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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

CLARKSTON CARES 2022,

2022-195571-AW

Plaintiff,

JUDGE RAE LEE CHABOT

vs.

Case Number: 2022-  
Hon.

-AW

JENNIFER SPEAGLE, as  
CLERK OF  
THE CITY OF THE VILLAGE OF  
CLARKSTON, in  
her Official Capacity.

Defendant.

HANNAH STOCKER (P82847) Attorney for Plaintiff 23332 Farmington #98 Farmington, MI 48336 (248) 252-6405 (telephone) hannah@stockerlawpllc.com	
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To the best of Plaintiff's knowledge, there is no other pending or resolved civil action arising out of the transaction or occurrence alleged in this Complaint.

**COMPLAINT FOR WRIT OF MANDAMUS AND DECLARATORY RELIEF**

NOW COMES Plaintiff, Clarkston Cares 2022, by and through its attorney, Hannah Stocker, and for this cause of action against the above-named Defendant, states as follows:

**GENERAL AND JURISDICTIONAL ALLEGATIONS**

1. This is a lawsuit to protect the rights of the electors of the City of the Village of Clarkston, through Plaintiff ballot committee, to be heard on an initiatory petition to place a charter amendment on the ballot in Clarkston.

2. Plaintiff, Clarkston Cares 2022 (“Plaintiff”), is a ballot question committee properly formed under the laws of the State of Michigan. Plaintiff was formed for the purpose of supporting a charter amendment to regulate and allow for medical marihuana facilities in the City of the Village of Clarkston.

3. The City of the Village of Clarkston (“Clarkston”) is located in Oakland County, State of Michigan.

4. Defendant, Jennifer Speagle (“Defendant”), is the City Clerk for Clarkston, Oakland County, Michigan.

5. Defendant is vested with the responsibility and duty to receive initiatory petitions and canvass the signatures thereon pursuant to the initiative process provided in the Clarkston Charter, as well as the Michigan Election Law, MCL 168.646a, and the Home Rule City Act, MCL 117.25.

6. Defendant is denying Plaintiff its statutory right to initiate a charter amendment in Clarkston for the November 2022 election based on the erroneous premises that Plaintiff’s petition was not timely submitted.

7. Venue is appropriate in Oakland County pursuant to MCL 600.1615.

8. This Court has jurisdiction to consider original complaints for mandamus and declaratory relief pursuant to, amongst other things, §§ 601 and 605 of the Revised Judicature Act, MCR 2.605, and MCR 3.305.

### **BACKGROUND FACTS**

9. From May 12, 2022 to July 1, 2022, Plaintiff collected signatures from citizens of Clarkston to initiate an Amendment to the Clarkston Charter, which would allow for the establishment of two marihuana facilities and create system to regulate and select licensees for marijuana facilities in Clarkston (the “Initiative Petition”).

10. On July 1, 2022, Plaintiff submitted its Initiative Petition to Defendant.

11. Upon information and belief, on or before July 13, 2022, Defendant completed her canvass of the signatures and sent the petitions to her attorney for review.

12. On August 11, 2022, forty-two days after Plaintiff submitted its petitions, Defendant sent Plaintiff's Counsel a letter, indicating that she was refusing to certify the petition for the November 2022 election because the "July 1, 2022 was too late to be considered for the November 2022 election."

13. As a result, Defendant has refused to certify the ballot language for the next general election.

14. Defendant has no valid basis to refuse to certify the Initiative Petition for the November 2022 election.

15. Defendant's refusal to certify the Initiative Petition is in direct violation of MCL 168.646a and MCL 117.25.

16. Defendant had, and continues to have, a clear and mandatory duty to certify the petition and to cause the initiative to be presented to the electors of Clarkston **at the next regular election.**

17. Plaintiff has filed this action to compel the Defendant to abide by Michigan Election Law and the Home Rule City Act and certify the petition immediately, so that it may be placed on the ballot for the next regular election.

**THE HOME RULE CITY ACT AND MICHIGAN ELECTION LAW**

18. Initiative petitions to amend City Charters are governed by the Home Rule City Act, MCL 117.1 et. seq.

19. Pursuant to MCL 117.25 (1), “[a]n initiatory petition authorized by [the Home Rule City Act] shall be addressed to and filed with the city clerk. . . The petition shall be signed by at least 5% of the qualified and registered electors of the municipality.”

20. MCL 117.25(3) requires the city clerk to canvass received petitions to assess whether they have been signed by the requisite number of electors.

21. “Within 45 days from the date of the filing of the petition, the city clerk shall certify the sufficiency or insufficiency of the petition.” MCL 117.25(3).

22. “If the petition contains the requisite number of signatures of registered electors, the clerk **shall** submit the proposed amendment to the electors of the city at the next regular municipal or general state election.” MCL 117.25(3) (emphasis added).

23. Amendments proposed by initiatory petition “shall be submitted to the electors of the city at the next regular municipal or general state election held in the city not less than 90 days after the filing of the petition.” MCL 117.21(1).

24. Furthermore, MCL 117.22 requires that the governor review charter amendments “passed pursuant to the provisions of [the Home Rule City Act]” prior to its submission to the electors.

25. However, “[i]f it be an amendment proposed by initiatory petition, it shall be submitted to the electors notwithstanding [the governor’s] objections.” MCL 117.22.

26. Because Plaintiff’s charter amendment was proposed by initiative petition and contained sufficient signatures, it must be placed on the ballot for the next regular municipal election, that being November 8, 2022.

**THE CLERK HAS A DUTY TO CERTIFY THE PETITION AND BALLOT QUESTION**

27. Clarkston is a “home rule city” pursuant to the Home Rule City Act, MCL 117.1 *et seq.*, which makes clear that a city’s laws and ordinances are “subject to the constitution and general laws of [Michigan],” such as the Michigan Election Law.

28. MCL 168.646a(2) states:

If a ballot question of a political subdivision of this state including, but not limited to, a county, city, village, township, school district, special use district, or other district is to be voted on at a regular election or special election, the ballot wording of the ballot question must be certified to the proper local or county clerk not later than 4 p.m. on the twelfth Tuesday before the election. If the wording is certified to a clerk other than the county clerk, the clerk shall certify the ballot wording to the county clerk at least 82 days before the election. Petitions to place a county or local ballot question on the ballot at the election must be filed with the clerk at least 14 days before the ballot wording must be certified to the local clerk.

29. MCL 168.646a(3) states that “[t]he provisions of this section apply to and control the filing deadlines for candidates for local office to be elected at the general November election and for all ballot questions of a political subdivision of this state at any regular election, primary election, or special election **notwithstanding any provisions of law or charter to the contrary.**” (emphasis added).

30. Notably, MCL 168.646a(3) was amended by the Legislature in 2015, following the Michigan Court of Appeals opinion in *Meridian Charter Township v Ingham County Clerk*, 285 Mich App 581; 777 NW2d 452 (2009).

31. Such amendment was made to clarify the original intent of the Legislature that MCL 168.646a “supersedes any and all conflicting provision of law or charter prescribing the filing deadlines . . . for all ballot questions of a political subdivision of this state at any regular election, primary election, or special election.” See Compiler’s Notes to MCL 168.646a.

32. Prior to such amendment, MCL 168.646a(3) stated, “[t]he provisions of this section apply to and control the filing deadlines . . . for all ballot questions of a political

subdivision of this state at any regular election, primary election, or special election notwithstanding any provisions of law or charter to the contrary, unless an earlier date for filing of affidavits or petitions, including nominating petitions, is provided in a law or charter, in which case the earlier filing date is controlling.” (emphasis added).

33. As such, MCL 168.646a(3) now requires compliance with state law related to the filing deadlines for all ballot questions of a political subdivision, rather than a conflicting provision of a city charter.

34. MCL 168.646a(2) obliges the local clerk to certify a ballot question on a voter’s initiative, notwithstanding its content.

35. It states in, in pertinent part, the “[local] clerk *shall* certify the ballot wording to the county clerk at least 82 days before the election.” MCL 168.646a(2) (emphasis added).

36. It is not within the scope of the clerk’s authority to assess the substance of the petition. *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 371 (2012).

37. The local clerk’s duty under MCL 168.646a(2) is to certify the ballot wording.

38. Therefore, Defendant has a duty to certify the ballot question language for the November 2022 election by August 16, 2022.

### **COUNT I – WRIT OF MANDAMUS**

39. Plaintiff hereby incorporates by reference all previous paragraphs as if fully set forth herein.

40. “Mandamus is the appropriate remedy for a party seeking to compel action by election officials.” *Citizens Protecting Michigan’s Constitution v Sec’y of State*, 280 Mich App 273, 283; 761 NW2d 210 (2008).

41. MCL 117.25 (7) states, “A person aggrieved by an action, or failure of action, of the city clerk may bring an action against the clerk in the circuit court for writ of mandamus or for other appropriate relief.”

42. In order to be entitled to mandamus, it must be demonstrated that:

(1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial in nature, and (4) the plaintiff has no other adequate legal or equitable remedy. *Id.* at 284; *White-Bey v Dep’t of Corrections*, 239 Mich App 221, 223-24; 608 NW2d 833 (1999).

43. A clear legal right is a right that is “clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.” *Univ Med Affiliates, PC v Wayne Cty Executive*, 142 Mich App 135, 143; 369 NW2d 277 (1985) (citation omitted).

44. Plaintiff submitted its Initiative Petition in accordance with MCL 168.646a(2) and Plaintiff submitted a sufficient number of signatures for the proposal to be placed on the ballot.

45. Plaintiff’s Initiative Petition complies with all requirements of applicable portions of the Michigan Election Law.

46. Plaintiff has the right to have its initiative considered by the electorate of Clarkston at the November 2022 regular election.

47. Pursuant to MCL 168.646a(2), Defendant has a clear legal duty to certify the petition and to have the petition presented to the electors of Clarkston on the November 2022 ballot.

48. Defendant is required to certify the ballot question language to the Oakland County Clerk by 4 p.m. on August 16, 2022 pursuant to that section.

49. “A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Hillsdale Cty Senior Servs, Inc v Hillsdale Cty*, 494 Mich 46, 58 n 11, 832 NW2d 728 (2013) (quotation marks and citation omitted).

50. It is a ministerial act to place the proposed charter amendment on the ballot. See *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362; 820 NW2d 208 (2012) (“On the basis of the clear language in the statute and charter, it was a ministerial act for defendants to place the initiative petition on the ballot once the clerk determined that the petitions contained the required number of qualified signatures.”).

51. Aside from the action for mandamus, “plaintiff has no other adequate legal remedy.” *Barrow v City of Detroit Election Com’n*, 301 Mich App 404, 412; 836 NW2d 498 (2013).

52. The refusal by Defendant to certify the petition in the time prescribed by MCL 168.646a(2) is a violation of her clear legal duties.

53. Mandamus is appropriate and required to enforce this clear legal duty imposed on Defendant by MCL 168.646a and the public trust imposed on her as an elected public official under the laws and Constitution of Michigan.

## **COUNT II – DECLARATORY JUDGMENT**

54. Plaintiff hereby incorporates by reference all previous paragraphs as if fully set forth herein.

55. This Court has the authority to issue a declaratory judgment pursuant to MCR 2.605 because there is an actual controversy between the parties regarding whether Plaintiff’s initiatory



petition complies with the mandates of the Michigan Election Law and whether Defendant has a duty to certify it to the County Clerk prior to the next election.

56. This Court should issue a declaratory judgment that Plaintiff petition complied with the Michigan Election Law.

**REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Honorable Court:

- (a) Issue a Writ of Mandamus compelling Defendant to immediately certify the petition and cause the initiative to be presented to the electors of Clarkston on the November 2022 ballot;
- (b) Issue a declaratory judgment that Plaintiff's petition complied with the Michigan Election Law and the Home Rule City Act;
- (c) Declare that Defendant has a duty to certify the ballot question language, notwithstanding any objections from the governor; and
- (d) Order any and all such other relief as justice may so require.

Respectfully Submitted,

Dated: August 12, 2022

/s/ Hannah Stocker  
By: \_\_\_\_\_  
Hannah Stocker (P82847)  
Attorneys for Plaintiff  
23332 Farmington Road, #98  
Farmington, MI 48336  
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Defendant.

HANNAH STOCKER (P82847) Attorney for Plaintiff 23332 Farmington #98 Farmington, MI 48336 (248) 252-6405 (telephone) hannah@stockerlawpllc.com	
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**EX PARTE MOTION TO SHOW CAUSE WHY WRIT OF MANDAMUS SHOULD NOT ISSUE**

NOW COMES Clarkston Cares 2022, by and through its attorney, Hannah Stocker, and for its Ex Parte Motion to Show Cause Why Writ of Mandamus Should Not Issue, states as follows:

1. This action arises out of Defendant's refusal to place a voter's ballot initiative (the "Initiative"), petitioned by Plaintiff, Clarkston Cares 2022 ("Plaintiff"), on the November 8, 2022 ballot.

2. The purpose of the Initiative was to amend the City Charter to authorize two medical marijuana facilities within the vicinity of the City of the Village of Clarkston (“Clarkston”) and create a system to regulate the facilities within the city.

3. From May 12, 2022 to July 1, 2022, Plaintiff collected the signatures of over 10% of the electors of Clarkston.

4. On July 1, 2022, pursuant to an email agreement with the Clarkston City Manager, Plaintiff submitted its signatures to Defendant, Jennifer Speagle (“Defendant”) via the City’s 24 hour drop box. See **Ex. 1**.

5. On July 13, 2022, Plaintiff’s Counsel contacted Defendant, inquiring as to whether she had canvassed the signatures and if the petitions were sufficient

6. In response, Defendant advised Plaintiff’s Counsel that she had “canvassed the petitions and had sent them to the Clarkston attorney to look at.” She further indicated that she “should hear from [the Clarkston attorney] tomorrow and will give [Plaintiff’s Counsel] an update at that time.” **Ex. 2**.

7. Defendant failed to contact Plaintiff’s Counsel on July 14, 2022.

8. On July 18, 2022, Plaintiff’s Counsel requested Defendant provide a status of the petition sufficiency.

9. In her July 18, 2022 response, despite having canvassed the Initiative petitions, Defendant failed to provide an update as to their sufficiency and indicated that they were still being reviewed by her attorney. **Ex. 3**.

10. On August 4, 2022, Plaintiff’s Counsel again requested that Defendant provide an update as to the sufficiency of the petitions. **Ex. 4**.

11. Defendant failed to respond to this email.

12. On August 11, 2022, Defendant sent a letter to Plaintiff indicating that she was refusing to place Plaintiff's Initiative on the November 2022 ballot because it was "fil[ed] too late to be considered for the November 2022 election." **Ex. 5.**

13. Defendant's actions violate the Home Rule City Act.

14. If an initiatory petition submitted to a clerk pursuant to the Home Rule City Act "contains the requisite number of signatures of registered electors, the clerk shall submit the proposed amendment to the electors of the city at the next regular municipal or general state election held in the city which shall occur not less than 90 days following filing of the petition." MCL 117.21(3).

15. Additionally, an initiatory petition containing a proposal for a charter amendment "shall be submitted to the electors notwithstanding [the governor's] objections." MCL 117.22.

16. Despite receiving a sufficient number of signatures more than twelve weeks before the next regular municipal or general state election, Defendant has breached her duty to place the Initiative on the ballot for the November 2022 regular election.

17. For the reasons set forth in its brief, Plaintiff hereby petitions the Court to issue an order to show cause why a writ of mandamus should not issue, compelling Defendant to certify the ballot question language and place the ballot initiative on the ballot for the November 8, 2022 election.

