

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

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**PEOPLE OF THE STATE OF MICHIGAN,**

Plaintiff/Appellant,

-v-

**BRANDON MICHAEL HALL,**

Defendant/Appellee.

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Supreme Court  
Docket No.

150677

Court of Appeals  
Docket No. 321045

Ottawa County Circuit Court  
Case No. 13-037857-AR

**DEFENDANT/APPELLEE'S SUPPLEMENTAL BRIEF**

**IN OPPOSITION TO LEAVE TO APPEAL**

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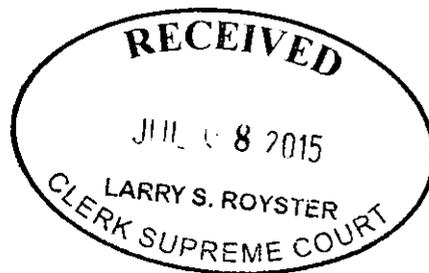
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Dated: July 2, 2015

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**JUDGMENT APPEALED**

The Attorney General is seeking leave to appeal from the Court of Appeals' Opinion affirming the rulings of the Circuit and District Courts.

## **STATEMENT OF QUESTIONS PRESENTED**

1. Do MCL 168.937 and MCL 168.554c conflict such that the Defendant's conduct may only be charged under the latter statute?
2. Is the "Rule of Lenity" relevant in this case?
3. Would charging the Defendant with felony forgery under MCL 168.937 violate his due process rights?

## **CONCISE STATEMENT OF PROCEEDINGS AND FACTS**

The state charged the Defendant under the Election Law Forgery statute, MCL 168.937. The defense claims the only proper charge is under MCL 168.544c. The 58<sup>th</sup> District Court agreed with the Defendant.

The Attorney General appealed to Ottawa County Circuit Court which upheld the District Court.

The Attorney General filed leave to appeal with this Court. Briefs were filed by both parties.

The Court ordered supplemental briefs addressing the questions presented on May 22, 2015.

## INDEX OF AUTHORITIES

### Case Law

<i>BMW of North America v Gore</i> , 317 US 559 (1996)	vi
<i>Bell v United States</i> , 349 US 81 (1955)	vi
<i>Bukowski v City of Detroit</i> , 478 Mich 269 (2007)	v
<i>People v Bergevin</i> , 406 Mich 307 (1979)	vi
<i>People v Carter</i> , 106 Mich App 765 (1981)	v
<i>People v Denio</i> , 454 Mich 691 (1997)	vi
<i>People v Jahner</i> , 433 Mich 490 (1989)	vi
<i>People v LaRose</i> , 87 Mich App 298 (1978)	v
<i>People v Matoon</i> , 217 Mich App 275 (2006)	v
<i>People v Shaw</i> , 27 Mich App 325 (1978)	v
<i>U.S v Batchelder</i> , 442 US 114 (1979)	vi, vii

### Michigan Statutes

MCL 168.1, <i>et seq</i>	v
MCL 168.303	v
MCL 168.322	v
MCL 168.349	v
MCL 168.382	v
MCL 168.484	v
MCL 168.544(c)	ii, iii, v, vi, vii
MCL 168.925	v
MCL 168.937	ii, iii, v, vii
MCL 750, <i>et seq</i>	v

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Michigan Constitution 1963, Article 1, §17	vi
U.S. Constitution Amendment XIV	vi

## ARGUMENT

### **I. MCL 168.544 AND 544c ARE THE EXCLUSIVE CHARGES AND PENALTIES FOR THE VIOLATIONS OF THE ACTS OF THE DEFENDANT.**

The statutes in question are contained in the Michigan Election Law. MCL 168.1, *et seq.* The Defendant has not been charged under the criminal code. MCL 750, *et seq.*

MCL 168.937 says that provisions of that section "except" as expressly provided apply to all petitions circulated under authority of the election law (emphasis added).

By adding that provision, the Legislature must have intended that not all forgeries under the election law would be felonies.

That language would make no sense otherwise. Every word should have an effect and not be surplusage. *People v Matoon*, 217 Mich App 275 (2006); *Bukowski v City of Detroit*, 478 Mich 269 (2007). That language has been part of Section 937 since it was enacted.

The election law has been modified several times since MCL 168.937 was first enacted. In 168.544c, the Legislature made the acts of the Defendant a misdemeanor. They expressly did so. To further emphasize the acts as a misdemeanor, the Legislature mandated that that fact be placed on nominating petition.

General rules of statutory construction confirm our position.

When two subjects encompass the same matter, one being specific and the other general, the specific statute controls. *People v Shaw*, 27 Mich App 325 (1978).

*People v Carter*, 106 Mich App 765 (1981), states that where the Legislature carves out an exception to the general statute and provides a lesser penalty, the prosecution must change the statute providing a lesser penalty.

Section 544c is an exception to the general statute, an exception the Legislature anticipated when they enacted 937. See also *People v LaRose*, 87 Mich App 298 (1978). Leave to appeal that decision was denied May 2, 1979.

The intent of the Legislature to make signing a fictitious or forged name to a petition a misdemeanor is found in MCL 168.484. That section applies to any initiate or referendum petition or to any ballot proposed amending the Constitution. It also applies to school elections (MCL 168.303); city elections (MCL 168.322); township elections (MCL 168.349); village elections (MCL 168.382); and recall elections (MCL 168.925).

The Attorney General's argument that 544c does not require an element of deceit is questionable. The purpose of signing someone's name to a petition is to qualify the petition. The petition itself warns people not to do so. If someone ignores that warning, are they not intending to deceive?

In any event, 544c covers deceitful and fraudulent intent. The exception does not say that it applies only to persons who do not intend to deceive.

