

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MANISTEE

TRUE COPY
JILL M. NOWAK
Manistee County Clerk

SUZANNE SCHWING,

Plaintiff,

v.

Case No. 12-14654 -AW
Honorable James M. Batzer
Circuit Court Judge

HELEN MATHIEU, CLERK, TOWNSHIP OF ONEKAMA

Defendant,

Rudolph L. Milasich, Jr. (P70347)
Attorney for Plaintiff
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**BRIEF IN SUPPORT OF ISSUANCE OF A WRIT OF MANDAMUS AND
OF A MOTION FOR EX PARTE TEMPORARY INJUNCTIVE RELIEF**

This is a case where village electors sign and file the statutorily required petitions requesting a vote on the question of whether the village shall disincorporate only to be told almost a year later that the township clerk has decided that there will be no vote count of the village electors voting on the question, only a count of the combined vote of the township electors and the village electors. The election will be held next Tuesday, August 7th and Plaintiff, a Village elector, seeks the issuance by this Court of a writ of mandamus directing the Township Clerk to conduct the election in the Village and the Township outside the Village separately under MCL74.18a and seeks the issuance of an ex parte temporary injunction

restraining the Township Clerk from conducting the election of the village Disincorporation issue in the Village and portions of the Township outside the Village together in one vote count.

STATEMENT OF FACTS

In early August of 2011, two Village electors began circulating petitions requesting a vote on the question of whether the Village shall disincorporate, which petitions read:

"We, the undersigned registered electors of the Village of Onekama, in Onekama Township, Manistee County, Michigan, respectfully petition and request a vote on the question of whether the Village of Onekama shall disincorporate into Onekama Township." (Schwing Aff., Ex. 1)

MCL 74.18a requires signatures from at least 15% of the village electors (57).

By mid-August, the two Village electors had obtained only 28 signatures of Village electors (Schwing Aff. Ex.1). On or about August 19, 2011, two Township electors who reside outside the Village began passing petitions among the Village electors, and in 4 days, the Township electors obtained 35 valid signatures (Schwing Aff. Ex1). The petitions were filed with the Township Clerk, and on August 24, 2011, the Township Clerk verified the signatures and determined that the petitions were sufficient under MCL 74.18a(4).

The first Village Council meeting after the Township Clerk determined that the petitions were sufficient was held on September 21, 2011 (Schwing Aff. ¶13) There was a lot of input from the public at that meeting on disincorporation, with the majority speaking against it (Schwing Aff. Att.2) At that meeting, the Village Council exercised its option under MCL 74.23 and voted to proceed with a Disincorporation Commission (Schwing Aff. Att.2)

Sometime after the September 21, 2011 Village Council meeting, Village President

Robert Blackmore notified plaintiff Schwing that he had appointed her to sit on the Disincorporation Commission with full approval of the Council members (Schwing Aff. ¶4) At the January 10, 2012 initial meeting of the Commission, Village President Blackmore announced that plaintiff Schwing was appointed as Commission Chairman (Schwing Aff. ¶5) Thereafter, the Commission met weekly on Mondays.

At its February 13, 2012 meeting, the Disincorporation Commission approved an Update On Disincorporation which was sent by the Township to all taxpayers in the Township along with their assessment notices (Schwing Aff. ¶6) The Update explained that, even if there was no Commission plan, the disincorporation of the Village would still be voted upon but subject to a 2/3 supermajority vote in the Township and a 2/3 supermajority vote in the Village, as follows:

"If the plan is not approved by the commission, or if it is not approved by the village or township governing bodies, the matter will still go to the village and township votes, and it requires a super majority vote in both entities to be approved (2/3 of voters in village, 2/3 majority vote of voters in the township to proceed with disincorporation) " (Schwing Aff. ¶6)(emphasis added).