18. Additionally, Plaintiff requests that this Honorable Court expedite the decision on this matter.

19. MCL 168.646a requires that a township clerk, such as Defendant, certify the ballot wording to a county clerk no later than 4 p.m. on the twelfth Tuesday before the election, in this case, August 16, 2022. **Ex. 6.**

20. Before ballots can be printed, proof ballots must be delivered to each County Election Committee, which must be comprehensively checked to ensure that the ballots are free of errors and omissions. **Ex. 7.**

21. The County Election Committee must also send a copy of the proof ballots to the Department of State's Bureau of Elections and to each candidate whose name appears on the ballot. **Ex. 7.**

22. Each candidate has two business days after receipt of the ballot to contact the County Clerk with any necessary corrections. **Ex. 7.**

23. Only after the Bureau of Elections grants its approval can official ballots be printed.

24. Once ballots are printed, they are inspected by the relevant County Election Committee for a final time and then delivered to the appropriate County Clerk, who must deliver printed ballots to municipal clerks at least 45 days before the election date, or by Saturday, September 24, 2022. MCL 168.714.

25. Upon information and belief, ballots for the August 2, 2022 general election will begin being printed in early September 2022.

26. In order for Plaintiff's proposed initiative to be included on the official ballot, this case must be resolved prior to early September 2022.

27. As such, Plaintiff respectfully requests that these proceedings be expedited as much as possible so that this Court can issue its decision (and one or more parties may appeal) before the deadline to begin printing ballot.

28. Plaintiff respectfully requests an immediate hearing on this Motion.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court to issue an Order for Defendant to Show Cause Why a Writ of Mandamus Should Not Issue. Plaintiff also requests

an award of its costs and attorney fees in having to bring this Motion and any other relief the Court deems necessary and just.

Respectfully Submitted,

Dated: August 12, 2022

/s/ Hannah Stocker  
By: \_\_\_\_\_  
Hannah Stocker (P82847)  
Attorneys for Plaintiff  
23332 Farmington Road, #98  
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**BRIEF IN SUPPORT**

**I. INTRODUCTION**

From May 12, 2022 to July 1, 2022, Plaintiff, Clarkston Cares 2022 (“Plaintiff”), circulated a ballot initiative, which, if passed, would amend the Charter in the City of the Village of Clarkston (“Clarkston”) to allow for two medical marijuana provisioning centers and establish a regulatory system for medical marijuana facilities in the City. Despite obtaining the signatures of over 10% of the voters of Clarkston and submitting the petitions on July 1, 2022, Defendant, Jennifer Speagle, City Clerk of Clarkston (“Defendant”), has refused to certify the ballot language for the next general state election (November 2022). This refusal goes against statutory mandates. As such, Plaintiff respectfully requests that this Court issue an order, compelling Defendant to show cause why a writ of mandamus shall not issue.

## II. BACKGROUND & FACTS

Plaintiff is a ballot question committee formed for the purpose of supporting a ballot initiative charter amendment (the “Initiative”) to authorize two medical marijuana provisioning centers and create a system to regulate such centers in Clarkston. From May 12, 2022 to July 1, 2022, Plaintiff reached out to citizens of Clarkston, seeking to gather signatures in support of the Initiative. Through its efforts, Plaintiff was able to obtain the signatures of over 10% of the voting electorate of Clarkston in the last election.

Having obtained a sufficient number of signatures to be placed on the ballot for the next general election, Plaintiff arranged to submit the Initiative to Defendant on July 1, 2022. Because the City Offices were closed from July 1 to July 4, 2022, Plaintiff’s representative coordinated with the City Manager to submit the petition via Clarkston’s 24-hour drop box on July 1, 2022.

**Ex. 1.** Plaintiff submitted the Initiative on or about 4:00 PM on that date.

On July 13, 2022, Plaintiff’s Counsel emailed Defendant and asked whether she had canvassed the signatures and determined the sufficiency of the petitions. **Ex. 2.** In her July 13, 2022 response, Defendant stated as follows:

I have canvassed the petitions and have sent them over to our attorney to look at. I should hear from him tomorrow and will give you an update at that time. **Ex. 2.**

Defendant failed to get back to Plaintiff on July 14, 2022. In fact, Defendant did not get back to Plaintiff until July 18, 2022. On that date, Defendant noted that her attorney was still reviewing the proposal. Plaintiff’s Counsel proceeded to follow up. **Ex. 3.** On August 4, 2022, Plaintiff’s Counsel again inquired as to whether Defendant had determined the petition’s sufficiency. **Ex. 4.** Defendant failed to respond to this email. Finally, on August 11, 2022, forty two days after receiving the petitions, Defendant emailed Plaintiff’s Counsel a letter. **Ex. 5.** In



this letter, Defendant noted that “[t]he City of the Village of Clarkston has 803 electors and you have provided 88 signatures that are appropriate and valid, so your petition has the proper amount of signatures.” Despite acknowledging that Plaintiff had obtained sufficient signatures, Defendant indicated that the “July 1, 2022 filing was too late to be considered for the November 2022 election” pursuant to guidance from Governor Whitmer’s Counsel, which was attached an exhibit (the “Whitmer Letter”). Pursuant to the Whitmer Letter, the governor’s office “will not approve proposed charter amendments or revisions after 4 p.m. on the twelfth Tuesday before the election” and “therefore strongly recommend submission of all proposed charter amendments to our office at least 60 days prior to the filing deadline.” **Ex. 8.**

Defendant, in relying on the Whitmer Letter, has missed the point and circumvented the right of the voters of Clarkston to vote on the Initiative at the next general election. The next regular election in the Clarkston is set to be held on November 8, 2022. Ballot wording of county and local proposal to be presented at the November general election must be certified by August 16, 2022 at 4:00 PM, pursuant to MCL 168.646a(2). Additionally, upon information and belief, the ballots will be printed on or about September 8, 2022.

As a result of this impending deadline, Plaintiff has brought this Motion to Show Cause Why Writ of Mandamus Should Not Issue, compelling Defendant to certify the ballot question language and have Plaintiff’s Initiative placed on the ballot for the November 8, 2022 election.

### **III. LAW & ARGUMENT**

The circuit court “has the power to compel an agency of government, through its officials to discharge a duty imposed by the law.” *Teasel v Dep’t of Mental Health*, 419 Mich 390, 411-12 (1984). When a government official fails to perform election-related duties, a party can petition the court for a writ of mandamus. *Warren City Council v Buffa*, 333 Mich App 422, 435; 960 NW 2d 166 (2020); *Citizens Protecting Michigan’s Constitution v Sec’y of State*, 280 Mich

App 273, 283; 761 NW2d 210 (2008) (“Mandamus is the appropriate remedy for a party seeking to compel action by election officials.”). “Mandamus will lie to compel the exercise of discretion, but not to compel its exercise in a particular manner.” *Teasel*, 419 Mich at 310.

A plaintiff bears the burden of establishing entitlement to the remedy. *Grabow v Macomb Twp*, 270 Mich App 222, 226 (2006). To do so, a plaintiff must show that (1) it has a clear legal right to performance of the specific duty sought to be compelled, (2) the defendant has a clear legal duty to perform such act, (3) the act is ministerial in nature such that it involves no discretion or judgment, and (4) the plaintiff has no other adequate legal or equitable remedy. *Barrow v City of Detroit Elect. Comm.*, 301 Mich App 404, 412; 836 NW2d 498 (2013).

An act is “ministerial” in nature if it is “described and defined by law with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Citizens Protecting Mich’s Const v Secretary of State*, 280 Mich App 273, 287 (2008) (internal citations omitted). In analyzing this prong, it is necessary to look at the words of the statute. See e.g. *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 371 (2012) (analyzing the clear language of the Home Rule City Act and City Charter to determine that it “was a ministerial act for defendants to place the initiative petition on the ballot”). A writ should issue if the statute uses mandatory language that leaves no room for interpretation and the governmental official’s duties are clearly delineated. See *id.* at 370 (noting that MCL 117.25(3) contains mandatory language that requires a clerk to submit proposed initiatory amendments with sufficient signatures to the public at the next election).

Upon satisfaction of these elements, an order for mandamus should issue. See e.g. *Barrow*, 301 Mich at 371 (holding that trial court abused its discretion by failing to enter an order of mandamus because plaintiff satisfied the elements of mandamus relief).

**A. Plaintiff has a clear right to compel Defendant and Defendant has a clear certify the ballot question language for the November 2022 election.**

The Michigan Election Law sets certain duties for the Clerk, pertaining to voter's ballot initiatives. MCL 168.646a(2) states:

If a ballot question of a political subdivision of this state including, but not limited to, a county, city, village, township, school district, special use district, or other district is to be voted on at a regular election date or special election, the ballot wording of the ballot question must be certified to the proper local or county clerk not later than 4 p.m. on the twelfth Tuesday before the election. If the wording is certified to a clerk other than the county clerk, the clerk shall certify the ballot wording to the county clerk at least 82 days before the election. Petitions to place a county or local ballot question on the ballot at the election must be filed with the clerk at least 14 days before the date the ballot wording must be certified to the local clerk.

Therefore, a City Clerk must also certify the ballot question language to the County Clerk 82 days before the election. MCL 168.646a(2). Certification is a ministerial task that offers no room for discretion. *Warren Cty Council v Buffa*, 333 Mich App 422, 435 (2020) (noting that the language of MCL 168.646a pertaining to certification “leaves no room for discretion.”). If a clerk fails to certify a ballot initiative in compliance with MCL 168.646a, a writ of mandamus should issue. See e.g. *Progress for Michigan 2020 v Jonseck*, unpublished per curiam opinion of the Court of Appeals, issued Sept 8, 2020 (Docket No. 354726) (attached as **Exhibit 9**).

Applying this to the case at hand, Defendant should be compelled to certify the ballot question language for the November 2022 election. The twelfth Tuesday before the November 8, 2022 election is August 16, 2022. Defendant has canvassed the signatures and has a duty to certify the wording by that date. Given that the ballot wording was submitted to Defendant on July 1, 2022, there is no reason for her to delay its certification to the Oakland County Clerk. Therefore, a writ of mandamus should issue, compelling Defendant to certify the ballot language as soon as possible.

**B. Plaintiff has a clear right to compel Defendant and Defendant has a clear legal duty to place the Initiative on the November 2022 election.**

In addition to the Michigan Election Law, Plaintiff's Initiative is governed by the Home Rule City Act ("HRCA"), specifically MCL 117.25. MCL 117.25 sets the requirements for ballot initiatives brought under the HRCA. Under that provision, an initiative must:

- Be addressed to and filed with the City Clerk, MCL 117.25(1);
- State what body, organization, or person is primarily interested in and responsible for the circulation of the petition and the securing of the amendment, MCL 117.25(1);
- Be verified by the affidavit of the circulator, MCL 117.25(1);
- Be signed by at least 5% of the qualified and registered electors of the municipality, each of whom write the date of signing and their street address after their signature, MCL 117.25(1);
- Comply with MCL 168.488 of the Michigan Election Law<sup>1</sup>, MCL 117.25; MCL 117.25(a);

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<sup>1</sup> MCL 168.488 requires that a petition comply with formatting requirements listed in MCL 168.482(1), (4), (5), and (6). The applicable sections of MCL 168.482 read as follows:

(1) Each petition under this section must be 8-1/2 inches by 14 inches in size.

(4) The following statement must appear beneath the petition heading:

"We, the undersigned qualified and registered electors, residents in the \_\_\_\_\_ congressional district in the state of Michigan, respectively petition for (amendment to constitution) (initiation of legislation) (referendum of legislation) (other appropriate description)."

(5) The following warning must be printed in 12-point type immediately above the place for signatures, on each part of the petition:

**WARNING**

A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

(6) Subject to subsections (7) and (8), the remainder of the petition form must be as provided following the warning to electors signing the petition in section 544c(1). In addition, the petition must comply with the requirements of section 544c(2).

Upon receipt of an initiative petition, the clerk has 45 days to canvass it to determine if it is signed by at least 5% of the registered electors of the city. MCL 117.25(3). By the forty-fifth day, “the city clerk **shall** certify the sufficiency or insufficiency of the petition.” MCL 117.25(3) (emphasis added). If the petition is signed by 5% of the registered electors of the city, “the clerk **shall** submit the proposed amendment to the electors of the city **at the next regular or general state election held in the city** which shall occur not less than 90 days following the filing of the petition.” MCL 117.25(3) (emphasis added). *These are mandatory provisions that offer no room for a clerk’s discretion.* The petition simply needs to meet the requirements of MCL 168.488 and the applicable HRCA provisions relating to charter amendments to vest the clerk’s duty.

Applying this to the case at hand, Defendant has a clear duty to place the voter’s initiative on the November 2022 ballot. To begin, the Petition complied with the requirements of MCL 168.488. Its petition face measured 8 ½ x 14 inches.

Additionally, it contained the following statement beneath the petition heading:

To the Clerk of the City of the Village of Clarkston: We, the undersigned qualified and registered electors, residents in the city of the Village of Clarkston, state of Michigan, respectfully petition for initiation of a charter amendment to end the City’s prohibition of medical marihuana facilities and establish a local licensing system and regulatory provisions for medical marihuana facilities to operate within the City. We respectfully request that this proposed amendment be submitted to a vote of the electors of the City of the Village of Clarkston for the November 8, 2022 General Election.

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(7) Each petition under this section must provide at the top of the page check boxes and statements printed in 12-point type to clearly indicate whether the circulator of the petition is a paid signature gatherer or a volunteer signature gatherer.

(8) Each petition under this section must clearly indicate below the statement required under subsection (7) and be printed in 12-point type that if the petition circulator does not comply with all of the requirements of this act for petition circulators, any signature obtained by that petition circulator on that petition is invalid and will not be counted.

Furthermore, it contained the warning required by MCL 168.482(5) in 12 point type:

**WARNING – A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.**

The petition also contained the requisite check boxes, denoting whether the circulator is a paid signature gatherer or volunteer signature gatherer and the warning invalidating the petitions for noncompliance with Michigan election law. See **Ex. 10 – Petition Face**<sup>2</sup>.

Finally, the petition contained what Defendant found to be 88 valid signatures of the voters of Clarkston. **This constitutes nearly 11 percent of Clarkston’s registered electors** (there are 803 electors in Clarkston) and Defendant herself admits that Plaintiff had obtained enough valid signatures. As such, Defendant’s duty under MCL 117.25 to submit the proposed amendment to the voters at the next general election has vested. Submission to the voters is a ministerial task that involves no use of discretion. As such, a writ of mandamus should issue.

Despite this fact, Defendant alleges she has no duty to submit the proposed amendment to the voters for the November 2022 election. She justifies this position by claiming that Plaintiff turned in its petitions too late to be placed on the November 2022. In doing so, she relies on MCL 117.22 and a guidance letter from Governor Whitmer’s office. This reliance is unfounded and incorrect.

MCL 117.21 dictates the process for amending a city charter. Under MCL 117.21(1), an amendment “may be proposed by the legislative body of the city on a 3/5 vote of the members-elect or by an initiatory petition.” Upon passage or proposal of the charter amendment, MCL 117.22 comes into play.

MCL 117.22 reads as follows:

Every amendment to a city charter whether passed pursuant to the provisions of this act or heretofore granted or passed by the state

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<sup>2</sup> It should be noted that Defendant currently has possession of the signed petition sheets.

legislature for the government of such city, before its submission to the electors, and every charter before the final adjournment of the commission, shall be transmitted to the governor of the state. If he shall approve it, he shall sign it; if not, he shall return the charter to the commission and the amendment to the legislative body of the city, with his objections thereto, which shall be spread at large on the journal of the body receiving them, and if it be an amendment proposed by the legislative body, such body shall re-consider it, and if 2/3 of the members-elect agree to pass it, it shall be submitted to the electors. If it be an amendment proposed by initiatory petition, it shall be submitted to the electors notwithstanding such objections.

