

**STATE OF MICHIGAN**  
**COURT OF CLAIMS**

JENNIFER JOHNSEN,

Plaintiff,

v

Case No. 24-000080-MB

BOARD OF STATE CANVASSERS,

Hon. Sima G. Patel

Defendant,

and

LISA MOLEGRAAF,

Amicus Curiae.

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**OPINION AND ORDER GRANTING WRIT OF MANDAMUS**

Plaintiff, Jennifer Johnsen, has filed a complaint for mandamus relief, as well as a motion for expedited consideration of the complaint. Defendant, the Board of State Canvassers has answered the complaint. Lisa Molegraaf, has moved to file an amicus brief. The parties and amici have fully briefed the pertinent issue, and they agree that the matter is ripe for decision.

For the reasons stated herein, the complaint for writ of mandamus is GRANTED and defendant is hereby ordered to certify plaintiff as eligible to appear on the ballot for the upcoming primary election. In addition, the motions for immediate and expedited consideration and to file an amicus brief are GRANTED.

## BACKGROUND

The pertinent facts in this case are largely undisputed. Plaintiff is a candidate for the office of judge of the 17th Circuit Court in Kent County. To be qualified to appear on the upcoming primary ballot, she needed to submit a minimum of 2,000 signatures on nominating petitions, based on the size of Kent County's population. MCL 168.544f. Plaintiff timely filed 2,197 signatures in total. Challenger Lisa Molegraaf challenged 641<sup>1</sup> of the signatures because the date of signing was provided by the petition circulator, not the elector who signed the petition.<sup>2</sup> She argued that MCL 168.544c(2) required electors to personally affix the date to the petition sheets.

Plaintiff has conceded that the petition circulators prefilled the dates on which the challenged signatures were provided in an effort to save time. In response to the challenge, the Bureau of Elections (BOE) concluded that MCL 168.544c(2) did not require electors who signed nominating petitions to personally affix the date on which they signed to the petition. The BOE recommended that the Board of State Canvassers (the Board) determine that the petitions were sufficient.

The Board deadlocked 2-2 on a motion to accept the BOE's recommendation. As a result, plaintiff was not certified to appear on the ballot. The issue before this Court is whether the challenged signatures are invalid because the electors did not personally affix the dates to the petition sheets.

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<sup>1</sup> Molegraaf initially challenged additional signatures as well. The current issue before the Court only concerns a challenge to 641 signatures.

<sup>2</sup> The Court notes that the validity of the signatures is not otherwise in doubt; that is, there is no assertion that the signatures were fraudulent. Rather, the only issue concerns dates that were filled in by petition circulators, rather than by the electors who signed the petition sheets.

## ANALYSIS

To obtain the extraordinary remedy of a writ of mandamus, plaintiff must show that:

(1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform such act, (3) the act is ministerial in nature such that it involves no discretion or judgment, and (4) the plaintiff has no other adequate legal or equitable remedy. [*Barrow v Detroit Election Comm*, 301 Mich App 404, 412; 836 NW2d 498 (2013).]

For purposes of mandamus relief,<sup>3</sup> a “clear legal right” is one that is “clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.” *Rental Props Owners Ass’n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 519; 866 NW2d 817 (2014). Here, the primary issue, given the impending ballot-printing deadline, is whether a clear legal right exists for plaintiff to be placed on the ballot for the upcoming primary election. Resolution of that issue requires an examination of MCL 168.544c.

“The fundamental purpose of judicial construction of statutes is to ascertain and give effect to the intent of the Legislature.” *Wilcoxon v Detroit Election Comm*, 301 Mich App 619, 631; 838 NW2d 183 (2013). Ascertaining legislative intent is done by examining the plain language of the statute. *Id.* “If the language of the statute is plain and unambiguous, effect must be given to the words used, and judicial construction is neither necessary nor permitted.” *Id.*

A candidate must strictly comply with the requirements contained in this state’s election law. *Stumbo v Roe*, 332 Mich App 479, 481; 957 NW2d 830 (2020). The election statute at issue

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<sup>3</sup> MCL 168.552(12) allows a person who feels aggrieved by the Board’s decision to seek mandamus relief. See also *Schwarzberg v Bd of State Canvassers*, 649 NW2d 73 (2002).

in this case, MCL 168.544c, outlines the requirements for nominating petitions, including the information that must be provided on petition sheets. For instance, in MCL 168.544c(1), the statute directs that the “date of signing,” as well as the elector’s signature, street address, and zip code must be included on the petition sheet. In addition, and pertinent here, MCL 168.544c(2) provides that:

The petition must be in a form providing a space for the circulator and each elector who signs the petition to print his or her name. The secretary of state shall prescribe the location of the space for the printed name. The failure of the circulator or an elector who signs the petition to print his or her name, to print his or her name in the location prescribed by the secretary of state, or to enter a zip code or his or her correct zip code does not affect the validity of the signature of the circulator or the elector who signs the petition. A printed name located in the space prescribed for printed names does not constitute the signature of the circulator or elector. *If an elector does not include his or her signature, his or her street address or rural route, or the date of signing on the petition as required under subsection (1), the elector's signature is invalid and must not be counted by a filing official.* [Emphasis added.]