The fact that there would always be a vote on disincorporation in the Village and in the Township but with a 2/3 supermajority vote required in each entity to pass was repeated again in the Commission's Plan. The Plan was adopted by Commission vote, with plaintiff Schwing voting against, on March 26, 2012 (Schwing Aff. ¶7). The Plan explained in a flow chart that if the Plan was not approved by the Village Council and/or the by the Township Board, there would still be an election on August 7, 2012 with "2/3 approval among village and among township voters required to pass". (Schwing Aff. ¶7)(emphasis in the original) The Commission

Plan was adopted by the Township Board, but the Village Council voted against the Plan on April 18, 2012 (Schwing Aff. ¶18).

A letter, dated June 7, 2012, was sent by Jill Novak, the Manistee County Clerk, to Peter Doren, who was the lawyer for the already disbanded Disincorporation Commission, with copies by e-mail to the Township Clerk and to the Village Clerk (Schwing Aff. ¶19). The letter refers both to a May telephone conversation between Novak and Doren and to information on Village Disincorporation which was received by Novak from Doren and presented by Novak to the Bureau of Elections. The letter reads, in relevant part:

"Per our phone conversation in May, there were numerous questions surrounding the Disincorporation of the Village of Onekama issue. Therefore, I had presented the information I received from you concerning the Disincorporation of the Village of Onekama to the Bureau of Elections legal department. I have just recently heard back from the Bureau. The issue will be on the ballot with the verbiage that was supplied by Helen Mathieu, Onekama Township Clerk. I did want to inform you that the Bureau sees no need or legal reason to force a split in the precinct and have two different ballots for this question. . . ." (Schwing Aff. Att.4)

After receipt of an e-mail copy of the June 7th Novak letter, the Township Clerk decided that the votes in the Township and in the Village on the disincorporation ballot issue would be added together. The Township Clerk explained the procedure for the August 7th vote as follows: there will be one voting machine; there will be one table for district 5 which has a large number of registered voters from the Township and Village; there will be another table for district 1 which will have a smaller number of only registered Township voters; and, at the end of the day they will take the readings from the voting machine for each district and add

them together to create the final vote (Schwing Aff. ¶11)¹

Plaintiff Schwing did not learn that the Township Clerk had decided that there would be solely a cumulative tally of the votes cast by the Township electors and the Village electors on the ballot until on or about July 16, 2012 (Schwing Aff. ¶10)

I. THE VILLAGE DISINCORPORATION STATUTE DIRECTS THAT THE TOWNSHIP CLERK CONDUCT THE ELECTION IN THE VILLAGE AND TOWNSHIP SEPARATELY

“The paramount rule of statutory interpretation is that we are to effect the intent of the Legislature.” Wickens v. Oakwood Hospitalcare System, 465 Mich 53, 60; 631 NW2d 686 (2001). The statute in Wickens was held to be unambiguous. However, the Michigan Supreme Court in Wickens also held that “[i]n reviewing the statute’s language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory.” 465 Mich. at 60.

The intent of Legislature in the Village Disincorporation Statute is revealed by Subsection (1) of MCL 74.18a, which states: “To initiate the disincorporation of a village, a petition signed by not less than 15% of the registered electors of the village requesting a vote on the question of whether the village shall disincorporate shall be filed with the township clerk.” The intent is that the filing of a sufficient petition ensures that will be a vote by village electors on the question of whether the village shall disincorporate.

The statutory right of the village electors to vote on whether the village shall disincorporate is not dependent upon: 1. whether the Village Council fails to proceed with a Disincorporation Commission (MCL74.18a(4)), or (2) whether the Village Council does proceed with the Commission but refuses to ratify the Commission Plan (MCL74.23f), or (3) whether the

¹ District 1 and District 5 refer to the County Commission Districts 1 (only Township) and 5 (Village and Township).

