

Via Email

March 23, 2017

Bethany M. Vujnov
City Attorney
161 W. Michigan Avenue
City Hall, 12th Floor
Jackson, MI 49201

Andrew J. Wrozek, Jr.
City Treasurer/City Clerk
161 W. Michigan Avenue
Jackson, MI 49201

Re: Jackson Together, a Properly Formed Ballot Questions Committee's Challenge

Dear Ms. Vujnov and Mr. Wrozek:

Our firm has been retained by "Jackson Together", a properly formed ballot question committee, which was created to oppose the repeal of Jackson's Non-Discrimination Ordinance ("NDO"), adopted on February 7, 2017 by the Jackson City Council.

Initially, we wish to disclose contact we had with the City Attorney's office shortly after the March 2, 2017 filing of the referendum petitions, wherein we expressed our objection to any petitions, once having been filed by the proponents, being either returned or modified after the fact by the proponents of the referendum or by City of Jackson officials.

We additionally object to a "certification" that may have issued by the City Clerk prior to the City Attorney addressing any of the legal challenges to the petitions or conduct engaged in by the City Clerk's office regarding the statutory and charter conditions regarding certification standards.

Challenge:

Our challenge consists of the elements, any are of which disqualify the petition in its entirety.

I. Affidavit.

The City of Jackson is a Home Rule City (MCL 117.1, *et seq*) which has adopted the Jackson City Charter. The Jackson City Charter clearly authorizes a referendum if properly requested.

March 23, 2017

Page 2

Section 10.2 – Right of Referendum specifically authorizes a referendum when petitions protesting an ordinance are filed with the City Clerk by qualified electors equal to at least (10) percent of the total vote for all candidates for mayor in the last preceding election.

Section 10.3 requires that each circulator of a petition sheet “. . . shall sign an affidavit that he or she circulated the petition, and that the signatures are believes to be these of qualified electors.” (emphasis supplied).

A cursory review of all of the petitions submitted on March 2, 2017 by the unnamed or identified proponents of the referendum to the Jackson County Clerk’s office (another challengeable issue discussed, *supra*) clearly reflects that none of the petition sheets were notarized or attested to by their circulator at the time of filing a mandatory requirement of the Jackson City Charter. This deficiency is fatal to any possible certification.

It was not until this fatal error was brought to the attention of this unnamed, unidentified proponent of the petition that the City Clerk then permitted the petitions to be altered, after the filing (which we are led to believe were removed from the City Clerk’s office) and then notarized by Andrew J. Wrozek, Jr. (Jackson City Clerk) or Melanie Curran (Jackson’s Elections and Records Coordinator) which is clearly inappropriate.

The after-the-fact notarization modified petitions signed as early as February 19 through March 2, 2017 when the petitions were filed. None of the petitions, when filed, were notarized as required by the Jackson City Charter, and as such, the petitions cannot be certified.

Additionally, the petitions were notarized by City officials (Mr. Wrozek and Ms. Curran) who were not witnessing signatures of circulators at the time of the circulator signature from dates ranging from February 19 through March 2, 2017, when the petitions were filed is also impermissible and causes the petition filing to be fatally defective.

The Michigan Supreme Court in *Stand Up for Democracy v Secretary of State*, 492 Mich 588 (2012) addressed the issue of whether substantial compliance in election-related cases could be sustained. There, the court said in regard to MCL 168.482, that when the Legislature used the term “shall”, it indicates a mandatory and imperative directive.” Continuing, the Michigan Supreme Court said:

... “Shall” in MCL 168.482(2)4 in the absence of any language indicating that substantial compliance with the statute’s requirements suffices, indicates a clear intent that such a petition must strictly comply with the type requirement. Consequently, substantial compliance with MCL 168.482(2) is not permitted. To certify a petition that does not strictly comply with the requirements of MCL 168.482 on the basis that is substantially complied with the statutory requirements would defeat the

March 23, 2017
Page 3

Legislature's intent. However, "our judicial role precludes [us from] imposing different policy choices that those selected by the Legislature", rather we must apply the terms as written.

