

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

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PROTECT ROAD FUNDING,

Plaintiff-Appellant,

v

DETROIT CITY COUNCIL,

and

DETROIT ELECTION COMMISSION,

Defendants-Appellees.

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UNPUBLISHED  
September 2, 2021

No. 358364  
Wayne Circuit Court  
LC No. 21-010309-AW

Before: CAMERON, P.J., K. F. KELLY, J., AND MURRAY, C.J.

PER CURIAM.

In this expedited<sup>1</sup> election-related appeal, plaintiff appeals of right the trial court’s final order granting defendants’ motion for reconsideration and denying relief to plaintiff. For the reasons expressed below, we affirm.

Plaintiff gathered sufficient signatures for a ballot initiative which sought to “amend the Advertising and Sign Ordinance, Chapter 4 of the 2019 Detroit City Code, that went into effect on December 9, 2020, such that it shall be repealed in its entirety and business and advertising signage throughout the city of Detroit shall rather be regulated by the former Chapter 61 of the Detroit City Code, Article VI, Signs, Sec. 61-6-1 – 61-6-119 . . . .” After plaintiff filed suit seeking a writ of mandamus against defendants to place the initiative proposal on the ballot, the circuit court ultimately denied relief through an August 31, 2021 order, holding that because the proposal

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<sup>1</sup> See *Protect Road Funding v Detroit City Clerk*, unpublished order of the Court of Appeals, entered September 1, 2021 (Docket No. 358364), granting plaintiff’s motion to expedite the appeal.

sought to adopt a zoning ordinance, it was unlawful under *Korash v Livonia*, 388 Mich 737; 202 NW2d 803 (1972).

“Mandamus is the proper remedy for a party aggrieved by an election official’s inaction.” *Protecting Mich Taxpayers v Bd of State Canvassers*, 324 Mich App 240, 244; 919 NW2d 677 (2018). The extraordinary remedy of a writ of mandamus is properly granted when: “(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result.” *Rental Props Owners Ass’n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014). Whether a plaintiff has a clear right to performance and whether a defendant has a clear legal duty to perform are questions of law that this Court reviews de novo. *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016).

We hold that the circuit court did not err in denying mandamus relief. As that court noted in its opinion, *Korash* held that zoning ordinances cannot be enacted through initiative proceedings. *Korash*, 388 Mich at 745-746. Here, although repealing the sign ordinance of Chapter 4 would be permissible by way of initiative, enacting (or re-enacting) the prior Chapter 61 would not be permissible through an initiative petition because, while Chapter 4 is not a zoning provision, Chapter 61 was. As a zoning ordinance, Chapter 61 could not be brought back to life through an initiative petition.<sup>2</sup>

The *Adams I* and *II* decisions<sup>3</sup> are distinguishable from this situation. Those decisions addressed a very particular type of sign ordinance that was specifically related to police powers (i.e., the removal of old, dangerous signs). As the *Adams I* Court explained, “We are simply holding that the amortization provision of the East Lansing sign code is a police power ordinance, properly enacted under MCL 117.4i(5) . . .” *Adams Outdoor Advertising v City of East Lansing*, 439 Mich 209, 218 n 14; 483 NW2d 38 (1992) (*Adams I*). Here, if approved, the petition would enact the entire zoning ordinance relative to signs, including setbacks, sizes, spacing from schools/playgrounds/parks etc., spacing between signs, landscaping around signs, and more. The ordinance that would be enacted even states, “Non-zoning provisions for signs are found in Chapter 3 of this Code . . .” (proposed/former Section 61-6-47). In other words, the former

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<sup>2</sup> Plaintiff’s reliance on decisions that discuss the ability to make changes to zoning ordinances through a referendum is misplaced for the simple fact that plaintiff brought forward an initiative petition, not a referendum. See, e.g., *Albright v City of Portage*, 188 Mich App 342, 349; 470 NW2d 657 (1991) (“we hold that zoning amendments are legislative acts subject to referendum.”); *Chynoweth v City of Hancock*, 107 Mich App 360, 361-362; 309 NW2d 606 (1981), and *Livonia Hotel, LLC v City of Livonia*, 259 Mich App 116, 137; 673 NW2d 763 (2003) (recognizing binding nature of *Korash* on this issue).

<sup>3</sup> *Adams Outdoor Advertising v City of East Lansing*, 439 Mich 209; 483 NW2d 38 (1992) (*Adams I*), and *Adams Outdoor Advertising, Inc v City of Holland*, 463 Mich 675; 625 NW2d 377 (2001) (*Adams II*).

Section 61 is a zoning ordinance, and nonzoning ordinances related to signs can be found elsewhere. And since it's a zoning ordinance, it can't be enacted by initiative petition.

Affirmed.

/s/ Thomas C. Cameron

/s/ Kirsten Frank Kelly

/s/ Christopher M. Murray