Village Council does so proceed and approves the Commission Plan (MCL74.23g). Regardless of which statutory scenario is followed, the Village electors' statutory right to "vote on the question of whether the village shall disincorporate . . ." must be honored. The only thing that changes is that in the first two instances a supermajority 2/3 "yes" vote is required for the Village to be disincorporated (MCL74.18a(9)), while the third instance-- which involves a village council ratified commission plan-- requires only a majority "yes" vote (MCL74.28h(1)). Cumulating the votes of the Village electors with the votes of the Township electors, which the Township Clerk has decided applies here, violates the statutory right petitioned for under Sec.18a, the Village electors' right to vote on the question of Village disincorporation.

The language of Section 18a, when read together and when meaning is given to all of the words, requires a 2/3 "yes" vote by Village electors and a separate 2/3 "yes" vote by Township voters in order for the incorporation of the Village to be vacated. Under Section 18a, it is only Village electors who must sign the petitions for a vote, and the only vote village electors could be requesting is a vote of village electors, not a vote where the votes of village electors and township electors are to be cumulated. There is no explicit language in Section 18a stating that there is to be a cumulated vote, and the absence of such language is significant. In an analogous statute where the petition prays to disincorporate a city into two townships, the statute specifies that "the votes cast in all such townships shall be cumulated. ..." MCL 117.14a.

Section 18a(6) requires the conduct of two separate votes, one in the Village and one in the Township outside of the Village. Section 18a(6) states:

"The clerk and election officials of each township into which the village is proposed to be disincorporated shall conduct the election on the proposed disincorporation in the village **and** the portions of the township outside the boundaries of the village, respectively." MCL 74.18a(6)(all emphasis added).

“Respectively” means “1 : in particular : SEPARATELY . . .” (Webster’s Ninth Collegiate Dictionary, 2004). The Michigan Supreme Court in Brackett v. Focus Hope Inc., 482 Mich. 269, 275 (2008), held that “[a]n undefined statutory term must be accorded its plain and ordinary meaning.” The Court also noted that “[a] lay dictionary may be consulted to define a common word or phrase that lacks a unique legal meaning . . .” and looked initially to “Webster’s College Dictionary” in that case. Id. Giving “respectively” its common meaning of “separately”, means that Section 18a(6) directs the Onekama Township Clerk to conduct the disincorporation election in the Village of Onekama and the Township of Onekama separately.

The conclusion that the election in the Village and the Township has to be conducted separately under Section 18a(6) is confirmed by Section 18a(8) which reads:

“The results of the election on the proposed disincorporation shall be canvassed by the board of canvassers of the village and the board of canvassers of each township in which the village is located.” MCL 74.18a(8)(emphasis added)

The Legislature’s use of the plural “results” of the election confirms that the Township Clerk is directed to conduct the election in the Village and the Township separately because there has to be two vote counts, one of the Village electors’ votes and one of the Township electors’ votes, for there to be election “results”. Cumulating the votes would yield only a single result.

The Township Board of Canvassers and the Village Board of Canvassers no longer exist. However, additional language in Section 18a(8) also confirms that the Section 18a(6) election is to be conducted in the Village and the Township separately, thus yielding two vote counts. There has to be a Village electors’ vote count which would have been canvassed and certified by the Village Board of Canvassers (if it still existed) and a Township electors’ vote count which would have been canvassed and certified by the Township Board of Canvasser (if it still existed).

Finally, use of the plural word, "questions", in Section 18a(9) can be read consistently with only one interpretation: that the election has to be conducted in the Village and the Township separately with separate vote counts on the disincorporation question:

"The disincorporation of the village shall take place under this section only if 2/3 of the electors voting on the questions vote "yes"" MCL 74.18a(9)(emphasis added).

There are multiple "questions" only if the disincorporation election in the Village and Township is conducted separately, thereby resulting in a count of the "yes" votes on the question "Shall the incorporation of the village be vacated?" cast by the Township electors residing outside the Village and resulting in a separate count of the "yes" votes cast by the Village electors on the question "Shall the incorporation of the village be vacated?" Significantly, there is only one "question" if the election in the Village and Township is conducted with cumulated votes which yields only one count of the votes cast by the Village electors and the Township electors.