Taken as a whole, MCL 117.22 appears to establish a review system for proposed charter amendments by the governor, in that amendments must be transmitted to the governor before placement on the ballot. However, unpacking MCL 117.22's explicit language, the first sentence only appears to apply to amendments "passed pursuant to the provisions of this act" or the state legislature, or thusfar granted. This suggests that it does not apply to an initiative petition. Only a legislative body can "pass" an amendment. They are the ones who vote on it and therefore can pass it. Additionally, the use of "heretofore" denotes passage of time. Websters Dictionary defines heretofore as "up to this time." See Heretofore, *Merriam Webster*, <<https://www.merriam-webster.com/dictionary/heretofore>> (accessed August 12, 2022).; see also Heretofore, *Collins Dictionary*, <<https://www.collinsdictionary.com/us/dictionary/english/heretofore>> (accessed August 12, 2022) (defining heretofore as "before this time" or "up to now". Because this relates to Amendments granted up to the time of the HRCA, there is no obligation that a ballot initiative be submitted to the governor prior to placement on the ballot.

Additionally, this reading is supported by the statute's legislative history. The original version of MCL 117.22 provided (in part) that, "Every amendment to a charter before its submission to the electors, and every charter before the final adjournment of the commission, shall be transmitted to the Governor of the State." This language encompassed all proposed

charter amendments. However, in 1913, this section was amended, adding restrictive language that it only applies to amendments “passed pursuant to the provisions of this act or heretofore granted or passed by the state legislature for the government of the city.” See *Sheffield v Detroit City Clerk*, 962 N.W.2d 157, 163-164 (2021) (Welch, J concurring) (providing an overview of HRCA amendment history). This suggests that there are circumstances, such as the present matter, where submission to the governor does not apply. This supported by the last sentence of amended MCL 117.22, which states an amendment proposed by initiative petition shall be submitted to the electors notwithstanding the governor’s objections. As such, there is no requirement that initiatory charter amendments be submitted to the governor and Defendant cannot use this as an excuse to keep Plaintiff’s Initiative off the November 2022 ballot.

Furthermore, even if there is a requirement to submit the charter amendment to the governor prior to the election, Defendant cannot use timing to refuse to place the Initiative on the November 2022 ballot. Neither the Michigan Election Law nor the HRCA require a petition be submitted over one hundred days in advance of the deadline for ballot question certification.<sup>3</sup> In using the Whitmer letter to justify her refusal, **Defendant is relying on a recommendation, not a mandate.** See **Ex. 8** (“[w]e strongly **recommend** submission of all proposed charter amendments to our office **at least 60 days prior** to the filing deadline”) (emphasis in original and emphasis added).

The mere prospect of the Governor’s inability to assess the petition language does not justify a clerk’s inaction. Defendant had a duty to submit the language to the governor upon

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<sup>3</sup> Ballot question certification is at least 82 days before the election. MCL 168.646a(2). MCL 148.646a(2) requires that “[p]etitions to place a county or local ballot question on the ballot at the election must be filed with the clerk at least 14 days before the date the ballot wording must be certified to the local clerk.” Additionally, MCL 117.25 merely grants the City Clerk 45 days to determine a petition’s sufficiency or insufficiency.



determining the sufficiency of the Initiative. Defendant received the Initiative on July 1, 2022 – 130 days before the election and 46 days before the ballot question language certification deadline found in MCL 168.646a. Upon information and belief, she completed canvassing the signatures on or before July 13, 2022 (34 days before the ballot question language certification deadline), thereby rendering the petitions sufficient and vesting her duty to submit the Initiative for review. Therefore, she had at least 34 days for the petitions to be reviewed.

The governor’s review of a proposed charter amendment is ceremonial, as opposed to directive when it is proposed by initiative petition. Whereas a governor’s disapproval of a charter amendment passed by the city’s legislative body requires the legislative body to review and revote on the provisions prior to submission to the electors, there is no such requirement for initiative petitions. An amendment proposed by initiative petition must be submitted to the electors notwithstanding the governor’s objections. Therefore, the fact that the governor may not be able to review the charter amendment prior to the certification date has no practical bearing on the amendment process.

Simply put, Defendant’s inaction (in failing to submit the amendment to the governor) cannot be used to circumvent the clear mandates of the MCL 117.25 – which states “[i]f the petition contains the requisite number of signatures of registered electors, the clerk shall submit the proposed amendment to the electors of the city at the next regular or general state election held in the city” – that being November 8, 2022.

Therefore, a writ of mandamus should issue, compelling Defendant to submit the proposed amendment to Clarkston’s electors for the November 8, 2022 election.

#### **IV. CONCLUSION**

The facts are clear. Plaintiff has submitted an initiative petition containing a sufficient number of signatures to be placed on the November 8, 2022 ballot. Defendant, in direct

circumvention of her duties under the Michigan Election Law and Home Rule City Act has failed to take the actions necessary for the Initiative's placement on the ballot for the next general election. As such, an Order should issue, requiring Defendant to show cause why a writ of mandamus should not issue. A proposed Order to Show Cause is attached hereto as **Exhibit 11**.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court to issue an Order for Defendant to Show Cause Why a Writ of Mandamus Should Not Issue. Plaintiff also requests an award of its costs and attorney fees in having to bring this Motion and any other relief the Court deems necessary and just.

Respectfully Submitted,

Dated: August 12, 2022

/s/ Hannah Stocker  
By: \_\_\_\_\_  
Hannah Stocker (P82847)  
Attorneys for Plaintiff  
23332 Farmington Road, #98  
Farmington, MI 48336  
(248) 252-6405 (telephone)  
[Hannah@stockerlawpllc.com](mailto:Hannah@stockerlawpllc.com)

# **EXHIBIT 1**

Begin forwarded message:

**From:** Jonathan Smith <[smithj@villageofclarkston.org](mailto:smithj@villageofclarkston.org)>  
**Subject:** RE: Charter Amendment Petition Turn In  
**Date:** July 5, 2022 at 10:09:21 AM EDT  
**To:** Zack Lask <[zacklask@gmail.com](mailto:zacklask@gmail.com)>

Zack,

You're documents have been received and have been date-stamped July 1<sup>st</sup>.

Thank you,

***Jonathan Smith***

City Manager, City of the Village of Clarkston

375 Depot, Clarkston, MI 48346

[smithj@villageofclarkston.org](mailto:smithj@villageofclarkston.org)

Office: (248) 625-1559

Cell: (248) 909-3380

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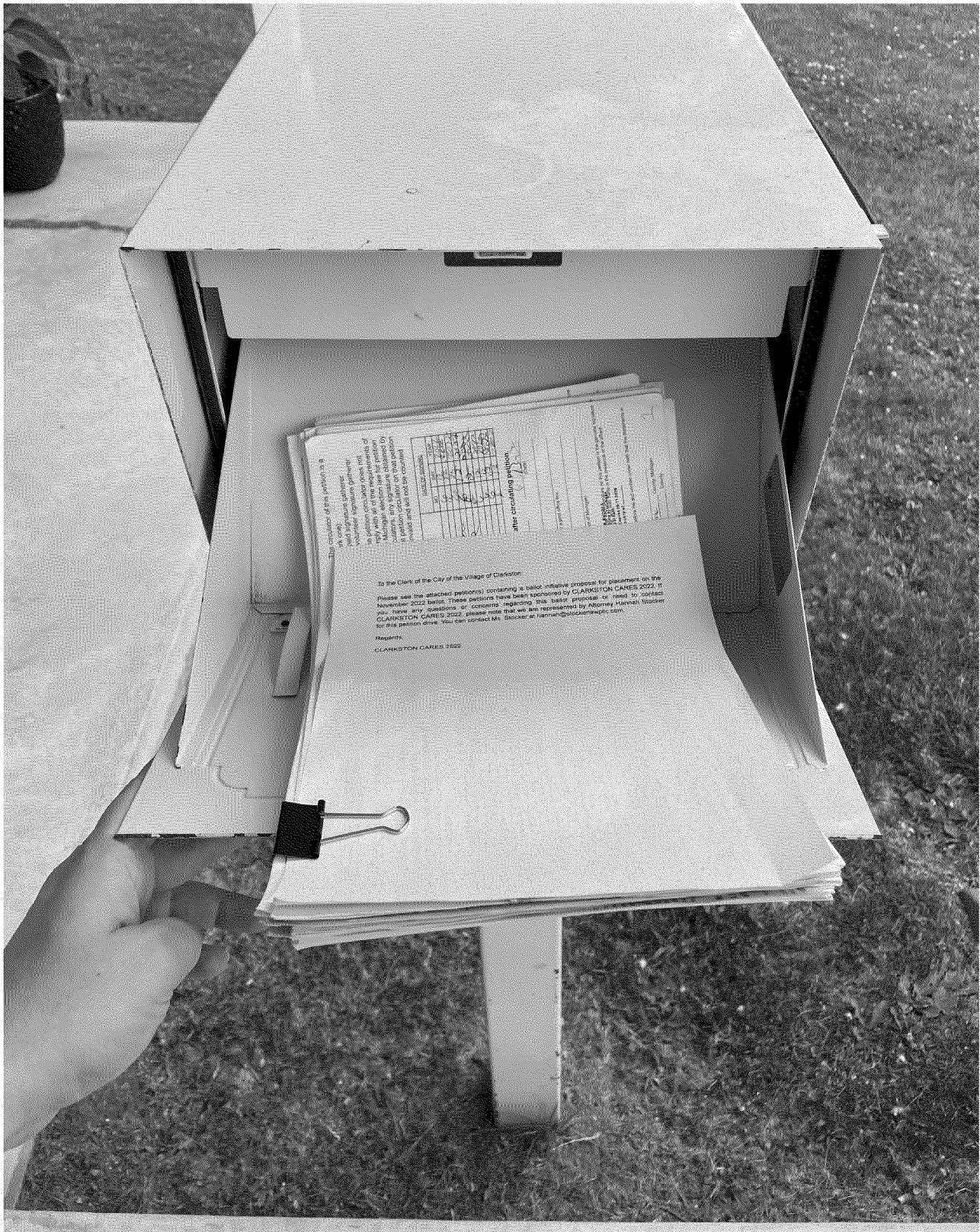
**From:** Zack Lask <[zacklask@gmail.com](mailto:zacklask@gmail.com)>  
**Sent:** Friday, July 1, 2022 4:17 PM  
**To:** Jonathan Smith <[smithj@villageofclarkston.org](mailto:smithj@villageofclarkston.org)>  
**Subject:** Re: Charter Amendment Petition Turn In

Hello Jonathan,

Attached is a photo of the submission turn in at 4:00pm on Friday.

Thank you,





Zachary Lask  
248-763-0431  
Sent from my iPhone

> On Jun 30, 2022, at 5:00 PM, Jonathan Smith <[smithj@villageofclarkston.org](mailto:smithj@villageofclarkston.org)> wrote:

>

> Hello Zack,

>

> I concur.

>

> Thank you,

>

> Jonathan Smith

> City Manager, City of the Village of Clarkston

> 375 Depot, Clarkston, MI 48346

> [smithj@villageofclarkston.org](mailto:smithj@villageofclarkston.org)

> Office: (248) 625-1559

> Cell: (248) 909-3380

>

>

>

> -----Original Message-----

> From: Zack Lask <[zacklask@gmail.com](mailto:zacklask@gmail.com)>

> Sent: Thursday, June 30, 2022 4:52 PM

> To: Jonathan Smith <[smithj@villageofclarkston.org](mailto:smithj@villageofclarkston.org)>

> Subject: Charter Amendment Petition Turn In

>

> On June 30th 2022 I spoke with city manager Jonathan Smith about turning in a petition from Clarkson Cares 2022 to the city's 24 hour drop box. This turn in will be submitted on July 1st 2022, the deadline for submission. The city manager stated that this turn in date will be honored, even though the city hall will be closed in person on July 1st 2022. The group Clarkston Cares 2022 will email a photograph of the submission on July 1st 2022, and a receipt of the submission will be received next week, when the office reopens following the July 4th Holiday.

>

> Regards,

>

> Zack Lask

> [zacklask@gmail.com](mailto:zacklask@gmail.com)

> (248)763-0431

>

# **EXHIBIT 2**

**Subject:** RE: Status of Determination of Petition Sufficiency?

**Date:** Wednesday, July 13, 2022 at 4:25:56 PM Eastern Daylight Time

**From:** Jennifer Speagle

**To:** Hannah Stocker

Good Afternoon Hannah,

I have canvassed the petitions and have sent them over to our attorney to look at. I should hear from him tomorrow and will give you an update at that time.

Thank you,

***Jennifer A. Speagle***

City Clerk

City of the Village of Clarkston

375 Depot, Clarkston, MI 48346

[speaglej@villageofclarkston.org](mailto:speaglej@villageofclarkston.org)

Office: (248) 625-1559

Fax: (248) 625-3770

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**From:** Hannah Stocker <[hannah@stockerlawpllc.com](mailto:hannah@stockerlawpllc.com)>

**Sent:** Wednesday, July 13, 2022 4:09 PM

**To:** Jennifer Speagle <[speaglej@villageofclarkston.org](mailto:speaglej@villageofclarkston.org)>

**Subject:** Status of Determination of Petition Sufficiency?

Good afternoon Ms. Speagle,

My name is Hannah Stocker. I am the attorney for the Oakland Cares Coalition, who I believe, submitted a ballot initiative petition to you in June of this year. I am touching base as to the status of this petition, specifically if you have canvassed the signatures and determined whether or not the petition was sufficient. Please advise at your earliest convenience.

Best regards,

Hannah Stocker, Esq.

23332 Farmington Rd. #98

Farmington, MI 48336

P: 248-252-6405



# **EXHIBIT 3**

**Subject:** RE: Status of Determination of Petition Sufficiency?

**Date:** Monday, July 18, 2022 at 4:47:09 PM Eastern Daylight Time

**From:** Jennifer Speagle

**To:** Hannah Stocker

Good Afternoon Hannah,

I am awaiting a response from our Attorney and will update you as soon as I hear back from him. In the meantime I want to make sure that you are aware that the City of Clarkston is just a 1/2sq mile of what is commonly considered "Clarkston" and our business district is only 2 blocks. The remainder of what is considered Clarkston is 36sq miles of Independence Township. They have numerous commercial areas throughout. Although we are all Clarkston mailing and we do work together on certain occasions we are two separate jurisdictions that run under our own governing bodies. If you are seeking to cover all of Clarkston with this ballot initiative the petitions that were turned in will not be considered for Independence Township November Ballot. I asked Zack Lask (the person who dropped of the petitions) this very question and he said that he did know the difference. The only reason I am asking you is because as of right now the majority of the signatures that were turned into me are from those that live in Independence Township not the City of Clarkston and therefore are invalid.

Thank you,

***Jennifer A. Speagle***

City Clerk

City of the Village of Clarkston

375 Depot, Clarkston, MI 48346

[speaglej@villageofclarkston.org](mailto:speaglej@villageofclarkston.org)

Office: (248) 625-1559

Fax: (248) 625-3770

**From:** Hannah Stocker <[hannah@stockerlawpllc.com](mailto:hannah@stockerlawpllc.com)>

**Sent:** Monday, July 18, 2022 12:50 PM

**To:** Jennifer Speagle <[speaglej@villageofclarkston.org](mailto:speaglej@villageofclarkston.org)>

**Subject:** Re: Status of Determination of Petition Sufficiency?

Good afternoon Ms. Speagle,

I am following up as to the sufficiency of the petitions. Please advise.