Lastly, the Michigan Supreme Court said:

In sum, neither the statutory scheme nor the case law plaintiff relies on supports application of the substantial compliance doctrine in the period before an election. Rather, for substantial compliance to be sufficient before an election, its use must be rooted in a particular statutory exception to the statutory formatting and content requirements. Because no statutory provision permitting application of substantial compliance exists in the instant case, and because intervenor has raised a pre-election challenge, plaintiff must have actually complied with the requirements of MCL 168.482(2) in order for its referendum petition to be certified.

Hence, it is clear that the Jackson City Charter's mandatory terms for circulation and filing of a referendum petition pursuant to Section 10.3 regarding an affidavit is mandatory and without such an affidavit being affixed upon filing of the petition, it is fatally defective and cannot be certified.

II. Filing a Petition – No Supplemental Filing Is Authorized

Reference to the Michigan Election Code clearly establishes that a filing of a petition cannot be supplemented. In Section 475 of 1954, PA 116, MCL 168.475, the Michigan Legislature clearly limited the right of petitioners to supplement original filing by stating "After the day on which a petition under this chapter is filed, the secretary of state shall not accept further filings of that petition to supplement the original filing."

The application of supplemental filings in a Home Rule City such as Jackson is equally applicable since deadlines or documents could be, and in this case were, altered after filing. Such is not the standard in Michigan Election Law, and the petitions are fatally deficient once they were altered after filing. Otherwise, deadlines would be meaningless.

III. Wards Not Included On the Petitions

None of the petitions indicate the ward of any of the signers of the petitions. In Section 10.3 of the Jackson City Charter, petition requirements include the requirement that "the petition shall also show the ward and street number of the signers and the date of their signing." None of the petitions indicate a ward of the signer and the petitions are fatally defective and cannot be certified.

March 23, 2017

Page 4

IV. No Ballot Question Committee Identified On The Petition

None of the petitions identify a properly organized and filed ballot question committee as the sponsor of the referendum petition. No organization has filed a State of Organization as the sponsor of the petition as required by Section 175 of the Home Rules Cities Act, MCL 117.25 with the Jackson County Clerk and the petitions are, again, fatally deficient.

V. Other Deficiencies

Some petitions were only signed after the March 2nd deadline and these petitions are totally invalid (see Exhibit 1 – Terri Shepherd signed on March 3, 2017 only; See Exhibit 2 -- Joan E. Grant did not sign prior to filing on March 2.) Yet, the Clerk's office appears to validate the signature on the each page; a clear violation of the Michigan Election Law and the Jackson City Charter. Lastly, there was no confirmations of the registration status of any of the circulators.

Conclusion

For all of the reasons cited above, Jackson Together requests that the unnamed and unsponsored petitions seeking a referendum ordinance 2017-3 be rejected as being incapable of certification. If the petition, in spite of all of the deficiencies cited above is certified, Jackson Together will pursue litigation to its conclusion in the Circuit Court and Appellate Courts, if necessary, and will seek costs and fees associated with such litigation.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP



John D. Pirich

JDP/lmh
Enc.

Exhibit 1

COUNTY/LOCAL PROPOSAL PETITION

91 Keweenaw
CITY OF JACKSON

MAR 02 2017

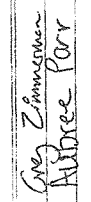
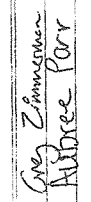
INSTRUCTIONS ON REVERSE SIDE

We, the undersigned, qualified and registered electors, residents in the State of Michigan, hereby petition for:
 City of Jackson, in the County of Jackson
 Township of _____, in the County of _____
 Village of _____, in the County of _____

pepeal or referendum of ordinance 2017-03, Shall Ordinance No. 2017-03, Non-Discrimination Ordinance (NDO), as adopted by the city council at its February 7, 2017 meeting providing for the non-discrimination

in the areas of housing, public accommodation, and employment, based on sexual orientation, or gender identity be repealed in its entirety?