Finally, the interpretation that the votes in the village and township must be counted separately and that the 2/3 standard applies to each vote count, is the only interpretation that is consistent with what the Village electors prayed for in their petition "requesting a vote on the question of whether the village shall disincorporate" MCL 74.18a. Having the voting machine count the "Yes" and "No" votes without regard to whether a vote is from a Township elector or from a Village elector leads to the absurd result that the Village voters never receive the requested "vote on the question of whether the village shall disincorporate"

Thus, the only interpretation which gives meaning to all of the words in Section 18a and the legislative intent to provide to the village electors the right to a vote on Village disincorporation is that Section 18a(6) directs the Township Clerk to conduct the election in the Village and the Township separately and to apply the 2/3 vote requirement to the question in

the Village and to apply the 2/3 vote requirement to the question in the Township . All inferences must be liberally construed in favor of the Village because Article VII, Sec.34 of the Michigan Constitution states that"[t]he provision of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. . . ." The Township Clerk's decision that votes of the Village Electors and the votes of the Township electors are to be cumulated reads the words "in the village" out of Section 18a(4), reads the word "respectively" out of Section 18a(6), reads the plural word "results" out of Section 18a(8) and reads the plural word "questions" out of Section 18a(9). Thus, the Township Clerk's decision violates the Supreme Court's holding in Wickens v. Oakwood Hospitalcare System, 465 Mich 53, 60; 631 NW2d 686 (2001) "that every word should be given meaning"

Therefore, this Court should grant an immediate temporary injunction restraining the Township Clerk from conducting the election on the Village Disincorporation issue in the Village and the portions of the Township outside the Village together in one vote count and from combining the votes of the Village electors on that issue with the votes cast by the Township electors. This Court should also an grant a writ of mandamus directing the Township Clerk to conduct the Village disincorporation issue election in the Village and the Township outside the Village separately and to apply the 2/3 vote requirement to each vote count separately.

II. THE AMENDMENTS TO THE DISINCORPORATION STATUTE SUPPORT THE CLEAR MEANING THAT THE STATUTE DIRECTS THE TOWNSHIP CLERK TO CONDUCT THE ELECTION IN THE VILLAGE AND TOWNSHIP SEPARATELY

The statutory provisions governing village disincorporation were enacted initially in 1895 and were amended three times--in 1988, 1998 and 2003. From 1895 through the 1998 amendments, village disincorporation was a question to be voted upon solely by village electors under a 2/3 majority requirement and without involvement by township electors.

Section 17 of the Michigan Compiled Laws of 1979 required that the initiating petition had to be signed "by at least ¼ of the electors of the village" and filed with the village council, that the petition must be a petition "praying that the incorporation of the village be vacated", and that the vote in the village meeting had to receive "a 2/3 majority of the qualified electors of such village" without any involvement of township electors (A copy of Section 17 is attached to this Brief as Appendix 1).

The statute, as amended in 1988, retained the requirements that the initiating petition had to be signed "by at least ¼ of the electors of the village", that the petition had to be filed with the village (now, with village clerk), that the petition must be a petition "praying that the incorporation of the village be vacated", and that the vote in the village was subject to a 2/3 supermajority standard (now "a 2/3 majority of the village votes canvassed . . .") without any involvement of township electors, as follows:

"Sec.18(a) . Any proposition to vacate the incorporation as a village shall be submitted to the qualified electors of the incorporated village at the next general election or at a special election. In the event the proposition is submitted to the qualified electors at the next election, on or before August 30, the village council shall have voted by a majority vote to submit the proposition of the electors of the village or there shall have been filed with the village clerk requesting the submission of the proposition which have been signed by at least ¼ of the electors of the village . . . praying that the incorporation of the village be vacated."

