

James R. Giddings  
Circuit Judge - Retired  
6000 Lounsbury Road  
Williamston, Michigan 48895

November 19, 2024

The Honorable George Brookover  
Mayor of the City of East Lansing  
City Hall  
East Lansing, Michigan 48823

Dear Mayor Brookover:

It is my understanding that there is serious discussion among members of the East Lansing City Council about filing a lawsuit to nullify the charter amendment recently adopted by a clear majority of East Lansing voters. Respectfully, I suggest that a legal challenge to Proposal 1 presents a problem for several practical reasons. First, resolution of such an action will turn on the factual situation presented to the court. Since an array of factual scenarios and individuals are likely impacted by the new charter provision, it would be a practical impossibility for the court to anticipate every possible factual situation and rule on every single one. In short, that problem presents to the Court the question of standing.

I know that you are aware of the concept of standing which requires a party to demonstrate a genuine factual dispute as well as some actual injury. The claim may not be grounded merely on speculation and guesswork. I submit that the city will not be able to establish an actionable injury for the simple reason that it cannot present facts showing such a specific injury. Merely arguing possibilities -- that is speculation -- will not establish the legal requirement of standing.

The prudent course is to let the situation evolve for several months or perhaps a year and then evaluate whether the city's power to enforce the rental laws has been significantly compromised. Until COVID struck, the City of East Lansing was zealous and successful in its enforcement of rental regulations. For reasons which are no longer relevant, the City abandoned that level of enforcement. The supporters of Proposal 1 strongly believe that this historical level of enforcement should be reinstated.

Its supporters argue that the new charter amendment will not have the slightest effect on enforcement. But, either way the number of cases and ruling by district court judges will be enlightening as to the vitality of rental regulations in light of the new amendment. Certainly, in some of those cases, the district court judges will rule on the impact of the new charter provision.

A facial challenge to the city charter amendment is not only premature. It has no legal merit in my view. The City Charter Amendment does not limit the City's ability to zone or regulate rent paying tenants. The citizens have a constitutional right implemented by statute to pass this Amendment initiated by petition of the citizens. There is no conflict with state zoning law in my view.

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I have looked at the possible challenges to the City Charter Amendment. I have concluded they have no legal merit and any suit the City might file will likely be dismissed for lack of standing, as well as for lack of stating a valid cause of action. If there is any doubt about this, the City may employ an independent counsel who has substantial expertise in the area of municipal law to look into the reasons for the validity of the citizens action in passing this Charter Amendment. Neither the Governor's legal counsel nor the Attorney General found any legal problems with the East Lansing Charter Amendment when it was submitted to them. I have confidence that an attorney looking at the legal merits with an unbiased eye would reach the same conclusion as their interim review provided.

The City's first duty is to follow the law. In this case, that means implementing the City Charter as written. It is important to remember that this situation has been created as a result of the city's overzealous enforcement of ordinances governing rentals! This action has consistently resulted in the city being slapped down by both district and circuit judges. The voters have provided the council and the city with a fix. It only makes sense to respect the voters' choice.

Very truly yours,

James R. Giddings

*James R. Giddings*  
Signed with Permission  
by PLR