Best,

Hannah Stocker, Esq.

23332 Farmington Rd. #98

Farmington, MI 48336

P: 248-252-6405

---

**From:** Hannah Stocker <[hannah@stockerlawpllc.com](mailto:hannah@stockerlawpllc.com)>

**Date:** Wednesday, July 13, 2022 at 4:26 PM

**To:** Jennifer Speagle <[Speaglej@villageofclarkston.org](mailto:Speaglej@villageofclarkston.org)>



# **EXHIBIT 4**

**Subject:** Re: Status of Determination of Petition Sufficiency?

**Date:** Thursday, August 4, 2022 at 4:36:10 PM Eastern Daylight Time

**From:** Hannah Stocker

**To:** Jennifer Speagle

Good afternoon Ms. Speagle,

I wanted to touch as to the status of the petition sufficiency. Please advise.

Best,

Hannah Stocker, Esq.  
23332 Farmington Rd. #98  
Farmington, MI 48336  
P: 248-252-6405

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**From:** Hannah Stocker <hannah@stockerlawpllc.com>

**Date:** Monday, July 18, 2022 at 5:17 PM

**To:** Jennifer Speagle <speaglej@villageofclarkston.org>

**Subject:** Re: Status of Determination of Petition Sufficiency?

Thank you for the update and the background information, Ms. Speagle. I am reaching out to my client to see if they are aware of this differentiation. (I believe they are, just from my precursory conversation with the Committee.)

If you have finished canvassing, can you advise how many signatures were valid for the City of Clarkston?

Thank you so much for your updates.

Hannah Stocker, Esq.  
23332 Farmington Rd. #98  
Farmington, MI 48336  
P: 248-252-6405

---

**From:** Jennifer Speagle <speaglej@villageofclarkston.org>

**Date:** Monday, July 18, 2022 at 4:47 PM

**To:** Hannah Stocker <hannah@stockerlawpllc.com>

**Subject:** RE: Status of Determination of Petition Sufficiency?

Good Afternoon Hannah,

I am awaiting a response from our Attorney and will update you as soon as I hear back from him. In the meantime I want to make sure that you are aware that the City of Clarkston is just a 1/2sq mile of what is commonly considered "Clarkston" and our business district is only 2 blocks. The remainder of what is considered Clarkston is 36sq miles of Independence Township. They have numerous commercial areas throughout. Although we are all Clarkston mailing and we do work together on certain occasions we are two separate jurisdictions that run under our own governing bodies. If you are seeking to cover all of Clarkston with this ballot initiative the petitions that were turned in will not be considered for Independence Townships

# **EXHIBIT 5**

**Subject:** Clarkston Cares Petition  
**Date:** Thursday, August 11, 2022 at 3:30:17 PM Eastern Daylight Time  
**From:** Jennifer Speagle  
**To:** Hannah Stocker  
**CC:** Jonathan Smith, sylvanlawtr@gmail.com  
**Attachments:** Clarkston Cares Petition Letter and exhibit 08 11 2022.pdf

Good Afternoon Ms. Stocker,

Please see attached in response to Clarkston Cares ballot initiative petition. if you have any questions or concerns please do not hesitate to contact me.

Thank you,

***Jennifer A. Speagle***

City Clerk

City of the Village of Clarkston

375 Depot, Clarkston, MI 48346

[speaglej@villageofclarkston.org](mailto:speaglej@villageofclarkston.org)

Office: (248) 625-1559

Fax: (248) 625-3770

# **EXHIBIT 6**



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## DETAILED CALENDAR FOR ELECTION ADMINISTRATORS

### -- 2022 ELECTION DATES -- AUGUST 2 PRIMARY NOVEMBER 8 GENERAL ELECTION

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All listed dates are in 2022 unless otherwise specified. Refer to Michigan compiled law for cited provisions ([Legislature.Mi.Gov.](http://Legislature.Mi.Gov)) Dates are subject to change through legislative action. If any errors are found, it is the law, itself, which must be followed.

- By March 1** Democratic and Republican state party chairpersons notify county and district committee chairs of county convention delegate (precinct delegate) allocation requirements. (168.623a)
- By 5:00 p.m.,  
March 21** Incumbent Appeals Court, Circuit Court, District Court and Probate Court judges file Affidavit of Candidacy and Affidavit of Identity for the August primary. Withdrawal deadline elapses at 5:00 p.m. on March 24. (168.409b, 413a, 414, 433a, 434, 467c, 467d)
- By April 1** County political party chairpersons certify number of delegates per precinct to county election commissions. (168.623a)
- By April 4** City and township election commissions finalize precinct boundaries for 2022 election cycle. (168.661)
- By 4:00 p.m.,  
April 19** Candidates seeking Appeals Court, Circuit Court, and District Court or Probate Court judgeships file nonpartisan nominating petitions, Affidavit of Identity and Affidavit of Constitutional Qualification for the August primary. Withdrawal deadline elapses at 5:00 p.m. on April 22. (168.409b, 409c, 413, 414, 433, 434, 467b, 467d)
- By 4:00 p.m.,  
April 19** Candidates for partisan and nonpartisan offices (other than judicial candidates) file nominating petitions (or fees if applicable) and Affidavit of Identity for the August primary. Withdrawal deadline elapses at 4:00 p.m. on April 22. (168.93, 133, 163 for federal and state-level offices; assorted other statutes for local offices)
- By 4:00 p.m.,  
April 19** Candidates seeking a Wayne County Community College Trustee position file an Affidavit of Identity and a nonpartisan nominating petition. Withdrawal deadline elapses at 4:00 p.m. on April 22. (389.83, 2018 PA 628; 168.303)
- By April 25** City and township clerks forward names and addresses of partisan and nonpartisan candidates to county clerk. (168.321, 349)
- By 5:00 p.m.,  
April 26** Challenges against nominating petitions filed by partisan and nonpartisan candidates submitted to filing official. (168.552)

- By 5:00 p.m.,  
April 26** Petitions to place county and local questions on the August primary ballot filed with county and local clerks. (168.646a)
- April 29** Last date a recall petition can be filed for recall question to appear on August primary ballot. (168.963)
- By 4:00 p.m.,  
May 3** Candidates for county convention delegate (precinct delegate) file an Affidavit of Identity for the August primary. Filing submitted to the clerk of the county in which candidate resides. Withdrawal deadline elapses at 4:00 p.m. on May 6. (168.624, 624a)
- By May 4** Last date precinct boundary alterations made for 2022 election cycle can go into effect. (168.661)
- By 4:00 p.m.,  
May 10** Ballot wording of county and local proposals to be presented at the August primary certified to county and local clerks; local clerks receiving ballot wording forward to county clerk within two days. (168.646a)
- By May 31** Board of State Canvassers complete canvass of nominating petitions filed by candidates for the August primary; Secretary of State certifies candidates eligible to appear on August primary ballot to county election commissions by June 3. (168.552)
- By 5:00 p.m.,  
June 1** Petitions to place a legislative initiative proposal on the November general election ballot filed with the Secretary of State (340,047 valid signatures required). (168.471)
- June 3** Final date cities and townships can establish, move or abolish a polling place for the August primary. (168.662)
- By June 3** Democratic and Republican Parties call fall state conventions. (168.591)
- By June 3** Ballot wording for constitutional amendments and legislative referendums, which the legislature wishes to place on the August primary ballot, presented to Secretary of State. (Art. 12, Sec. 1)
- By June 18** Clerks shall electronically transmit or mail (as requested) an absent voter ballot to each absent UOCAVA (uniformed services or overseas) voter who applied for an absent voter ballot 45 days or more before the election. (168.759a). All requests received since November 2, 2021, from a military or overseas voter must be honored for all 2022 elections. (168.759a)
- By June 18** County clerks deliver absent voter ballots for the August primary to local clerks. (168.714)
- By June 18** County committees of Democratic and Republican Parties call county conventions. (168.592)
- By June 23** Absent voter ballots must be available for issuance to voters. (Mich. Const. Art 2, Sec 4)
- June 23 through  
July 12** Precinct inspectors for August primary appointed by city and township election commissions. (168.674)

- By July 5** Notice of voter registration for August primary published. One notice required. (168.498)
- By 5:00 p.m., July 5** Incumbent Supreme Court Justices file Affidavit of Identity and Affidavit of Candidacy forms for the November general election. (168.392a, 558)
- By July 5** Clerk shall post and enter into Qualified Voter File (QVF) the hours the clerk's office will be open on the Saturday or Sunday or both immediately before the election to issue and receive absent voter ballots. (168.761b)
- By July 5** Clerk shall post and enter into the QVF any additional locations and hours the clerk will be available to issue and receive absent voter ballots, if applicable. (168.761b)
- By 5:00 p.m., July 11** Petitions to place a proposed constitutional amendment on the November general election ballot filed with the Secretary of State. (168.471)
- July 18** Last day to register in any manner other than in-person with the local clerk for the August primary. (168.497)
- July 19 through 8:00 p.m., August 2** In-person registration with local clerk with proof of residency. (168.497)
- By 4:00 p.m., July 21** District Library Board candidates for districts that do not include a school district file an Affidavit of Identity and a nonpartisan nominating petition. (A \$100.00 nonrefundable fee may be filed in lieu of a petition.) (Special note: If district library includes a school district, District Library Board candidates file by 4:00 p.m. on August 16, 2022) (397.181)
- By 4:00 p.m., July 21** Candidates without political party affiliation seeking partisan offices file qualifying petitions and Affidavit of Identity for the November general election. Withdrawal deadline elapses at 4:00 p.m. on July 25. (168.590c)
- By 4:00 p.m., July 21** New political parties file petitions to qualify for November general election ballot. (168.685)
- By 4:00 p.m., July 22** Write-in candidates other than write-in candidates who seek precinct delegate positions file Declaration of Intent forms for the August primary. (168.737a)
- By July 23** County clerks deliver remainder of ballots and election supplies for August primary to local clerks. (168.714)
- By 4:00 p.m., July 26** Candidates for Local School Board and Community College Trustee file an Affidavit of Identity and a nonpartisan nominating petition. (A \$100.00 nonrefundable fee may be filed in lieu of a petition.) Withdrawal deadline elapses at 4:00 p.m. on July 29. (168.303; 389.152)
- By 4:00 p.m., July 26** Candidates for village offices file an Affidavit of Identity and a nonpartisan nominating petition. Withdrawal deadline elapses at 4:00 p.m. on July 29. (168.381)
- By July 26** Notice of August primary published. One notice required. (168.653a)

- By July 27** City and township clerks forward names and addresses of candidates without political party affiliation to county clerk. (168.321, 349)
- By 5:00 p.m.,  
July 28** Challenges against qualifying petitions filed by candidates without political party affiliation submitted to filing official. (168.552)
- By July 28** Public accuracy test must be conducted. (R 168.778) Notice of test must be published at least 48 hours before test. (168.798)
- By 4:00 p.m.,  
July 29** Write-in candidates who seek precinct delegate positions file Declaration of Intent forms with the county clerk for the August primary. (As an alternative, candidates for precinct delegate may file form with appropriate precinct board on election day before the close of the polls.) (168.737a)
- By 5:00 p.m.,  
July 29** Electors may obtain an absent voter ballot via First Class mail. (168.759)
- By 5:00 p.m.,  
July 29** Electors may submit written request to spoil their absent voter ballot and receive new ballot via First Class mail. (168.765b)
- By 10:00 a.m.,  
August 1** Electors who have returned their absent voter ballot may submit written request in person to spoil their absent voter ballot and receive new ballot in the clerk's office. (168.765b)
- Up to 4:00 p.m.,  
August 1** Electors may obtain an absent voter ballot in person in the clerk's office. (168.761)
- Up to 4:00 p.m.,  
August 1** Electors who have lost their absent voter ballot or not yet received their ballot in the mail may submit a written request in person to spoil their absent voter ballot and receive a new ballot in the clerk's office. (168.765b)
- Up to 4:00 p.m.,  
August 2** Emergency absentee voting for August primary. (168.759b)
- By 5:00 p.m.,  
August 2** Petitions to place county and local questions on the November general election ballot filed with county and local clerks. (If governing law sets an earlier petition filing deadline, earlier deadline must be observed.) (168.646a)
- Up to 8:00 p.m.,  
August 2** Election Day registrants may obtain and vote an absent voter ballot in person in the local clerk's office with proof of residency or vote in person in the proper precinct. (168.761)
- By August 2** Minor parties hold county caucuses; notify county clerk of nominated candidates within one business day after caucus. (168.686a)
- By August 2** Minor parties hold state conventions; notify Secretary of State of nominated candidates within one business day after convention. (168.686a)
- August 2** **STATE PRIMARY ELECTION**
- By 9:00 a.m.,  
August 4** Boards of county canvassers meet to canvass August primary. (168.821)
- August 5** Last date a recall petition can be filed for recall question to appear on November general election ballot. (168.963)

- By August 9** County clerks notify precinct delegates elected at August primary; certify delegate names and addresses to chairpersons of county committees. (168.608)
- August 10 through August 27** Democratic and Republican Parties hold fall county conventions. (168.592)
- By 4:00 p.m., August 16** District Library Board candidates (for library districts that include a school district) file an Affidavit of Identity and a nominating petition. (A \$100.00 nonrefundable fee may be filed in lieu of a petition.) Withdrawal deadline elapses at 4:00 p.m. on August 19. (Special note: If district library does not include a school district, District Library Board candidates file by 4:00 p.m. on July 26.) (397.181)
- By 4:00 p.m., August 16** Ballot wording of county and local proposals to be presented at the November general election certified to county and local clerks; local clerks receiving ballot wording forward to county clerk within two days. (168.646a)
- By August 16** Boards of county canvassers complete canvass of August primary; county clerks forward results to Secretary of State within 24 hours. (168.581, 822, 828)
- By August 22** Board of State Canvassers meet to canvass August primary. (168.581)
- By Sept. 9** Democratic and Republican Parties hold fall state conventions. (168.591)
- By Sept. 9** Cities and townships can establish, move or abolish a polling place for the November general election. (168.662)
- By Sept. 9** Ballot wording for constitutional amendments and legislative referendums, which the legislature wishes to place on the November general election ballot, presented to Secretary of State. (Art. 12, Sec. 1)
- By Sept. 24** Clerks shall electronically transmit or mail (as requested) an absent voter ballot to each absent UOCAVA (uniformed services or overseas) voter who applied for an absent voter ballot 45 days or more before the election. (168.759a). All requests received since November 2, 2021, from a military or overseas voter must be honored for all 2022 elections. (168.759a)
- By Sept. 24** County clerks deliver absent voter ballots for November general election to local clerks. (168.714)
- By Sept. 29** Absent voter ballots must be available for issuance to voters. (1963 Mich. Const. Art 2, Sec 4)
- Sept. 29 through Oct. 18** Precinct inspectors for November general election appointed by city and township election commissions. (168.674)
- By Oct. 11** Notice of voter registration for November general election published. One notice required. (168.498)

# **EXHIBIT 7**



STATE OF MICHIGAN  
BUREAU OF ELECTIONS  
LANSING

## **BALLOT PROOFING -- ELECTION BALLOTS**

Election ballots printed must be carefully proofed to ensure that they 1) meet the ballot production standards issued through the Michigan Department of State's Bureau of Elections and 2) are free of errors and omissions. The ballot proofing procedures specified under Michigan election law are detailed below. The importance of the ballot proofing steps cannot be over emphasized!