(2) The proposition to be submitted by ballot in the village shall be substantially as follows:

'Shall the incorporation of the village of be vacated?

Yes ()

No ()'

(3) The ballots shall be cast and canvassed, and the results of the election certified, in the same manner as ballots on any question submitted to the electors of the village. if a

2/3 majority of the village votes canvassed are in favor of vacating, the council . . . shall immediately cause a transcript of all the proceedings in the case to be certified to the county clerk . . .” Sec. 74.18a(1), (2) & (3) (as amended in 1988)(emphasis added)(A copy of MCL74.18a as it existed in 1991 is attached to this Brief as Appendix 2) .

The 1998 Amendments were a wide ranging revision of the entire General Law Village Act, the purpose of which was represented to the Legislature as “not to change the basic character of village government but rather to provide villages with greater flexibility—with more options—in their structure and operation.” House Legislative Analysis, Second Analysis House Bill 5437 and House Bill 5438 at p1 (7-21-98)(A copy is attached to this Brief as Appendix 3). The disincorporation provisions of the statute, as amended in 1998, did contain changes: the petition no longer requested that the village be disincorporated, instead village electors had to sign a petition "requesting a vote on the question of whether the village shall disincorporate"; the village council was given the option of proceeding with a disincorporation commission in Sections 18a(4) & 23); and, a vote was provide to township electors in Sections 18a(6). However, the statute retained the requirement that the initiating petition had to be signed by village electors (now “by not less than 15% of the electors of the village”), the requirement that the petition had to be filed with the village clerk, and the requirement that the vote is subject to a 2/3 super majority standard.

The 1998 Amendments added Sections 23 through 23(i) which provide for a Disincorporation Commission and which gives the village council the option to “elect to proceed” with the petition through the Commission route instead of the petition going directly to a Section 18a disincorporation election. The 1998 Amendments also provided that disincorporation of the village pursuant to a Plan adopted by the Disincorporation Commission and ratified by both the village council and the township board would be submitted to a vote on unique ballot language:

“Shall the village of _____ be disincorporated pursuant to the plan adopted by the disincorporation commission?

() Yes

() No’.” Section 23g.(1)(emphasis added)

Matching the unique ballot language was the unique approval language of Section 23h.(1):

“The proposed disincorporation is approved by the electors and shall take place pursuant to the plan adopted under section 23e of this chapter only if a majority of each of the following votes cast on the question of the proposed disincorporation are in favor of the disincorporation:

(a) The votes cast by electors of the village

(b) The votes cast by the electors of each township into which the village is proposed to be disincorporated, counted separately.” (emphasis added)(A copy of the relevant parts of Public Act 254 of 1998 is attached to this Brief as App.4).

These unique provisions were necessary because a plan may very well contain obligations sought to be imposed on the township with respect to village bonded debt, hiring of the village sewer technician and other employees, restricting township spending of monies transferred from the village accounts, and maintaining village special services, e.g., as here, early snow plowing and brush pickup. For these obligations to be truly binding on a township, there has to be a separate vote count of the village vote and a separate count of the township vote, and a majority vote both by the township electors and by the village electors for there to be village “disincorporation pursuant to the plan”.

The unique provisions of Section 23h(1)(a)&(b) were not added to Section 18a because there is **no plan** involved in the votes required by Section 18a. The question to be voted on in Section 18(a) remained unchanged by the 1998 Amendments, which is “[s]hall the incorporation of the village be vacated?” However, the language which was added to Section 18a by the 1998 Amendments is equally clear that it directs an election in the village and the

township separately because the responsibility for carrying out the obligations added to Section 18a was placed by the Legislature on the village clerk. The language of Section 18a, as amended in 1998 is substantially identical to the present day language except that it was the village clerk who was tasked with carrying out the official functions:

“(1) To initiate the disincorporation of a village, there shall be filed with the village clerk a petition signed by not less than 15% of the registered electors of the village requesting a vote on the question of whether the village shall disincorporate.