## **II. THE RULE OF LENITY IS RELEVANT TO THIS CASE.**

We believe applying the rules of statutory construction should affirm the lower courts' opinions but if it does not, the Rule of Lenity should.

The Rule of Lenity is recognized in Michigan in *People v Jahner*, 433 Mich 490 (1989); *People v Denio*, 454 Mich 691 (1997). The essence of the rule is that it is the presumption to resolve doubts in the enforcement of our penal code in favor of the lesser instead of the harsher punishment. This was set forth in *People v Bergevin*, 406 Mich 307 (1979) which quoted *Bell v United States*, 349 US 81 (1955).

If the Court decides these two statutes would be covering the same facts, then the Rule of Lenity would be relevant and the charge with the lesser penalty be applied.

## **III. CHARGING THE DEFENDANT WITH A FELONY IN THIS CASE WOULD VIOLATE HIS DUE PROCESS RIGHTS.**

The Michigan Constitution provides no person shall be deprived of life, liberty or process with due process of law. Constitution 1963, Art 1, §17. The United States Constitution so provides in the Fourteenth Amendment.

The United States Supreme Court has held that due process extends to the penalties also. *BMW of North America v Gore*, 317 US 559 (1996), not alone prohibited conduct must be made clear but also the punishment.

In *U.S. v Batchelder*, 442 US 114 (1979), the Supreme Court said it did not apply in that case. There were two statutes in separate sections of the U.S. penal code that prohibited the same conduct, one with a harsher sentence than the other.

*Batchelder* can be distinguished by the fact that there were no warnings as are on the nominating petitions stating what the maximum punishment could be.

A person with a nominating petition would believe that signing a forged name would be a misdemeanor. There was no warning it could also be a felony.

That warning is directed by the statutes. Fundamental fairness and justice requires the state to be held to its word.

### **SUMMARY**

The Attorney General's position that MCL 168.544c is not the sole charge for the acts in question requires the Court to ignore the words "except as otherwise provided".

If those words were not in the statute, then he would have discretion on which section to use. I know of no approach to statutory construction that allows a court to ignore the express language of a statute.

If that phrase was not included, the Rule of Lenity would still apply. The two statutes prohibit the same conduct of signing another's name to a nominating petition.

If the phrase was not present in MCL 168.937, the question of due process would still be present. The Legislature directed the warning that such conduct would be a misdemeanor be placed on the nominating petition.

A person must be advised as to what penalties would be applied and to mislead them would be a denial of due process.

### **RELIEF REQUESTED**

Appellee respectfully request leave to appeal be denied.

Respectfully Submitted:



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-v-

BRANDON MICHAEL HALL,

Defendant/Appellee.

Supreme Court Docket No. 321045

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20<sup>th</sup> Circuit Court Case No. 13-37857-AR

58<sup>th</sup> District Court Case No. GH-13-32796-FY

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STATE OF MICHIGAN )  
County of Ottawa )§

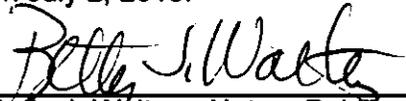
Sally K. Serrano, being first duly sworn, deposes and says that she is employed by the law firm of HANN PERSINGER, P.C., and that on July 2, 2015, she personally mailed by regular, first-class mail, with full postage prepaid thereon, to: Richard L. Cunningham, Assistant Attorney General, 3030 West Grand Blvd., Suit 10-200, Detroit, Michigan 48202, the following documents in the above entitled cause:

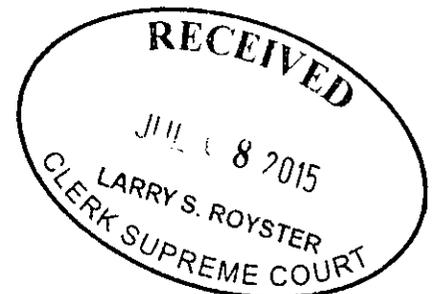
1. Defendant/Appellee's Supplemental Brief in Opposition to Leave to Appeal; and
2. An Affidavit of Mailing.

Further, deponent says not.

  
Sally K. Serrano

Subscribed and sworn to before me  
on July 2, 2015.

  
Betty J. Walters, Notary Public  
Allegan County, Michigan  
My Commission Expires: 11/17/16  
Acting in and for Ottawa Co., MI



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July 2, 2015

Clerk of the Michigan Supreme Court  
Michigan Hall of Justice  
P.O. Box 30052  
Lansing, Michigan 48909

Re: People of the State of Michigan v Brandon Michael Hall  
Supreme Court Docket No. 150677  
Court of Appeals Docket No. 321045  
20<sup>th</sup> Circuit Court Case No. 13-37857-AR  
58<sup>th</sup> District Court Case No. 13-32796-FY

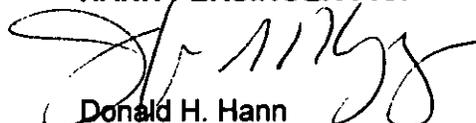
Dear Clerk:

Enclosed herewith for filing in the above captioned cause, please find the original of Defendant'/Appellee's Brief in Opposition to Leave to Appeal and seven (7) copies of the same to be submitted to the judges.

Also enclosed is an Affidavit of Mailing verifying the mailing of the same to the Attorney General's Office and I thank you for your assistance on this filing.

Yours very truly,

**HANN PERSINGER P.C.**

  
Donald H. Hann  
for Telephone No. (616) 396-1245/ext 103

DHH:sks  
Enclosures

cc: Richard L. Cunningham (w/enc)  
Brandon Hall (w/enc)