### **Ballot Proofing Procedures: County Election Commission's Responsibilities**

Before the ballots are printed, the printer returns copies of the ballots to the County Election Commission. The Commission is responsible for checking the various proof ballots to make sure that they are free of errors and omissions. A comprehensive check should include a careful review of the following:

- ballot format;
- offices on ballot and the placement of offices;
- district numbers (where applicable);
- number to be elected to each office;
- placement of candidate names;
- form and spelling of candidate names;
- candidate rotations;
- number of write-in lines provided under office;
- placement of special ballot designations;
- wording and placement of ballot proposals.

Proofing ballots is a tedious and time-consuming task – but the problems and embarrassment a complete proofing job can save on election day makes the task well worth the effort. If the Commission delegates ballot proofing to the county clerk's staff, the task should be assigned to the person in the office with the best eye for detail. Unfortunately, ballot errors are the most common – and serious – problems encountered on election day throughout the state. **Don't let it happen in your county!**

### **Ballot Proofing Procedures: Candidate's and Department of State's Responsibilities**

Immediately after the proof ballots are delivered to the County Election Commission, the Commission must forward the proof ballots in PDF format to the Department of State's Bureau of Elections in Lansing for approval. The Commission also sends each candidate a proof ballot which lists the candidate's name.

BUREAU OF ELECTIONS  
RICHARD H. AUSTIN BUILDING • 1ST FLOOR • 430 W. ALLEGAN • LANSING, MICHIGAN 48918  
[www.Michigan.gov/elections](http://www.Michigan.gov/elections) • (800) 292-5973

- 1) After sending proof ballots, the county clerk must sign an affidavit that attests that proof ballots were mailed as required. The affidavit must list the candidates to whom the ballots were mailed, the addresses to which the ballots were mailed, and the dates on which the ballots were mailed.

- 2) The Department of State's Bureau of Elections inspects the form of the proof ballots received from each County Election Commission. (The Bureau of Elections does *not* check candidate name spellings; verify that all required offices are on the ballot; or proof the wording of proposals.) If the ballot forms meet the ballot production standards and are free of errors and omissions, the Bureau of Elections grants its approval of the ballots; if errors or omissions are found, the Bureau of Elections forwards the necessary corrections to the Commission. Candidates who receive a proof ballot have *two business days* after the receipt of the ballot to contact the county clerk with any necessary corrections.
- 3) The County Election Commission proceeds with the printing of a ballot if the Bureau of Elections grants its approval of the ballot and no corrections are received from candidates on the ballot within the two-day period allowed for name corrections. If errors or omissions are found on a ballot by the Bureau of Elections or a candidate, the Commission may not proceed with the printing of the ballot until the errors or omissions are corrected. If ballot corrections are required, a copy of the corrected ballot must be forwarded to the Bureau of Elections.

### **Final Inspection by the County Election Commission and Local Jurisdictions**

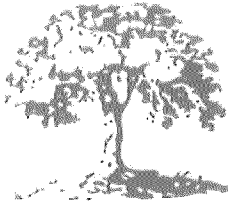
After the ballots are printed, they are given a final inspection by the County Election Commission (Note: this step may be delegated to County election staff by the Commission.) If the ballots pass the final inspection, they are wrapped and delivered to the county clerk. The county clerk is then responsible for the delivery of the ballots to the local jurisdictions in the county. If convenient, the county clerk can arrange for the printer to send the ballots to the local jurisdictions. The printer must not ship ballots to local jurisdictions before the County Election Commission has inspected the ballots a final time. It is strongly recommended that the city or township clerk carefully inspect the ballots again after the ballots are received on the local level to make sure that the County Election Commission has not overlooked an error or omission on the ballot.

### **Correction of Ballot Errors and Omissions After Ballots Are Printed**

The objective of the ballot proofing procedures is, of course, to spot and correct all ballot errors and omissions before the ballots are printed. If a ballot error or omission is found after the ballots have been printed, contact the Bureau of Elections ([Elections@Michigan.gov](mailto:Elections@Michigan.gov)) immediately to determine what corrective action must be taken. It should be noted that a candidate can, under certain circumstances, petition for an election to be held again by mail if a ballot defect is found after the polls open on election day. (MCL 168.831-839)



# **EXHIBIT 8**



# CITY OF THE VILLAGE OF CLARKSTON

375 Depot Road  
Clarkston, MI 48346-1418  
Phone 248 • 625-1559  
Fax 248 • 625-3770

August 11, 2022

Clarkston Cares 2022

Re: Clarkston Cares 2022  
Charter Initiatory Petition

Dear Ms. Stocker,

As the Clerk for the City of the Village of Clarkston, I received your initiatory petitions for a Charter Amendment for the November 8, 2022 election, on July 1, 2022 after approximately 4:00 p.m.


Pursuant to Michigan statutes MCL 117.21(2), 117.22 and MCL 117.25(3), as City Clerk, I have 45 days to review the petition to make sure it is signed by the requisite number of registered electors. The City of the Village of Clarkston has 803 electors and you have provided 88 signatures that are appropriate and valid, so your petition has the proper amount of signatures.

I will advise the City Council of all the facts of this petition and that the petition has the requisite number of signatures and will put this on a City Council agenda in the near future to apprise City Council of the petition and ballot language.

Thereafter, by law, I must send the petition out to the Attorney General and Governor for review.

As indicated by the governing guidelines (Attached Exhibit A), your July 1, 2022 filing was too late to be considered for the November 2022 election.

Sincerely, -

  
Jennifer Speagle, City Clerk

Attachment

cc: Jonathan Smith, City Manager  
Thomas J. Ryan, City Attorney



STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GRETCHEN WHITMER  
GOVERNOR

GARLIN GILCHRIST II  
LT. GOVERNOR

EXHIBIT

A

August 30, 2021

*VIA EMAIL*

Michigan Department of State  
Bureau of Elections  
ATTN: Jonathan Brater  
P.O. Box 20126  
Lansing, MI 48901-0726

RE: **Charter Amendments and Revisions**

Dear Mr. Brater,

I am writing to request your assistance in notifying municipalities across Michigan of our administration's policy and recommendations regarding charter amendments and revisions.

Under the Home Rule City Act (MCL 117.22) the Governor has the responsibility to review all proposed charter amendments and revisions before any such amendment or revision is presented to the electors. Separately, under Michigan Election Law (MCL 168.646a) municipalities must submit ballot language regarding a proposed charter amendment or revision to the local clerk for certification not later than 4 p.m. on the twelfth Tuesday before the election.

It is a priority of Governor Whitmer's administration to review and respond to proposals by or before this first election filing deadline. It has also been our practice to request the Department of Attorney General review all submissions to our office for compliance with state law. This review takes time and historically guidance has recommended materials be submitted 60 – 90 days prior to the filing deadline to ensure sufficient time to review.

Starting in 2022, our office will not approve proposed charter amendments or revisions after 4 p.m. on the twelfth Tuesday before the election. (We will approve changes that fix scrivener's errors for charter amendments and revisions already approved by the deadline.)

We therefore strongly recommend submission of all proposed charter amendments to our office at least 60 days prior to the filing deadline and strongly recommend submission of all proposed charter revisions to our office at least 90 days prior to the filing deadline. We are requesting your assistance in notifying municipalities across Michigan of this policy and request.



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

Proposed amendments and revisions can be sent to our office via email at [Gretchen.Whitmer@michigan.gov](mailto:Gretchen.Whitmer@michigan.gov).

While we prefer email submission, we will also accept submissions sent via mail to:

Governor Gretchen Whitmer  
ATTN: Legal Division  
George W. Romney Building  
111 S. Capitol Avenue  
Lansing, MI 48933

Please note, the Department of Attorney General has an independent obligation to review proposed ballot language under the Home Rule City Act. The Department of Attorney General will continue using their historical process moving forward. For questions about the Department of Attorney General's process, please contact Assistant Attorney General George Elworth at (517) 335-7573 or [ElworthG@michigan.gov](mailto:ElworthG@michigan.gov).

Thank you for your hard work on behalf of Michiganders and for your continued partnership and commitment to improving the lives of residents. If you have questions on the Governor's process, please feel free to contact Kristina Gierhart, Executive Assistant for the Governor's Office of Legal Counsel, at [GierhartK1@michigan.gov](mailto:GierhartK1@michigan.gov).

Sincerely,

Alicia Moon  
Deputy Legal Counsel  
Office of Governor Whitmer

c: Michigan Municipal League  
Michigan Association of Municipal Clerks  
Michigan Association of County Clerks  
Michigan Association of Municipal Attorneys  
State Bar of Michigan, Government Law Section  
Department of Attorney General, State Operations Division

# **EXHIBIT 9**

2020 WL 5406132

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.

UNPUBLISHED  
Court of Appeals of Michigan.

PROGRESS FOR MICHIGAN  
2020, Plaintiff-Appellant,

v.

Cyndee JONSECK, Defendant-Appellee.

No. 354726

|

September 8, 2020

St. Clair Circuit Court, LC No. 20-001331-AW

Before: O'Brien, P.J., and Cavanagh and Jansen, JJ.

### Opinion

Per Curiam.

\*1 Plaintiff, Progress for Michigan 2020, appeals as of right the September 3, 2020 order of the St. Clair Circuit Court, which denied plaintiff's complaint for mandamus. Plaintiff seeks a writ of mandamus compelling defendant, Cyndee Jonseck, the Port Huron City Clerk, to certify plaintiff's ballot initiative language to the county clerk pursuant to MCL 168.646a. We reverse, and direct defendant to immediately certify the ballot language to the county clerk pursuant to MCL 168.646a.<sup>1</sup>

### I. FACTS

**By 5:00 p.m., July 28, 2020**

**By 4:00 p.m., August 11, 2020**

Plaintiff seeks to have a proposal placed on the ballot in the upcoming November 3, 2020 general election. The initiative, if approved, would enact an ordinance in the City of Port Huron regarding marijuana-related businesses and the adult use of marijuana. The content of the proposal is not at issue; rather, at issue in this appeal are two procedures for placing voter-initiated ballot proposals on the ballot, one provided by statute, and the other by the Port Huron City Charter. Beginning with the statutory provisions, MCL 168.646a(2) and (3), provisions of the Michigan election law, MCL 168.1 *et seq.*, provide the following:

(2) If a ballot question of a political subdivision of this state including, but not limited to, a ... city ... is to be voted on at a regular election date or special election, the ballot wording of the ballot question must be certified to the proper local or county clerk not later than 4 p.m. on the twelfth Tuesday before the election. If the wording is certified to a clerk other than the county clerk, the clerk shall certify the ballot wording to the county clerk at least 82 days before the election. *Petitions to place a county or local ballot question on the ballot at the election must be filed with the clerk at least 14 days before the date the ballot wording must be certified to the local clerk.*

(3) *The provisions of this section apply to and control the filing deadlines for ... all ballot questions of a political subdivision of this state at any regular election ... notwithstanding any provisions of law or charter to the contrary.* [Emphasis added.]

There is no dispute that the twelfth Tuesday before the November 3, 2020 general election is August 11, 2020, and that the day that is 82 days before that election is August 13, 2020. Nor does anyone dispute that 14 days before August 11, 2020, is July 28, 2020. This aligns with guidance issued by the Secretary of State:

#### Filing Deadlines: County and Local Proposals

\* \* \*

Petitions to place county and local questions on the November general election ballot filed with county and local clerks. (168.646a)

Ballot wording of county and local proposals to be presented at the November general election certified to county and local clerks; local clerks receiving ballot wording forward to county clerk within two days. (168.646a)<sup>[2]</sup>

\*2 The Port Huron City Charter has a detailed section regarding voter initiatives and referendums. Port Huron City Charter, Section 3-9, gives the electors of the city the “the powers of initiative and referendum on all matters within the scope of the powers of the City. Initiative means the power to propose and to enact ordinances.”<sup>3</sup> Port Huron City Charter, Section 3-10, provides the procedures by which initiatory and referendum petitions are governed. Relevant to this matter, Port Huron City Charter, Section 3-10(5) requires that, before a petition is circulated, the petition must be submitted to the city clerk, who shall then submit the petition to the city attorney “for an opinion on the proposal’s compliance with the law.” The city attorney is to provide his or her opinion, in writing, within 15 days. Port Huron City Charter, Section 3-10(5).

Port Huron City Charter, Section 3-10(6), provides that signed petitions must be filed with the city clerk. Port Huron City Charter, Section 3-10(7), then provides the city clerk with 15 days to determine whether the petition is in “proper form” and to determine whether the petition signatures are valid. Pursuant to Port Huron City Charter, Section 3-10(9), “If the petition is found sufficient and proper, the City Clerk shall present the petition to the City Council at its next regular meeting.” Port Huron City Charter, Section 3-11, explains that once submitted to the city council, the city council must decide whether to adopt the ordinance itself, or alternatively, submit the proposal to the electors at the next available election date. The charter provides city council with 30 days to reach its decision after its meeting. Port Huron City Charter, Section 3-11(1) and (2).

In the present matter, plaintiff e-mailed a copy of the petition for review by the city’s attorney on July 15, 2020. Plaintiff submitted to defendant 347 pages of petition signatures on July 28, 2020, the last day permitted for submission of petition signatures under MCL 168.646a(2). The city attorney provided an opinion on July 29, 2020, which found no problems with the proposal itself; the subject of the petition was “permissible under Michigan law and the City Charter[.]” and the “form and format of the Petition [was] consistent with Michigan law and the City Charter.” But the city attorney did note that although MCL 168.646a(2) “allows signed petitions to be submitted to the Clerk up to July 28, 2020, such may not allow sufficient time to complete the certification process required by the City Charter, which can take up to 45 days (15 days for the Clerk and 30 days for Council), to be included on the November 3, 2020 ballot.” On July 31, 2020, defendant

emailed plaintiff’s representative with a copy of the city attorney’s letter. Defendant explained that:

Per the City Charter, the City Clerk shall within 15 business days of receiving the signed petitions (July 28, 2020) determine the validity of the signatures on the petition in accordance with the law and so certify. I will be in touch on/or before Monday, August 17, 2020.

And on August 17, 2020, an assistant city clerk emailed plaintiff’s representative to explain that indeed, a sufficient number of valid signatures were presented. The e-mail explains:

The next step per Section 3-10 & 3-11 of the City of Port Huron Charter is to present the petition to the City Council at its next regular meeting which is September 14, 2020.

Within thirty (30) days of receiving the petition, the City Council must (a) adopt the ordinance submitted in the petition; or (b) submit the proposal to the electors at the next available election date as provided by law.

\*3 Realizing that the timeline set by the above e-mail correspondence would almost certainly mean that the proposal would not be certified in time to be placed on the November 3, 2020 general election ballot, plaintiff filed suit in the circuit court on August 20, 2020. Plaintiff sought a writ of mandamus compelling defendant to immediately certify the ballot proposal pursuant to MCL 168.646a(2). Plaintiff’s complaint alleged that the timeline provided by the city charter was in clear conflict with MCL 168.646a(2). Plaintiff asserted that defendant had a clear legal duty to certify the ballot language to the county clerk immediately, notwithstanding the provisions of the city charter. The trial court heard the matter on August 27, 2020, and on September 3, 2020, the court entered an order denying the complaint for mandamus and closing the case. Plaintiff now appeals as of right.

## II. DISCUSSION

### A. STANDARD OF REVIEW

“A trial court’s decision to deny a writ of mandamus will not be reversed absent an abuse of discretion.” *Keaton v. Village of Beverly Hills*, 202 Mich. App. 681, 683, 509 N.W.2d 544 (1993). To establish entitlement to the writ, a plaintiff must show (1) that the plaintiff “has a clear legal right to the

performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result.” *Coalition for a Safer Detroit v. Detroit City Clerk*, 295 Mich. App. 362, 367, 820 N.W.2d 208 (2012) (quotation marks and citation omitted). Although the trial court’s decision whether to issue a writ of mandamus is reviewed for an abuse of discretion, this Court’s review of the first two elements—i.e., the existence of a clear legal right and a clear legal duty—de novo, as those are questions of law. *Id.* To the extent this Court must interpret the relevant statutes, questions of statutory interpretation are likewise reviewed de novo. *PNC Nat’l Bank Ass’n v. Dep’t of Treasury*, 285 Mich. App. 504, 505, 778 N.W.2d 282 (2009).

