

STATE OF MICHIGAN
COURT OF CLAIMS

COMMITTEE TO BAN FRACKING IN
MICHIGAN and LUANNE KOZMA,

Plaintiffs,

v

DIRECTOR OF ELECTIONS, SECRETARY OF
STATE, and BOARD OF STATE
CANVASSERS,

Defendants.

OPINION AND ORDER

Case No. 16-000122-MM

Hon. Stephen L. Borrello

Plaintiffs ask this Court to declare MCL 168.472(a) unconstitutional as an infringement on their rights under the ballot initiative provision in Const 1963, art 2, § 9, because it limits the time for circulating petitions to 180 days. Defendants move for summary disposition under MCR 2.116(C)(4) (lack of jurisdiction), (C)(5) (lack of standing) and (C)(8) (failure to state a claim). For the reasons set forth in this opinion, defendants' motion for summary disposition is GRANTED.

I. BRIEF BACKGROUND

Plaintiff Committee to Ban Fracking in Michigan is a ballot question committee that is campaigning for a legislative initiative to end the practice of horizontal hydraulic fracturing (fracking). Plaintiff LuAnne Kozma directs the campaign. In May 2015, plaintiffs began circulating initiative petitions to place a fracking ban measure on the ballot at the next general election. The minimum number of signatures needed to place the proposed law on the ballot is

252,523.¹ Plaintiffs did not collect enough signatures and did not submit petitions to the secretary of state by the June 1, 2016 deadline for the November 2016 election.²

Plaintiffs argue that they are entitled to use the more than 200,000 petition signatures that they allege they have, along with additional signatures that they intend to collect, to meet the minimum requirement for a ballot initiative in the November 2018 election. Under MCL 168.472a, “[t]he signature on a petition that . . . is to initiate legislation shall not be counted if the signature was made more than 180 days before the petition is filed with the office of the secretary of state.”³ It appears from plaintiffs’ pleadings that whatever number of signatures plaintiffs have, most of their signatures are more than 180 days old. Plaintiffs argue that by limiting the petition circulation period to 180 days, the Legislature has impermissibly infringed on the right to initiative under Const 1963, art 2, § 9. They maintain that MCL 168.472a places an undue burden on their ability to obtain the required number of signatures. Plaintiffs therefore ask this Court to declare MCL 168.472a unconstitutional and enjoin defendants from enforcing it. In response, defendants move for summary disposition under MCR 2.116(C)(4), (C)(5) and (C)(8) arguing that plaintiffs lack standing, that plaintiffs fail to state a claim for declaratory relief, and that plaintiffs’ claims are not ripe.

¹ Const 1963, art 2, § 9 requires signatures totaling at least 8% of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Defendants do not dispute that for the 2016 and 2018 elections, that number is 252,523.

² Initiative petitions must be filed with the secretary of state at least 160 days before the proposed law is to be voted on. MCL 168.471.

³ The Legislature’s recent amendment of MCL 168.472a became effective June 7, 2016, after plaintiffs filed their complaint. Previously, petition signatures that were more than 180 days old were subject to a rebuttable presumption of staleness.

II. ANALYSIS

In order to establish standing to seek a declaratory judgment, a plaintiff must meet the requirements of MCR 2.605. *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). The court rule provides:

In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted. [MCR 2.605(A)(1).]

MCR 2.605 “incorporates the doctrines of standing, ripeness, and mootness.” *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012).

This Court’s authority to enter a declaratory judgment depends on the existence of a case of actual controversy. MCR 2.605(A)(1); *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978). “An ‘actual controversy’ exists under MCR 2.605(A)(1) when a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve legal rights.” *UAW*, 295 Mich App at 495. The actual controversy requirement prevents a court from deciding hypothetical issues. *Id.* This Court’s duty is to consider and decide actual cases and controversies, not to declare legal principles that have no practical effect in a case. *In re Gerald Pollack Trust*, 309 Mich App 125, 154; 867 NW2d 884 (2015), citing *Morales v Parole Bd*, 250 Mich App 29, 32; 676 NW2d 221 (2003).

Here, plaintiffs fail to establish an actual controversy to invoke this Court’s jurisdiction to grant declaratory relief. Plaintiffs have not submitted their initiative petition to the secretary of state, and have not even collected the requisite number of signatures. Plaintiffs state their intention to obtain enough signatures for a ballot initiative in the November 2018 election, but


their ability to do so is, at most, speculative. A declaratory judgment is not necessary to guide plaintiffs' future conduct when, at this point, an application of MCL 168.472a to their efforts would be purely hypothetical.

For the same reasons, plaintiffs' challenge to the constitutionality of MCL 168.472a is not ripe for consideration. The ripeness doctrine prevents the adjudication of hypothetical or contingent claims before an actual injury has been sustained. *Huntington Woods v Detroit*, 279 Mich App 603, 615; 761 NW2d 127 (2008). "A claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* at 615-616. Despite plaintiffs' assurance that they will be able to collect enough petition signatures, their claim is contingent on that occurrence. Again, because plaintiffs have not even submitted their petition to the secretary of state or collected the requisite number of signatures, plaintiffs fail to establish more than a hypothetical violation of their constitutional rights under Const 1963, art 2, § 9. Accordingly, their request for declaratory relief is not ripe for adjudication.

IT IS HEREBY ORDERED that defendants' motion for summary disposition is GRANTED.

This order resolves the last pending claim and closes the case.

Dated: Monday, August 8, 2016


Stephen L. Borrello, Judge
Court of Claims