscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-511; 522 NW2d 686 (1994).

In denying plaintiffs' mandamus request, and granting defendants' motion for summary disposition, the trial court ruled that: (i) the initiative violated city charter § 12-101 because it extended to matters directly and substantially affecting the budget; and (ii) the initiative petition was facially defective because it did not set forth the specific city code sections that would be amended. The trial court further ruled that defendant city clerk was permitted to examine the initiative petition to determine whether it was facially defective. In making its ruling, the trial court applied state law, as well as the relevant city charter provisions.

As an initial matter, plaintiffs contend that the trial court erred in applying state law to the initiative petition procedures. In *Settles v Bradley*, 169 Mich App 797, 801-802; 427 NW2d 188 (1988) we noted:

> In Const 1963, art 2, § 9, the power to propose, enact and reject laws, called the initiative, is reserved to the people. However, this reserved power does not include the power of initiative with respect to local ordinances. *Korash v Livonia*, 388 Mich 737, 742, n 3; 202 NW2d 803 (1972). The power of a home rule city, such as Detroit, to provide for initiative petitions derives from statute.

Specifically, MCL 117.4i(g) provides: "Each city may provide in its charter for . . . [t]he initiative and referendum on all matters within the scope of the powers of that city and the recall of city officials." However, no "provisions of any city charter shall conflict with or contravene the provisions of any general law of the state." MCL 117.36.

Here, city charter § 12-101, *et seq.*, provides initiative and referendum procedures for the city of Detroit. In addition, § 3-104 provides: "Except as otherwise provided by this Charter or ordinance, state law applies to the qualifications and registration of voters, the filing for office by candidates, and the conduct and canvass of city elections." Thus, while the city of Detroit provides initiative and referendum procedures in its charter, it also provides that state law will apply to the conduct and canvass of city elections. Therefore, the trial court did not err in determining that state law also applied to the conduct and canvass of the elections.

Plaintiffs also contend that defendant city clerk only had authority to "canvass" the signatures on the petition, and that she, therefore, lacked the authority to determine whether the petition was facially defective. Indeed, city charter § 12-104 provides that the clerk "shall . . . canvass the signatures thereon to determine their sufficiency and make a report of the result to the city council." Similarly, MCL 117.25(4)[1] provides in pertinent part: "Upon receipt of the [initiative] petition, the city clerk shall canvass it to ascertain if it has been signed by the requisite number of registered electors." Thus, there is some merit to plaintiffs' contention that defendant city clerk was only allowed to determine that there were sufficient signatures.

However, in *Herp v Lansing City Clerk*, 164 Mich App 150, 157; 416 NW2d 367 (1987), we rejected a similar challenge to a city clerk's authority to review a petition. In construing the scope of a city clerk's authority to "canvass" a petition, MCL 117.25(4), we noted that our

[1] Again, although the city charter provides for the initiative procedure, § 3-104 also provides that "state law applies to . . . the conduct and canvass of city elections." Therefore, the city charter is not the exclusive authority for city election procedures.

Supreme Court has "long held that to 'canvass' entails more than merely passing upon the sufficiency of signatures; it also includes consideration of the petition itself.'" *Id*. at 160 (citations omitted). We further noted that such a restricted construction of the word "canvass" would negate MCL 117.25(1) and (2), which set forth additional initiative petition requirements. *Id.* at 159. In other words, if the city clerk's canvassing of an initiative petition did not include a determination of whether the petition facially violated those subsections, the subsections would be rendered meaningless.[2] See *id.*

Here, city charter § 12-102 states in pertinent part that a petition "shall set forth in full, the measure to be initiated or referred, as well as a brief statement of its substance." Applying the rationale from *Herp*, this subsection would be negated if the city clerk could not make a determination that each petition facially complied with that requirement. Accordingly, we do not believe that the trial court erred in construing "canvass" to include more than just counting valid signatures.

Plaintiffs also contend that the trial court erred in determining that the initiative petition would directly and substantially affect the budget. Section 12-101 of the city charter provides in pertinent part that the power of initiative does not extend to the budget or any ordinance for the appropriation of money. Sections 2 and 3 of plaintiffs' initiative petition state:

> SECTION 2: LAW ENFORCEMENT PRIORITY OF MARIJUANA[:] Through the budgetary process, the City Council and other city officials shall seek to assure that The Detroit Police Department and The City of Detroit Law Department assign the lowest possible priority to the enforcement and prosecution of marijuana laws, when the violation is based upon medical use, in the City of Detroit.
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> SECTION 3: EXPENDITURES FOR ENFORCEMENT[:] Neither the City Council, the City Law Department or the Detroit Police Department shall spend, or authorize the expenditure, of city funds for the investigation, arrest or prosecution of any person, or the seizure of any property in any single case involved three (3) or fewer adult marijuana plants, or the equivalent of dried marijuana, for medical use.

The proposed initiative plainly references the use of the budgetary process to minimize the priority of enforcing and prosecuting marijuana laws. Accordingly, we are not persuaded that the trial court erred in finding that plaintiffs' initiative petition violated § 12-101 of the city charter.

Next, plaintiffs contend that the trial court erred in finding that plaintiffs' initiative petition was facially defective because it failed to set forth the full text of the proposed amendment in accordance with MCL 168.482(3) and § 12-102 of the city charter. Plaintiffs note that "the great mass of people would conclude that the entire text of the amendment to be

[2] Reviewing courts should avoid any statutory construction that would render a statute, or merely part of it, surplusage or nugatory. *Ypsilanti Housing Comm'n v O'Day*, 240 Mich App 621, 624; 618 NW2d 18 (2000).

adopted (but not the entire text of other pre-existing sections) should be included on the petition." However, plaintiffs cite no authority in support of their position that the trial court erred. "[A] mere statement without authority is insufficient to bring an issue before this Court." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). It is well established that a party may not simply "'announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Id.*, quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) (holding that failure to properly brief an issue on appeal is tantamount to abandoning it). Accordingly, we decline to address this issue.[3]

Thus, we do not believe that plaintiffs have demonstrated that they were entitled to relief as a matter of law. Consequently, we are not persuaded that the trial court erred in granting defendants' motion for summary disposition. *Haliw, supra* at 302; *Beaudrie, supra* at 129-130.

Affirmed.

/s/ Henry William Saad
/s/ Michael R. Smolenski
/s/ Donald S. Owens

[3] Plaintiffs also contend that defendants' actions violated their constitutional rights; however, plaintiffs have failed to argue how their rights were violated. Instead, plaintiffs merely state the constitutional importance of the right to free expression, the right to petition the government, and the right to instruct representatives, and that "[b]ureaucratic impediments to [citizen] participation and expression are disfavored." Similarly, plaintiffs have failed to cite authority in support of their contention that the city of Detroit was not a proper party. Again, "a mere statement without authority is insufficient to bring an issue before this Court." *Wilson, supra* at 243; *Mitcham, supra* at 203. Therefore, we decline to address the merits of these issues.