. . .

(4) By not more than 14 days after the petition is filed, the village clerk shall verify the signatures and determine the sufficiency of the petition. Unless the council proceeds under sections 23 to 23i of this chapter, if the clerk determines that the petition is sufficient, the question of the disincorporation of the village shall appear on the ballot at the next general or special election to be held in the village. . . . The village clerk shall prepare the ballot language, in substantially the following form:

‘Shall incorporation of the village of _____ be vacated?

Yes

No’.

(6) The clerk and election officials of the village and each township into which the village is proposed to be disincorporated shall conduct the election on the proposed disincorporation in the village and the portions of the township outside the village, respectively.

(8) The results of the election on the proposed disincorporation shall be canvassed by the board of canvassers of the village and the board of canvassers of each township in which the village is located.

(9) The disincorporation of the village shall take place pursuant to this section only if 2/3 of the electors voting on the questions vote ‘yes’.” Sec.18a (1),(4),(6),(8) & (9) (emphasis added)

It is clear under the language of Section 18a(6), as it existed in 1998, that the village clerk and the village election officials are directed to conduct the election in the village and that

the township clerk and the township election officials are directed to conduct the election in the township separately. No one reading the 1998 language would even suggest that the village clerk and the village election officials were directed to conduct not only the village election but to also cumulate the votes of the village electors and the votes of the township electors. "Respectively" means separately, and the election in the village is conducted separately from the conduct of the election in the township. Section 18a(8) makes it equally clear that the votes of village electors and the township electors are not to be cumulated because it specifies that the "results of the election " not the result of the election, "shall be canvassed by the board of canvassers of the village and the board of canvassers of each township in which the village is located." There are "results" only if there are two separate vote counts, a count of the village electors' votes on the disincorporation question and a separate count of the township electors' votes on the disincorporation question.

Finally, Section 18a(9) makes it equally clear that the votes of the village electors and the township electors are not to be cumulated because it specifies that disincorporation takes place only if there is a "yes" vote by "2/3 of the electors voting on the questions", not 2/3 of the electors voting on the question. For there to be voting on the "questions" (plural), there must be a count of the village electors' votes on the disincorporation question separate from the count of the township electors' votes on the disincorporation question. Cumulating the votes of the village electors and township electors would result in there being a vote only on the "question", not on the statutorily required "2/3 of the electors voting on the questions" (Section 18a(9))

Almost all of the changes in Section 18a brought about by the 2003 amendments were conforming changes: the substitution of "township clerk" wherever "village clerk" was used previously; specifying that the initial petition of the village electors requesting a village

disincorporation vote under Section 18(a)(1) "shall be filed with the township clerk"; and, the substitution of "clerk and election officials of each township" where "clerk and election officials of the village and each township" was used previously in Section 18a(6). There were also changes made to Section 18a to conform it to changes made in the election laws generally. This substitution of the township clerk for village clerk did not change the statutory right set forth in Section 18a of the village electors to vote on the disincorporation of the Village; the only change was the identity of the public official who was directed to carry out the voting rights already established prior to the 2003 amendments. The crucial words that clearly mandated an election conducted separately in the village remain unchanged in form and meaning: "a petition signed by not less than 15% of the registered electors of the village requesting a vote on the question of whether the village shall disincorporate" in MCL 74.18a(1); "respectively" in MCL 74.18a(6); "results" and "canvassed by the board of canvassers of the village" in MCL 74.18a(8); and "questions" in MCL 74.18a(9).

