

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

CITY OF TROY,
Plaintiff,

v

Case No: 10-115380-CZ
Hon. Denise Langford Morris

EDWARD KEMPEN,
Defendant.

OPINION AND ORDER

This matter is before the Court on Plaintiff's Motion for Expedited Review of Complaint seeking Declaratory Judgment and Defendant's Motion to Dismiss. The Court heard oral arguments and took the matter under advisement.

On December 9, 2010 Defendant filed a petition to adopt an ordinance with the Troy City Clerk. The petition is entitled: Proposal 1, Library Protection Ordinance With No New Taxes. It states: "In order to assure access to quality local library service, the City of Troy shall operate and maintain a public library open to the public for not less than 55 hours each week". Plaintiff filed the instant lawsuit for issuance of a declaratory judgment finding that Defendant's proposed ordinance petition is not legislative in character and therefore not subject to the rules of initiative petition under Troy's City Charter. Defendant argues that he is not a proper party and that the proposal is legislative in character.

Having considered the merits and being fully advised in the premises, the Court finds that Defendant is a properly named party to this lawsuit. Defendant gathered signatures, assembled circulated petitions and formally submitted them to the City Clerk. Defendant was the individual officially notified that the signature requirements had been satisfied. The Court finds that the Complaint states a viable claim seeking declaratory

relief. Therefore, dismissal is not appropriate and Defendant's motion is denied.

Under the Home Rules Cites Act, MCL 117.4 (i), a city is empowered to provide for initiative for all matters within the scope of its powers. Courts have interpreted this language to mean that the right of initiative extends only to legislative acts. *West v Portage*, 392 Mich 458 (1974). Voter initiative does not apply to those instances where the proposed ordinances affect the fiscal affairs of the city without regard to the budget or to the overall fiscal program. *Citizen's Lobby of Port Huron v Port Huron City Clerk*, 132 Mich App 412 (1984). This Court finds that the proposed initiative would impair the efficient administration of the municipality and therefore concludes that it is not legislative.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C) (8) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Request for a Declaratory Judgment that the proposed initiative ordinance is not legislative is GRANTED.

This disposes of the last pending claim and closes the case.

IT IS SO ORDERED.

DATED: FEB 7, 2011

/s/Denise Langford Morris CM
DENISE LANGFORD MORRIS
Circuit Court Judge