WARNING - A PERSON WHO KNOWINGLY SIGNS THIS PETITION MORE THAN ONCE, SIGNS A NAME OTHER THAN HIS OR HER OWN, SIGNS WHEN NOT A QUALIFIED AND REGISTERED ELECTOR, OR SETS OPPOSITE HIS OR HER SIGNATURE ON A PETITION, A DATE OTHER THAN THE ACTUAL DATE THE SIGNATURE WAS AFFIXED, IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
				Month	Day	Year
	Greg Zimmerman	1500 W. 16th Street A13	49202	3	2	17
	Audrey Parr	350 E. Porter St	49202	3	2	17

ANDREW J. WROZEK JR.
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF JACKSON
My Commission Expires 12/31/16
Acting in the County of Keweenaw

Andrew J. Wrozek Jr.
3/3/17 Andrew J. Wrozek Jr.

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in this or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once; that he or she has not signed the petition more than once; and that, to the best of his or her knowledge and belief, each signature on the petition more than once and that, to the best of his or her knowledge and belief, each signature on the petition more than once was not made by the same person; that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition submitted to the Secretary of State; that he or she is not a designated agent of the Secretary of State and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

If the circulator is not a resident of Michigan, the circulator shall make a cross [X] or check mark [✓] in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition submitted to the Secretary of State and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

WARNING-A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.

Jane Shepherd
Tami Shepherd
300 E. Meadow Heights
Jackson MI 49203
Jackson

CIRCULATOR - DO NOT SIGN OR DATE CERTIFICATE UNTIL AFTER CIRCULATING PETITION.

3 3 17
(Date)

Exhibit 2

INSTRUCTIONS ON REVERSE SIDE

COUNTY/LOCAL PROPOSAL PETITION

We, the undersigned, qualified and registered electors, residents in the City of Jackson } State of Michigan, respectively petition for:
 Township of Jackson }
 Village of _____ }
 CHECK ONE } in the County of Jackson

repeal or referendum of ordinance 2017-03, Shall Ordinance No. 2017-03, Non-Discrimination Ordinance (NDO), as adopted by the city council at its February 7, 2017 meeting providing for the non-discrimination in the areas of housing, public accommodation, and employment, based on sexual orientation, or gender identity be repeated in its entirety?

WARNING - A PERSON WHO KNOWINGLY SIGNS THIS PETITION MORE THAN ONCE, SIGNS A NAME OTHER THAN HIS OR HER OWN, SIGNS WHEN NOT A QUALIFIED AND REGISTERED ELECTOR, OR SETS OPPOSITE HIS OR HER SIGNATURE ON A PETITION, A DATE OTHER THAN THE ACTUAL DATE THE SIGNATURE WAS AFFIXED, IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
					Month	Day	Year
1.	<i>Prava L. Rockwell</i>	Prava L. Rockwell	510 S. Webster	49203	2	24	17
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							
11.							
12.							

Acknowledged before me
 3/23/17 *Andrew J. Wozniak*
 ANDREW J. WOZNIAK, JR.
 NOTARY PUBLIC - STATE OF MICHIGAN
 COUNTY OF JACKSON
 My Commission Expires 7/27/20
 Acting in the County of Jackson

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, the signature is the genuine signature of the person who signed the petition. I sign this certificate of circulation as a registered elector of the City, Township or Village listed in the heading of this petition, and the elector was qualified to sign the petition.

If the circulator is not a resident of Michigan, the circulator shall make a cross (X) or check mark (✓) in the box provided. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

Prava L. Rockwell
 (Signature of Circulator)
 Prava L. Rockwell
 (Printed Name of Circulator)
 5130 S. Grant St.
 Jackson, MI 49201
 (Complete Residence Address [Street and Number or Rural Route] - Do not enter a post office box)
 Jackson, MI 49201
 (City or Township, State, Zip Code)
 County of Registration, if Registered to Vote, of a Circulator who is not a Resident of Michigan: Jackson

WARNING-A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS AS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.