Thus, the history of amendments to Section 18a(6) confirms that the only interpretation which gives meaning to all of the words in Section 18a and the legislative intent to provide to the village electors the right to a vote on disincorporation is that the Township Clerk is statutorily directed to conduct the election in the Village and the Township separately. Therefore, because the Township Clerk's decision that the disincorporation ballot issue are to be cumulated reads the word "respectively" out of Section 18a(6), reads the word "results" out of Section 18a(8) and reads the word "questions" out of Section 18a(9) in violation of the Supreme Court's holding in Wickens, 465 Mich 53 at 60. Tthis Court should hold that the Township Clerk's cumulated vote decision violates Section 18a(1) and (6). MCL 74.18a(1)&(6).

III. INTERPRETING MCL 74.18a AS REQUIRING CUMULATIVE VOTING RAISES SERIOUS EQUAL PROTECTION ISSUES UNDER ARTICLE 1, SECTION 2 OF THE MICHIGAN CONSTITUTION

MCL 74.18a is unusual in that the entire statutory section turns upon the filing of a petition requesting a vote--"a petition signed by not less than 15% of the registered electors of the village requesting a vote on the question of whether the village shall disincorporate shall be filed with the township clerk." (emphasis added). In other Michigan statutes which deal with disincorporation or incorporation and which includes a petition requirement, the petition does not request a vote on the desired action, instead the petition requests that desired action be taken, e.g. a petition that the incorporation of a city be vacated.² Thus, this is a case involving voting rights, as evidenced by the petitions which the Village electors signed:

"We, the undersigned registered electors of the Village of Onekama, in Onekama Township, Manistee County, Michigan, respectfully petition and request a vote on the question of whether the Village of Onekama shall disincorporate into Onekama Township." (Schwing Aff. Att.1) (emphasis added).

Because MCL 74.18a is centered upon the voting rights of the Village electors on Village disincorporation, it must comply Article 1, Section 2 of the Michigan Constitution:

§ 2. Equal protection; discrimination

Sec.2. No person shall be denied the equal protection of the laws"

A citizen's right to vote is a fundamental right which is protected under equal protection

² Section 14a of the Home Rule City Act states: "Whenever the qualified electors of any city incorporated under the provisions of this act shall file a petition with the city clerk, which petition shall be . . . signed by not less than 1/4 of the registered electors of such city . . . , **praying that the incorporation of such city be vacated**" (MCL117.14a) (emphasis added). Similarly, Section 2 of the Home Rule Village Act states: "Villages may be incorporated or territory detached therefrom or added thereto, or consolidation made of 2 or more villages into 1 village by proceedings originating by **petition therefor**" MCL78.2(emphasis added).

principles. Brouwer v. Bronkema, 377 Mich. 616, 141 N.W.2d 98 (Mich. 1966). Equal protection of the laws "requires the States to render substantial equality between citizens except where there exist differences justifying the classification of citizens, in which event there must be equality within the classes, and that the differences which may justify classification must be such as bear reasonable relation to permissible State objectives sought to be achieved by classification and not such as are merely arbitrary and capricious." 367 Mich. at 347. Equal protection of the laws is denied to the electors of the Village under the Township Clerk's interpretation of the MCL 74.18a that the votes on Village disincorporation of the Village electors and the Township electors are to be cumulated. This is so because in the analogous situation where a village could be faced with loss of its government through annexation, the Legislature has specified that "[a] village having a population of 4,200 or more shall not be annexed to a contiguous unit of government unless a majority of the qualified and registered electors residing within the village vote in favor of the annexation" MCL42.34(7) The electors of both villages stand in the same relationship to a governmental action, loss of their village government at the hands of state law, but electors in a large village have their right to a separate vote guaranteed by statute while the electors in this small village have absolutely no right to a separate vote, if the Township Clerk's cumulative vote interpretation is correct. Basing the level of protection accorded to an elector's right to vote solely on the size of the governmental entity in which the elector resides bears no rational relationship to any permissible state objective sought to be achieved by this type of population classification. . . . Thus, because there is no rational basis for the legislature's protection of a large village's right

to a separate vote count when it faces loss of its governmental identity while denying that same protection to a separate vote count for a similarly situated small village, the Township Clerk's cumulative vote interpretation of MCL78.14a would raise serious equal protection issues.

