

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

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LANSING EQUAL RIGHTS TASK FORCE,  
LANSING EQUAL RIGHTS COMMITTEE,  
CHERYL VANDEKERKHOVE and  
ROBERT EGAN,

UNPUBLISHED  
August 27, 1996

Plaintiffs-Appellees,  
Cross Appellants,

v

No. 195355  
LC No. 96-083533-AW

LANSING CITY CLERK,

Defendant-Appellant,  
Cross Appellee.

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Before: Michael J. Kelly, P.J, and Hoekstra and E.A. Quinnell,\* JJ.

PER CURIAM.

Defendant appeals and plaintiffs cross appeal by right the May 20, 1996 order of the Ingham Circuit Court granting plaintiffs a writ of mandamus compelling defendant to reject referendum petitions and giving the petition circulators an additional 30 days to submit corrected petitions.

I

On March 18, 1996 the Lansing City Council enacted ordinances 944 and 945 amending chapters 296 and 297 of the codified ordinances of Lansing, respectively. Chapter 296 prior to amendment proscribes discrimination on the basis of race, color, sex, age, political orientation, marital status, handicap, and ancestry in certain housing transactions. The amendments in ordinance 944 would prohibit discrimination based on these same characteristics in certain employment settings, public accommodations, and public services. In addition, the amendments would prohibit discrimination on the basis of sexual orientation, familial status, height and weight. Ordinance 944 contains several exemptions, including exemptions for religious organizations and owner-occupied housing.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Chapter 297 prior to amendment creates a Human Relations Board and sets forth its duties and powers. It also prohibits certain forms of discrimination by City departments and employees. The amendments contained in ordinance 945 would expand the duties of the Board, and would amend the prohibited forms of discrimination to include discriminating on the basis of sexual orientation and familial status.

Referendum petitions were circulated by Majority Opposed to Special Treatment (MOST). Section 2-403 of the Lansing City Charter provides in part:

1. Initiative and referendum petitions must be signed by a number of City electors equivalent to at least 5 percent of registered electors in the City.
- .2 Petitions shall set forth in full the measure to be initiated or referred. The circulators may submit the petitions to the City Attorney for approval as to form before circulating, but they are not required to do so.

MOST submitted the petitions to the city attorney, and they were approved as to form.

MOST filed referendum petitions on April 16, 1996 regarding both ordinances with defendant city clerk. The clerk is required by the charter to canvass the signatures and, if there are sufficient signatures and the petitions are otherwise proper, to submit the petitions to the city council at its next regular meeting. The filing of referendum petitions delays or suspends the operation of the ordinance at issue until the clerk determines that the petitions are improper, or if proper, until city council acts. Council in turn is required to either repeal the ordinance at issue or submit the issue to the voters. Until the ordinance is approved by the voters, it does not go into effect.

Plaintiffs concede that the petitions contain sufficient numbers of valid signatures. However, they contend that the petitions are invalid because they do not comply with the requirement of charter § 2-403.2, in that the petitions do not “set forth in full the measure to be initiated or referred.” The entire text of the ordinances at issue is not printed on the referendum petitions or attached to them. The petitions state that the “measure to be referred appears on the reverse side of this petition.” Each petition has printed on its reverse one of the following:

**ORDINANCE TO BE REFERRED**

Ordinance No. 944, of March 18, 1996

An Ordinance to amend, restate and revise Chapter 296 of the Codified Ordinances of Lansing, Michigan in its entirety to define and extend certain civil rights in the areas of housing, employment, public accommodations and public services; to prohibit certain discriminatory practices; to extend the protection of said Chapter, as amended, restated and revised to the new protected classes of sexual orientation, familial status and height and weight; to provide for the administration and enforcement of the provisions of said

Chapter; to provide exemptions from said Chapter and to provide penalties for violations of the Chapter as civil infractions.

Shall this ordinance be approved?

**ORDINANCE TO BE REFERRED**

Ordinance No. 945, of March 18, 1996

An Ordinance of the City of Lansing, Michigan, to amend the Code of Ordinances of the City of Lansing by amending Chapter 297, Section 297.02, 297.03, 297.04, 297.06; and adding new Sections 297.08, 297.09, and 297.10; for the purpose of providing new protected classes of sexual orientation, familial status, and source of income within the jurisdiction of the Human Relations Board.

Shall this ordinance be approved?

On April 23, 1996, plaintiffs wrote to the city clerk and argued that the petitions should be rejected because the charter requires the petitions to reproduce the full text of the ordinances to be referred, and does not allow the sort of summary of the ordinances which appear on MOST's petitions. On April 25, 1996 the Lansing city attorney issued Opinion 96-10 rejecting plaintiffs' challenge to the petitions, opining that they were sufficient because the charter requires "the full *measure* be on the petition, not the full ordinance."