## B. ANALYSIS

The first question that must be answered is whether the Port Huron City Charter’s provisions are preempted by the statutory procedure created by MCL 168.646a. “[W]here a city charter conflicts with a state statute, the statute controls in matters that are not solely a local concern.” *Detroit City Council v. Detroit Mayor*, 283 Mich. App. 442, 454, 770 N.W.2d 117 (2009). Pursuant to MCL 117.36, “No provision of any city charter shall conflict with or contravene the provisions of any general law of the state.” We conclude that MCL 168.646a, in its current form, preempts the Port Huron City Charter’s provisions.

As background, MCL 168.646a was amended in 2015, in response to this Court’s decision in *Meridian Charter Twp. v. Ingham City Clerk*, 285 Mich. App. 581, 777 N.W.2d 452 (2009). At the time *Meridian Charter Twp.* was decided, MCL 168.646a(3) provided that “[t]he provisions of this section apply notwithstanding any provisions of law or charter to the contrary, unless an earlier date for the filing of affidavits or petitions, including nominating petitions, is provided in a law or charter, in which case the earlier filing date is controlling.” MCL 168.646a(3), as enacted by 2013 PA 253 (emphasis added). In response to *Meridian Charter Twp.*, our Legislature amended MCL 168.646a(3) to state that the provisions of MCL 168.646a “apply to and control the filing deadlines for candidates for local office to be elected at the general November election and for all ballot questions of a political subdivision of this state at any regular election, primary election, or special election notwithstanding any provisions of law or charter to the contrary.” MCL 168.646a(3), as enacted by 2015 PA 197 (emphasis added). Were there any doubt

regarding what that alteration was intended to accomplish, enacting section 1 of the public act states:

\*4 Section 646a of the Michigan election law ... as amended by this amendatory act is curative and intended to correct any misinterpretation of legislative intent by the Michigan court of appeals in *Meridian Charter Township v. Ingham County Clerk*, 285 Mich. App. 581, 777 N.W.2d 452 (2009). It is the intent of the legislature that section 646a of the Michigan election law ... as amended by this amendatory act expresses the original intent of the legislature that MCL 168.646a(3) *supersedes any and all conflicting provisions of law or charter prescribing the filing deadlines for candidates for local office to be elected at the general November election and for all ballot questions of a political subdivision of this state at any regular election, primary election, or special election.* [Emphasis added.]

And while the statute was amended again by way of 2018 PA 627, no alterations were made to MCL 168.646a(3). Thus, the language enacted by 2015 PA 197 remains controlling.

It is thus apparent that, at least as the charter has been applied in this case, MCL 168.646a and the Port Huron City Charter conflict. Under MCL 168.646a(2), initiatory petitions must be filed the city clerk “14 days before the date the ballot wording must be certified to the local clerk.” With reference to the November 3, 2020 general election, that date is July 28, 2020. There is no question in this case that the initiatory petition was filed on the last day permitted by statute, July 28, 2020. Pursuant to MCL 168.646a(2), no later than “82 days before the election,” the local clerk “shall certify the ballot wording to the county clerk ....” Following the terms of the statute, defendant had between July 28, 2020, and August 13, 2020, during which it could conduct any review of the petition before certifying the ballot wording to the county clerk.

In contrast, the city charter gives defendant 15 business days to review the petition to determine whether it is “in proper form” and to determine whether the signatures are valid. Port Huron City Charter, Section 3-10(7). Then, presuming the clerk finds the petition to comply with those requirements, it is to be presented to the city council at the next regular meeting; the city council may elect to adopt the proposal itself or submit it to the voters. Port Huron City Charter, Section 3-10(9). The city council may consider the matter for up to 30 days before deciding what action to take. Port Huron City Charter, Section 3-11. In this case, given the date defendant approved the ballot signatures and the date of the next regularly scheduled city council meeting at which the



proposal could be considered, the Port Huron City Charter would allow the city council to wait to decide whether to put the matter on the ballot until mid-October—clearly too late for the matter to be put to the voters at the November 3, 2020 general election.

It is abundantly clear that the city charter provisions, to the extent those provisions conflict with MCL 168.646a(2), must give way. The Legislature could not have been more clear in MCL 168.646a(3): “The provisions of this section,” i.e., MCL 168.646a, “apply to and control the filing deadlines ... for all ballot questions of a political subdivision of this state at any regular election ... notwithstanding any provisions of ... charter to the contrary.” As plaintiff explains, by strictly enforcing the city charter provisions, defendant has effectively moved the date for submission of petitions to a date earlier than that contemplated by MCL 168.646a(2).<sup>4</sup> Defendant’s obligation is to certify the ballot language pursuant to MCL 168.646a(2), even if that would conflict with the terms of the city charter.

\*5 Defendant argues that there is no conflict because MCL 168.646a(2) only applies if a ballot issue “is to be voted on at a regular election date ...” That is, according to defendant, plaintiff must first establish that the measure is to be voted on at the November 3, 2020 general election before the procedures of MCL 168.646a(2) would even apply. According to defendant, before having a right to put the matter on the November 3, 2020 general election, the procedures of the city charter would need to be completed, and it is not until those procedures are completed that plaintiff may have a right to have the matter put on any ballot.<sup>5</sup> We disagree. The first sentence of MCL 168.646a(2), on which defendant relies, states that, “If a ballot question of a political subdivision of this state ... is to be voted on at a regular election date ... the ballot wording of the ballot question must be certified to the proper local or county clerk not later than 4 p.m. on the twelfth Tuesday before the election.” The phrase relied on by defendant is stated in a sentence that sets one deadline for certifying ballot wording to local or county clerks, no more and no less. And more importantly, the last sentence of MCL 168.646a(2) is clear: “Petitions to place a county or local ballot question on the ballot at the election must be filed with the clerk at least 14 days before the date the ballot wording must be certified to the local clerk.” This case undoubtedly involves a petition to place a local ballot question on the ballot at the November 3, 2020 general election. As has been explained, plaintiff satisfied MCL 168.646a(2) by filing its petition on July 28, 2020, the

date that is “14 days before the date the ballot wording must be certified to the local clerk.” Because the provisions of MCL 168.646a(2) “apply to and control the filing deadlines ... for all ballot questions of a political subdivision of this state at any regular election ... notwithstanding any provisions of law or charter to the contrary[,]” MCL 168.646a(3), and because plaintiff satisfied the deadline for filing its petition established by MCL 168.646a(2), the city charter’s lengthy approval process cannot be used to effectively keep the proposal off the November 3, 2020 general election ballot.<sup>6</sup>

The question becomes whether plaintiff is entitled to a writ of mandamus compelling defendant to certify the ballot language to the county clerk. We have little difficulty concluding that plaintiff is so entitled. For the reasons explained, defendant had a clear legal duty to comply with MCL 168.646a(2), even if that procedure differs from that stated in the city charter, and certify the ballot language to the county clerk by August 13, 2020. See *Warren City Council v. Buffa*, — Mich. App. —, —; — N.W.2d — (2020) (Docket No. 354663), slip op. at 5-6 (where the city council complied with the timeline of MCL 168.646a(2), the city clerk had a clear legal duty to certify the ballot language to the county clerk by August 13, 2020). And plaintiff, as the organization seeking to put the proposal to the voters, has a right to the performance of that duty. See *id.* at —; slip op. at 6 (“And as the body who passed the resolution, we conclude that plaintiff has a right to the performance of that duty”).

“The third element asks if the duty was ministerial, or instead, involves a measure of discretion.” *Id.* In *Warren City Council*, this Court held that the language of MCL 168.646a(2) provides “no room for discretion.” *Id.* This is because the language uses the word, “shall,” to describe the local clerk’s duty to certify the ballot language to the county clerk. *Id.* The word “shall” indicates a mandatory, not discretionary, directive. *Id.* Given that no concerns have been raised with any aspect of the initiative—i.e., the requisite number of signatures were obtained, the language is not objectionable, etc.—defendant’s “obligation was to certify the ballot language to the county clerk” by August 13, 2020. *Id.*<sup>7</sup>

\*6 “Finally, before the writ may issue, plaintiff must demonstrate that it has no other legal remedy.” *Id.* Mandamus is generally the appropriate legal remedy to “compel the performance of election-related duties.” *Id.* A writ of mandamus is necessary to compel defendant to perform her legal duties and certify the ballot language at issue.

Accordingly, it was an abuse of discretion to refuse to issue the writ.

to immediately certify the ballot language to the county clerk pursuant to MCL 168.646a(2). A public question being involved, no costs may be taxed under MCR 7.219. This opinion shall have immediate effect pursuant to MCR 7.215(F)(2).

### III. CONCLUSION

The circuit court's order is reversed to the extent that court denied plaintiff's request for a writ of mandamus compelling defendant to immediately certify plaintiff's ballot proposal language to the county clerk. Defendant is hereby ordered

#### All Citations

Not Reported in N.W. Rptr., 2020 WL 5406132

#### Footnotes

- 1 This Court granted plaintiff's motion to expedite the appeal. *Progress for Michigan 2020 v. Jonseck*, unpublished order of the Court of Appeals, entered September 8, 2020 (Docket No. 354726).
- 2 2020 Michigan Election Date Booklet, p. 5, available at [https://www.michigan.gov/documents/sos/2020\\_Elec-Dates-Booklet\\_ED-12\\_10-0919\\_668275\\_7.pdf](https://www.michigan.gov/documents/sos/2020_Elec-Dates-Booklet_ED-12_10-0919_668275_7.pdf).
- 3 MCL 117.4i(g), a provision of the Home Rule City Act, MCL 117.1 *et seq.*, allows cities to provide for "[t]he initiative and referendum on all matters within the scope and powers of that city ...."
- 4 Indeed, defendant argues that plaintiff could have avoided the problem by simply filing its petition signatures 40 days earlier, which would have allowed the matter to be put before the city council on August 10, 2020. Defendant thus admits that its charter provisions have effectively moved the filing deadline for this proposal to be put on the November 3, 2020 ballot to a date well before that contemplated by MCL 168.646a(2).
- 5 We use the word "may" because, as defendant notes, the city council could choose to enact the proposal itself.
- 6 Defendant has asserted that had plaintiff acted more quickly and submitted its petition signatures a mere 40 days earlier than required by MCL 168.646a(2), the matter could have been submitted to the city council at its August 10, 2020 regular meeting, which would have obviated the need for this entire suit. Yet, as explained, MCL 168.646a(2) and (3) gave plaintiff the right to submit its petition at any point up until July 28, 2020. And by doing so, plaintiff did not prevent defendant and the City of Port Huron from completing the procedure put forth in the Port Huron City Charter. Defendant had the signatures in hand on July 28, 2020, and while the city charter provided her with 15 business days to review those signatures, nothing required her to wait that long. Rather, defendant could have completed her review in time to put the matter to the city council on August 10, 2020. At that point, and while the charter provides the city council with up to 30 days to reach a decision whether to adopt the ordinance itself or submit it to the voters, the city council is not required to wait that long. Rather, the city council could have made a decision in time such that defendant could have certified the proposal within the timeframe of MCL 168.646a(2). In other words, just as plaintiff could have acted earlier to ensure the city council's consideration at the August 10, 2020 meeting, so, too, could have defendant.
- 7 This Court need not decide what, exactly, falls within the scope of a local clerk's review during the period provided by MCL 168.646a(2) between the filing of a petition with the local clerk and the certification of that petition to the county clerk, as in this case, there is no dispute whatsoever that there are no hurdles to certification other than the fact that the Port Huron City Charter could force the review process to drag out until mid-October 2020, just weeks before the November 3, 2020 general election.

# **EXHIBIT 10**

# INITIATION OF LEGISLATION AMENDMENT TO THE CHARTER

The circulator of this petition is a (mark one):

- paid signature gatherer  
 volunteer signature gatherer

If the petition circulator does not comply with all of the requirements of the Michigan election law for petition circulators, any signature obtained by that petition circulator on that petition is invalid and will not be counted

To the Clerk of the City of the Village of Clarkston: We, the undersigned qualified and registered electors, residents in the city of the Village of Clarkston, state of Michigan, respectively petition for initiation of a charter amendment to end the City's prohibition of medical marihuana facilities and establish a local licensing system and regulatory provisions for medical marihuana facilities to operate within the City. We respectfully request that this proposed amendment be submitted to a vote of the electors of the City of the Village of Clarkston for the November 8, 2022 General Election.

FOR THE FULL TEXT OF THE PROPOSED AMENDMENT AND PROVISIONS OF THE CITY CHARTER THAT ARE ALTERED OR ABROGATED BY THE PROPOSAL IF ADOPTED, SEE THE REVERSE SIDE OF THIS PETITION.

**WARNING – A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.**

SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
				MO	DAY	YEAR
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

### CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the city or township indicated preceding the signature, and the elector was qualified to sign the petition.

If the circulator is not a resident of Michigan, the circulator shall make a cross or check mark in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

**WARNING - A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor.**

Paid for with regulated funds by CLARKSTON CARES 2022, 37637 Five Mile Rd Suite 307, Livonia, MI 48154

CLARKSTON CARES 2022 is the organization primarily interested in and responsible for the circulation of this petition and the securing of this amendment to the charter.

### CIRCULATOR - Do not sign or date certificate until after circulating petition.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
(Signature of Circulator) (Date)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
((Complete Residence Address (Street and Number or Rural Route)) Do not enter a post office box

\_\_\_\_\_  
(City or Township, State, Zip Code)

\_\_\_\_\_  
(County of Registration, If Registered to Vote, of a Circulator who is not a Resident of Michigan)

#### AFFIDAVIT

\_\_\_\_\_, being first duly sworn, deposes and says that each signature on this petition is the genuine signature of the person whose names it purports to be, and was made in the presence of the affiant

STATE OF MICHIGAN }  
COUNTY OF \_\_\_\_\_ }

On this date \_\_\_\_/\_\_\_\_/2022 the above-named circulator personally appeared before me and verified under oath that the statements in the certificate of circulator are true.

X \_\_\_\_\_

Printed Name \_\_\_\_\_ Notary Public, \_\_\_\_\_ County, Michigan

My Commission Expires: \_\_\_\_/\_\_\_\_/\_\_\_\_ Acting in \_\_\_\_\_ County.

# **EXHIBIT 11**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

CLARKSTON CARES 2022,

Plaintiff,

vs.

Case Number: 2022-  
Hon.

-AW

JENNIFER SPEAGLE, as  
CLERK OF THE  
CITY OF THE VILLAGE OF  
CLARKSTON, in  
her Official Capacity.

Defendant.

HANNAH STOCKER (P82847) Attorney for Plaintiff 23332 Farmington #98 Farmington, MI 48336 (248) 252-6405 (telephone) hannah@stockerlawpllc.com	
--	--

**ORDER TO SHOW CAUSE WHY WRIT OF MANDAMUS SHOULD NOT ISSUE  
PURSUANT TO MCR 3.305(C)**

At a session of said Court, held in the Oakland County Courthouse,  
located in the City of Pontiac, Oakland County, Michigan on  
\_\_\_\_\_, 2022.