The dispositive issue is whether MCL 168.544c(2) requires that electors personally affix the date of signing to a nominating petition. The Court concludes that no express requirement exists in the statute. Notably, the statute only specifies that the elector must “include” the date of signing as required by subsection (1). However, neither subsection (2) nor subsection (1) specify *how* that information must be included, i.e., whether it must be done by the electors personally or by the circulator. Hence, the requirement can be met if, as occurred here, the elector authorizes the date to be included with the elector’s signature. This Court will not read into the statute a requirement that the elector must be the one who personally affixes the date on a nominating petition when such a requirement is not found within the plain language of the statute itself. See *Save Our Downtown v Traverse City*, 343 Mich App 523, 534; 997 NW2d 498 (2022).

A visual representation of a petition sheet, along with a dictionary definition of the term “include,” makes the above conclusion apparent. As for the definition of “include,” the term means to “take in or comprise as a part of a whole or group.” *Merriam-Webster’s Online*, available at <https://www.merriam-webster.com/dictionary/include> (accessed June 6, 2024).<sup>4</sup> When a petition sheet is viewed, it becomes clear that an elector can “include” the date of signing “as a part of a whole or group” of information that is on the sheet by placing the elector’s signature and information on a line that already has the date filled in by the circulator.<sup>5</sup>

Johnsen, Circuit.000246

**INSTRUCTIONS ON REVERSE SIDE**      **NOMINATING PETITION**  
(COUNTYWIDE NONPARTISAN)

The “Countywide” Nonpartisan Petition form may be used by any nonpartisan candidate. Exceptions: the form may not be used by a candidate who seeks a school board position, intermediate school board position, community college trustee position, library board position or a district library board position.

We, the undersigned, registered and qualified voters of the County of Kent and State of Michigan, nominate Jennifer Johnson (Name of Candidate) as a candidate for the office of 17th Circuit Court Judge (Regular Term-Non-Incumbent Term Ending: 01/01/31) (Street Address or Rural Route) (City or Township) (Title of Office/Term Expiration Date)

17th Circuit (District, if any) to be voted for at the Primary Election to be held on the 6th day of August, 2024.

**WARNING - A PERSON WHO KNOWINGLY SIGNS MORE PETITIONS FOR THE SAME OFFICE THAN THERE ARE PERSONS TO BE ELECTED TO THE OFFICE, SIGNS A PETITION MORE THAN ONCE, OR SIGNS A NAME OTHER THAN HIS OR HER OWN IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.**

Signature	Printed Name	Street Address or Rural Route	Name of City or Township	Zip Code	DATE OF SIGNING Month Day Year
			Kentwood	49512	3 17 24
			Grand Rapids MI	49506	3 17 24
			Hudsonville, MI	49426	3 17 24
			walker, MI	49834	3 17 24
					3 17 24
					3 17 24
					3 17 24
					3 17 24
					3 17 24
					3 17 24

**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, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the City or Township indicated preceding the signature, 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, 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 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.

**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.**

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

(Signature of Circulator) J. Johnson (Date) 03/17/24

(Printed Name of Circulator) \_\_\_\_\_

(Complete Residence Address (Street and Number or Rural Route)) - (Do not enter a post office box) \_\_\_\_\_

(City or Township, State, Zip Code) Kent \_\_\_\_\_

(County of Registration, if Registered to Vote, of a Circulator who is not a Resident of Michigan) \_\_\_\_\_

Form Approved by the Director of Elections, State of Michigan  
www.PollingSystems.us (800) 95-1245 (R 10/15) FORM #406

<sup>4</sup> Where appropriate, a court may turn to dictionaries to provide guidance when considering undefined terms in a statute. *Ronnisch Construction Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 559 n 41; 886 NW2d 113 (2016).

<sup>5</sup> The petition sheet at issue is one of plaintiff’s petition sheets, but all identifying information of the signing electors has been removed.

The above petition sheet shows that all of an elector's information, as well as the date of signing, is included within a single line. When electors opt to place their signatures, street addresses, and zip codes on a line that already has the date filled in, they "include" that information as part of the whole or group of information about themselves. Hence, an elector can "include" the date even though the date has already been supplied on the form in advance.

The conclusion that MCL 168.544c(2) does not compel the elector to affix their own date to the petition becomes clear when the language employed in subsection (2) is contrasted with the duties placed on a petition circulator in subsection (5) of the statute. Subsection (5) declares that a "circulator of a petition *shall sign and date* the certificate of circulator before the petition is filed." MCL 168.544c(5) (emphasis added). The directive that the *circulator shall* date the petition makes it apparent that the Legislature intended to place on petition circulators themselves the mandatory duty to personally sign and date the certificate of circulator. See *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 65; 642 NW2d 663 (2002). Unlike in subsection (5), however, subsection (2) lacks a mandatory directive about who shall date the petition. "[W]hen the Legislature omits a particular [ ] provision in one part of a statute but includes it in another, we should presume that decision to have been purposeful." *Protecting Mich Taxpayers v Bd of State Canvassers*, 324 Mich App 240, 250; 919 NW2d 677 (2018). The mandatory directive in subsection (5) makes it apparent that, if the Legislature intended to require electors to personally date the petition sheets, it would have made such directive clear, as it did in subsection (5).