On May 3, 1996 plaintiffs filed a complaint for mandamus and injunctive relief, requesting the circuit court to order the clerk to reject the petitions. Although the court refused plaintiffs' request for a TRO, the court ordered defendant to show cause why it should not be ordered to reject the petitions. Following a hearing held on May 9, 1996, the court issued its opinion and order dated May 20, 1996 granting plaintiffs' request and ordering defendant to reject the petitions. Although the court found no authority directly on point, it reasoned that the word "measure" in § 2-403.2 refers to the text of the ordinance at issue. The court noted that § 2-405.1 makes clear that the entire text of a proposed ordinance must be incorporated in or attached to initiative petitions. The court found no reason to reach a different result in the case of referendum petitions, noting that under the charter an ordinance subject to a referendum election never takes effect until approved by the electors. The court reasoned that what is submitted to the electors in a referendum election is the adoption of the ordinance at issue, whether directly by way of initiative, or indirectly by referendum on a decision already taken by city council.

Although the circuit court agreed with plaintiffs that defendant should have rejected the petitions, the court then made an additional ruling, with which plaintiffs disagree. Section 2-403.6 of the charter provides:

If the City Clerk determines the petition lacks sufficient signatures or is otherwise improper, the City Clerk shall forthwith notify the person filing such petition by regular mail of the deficiency and 10 days shall be allowed for filing supplemental petition papers.

The circuit court held that this 10-day period to file corrected petitions applies only in cases where the clerk rejects the petitions, and does not by its terms apply in a situation such as this, where the clerk accepted the petitions and presented them to the city council but a reviewing court ultimately held that the clerk should have rejected the petitions. The court argued that under such circumstances it would be unfair to give the petition circulators an additional 10 days only. The court reasoned that this was especially true in the instant case, where MOST obtained approval as to the form of the petitions from the city attorney prior to circulating them. The court held that the most equitable solution would be to consider the ordinances at issue to have been enacted on the day the court issued its opinion, thus giving MOST the usual 30 days to circulate and file referendum petitions.

Defendant appeals by right the circuit court's holding that defendant should have rejected the petitions because they do not contain the full text of the ordinance to be referred. Plaintiffs cross appeal by right the court's holding that MOST can file corrected petitions within 30 days of the court's order as opposed to the 10 days stated in the charter.<sup>1</sup>

## II

The parties advise that subsequent to the circuit court's decision, the city council voted to submit Ordinance 944 to the voters on the November 5, 1996 ballot. On June 3, 1996 the city council passed resolution 255 submitting the following ballot language for consideration:

On March 18, 1996, the Lansing City Council voted to prohibit discrimination in employment, public accommodations and public services on the basis of religion, race, color, sex, age, height, weight, familial status, marital status, ancestry, national origin, sexual orientation, political orientation, handicap, use of adaptive devices or source of income. The Council also added the categories of height, weight, familial status, sexual orientation, and source of income to the City's existing prohibition of discrimination in housing.

Should the Lansing City Council's enactment be repealed?

In light of council's action, we hold that the issue presented by defendant's appeal is moot. Whether or not the circuit court properly interpreted the city charter, the object of the petition drive has been achieved, namely, submission of Ordinance 944 to the city voters. Therefore, it is immaterial whether this Court agrees or disagrees with the circuit court. In this regard we note that MOST was not a party below and is not a party to this appeal, and that questions regarding the language which should appear on the ballot are not presently before us. Indeed, it does not appear that any decision

has been reached regarding ballot language. We have not been asked to give, and we do not intend to give, any advisory opinion in this regard.

An issue which is technically moot may nevertheless be reviewed on the merits because the issue is one of public significance and is likely to recur in the future, yet evade appellate review. *People v Cannon*, 206 Mich App 653, 654; 522 NW2d 716 (1994). Even if the present issue were one of public significance likely to recur in the future, it is not likely to evade appellate review. It is not likely that city council will refer issues to the voters in all future cases in which there is a dispute regarding compliance of referendum petitions with §2-403.2.

### III

On June 18, 1996 MOST submitted new referendum petitions to defendant, which were identical to the original petitions except the full text of Ordinance 944 was attached to each petition. On August 5, 1996 the city council acknowledged defendant's certification that the petitions contain sufficient signatures and are otherwise proper as to form. The council resolved that the proposal be submitted on the November 5, 1996 ballot.

We hold that the issue presented by the cross appeal is also moot for the reasons given above. Whether or not we agree with the circuit court's decision to grant MOST 30 days to file new petitions, Ordinance 944 will be submitted to the voters on the November ballot, either as a result of MOST's second petition drive or of council's decision to submit the issue pursuant to § 2-407 of the charter. We note once again that questions regarding ballot language are not before us.

We therefore deny the relief requested in the appeal and cross appeal because the issues presented are moot. No costs are awarded.

/s/ Michael J. Kelly  
/s/ Joel P. Hoekstra  
/s/ Edward A. Quinnell

<sup>1</sup> Although plaintiffs also argued in their cross appeal that Ordinance 945 cannot be the subject of a referendum because it is administrative or executive in nature, they have withdrawn this issue in light of Ordinance 952, adopted by the city council on August 5, 1996, repealing Ordinance 945.