Faced with a similar problem in Broukema, the Michigan Supreme Court stated that "[i]t is our clear duty to construe such provisions to avoid invalidating them whenever it is possible to do so." 367 Mich. at 648. Here, the constitutional invalidity of MCL 74.18a is easily avoided when the interpretive maxim of giving meaning to all of the words in the statute is followed. Giving meaning to the words "in the village " as used in Section 18a(4), giving the word "respectively" in Section 18a(6) its ordinary meaning of "separately", giving meaning to the plural word "results" in Section 18a(8), and giving meaning to the plural word "questions" in Section 18a(9), all result in the conclusion that Section 18a(6) directs the Township Clerk to conduct the election in the Village and the Township separately and directs her to apply the 2/3 vote requirement to the question voted upon by the Village electors and to apply the 2/3 vote requirement to the question voted upon by the Township electors.

IV. THE STANDARDS FOR ISSUANCE OF TEMPORARY INJUNCTION ARE SATISFIED

A four factor test is applied to determine whether the standards for issuance of a temporary injunction are satisfied: (1) likelihood of success on the merits; (2) the irreparable harm to the plaintiff if the injunction is not granted; (3) the risk that the party seeking the injunction would be harmed more by the denial of the injunction than the party being

restrained would be by the granting of the injunction; and, (4) the public interest. See, e.g., Campau v. McGrath, 185 Mich. 724, 729; 463 N.W.2d 186 (1990).

There is a strong likelihood of success on the merits, here. The only interpretation of the MCL74.18a which gives meaning to all the words in that statute is that the election is to be directed in the Village and the portions of the Township outside the Village respectively, especially because "respectively" means "separately." Moreover, all inferences must be liberally construed in favor of the Village, which is at risk, because Article VII, Sec.34 of the Michigan Constitution states that "[t]he provision of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. . . ." Finally, the Township Clerk's decision that votes of the Village Electors and the votes of the Township electors are to be cumulated reads the words "in the village" out of Section 18a(4), reads the word "respectively" out of Section 18a(6), reads the plural word "results" out of Section 18a(8) and reads the plural word "questions" out of Section 18a(9) and raises questions about the constitutionality of MCL74.18a under equal protection principles.

The irreparable injury to plaintiff's protected voting rights are manifest. If the votes on the Village disincorporation issue cast by the Township electors and the Village electors are combined, there will be no way to ever know whether 2/3 of the Village voters cast ballots in favor of disincorporation. Until that issue is resolved in the court system, there must be a separate tally of the votes cast by the Village electors on the ballot and that separate tally must be preserved. The harm to the defendant is negligible because the ballots cast by the Village

electors can be placed in sealed ballot box and counted by hand. A hand count of at most 388 ballots is a mere inconvenience compared to the harm to the Village elector's rights if it is later decided that a cumulated count violates the statute or the Michigan Constitution. Preservation of a citizen's right to vote is always in the public interest.

Thus, all four factors weigh heavily in favor of this Court granting an immediate temporary injunction restraining the Clerk from conducting the election on the Village Disincorporation issue in the Village and the portions of the Township outside the Village together in one vote count and from combining the votes of Village and Township electors.

CONCLUSION

For the reasons set forth above, this Court should hold that the Township Clerk's decision directing that the votes of the disincorporation ballot issue should be cumulated violates the language of MCL 74.18a(1), (4), (6), (8)&(9). For a remedy, this Court should issue a writ of mandamus directing the Township Clerk to conduct the election in the Village and the Township outside the Village separately under MCL74.18a and to issue a temporary injunction restraining the Township Clerk from conducting the election on the Village Disincorporation issue in the Village and the Township in one vote count and from combining the votes of the Village electors issue with the votes cast by the Township electors.

Respectfully submitted,


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