PRESENT: HONORABLE \_\_\_\_\_  
Circuit Court Judge

THIS MATTER having come before the Court upon Plaintiff's Complaint and Ex Parte Motion to Show Cause, and it appearing to the Court that immediate action is necessary;

THEREFORE IT IS HEREBY ORDERED that Defendant shall appear before this Honorable Court on \_\_\_\_\_ at \_\_\_\_\_ to Show Cause Why a Writ of Mandamus should not issue as requested in Plaintiff's Complaint and Ex Parte Motion;

IT IS FURTHER ORDERED that Defendants shall have until \_\_\_\_\_ to answer and respond to Plaintiff's Complaint.

Dated: \_\_\_\_\_

\_\_\_\_\_

Circuit Court Judge

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

CLARKSTON CARES 2022,

Plaintiff,

vs.

Case Number: 2022- 195571 -AW  
Hon.

JENNIFER SPEAGLE, as  
CLERK OF THE  
CITY OF THE VILLAGE OF  
CLARKSTON, in  
her Official Capacity.

Defendant.

HANNAH STOCKER (P82847) Attorney for Plaintiff 23332 Farmington #98 Farmington, MI 48336 (248) 252-6405 (telephone) hannah@stockerlawpllc.com	
--	--

**ORDER TO SHOW CAUSE WHY WRIT OF MANDAMUS SHOULD NOT ISSUE  
PURSUANT TO MCR 3.305(C)**

At a session of said Court, held in the Oakland County Courthouse,  
located in the City of Pontiac, Oakland County, Michigan on  
8-12-2022, 2022.

PRESENT: HONORABLE RAE LEE CHABOT  
Circuit Court Judge

THIS MATTER having come before the Court upon Plaintiff's Complaint and Ex Parte Motion to Show Cause, and it appearing to the Court that immediate action is necessary;

THEREFORE IT IS HEREBY ORDERED that Defendant shall appear before this Honorable Court on Tuesday, August 16, 2022 at 10:30 AM to Show Cause Why a Writ of Mandamus should not issue as requested in Plaintiff's Complaint and Ex Parte Motion;



IT IS FURTHER ORDERED that Defendants shall have until August 16, 2022 to answer and respond to Plaintiff's Complaint.

Dated: 8-12-2022

/s/ Rae Lee Chabot

Circuit Court Judge

JSG

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CLARKSTON CARES 2022

Plaintiff,

vs.

Case No. 2022-195571-AW  
Hon. Rae Lee Chabot

JENNIFER SPEAGLE, as CLERK OF  
THE CITY OF THE VILLAGE OF CLARKSTON,  
in her Official Capacity

Defendant.

\_\_\_\_\_  
HANNAH STOCKER (P82847)  
Attorney for Plaintiff  
23332 Farmington #98  
Farmington, Michigan 48336  
(248) 252-6405  
hannah@stockerlawpllc.com

\_\_\_\_\_  
THOMAS J. RYAN, P.C. (P19808)  
Attorney for Defendant  
2055 Orchard Lake Road  
Sylvan Lake, Michigan 48320  
(248) 334-9938  
sylvanlawtr@gmail.com

**ANSWER TO PLAINTIFF'S COMPLAINT FOR WRIT OF MANDAMUS AND  
DECLARATORY RELIEF**

NOW COMES the Defendant, Jennifer Speagle, as Clerk for the City of the Village of Clarkston, in her Official Capacity, by and through her attorney, Thomas J. Ryan, P.C., and in answer to Plaintiff's Complaint for Writ of Mandamus and Declaratory Relief states as follows:

**GENERAL AND JURISDICTIONAL ALLEGATIONS**

1. Answering paragraph one, Defendant being without sufficient information to form a belief leaves Defendant to its proofs.

2. Answering paragraph two, Defendant being without sufficient information to form a belief leaves Defendant to its proofs.

3. Answering paragraph three, Defendant admits the allegations as true.

4. Answering paragraph four, Defendant admits the allegations as true.

5. Answering paragraph five, Defendant admits the allegations as true, the statute cited speaks for itself without further response from Defendant herein. Defendant further states that the Home Rule City Act relating to charter amendments is MCL 117.21 through 117.25.

6. Answering paragraph six, Defendant denies the allegations as untrue.

7. Answering paragraph seven, Defendant admits the allegations as true.

8. Answering paragraph eight, Defendant admits the allegations as true.

#### **BACKGROUND FACTS**

9. Answering paragraph nine, Defendant, according to information and belief admit the allegations as true.

10. Answering paragraph 10, Defendant admits the allegations as true.

11. Answering paragraph 11, Defendant denies the allegations as untrue, and in further answer states the initial canvass was on July 14, 2022.

12. Answering paragraph 12, Defendant denies the allegations as untrue as the letter speaks for itself.

13. Answering paragraph 13, Defendant admits the allegations as true as the Defendant does not have the right to certify ballot language according to the Home Rule City Act without review by the Governor and Attorney General of the State of Michigan.

14. Answering paragraph 14, Defendant denies the allegations as untrue.

15. Answering paragraph 15, Defendant denies the allegations as untrue.

16. Answering paragraph 16, Defendant denies the allegations as untrue.

17. Paragraph 17 is a request for relief and does not contain factual allegations and no response is required by Defendant herein.

**THE HOME RULE CITY ACT AND MICHIGAN ELECTION LAW**

18. Answering paragraph 18, Defendant admits the allegations as true.

19. Answering paragraph 19, Defendant states the statute cited speaks for itself without further response by Defendant herein.

20. Answering paragraph 20, Defendant states the statute cited speaks for itself without further response by Defendant herein.

21. Answering paragraph 21, Defendant states the statute cited speaks for itself without further response by Defendant herein.

22. Answering paragraph 22, Defendant states the statute cited speaks for itself without further response by Defendant herein.

23. Answering paragraph 23, Defendant states the statute cited speaks for itself without further response by Defendant herein.

24. Answering paragraph 24, Defendant states the statute cited speaks for itself without further response by Defendant herein.

25. Answering paragraph 25, Defendant states the statute cited speaks for itself without further response by Defendant herein.

26. Answering paragraph 26, Defendant denies the allegations as untrue. In further answer, Plaintiff omits MCL 117.21(2), which mandates the text of the ballot statement be submitted to the Attorney General for approval for compliance before being printed.

**THE CLERK HAS A DUTY TO CERTIFY THE PETITION AND BALLOT QUESTION**

27. Answering paragraph 27, Defendant admits the allegations as true.

28. Answering paragraph 28, Defendant states the statute cited speaks for itself without further response by Defendant herein.

29. Answering paragraph 29, Defendant states the statute cited speaks for itself without further response by Defendant herein.

30. Answering paragraph 30, Defendant states the statute and case cited speak for themselves without further response by Defendant herein.

31. Answering paragraph 31, Defendant states the statute cited speaks for itself without further response by Defendant herein.

32. Answering paragraph 32, Defendant states the statute cited speaks for itself without further response by Defendant herein.

33. Answering paragraph 33, Defendant states the statute cited speaks for itself without further response by Defendant herein.

34. Answering paragraph 34, Defendant states the statute cited speaks for itself without further response by Defendant herein.

35. Answering paragraph 35, Defendant states the statute cited speaks for itself without further response by Defendant herein.

36. Answering paragraph 36, Defendant states the case cited speaks for itself without further response by Defendant herein.

37. Answering paragraph 37, Defendant states the statute cited speaks for itself without further response by Defendant herein.

38. Paragraph 38 is a request for relief and does not contain factual allegations and no response is required by Defendant herein.

**COUNTY 1 – WRIT OF MANDAMUS**

39. Defendant incorporates by reference all answers to the preceding paragraphs as if fully restated herein.

40. Answering paragraph 40, Defendant states the case cited speaks for itself without further response by Defendant herein.

41. Answering paragraph 41, Defendant states the statute speaks for itself without further response by Defendant herein.

42. Answering paragraph 42, Defendant states the statute cited speaks for itself without further response by Defendant herein.

43. Answering paragraph 43, Defendant states the case cited speaks for itself without further response by Defendant herein.

44. Answering paragraph 44, Defendant admits the allegations as true.

45. Answering paragraph 45, Defendant denies the allegations as untrue, as the Home Rule City Act controls the procedure for initiatory charter amendments.

46. Answering paragraph 46, Defendant denies the allegations as untrue.

47. Answering paragraph 47, Defendant denies the allegations as untrue.

48. Answering paragraph 48, Defendant denies the allegations as untrue.

49. Answering paragraph 49, Defendant states the case cited speaks for itself without further response by Defendant herein.

50. Answering paragraph 50, Defendant denies the allegations as untrue.

51. Answering paragraph 51, Defendant states the case cited speaks for itself without further response by Defendant herein.

52. Answering paragraph 52, Defendant denies the allegations as untrue.

53. Paragraph 53 is a request for relief and does not contain factual allegations and no response is required by Defendant herein.

**COUNT II – DECLARATORY JUDGMENT**

54. Defendant incorporates by reference all answers to the preceding paragraphs as if fully restated herein.

55. Answering paragraph 55, Defendant admits the allegations as true.

56. Paragraph 56 is a request for relief and does not contain factual allegations and no response is required by Defendant herein.

WHEREFORE, Defendant prays this Honorable Court deny Plaintiff's Complaint for a Writ of Mandamus and Declaratory Relief.

Respectfully submitted,

BY: /s/ Thomas J. Ryan  
THOMAS J. RYAN, P.C. (P19808)  
Attorney for Defendant  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 334-9938  
[sylvanlawtr@gmail.com](mailto:sylvanlawtr@gmail.com)

Dated: August 15, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2022, I electronically filed the foregoing paper with the Clerk of the Court using the MiFile system, which will send notification of such filing to the attorney(s) of record.

/s/ Laura L. Petrusha  
Laura L. Petrusha

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CLARKSTON CARES 2022,

Plaintiff,

Case No. 2022-195571-AW

Vs.

Hon. Rae Lee Chabot

JENNIFER SPEAGLE, as CLERK OF THE  
CITY OF THE VILLAGE OF CLARKSTON,  
in her official capacity

Defendant.

---

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**DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S  
EX PARTE MOTION FOR ORDER TO SHOW CAUSE WHY A  
WRIT OF MANDAMUS SHOULD NOT ISSUE**

**I. INTRODUCTION AND SUMMARY OF CITY'S POSITION**

This very matter has been decided by this Honorable Court last August in Oakland Cares Coalition vs. Tammy Neeb, in her official capacity as Clerk for the City of Keego Harbor, Oakland County Circuit Court Case No. 2021-189429-AW. This Honorable Court denied Plaintiff's request for mandamus on the same issues and was upheld by the Court of Appeals. (attached **Exhibit A**). The Plaintiff makes several errors of law in this case.



1. The Plaintiff states whatever ballot language is presented for an initiatory charter amendment petition must be accepted by a local city clerk without regard to the statutory process established under the Michigan Home Rule City Act (HRCA) and must be certified by the dates set under MCL 168.646(a)(2). The HRCA includes MCL 117.21, MCL 117.21(2). MCL 117.21(3); MCL 117.25(3) contains the 45 day time period for a clerk to certify the sufficiency or insufficiency of a petition. The HRCA procedure for charter initiative petitions was the basis upon which this court correctly ruled as a matter of law that mandamus was not sustainable.

2. The amendment deadline filing statute created by MCL 168.646(a)(2) has a different purpose than the charter amendment process under the Home Rule City Act. *Warren City Council v. Buffa*, 333 Mich App 422, 960 NW2d 166, appeal denied, 506 Mich 889, 947 NW2d 689 (2020). *Buffa, supra* recognizes the process for Home Rule City charter amendments. The Plaintiff consistently argues the election deadline statute overrides the procedure by which a charter amendment initiative petition is processed to be placed on a ballot. The deadline statute has nothing whatsoever to do with the process as to how language is certified to be placed on a ballot for election.

3. The election deadline statute is concerned with ballot proposals that are ready to be certified by a city and county clerk for inclusion on a ballot. MCL 168.646(a)(2) states:

“(2) If a ballot question of a political subdivision of this state including, but not limited to, a county, city, village, township, school district, special use district, or other district is to be voted on at a regular election date or special election, the ballot wording of the ballot question must be certified to the proper local or county clerk not later than 4 p.m. on the twelfth Tuesday before the election. If the wording is certified to a clerk other than the county clerk, the clerk shall certify the ballot wording to the county clerk at least 82 days before the election. Petitions to place a county or local ballot question on the ballot at the election must be filed with the clerk at least 14 days before the date the ballot wording must be certified to the local clerk.” (Emphasis added)

The election deadline statute in question uses the conditional term “if” meaning that it is not a guarantee that language will be placed in the election cycle on a ballot, but only includes proposals that are ready to be certified by the local clerk to the county clerk at the election in question. The “if” is an insurmountable legal hurdle for the Plaintiff, because as the initiatory charter amendment process has not concluded, this Plaintiff’s petition and proposed ballot question does not qualify to be placed on the ballot.

The election statute deadline language has nothing whatsoever to do with the process to have a initiative charter ballot language vetted possibly by the city legislative body and mandatorily by the Attorney General and at least reviewed by the Governor. Once these steps occur and the Attorney General contacts the City Clerk, thereafter the matter is ready to be certified. The timing of the ballot certification is not controlled by the election deadline statute. The election deadline statute is the control date when all the steps have been successfully completed to place the ballot language for an election. In other words, the petitions filed by the Plaintiff do not meet the condition precedent for the election deadline statute because the ballot question is not ready to be certified at this time.

4. A city clerk has no authority to act in a vacuum on a charter amendment ballot initiative petition to decide to certify ballot language without following the process in the HRCA. Thus, the instant lawsuit requesting a city clerk to act outside of her authority when she does not have the legal authority to so act is not properly brought.

5. The county clerk is a necessary party to this litigation as it is the county to which the language must be certified. As the county is not a party to this litigation, the county cannot be ordered to take any action.

6. The constitutional right to initiative guaranteed by the Constitution of 1963, Article II, Section 9 provides: “The legislature shall implement the provisions of this section.” The legislature has provided the process for a charter amendment pursuant to the HRCA. While the Plaintiff takes advantage of the five (5%) percent signature requirement for an initiative petition under the HRCA; (where city charters require a greater number of signatures); they refuse to acknowledge that their right of initiative petition is governed by the remaining language in the HRCA as to the procedure that must be followed prior to ballot language being certified.

7. Pursuant to the difficulties caused by meeting the state election deadline to file charter amendments in local jurisdictions, but not appreciating the remainder of the process; the Governor’s office issued a directive on August 30, 2021, indicating in the next election year 2022 charter amendments will not be processed as of the filing deadline indicated in the election deadline statute and recommending a 60 to 90 day submission prior to the election deadline to have charter amendments processed timely. This only highlights to the fallacy of Plaintiff’s argument that its submitting a charter initiative petition completes the process and triggers the election deadline statute and totally ignores the remaining statutory review process. (**Exhibit B** – Letter of Alicia Moon, Deputy Legal Counsel, Office of Governor Whitmer dated 8/30/21)

## I. ARGUMENT

The crux of Plaintiff’s argument is that the election deadline statute MCL 168.646(a)(2) eviscerates and trumps the statutory process for a charter amendment initiatory petition established in the HRCA MCL 117.1 et seq. The Plaintiff is attempting to cause a conflict between the two (2) statutes when in a published Court of Appeals opinion *City of Warren v*

*Buffa*, this Court found no such conflict, but that each statute dealt with a different process concerning elections.

