FILED
Michelle L. Crocker
Leelanau 13th Circuit Court
02/28/2020

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

M. SUE KELLY,

Appellant,

v

File No. 2019010412AA
HON. KEVIN A. ELSENHEIMER

COUNTY OF LEELANAU ELECTION COMMISSION,

Appellee.
/

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Attorneys for Appellee

Appellant Acting in Pro Per

DECISION AND ORDER REGARDING TIMING OF RECALL PETITION

On December 5, 2019, a petition for the recall of M. Sue Kelly, a Traverse City Area Public Schools (TCAPS) board of education member, was filed with the Leelanau County Election Commission. The Leelanau County Election Commission issued a decision approving the petition language on December 18, 2019. On December 27, 2019, Kelly filed a claim of appeal from the decision of the Leelanau County Election Commission approving the recall petition language. On February 3, 2020, the Court heard oral arguments on the claim of appeal. Subsequently, on February 6, 2020, the Court issued an Order, wherein the Court found that the language of the recall petition filed against Kelly was factual and of sufficient clarity pursuant to MCL § 168.952, held in reserve the issue of timeliness with regard to the filing and permitted the parties an additional 14-days to file briefs addressing whether the recall petition was timely submitted for review by Appellee subject to MCL § 168.951 *et seq.* On February 18, 2020, Appellee filed a Post-Hearing Brief and Appellant filed a Brief in Opposition to Appellees' Motion for Reconsideration.

The Court having now reviewed all documents submitted, dispenses with oral argument, pursuant to MCR 2.119(E)(3), and issues this written decision and order for the reasons stated herein.[1]

With regard to the recall petition timing itself, under MCL § 168.951(1), each elective officer, except a judicial officer, is subject to recall by the voters of the electoral district in which the officer is elected. If an officer's term of office is 2-years or less, a recall petition shall not be filed against the officer until the officer has actually performed the duties of the office to which elected for a period of 6-months during the current term of that office and a recall petition shall not be filed against an officer during the last 6-months of the officer's term of office.[2] If an officer's term of office is *more* than 2-years, a recall petition shall not be **filed** against the officer until the officer has actually performed the duties of the office to which elected for a **period of 1-year** during the current term of office and a recall petition shall not be filed against an officer during the last 1-year of the officer's term of office.[3] Whereas, MCL § 168.952b states:

> A petition for the recall of an officer shall not be **submitted** to the board of state canvassers under section 951a or the board of county election commissioners under section 952 to determine if the petition is factual and of sufficient clarity until the officer has actually performed the duties of the office to which elected for a **period of 6-months** during the current term of that office. In addition, a petition for the recall of an officer shall not be submitted to the board of state canvassers under section 951a or the board of county election commissioners under section 952 to determine if the petition is factual and of sufficient clarity during the last 6 months of the officer's term of office.[4]

However, the terms "submitted" and "filed," as used in the above statutes, are not defined within the Election Code. When a statute plainly and unambiguously expresses the legislative intent, the role of the court is limited to applying the terms of the statute to the circumstances of the particular case.[5] Conversely, where the language employed by the Legislature is susceptible to

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[1] An issue is moot when a subsequent event makes it impossible for the appellate court to grant relief. *Gleason v Kincaid*, 323 Mich App 308; 917 NW2d 685 (2018). A case that does not rest upon existing facts or rights and presents nothing but abstract questions of law is moot. *Id.* Generally, an appellate court dismisses a moot case without reaching the underlying merits because reviewing a moot question would ordinarily be a purposeless proceeding; however, an exception exists when an issue is moot, but is one of public significance and is likely to recur, yet may evade judicial review. *Id.* Essentially, an otherwise moot issue is nonetheless justiciable and appropriately addressed by a court when there is a reasonable expectation that the publicly significant alleged wrong will recur. *Id.* In the matter at hand, the timing of the recall petitions is a matter of public significance that involves multiple members of the TCAPS Board of Education, with the potential for recurrence if additional board members are implicated. For this reason, the mootness exception applies to the petition timing issue and the issue may be properly addressed by the Court.

[2] *Id.*

[3] *Id.* Emphasis added.

[4] Emphasis added.

[5] *Dep't of Transportation v Tomkins*, 481 Mich 184, 191; 749 NW2d 716 (2008).

more than one interpretation, judicial construction is justified.[6] The goal of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute.[7] If a meaning of a statute is unclear, the court must consider the object of the statute and apply a reasonable construction that best accomplishes the Legislature's purpose.[8] A court interpreting a statute applies the doctrine of *noscitur a sociis*, which stands for the principle that a word or phrase is given meaning by its context or setting.[9]

A review of both statutes, the related administrative guidance and publications by the Michigan Bureau of Elections indicate that the terms "submitted" and "filed" are not synonymous and a petition must be "submitted" before it can be "filed." The Michigan Bureau of Elections summary, published in July 2013, denotes that the first step for recall of a local election officer requires that the petition language be "submitted" for approval, but not within the first or last six-months of an elected officer's term. The second step is a clarity hearing between ten and 20-days after the petition language has been submitted. Depending on the outcome of the clarity hearing, the third step may be an appeal to the circuit court within ten-days of the hearing. Step four would be a final determination on appeal by the circuit court within 40-days of the filing of appeal. Step five is a finding that the recall petition language is valid and step six is circulation of the recall petition for signatures. Under step seven, the recall petition is then "filed." When the elected officer's term is great than 2-years, the signed/circulated petition cannot be filed during the first or last year of the term.[10] Step eight is a determination, within 35-days of the date of filing, regarding the petition's sufficiency or insufficiency. Finally, assuming the petition is sufficient, step nine is a recall election. A recall election is to be held at least 95-days after the recall petition is filed on either the next May or November election date. Given this summary, it is clear that a recall petition may be "submitted" to the board of county election commissioners after an elected officer has been in office for six-months and then may be "filed" against the officer after six-months or one-year (depending on whether the elected term is two years or greater).

In this case, Board of Education Members for TCAPS serve for four-year terms. Appellant Kelly was elected in 2018 for a term beginning January 1, 2019, and running through the end of

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[6] *Rowell v Security Steel Processing Co.*, 445 Mich 347; 518 NW2d 409 (1994).
[7] *Id.*
[8] *Id.*
[9] *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90; 754 NW2d 259 (2008).
[10] When the elected officer's term is less than 2-years, the signed/circulated petition cannot be filed during the first or last 6-months of the term.

2022. Thus, a petition for a recall of Kelly could be "submitted" to the Grand Traverse County Election Commission after June 30, 2019, and a signed/circulated petition could "filed" against Kelly on January 1, 2020.

The Court is persuaded that MCL § 168.952b governs when recall petitions may be submitted to the board of county election commissioners. The recall petition was submitted to the board of county election commissioners on December 5, 2019, at which time the Appellant had actually performed the duties of the office to which elected for a period of 6-months during the current term of that office, therefore, the petition was timely. The Court's prior Order, entered February 6, 2020, is modified to reflect that the recall petition was timely submitted.

IT IS SO ORDERED.

02/28/2020
01:41PM

KEVIN A. ELSENHEIMER, CIRCUIT COURT JUDGE, P49293

HONORABLE KEVIN A. ELSENHEIMER
Circuit Court Judge