The parties have directed the Court's attention to the statute pertaining to recall petitions, MCL 168.954. In that statute, the Legislature declared, in pertinent part, that "[a] recall petition must be signed by registered and qualified electors of the electoral district of the official whose recall is sought. *Each signer of a recall petition shall affix his or her signature, address, and the*

*date of signing.*” MCL 168.954(1) (emphasis added). Unlike the statute at issue in this case, which only requires that the signers include or make their information part of the petition line, the Legislature in MCL 168.954(1) expressed a clear, unambiguous intent that signers of recall petitions personally affix the date of signing to the recall petition. See *McCoy v Berrien Co Clerk*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW3d \_\_\_ (2023) (Docket No. 365187), slip op at p. 7, citing *Schmidt v Genesee Co Clerk*, 127 Mich App 694, 701; 339 NW2d 526 (1983). Again, this Court will construe as intentional the Legislature’s decision to omit language from one part of a statute that it has included in another part of the same statute. *Protecting Mich Taxpayers*, 324 Mich App at 250. Here, the lack of express language in MCL 168.544c(2) requiring that an elector personally affix the date to a nominating petition, when contrasted with the express inclusion of such language in the recall statute, demonstrates that the Legislature did not intend to require that electors personally affix the date to nominating petitions.

Amicus argues that the Court of Appeals opinion in *Sutika v Roscommon Co Clerk*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2017 (Docket No. 337144), is on-point for the issue currently before this Court. That case concerned a recall petition and the above-noted requirement in MCL 168.954 that a petition signer affix his or her signature and date of signing. *Sutika*, unpub op at p. 1. The *Sutika* panel cited *Schmidt* for the proposition that signers of a recall petition must personally affix the date of signing to a recall petition. *Id.* at 2, citing *Schmidt*, 127 Mich App 694. The panel then noted that recall petitions must also conform to MCL 168.544c(2). *Id.* And reading MCL 168.954 together with MCL 168.544c(2), the panel concluded that the two statutes “plainly require electors to personally affix their signatures, street addresses, and dates of signing for their signatures to be valid.” *Id.* at 3.

The Court finds the citation to *Sutika* unconvincing. Initially, the opinion is unpublished and it does not bind this Court. MCR 7.215(C)(1). Moreover, the *Sutika* opinion addressed recall petitions, which contain mandatory language that is not present in MCL 168.544c(2), as noted above. Hence, the panel’s holding in that case appears to have been a product of the mandatory language in MCL 168.954, and it is not particularly convincing in this situation, where only MCL 168.544c(2) is implicated.

Finally, the Court notes that the parties have discussed *Wilcoxon*, 301 Mich App 619. In that case, the Court of Appeals held that a nominating petition could be valid even if no date of signing appeared next to an elector’s signature. *Id.* at 638. While the same would appear to control here, the parties have pointed out that, in 2014 PA 94, the Legislature amended MCL 168.544c(2) to include the statutory language now at issue in this case. That is, the statute now includes the requirement an elector “include” the date of signing. Given the subsequent amendment of the statute, the *Wilcoxon* opinion does not control the outcome of this case.

An argument could be made that, in amending MCL 168.544c(2), the Legislature was aware of the opinion in *Wilcoxon* and that the amendment was designed to address the problem that arose in *Wilcoxon*. See *Campbell v Dep’t of Treasury*, 509 Mich 230, 242; 984 NW2d 13 (2022). As noted, the problem that arose in *Wilcoxon* was the lack of a date on a nominating petition. The amendment to MCL 168.544c(2) clearly addressed that issue. It is not apparent, though, that the amendment addressed the question of whether the elector must be the one to affix the date; rather, the amendment only addressed the issue of whether the date had to be included on the petition by the elector. And for the reasons noted above, the Court declines to read the amendment to MCL 168.544c(2) as directing that the only way the elector can “include” the date is by personally writing it onto the petition.



CONCLUSION

The Board had a clear legal duty to accept plaintiff’s nominating petitions and to certify plaintiff for the upcoming primary election. Likewise, plaintiff established that she has a clear legal right to be included on the upcoming primary ballot. “The inclusion or exclusion of a name on a ballot is ministerial in nature.” *Barrow*, 301 Mich App at 412. And given the rapidly approaching deadline for certifying the ballot, plaintiff established that mandamus is the appropriate procedural vehicle for vindicating her rights. See *id.* Accordingly, the complaint for writ of mandamus is GRANTED and the Board is ordered to certify plaintiff for inclusion on the ballot for the upcoming August 6, 2024 primary election.

In addition, the motions for immediate and expedited consideration and to file an amicus brief are GRANTED.

Date: June 6, 2024



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Sima G. Patel  
Judge, Court of Claims