The HRCA gives the city clerk 45 days to canvass the petitions served, which includes reviewing the sufficiency of signatures as well as whether the form by the petition complies with applicable requirements. *Herp v Lansing City Clerk*, 164 Mich App 150, 160-161 (1987); MCL 117.25(3). Once a petition is certified as sufficient, “the clerk shall submit the proposed amendment to the electors of the city at the next regular municipal or general state election held in the city which shall occur not less than 90 days following the filing of the petition.” *Id.* Because this duty is not triggered until after the city clerk certifies the sufficiency of the petition, the next regular municipal or general state election, is determined as of the date of the certification, with consideration given to applicable ballot preparation deadlines. Thus, if certification does not occur until a deadline to submit ballot language for an upcoming election, i.e. the deadline described in MCL 168.646(a) has already passed, then the proposal cannot be placed on the ballot until the subsequent election.

There are also a number of other steps that must be taken before a proposed initiatory charter amendment can appear on an election ballot. The first step is to present the petition of the proposed ballot question to the local legislative body, which allows the local legislative body to weigh in on the form, that the question shall appear on the ballot and allows the legislative body to add an explanatory caption. MCL 117.21(2). Otherwise, the local legislative body can formulate a ballot question by “resolution”. The state Attorney General requires a completed packet from the local legislative body prior to a mandatory review by the Attorney General.

“This ballot language shall be submitted to the Attorney General for approval as compliance with applicable requirements before being printed.” MCL 117.21(2). The Attorney General requests that the completed packet be sent to the Attorney General and Governor at the same time, although for charter amendments by initiative petitions “they are submitted to the electors notwithstanding any objection by the Governor.” MCL 117.22. In the case at bar, since the petitions were attempted to be processed by the city clerk as indicated by the August 11, 2022 letter to Plaintiff’s counsel (attached **Exhibit C**); the statutory process with the City Council, Attorney General and Governor could not be completed by August 16, 2022. This the matter would be processed for the 2023 election. The *City of Warren v Buffa* case did not find any conflict between the state election deadline statute and the procedure for approval of charter amendment ballot language by initiative petition. By the plain language of the election deadline statute, the statute is only a possibility not a right by using the term “if”. Further, under the plain meaning of the election deadline statute, the HRCA does not contain filing deadlines it only deals with the procedure for processing charter initiative ballot amendments.

The Plaintiff is attempting to by implication to eviscerate the long standing HRCA process for initiatory charter amendments, which could have been recognized in *City of Warren v Buffa*, supra but was not. Such a position would violate rules of statutory construction by overruling other statutes, i.e. the Home Rule City Act for initiatory charter amendment procedures by implication. It is axiomatic that repeals by implication are disfavored, and that it is to be presumed in most circumstances “that if the Legislature had intended to repeal a statute or statutory provision, it would have done so explicitly.” *Wayne Co Prosecutor v Dep’t of Corrections*, 451 Mich 569, 576; 548 NW2d 900 (1996), citing *House*

*Speaker v State Admin Bd*, 441 Mich 547, 562; 495 NW2d 539 (1993). Therefore, repeal by implication will not be found if any other reasonable construction may be given to the statutes, *Wayne Co Prosecutor, supra* at 576.

In *Buffa, supra*, which was decided in a published opinion September 2, 2020, this issue of a conflict should have been laid to rest. The *Buffa* court ruled that “while both statutes ultimately concern ballot questions, MCL 168.646(a) encompasses any ballot question of a political subdivision of the state, while MCL 117.22 concerns only a narrow category, proposed amendments to city charters.” The court went on to say further,

“... they did not consider this as a common purpose, but that the statutes were better categorized as statutes that incidentally refer to the same subject. Continuing, *Buffa* stated that “both statutes generally refer to election matters but each has a distinct purpose. This court cannot read additional requirements into either MCL 117.22 or MCL 168.646(a)(2) that were not placed there by the legislature.” (citations omitted). Further, in this case MCL 168.646(a)(2) provides that if proposed ballot language is certified to a local clerk by 4 PM on the twelfth Tuesday before the election “the clerk shall certify the ballot wording to the county clerk at least 82 days before the election.”

The HRCA does not apply to any particular election or election date. It is the statutorily enacted process since 1909 to provide the process by which initiatory charter amendment petitions are handled.

Thus, after *Buffa, supra* there should be no misunderstanding in Michigan law as to an alleged conflict between the initiatory charter amendment process and the election deadline statute.

Really there is no conflict between the two (2) statutes because until and unless a ballot proposal has been properly vetted and is ready to be placed on the ballot, the “if” becomes an actuality and that point the ballot language must proceed forward. *Buffa, supra*.

## I. ARGUMENT – MANDAMUS

*Lansing School Education Association v Lansing Board of Education*, (on Remand); 293 Mich App 506, 519; 810 NW2d 95 (2011)

Plaintiff bears the burden of establishing an entitlement to that remedy and must prove the following four (4) elements:

1. The Plaintiff has a clear legal right to the performance of the duty sought to be compelled.
2. The Defendant has a clear legal duty to perform such act.
3. The act is ministerial in nature and involves no discretion or judgment.
4. The Plaintiff has no other adequate legal or equitable remedy.

The Plaintiff in this matter was unable to meet the elements in question as to:

1. Simply filing an initiatory petition for a charter amendment on a timely basis by or before the statutory deadline of July 26, 2022 is only the first in a many step process, which by law needs to be completed before the ballot question can be approved under the HRCA. The Plaintiff has the clear legal right only “if” the question is to be voted on at the election in question. The “if” is not the right indicated to the Plaintiff, but is vested only upon the completion of statutory process in question under the HRCA to qualify to be certified for the ballot at the election in question.

Here, because the process is ongoing and the ballot question was not able to be certified by the city clerk August 16, 2022, until the process is completed the Plaintiff does not have a clear legal right. Because of the statutory process, it may become a clear legal right at the conclusion of the procedural steps.

2. The Defendant does not have a clear legal duty to place this initiatory petition on the ballot for the reason that the city clerk is bound by the statutory procedures under the HRCA and is obligated by law to follow those procedures.

Under MCL 117.21(2), if the clerk determines a sufficient number of valid signatures, the clerk submits the petition to city council with the certification of the number of valid signatures. Further, at that point the city council determines whether the form of the question that will appear on the ballot, which shall “consist of a true and impartial statement of purpose of the amendment or question and does not create prejudice for or against the amendment in question.” At that point the legislative body, i.e. city council, may by resolution add an explanatory caption or a 100 word definition of purpose language of its own. In this matter, the City will act because the petition’s proposed language doesn’t meet the statutory requirement as neutral and impartial.

Pursuant to MCL 117.21 and 117.22, the text of the statement “shall be submitted to the Attorney General for approval as to compliance with this requirement before being printed.” Further, under MCL 117.22, the petition “shall be transmitted to the Governor of the state.” The Plaintiff’s Complaint and Brief ignore the mandatory and significant input the Attorney General has by statute to the ballot question.

At the time when the Attorney General has weighed in on the language, after the submission to the Governor with or without the Governor’s approval, the statutory process for reviewing the ballot language is complete and returned to the city clerk for certification to the Oakland County Clerk.

Thus, the City Clerk does not have authority to certify the ballot language by August 16<sup>th</sup> at 5:00 p.m. as the clear statutory process mandated by the HRCA has not been completed.

Because of the short time constraints involved in the filing of the petition and the statutory requirements of review by City Council, Attorney General and Governor, which



have not yet occurred; the clerk cannot certify the ballot language in contravention of state law regarding the process for charter amendment by initiatory petitions. As stated in the Letter of August 11, 2022 to Plaintiff's counsel (attached **Exhibit C**), City Council will take up the issue of the question and forward the information to the Attorney General and Governor after review by City Council. It should be indicated that other than the 45 day period to review signatures, there are no mandatory time constraints for action by the City Clerk. Thus, the act of the clerk is not a ministerial matter but is one nuanced after review by the City Council, Attorney General and Governor as to the content of the final ballot language.

The City Clerk in good faith attempted to move forward the petitions filed by Plaintiff, but because the process is more extensive than just the actions of the City Clerk, it is an impossibility for such actions to occur prior to the timing of the election statute, which again does not deal with the process for initiatory charter amendment as indicated by *Warren City Council v. Buffa*, 333 Mich App 422, 960 NW2d 166, appeal denied, 506 Mich 889, 947 NW2d 689 (2020). Just providing an initiatory petition before or at the deadline is only the beginning of the process not the final legally sufficient ballot language.

## II. ARGUMENT

### MINISTERIAL IN NATURE INVOLVING NO DISCRETION OR JUDGEMENT

“A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Hillsdale Co. Senior Servs, Inc. v. Hillsdale Co.*, 494 Mich. 46, 58 n. 11, 832 N.W.2d 728 (2013). (quotation marks and citation omitted). *Berry v. Garrett*, 316 Mich. App. 37, 42, 890 N.W.2d 882, 885 (2016). The city clerk's duty to certify the ministerial act of

certifying the ballot language can only arise after the City Council and Attorney General have weighed in with their statutory duties under the HRCA procedure. Until a ballot language is vetted appropriately by the entities in question, a city clerk has no legal authority to certify the ballot language by Michigan law.

### **III. ARGUMENT**

#### **PLAINTIFF HAS AN ADEQUATE LEGAL REMEDY.**

Plaintiff has an adequate legal remedy in that its petition is still being processed by the City Clerk and will be forwarded to the appropriate agencies, i.e. City Council, Attorney General and Governor for a final decision on the ballot language to the Oakland County Clerk for the November 2023 election. As indicated earlier, the city clerk cannot act in a vacuum and is only one part of the process to approve ballot language to be certified to the Oakland County Clerk. Since the Oakland County Clerk is not a party to this litigation; and the Plaintiff's ballot initiative is still being processed by the City Clerk, the request by the Plaintiff should be denied.

#### **CONCLUSION**

In conclusion, because the charter amendment initiatory process for an amendment of a city charter is more involved than just the actions of the city clerk; and because election law deadlines deal with ballot language that is ready to proceed to vote; and the status of the Plaintiff's ballot language is not at that stage for approval; and as a city clerk has no authority to ignore the charter amendment process of the HRCA, the Plaintiff's complaint must fail.

**RELIEF REQUESTED**

For all of the foregoing reasons, Defendant, JENNIFER SPEAGLE, respectfully requests this Honorable Court deny Plaintiff's request for writ of mandamus.

Respectfully submitted,

THOMAS J. RYAN, P.C.

/s/ Thomas J. Ryan

BY: THOMAS J. RYAN (P19808)

Attorney for Defendant/Appellee

2055 Orchard Lake Road

Sylvan Lake, MI 48320

(248) 334-9938

Dated: August 15, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2022, I electronically filed the foregoing paper with the Clerk of the Court using the MiFiling system which will send notification of such filing to all counsel of record.

/s/ Laura L. Petrusa

Laura L. Petrusa

**Court of Appeals, State of Michigan**

**ORDER**

Oakland Cares Coalition v Keego Harbor City Clerk

Docket No. 358335

LC No. 2021-189429-AW

Christopher M. Murray  
Presiding Judge

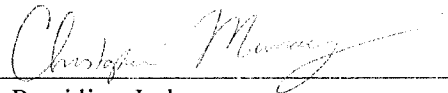
Deborah A. Servitto

Colleen A. O'Brien  
Judges

The Court orders, under MCR 7.216(A)(7), that the August 18, 2021, order denying plaintiff's complaint for mandamus is AFFIRMED. "Mandamus is the proper remedy for a party aggrieved by an election official's inaction." *Protecting Mich Taxpayers v Bd of State Canvassers*, 324 Mich App 240, 244; 919 NW2d 677 (2018). The extraordinary remedy of a writ of mandamus is properly granted when: "(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result." *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014). Whether a plaintiff has a clear right to performance and whether a defendant has a clear legal duty to perform are questions of law that this Court reviews de novo. *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016).

Defendant did not have a clear legal duty to certify plaintiff's petition for inclusion on the November 2, 2021, ballot. The filing deadlines stated in MCL 168.646a(2) do not control the charter amendment process under the Home Rule City Act (HRCA), MCL 117.1 *et seq.*, in particular, as it pertains to this case, they do not trump the 45-day time period within which a city clerk shall certify the sufficiency or insufficiency of a petition under MCL 117.25(3). Recently, in *Warren City Council v Buffa*, 333 Mich App 422, 432; 960 NW2d 166 (2020), this Court held that MCL 168.646a and the HRCA do not share a common purpose and, although both statutes "generally refer to election matters," "each has a distinct purpose." Accordingly, plaintiff did not have a clear legal right to performance, and the August 18, 2021, order denying mandamus relief is AFFIRMED.

The Court does not retain jurisdiction. This order is to have immediate effect. MCR 7.215(F)(2).

  
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

September 1, 2021

Date

  
Chief Clerk

**EXHIBIT**

A



STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GRETCHEN WHITMER  
GOVERNOR

GARLIN GILCHRIST II  
LT. GOVERNOR

August 30, 2021

*VIA EMAIL*

Michigan Department of State  
Bureau of Elections  
ATTN: Jonathan Brater  
P.O. Box 20126  
Lansing, MI 48901-0726

RE: Charter Amendments and Revisions

Dear Mr. Brater,

I am writing to request your assistance in notifying municipalities across Michigan of our administration's policy and recommendations regarding charter amendments and revisions.

Under the Home Rule City Act (MCL 117.22) the Governor has the responsibility to review all proposed charter amendments and revisions before any such amendment or revision is presented to the electors. Separately, under Michigan Election Law (MCL 168.646a) municipalities must submit ballot language regarding a proposed charter amendment or revision to the local clerk for certification not later than 4 p.m. on the twelfth Tuesday before the election.

It is a priority of Governor Whitmer's administration to review and respond to proposals by or before this first election filing deadline. It has also been our practice to request the Department of Attorney General review all submissions to our office for compliance with state law. This review takes time and historically guidance has recommended materials be submitted 60 – 90 days prior to the filing deadline to ensure sufficient time to review.

Starting in 2022, our office will not approve proposed charter amendments or revisions after 4 p.m. on the twelfth Tuesday before the election. (We will approve changes that fix scrivener's errors for charter amendments and revisions already approved by the deadline.)

We therefore strongly recommend submission of all proposed charter amendments to our office at least 60 days prior to the filing deadline and strongly recommend submission of all proposed charter revisions to our office at least 90 days prior to the filing deadline. We are requesting your assistance in notifying municipalities across Michigan of this policy and request.

EXHIBIT

B



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

GARLIN GILCHRIST II  
LT. GOVERNOR

Proposed amendments and revisions can be sent to our office via email at [Gretchen.Whitmer@michigan.gov](mailto:Gretchen.Whitmer@michigan.gov).

While we prefer email submission, we will also accept submissions sent via mail to:

Governor Gretchen Whitmer  
ATTN: Legal Division  
George W. Romney Building  
111 S. Capitol Avenue  
Lansing, MI 48933

Please note, the Department of Attorney General has an independent obligation to review proposed ballot language under the Home Rule City Act. The Department of Attorney General will continue using their historical process moving forward. For questions about the Department of Attorney General's process, please contact Assistant Attorney General George Elworth at (517) 335-7573 or [ElworthG@michigan.gov](mailto:ElworthG@michigan.gov).

Thank you for your hard work on behalf of Michiganders and for your continued partnership and commitment to improving the lives of residents. If you have questions on the Governor's process, please feel free to contact Kristina Gierhart, Executive Assistant for the Governor's Office of Legal Counsel, at [GierhartK1@michigan.gov](mailto:GierhartK1@michigan.gov).

Sincerely,

Alicia Moon  
Deputy Legal Counsel  
Office of Governor Whitmer

- c: Michigan Municipal League  
Michigan Association of Municipal Clerks  
Michigan Association of County Clerks  
Michigan Association of Municipal Attorneys  
State Bar of Michigan, Government Law Section  
Department of Attorney General, State Operations Division



**CITY OF THE VILLAGE OF CLARKSTON**

375 Depot Road  
Clarkston, MI 48346-1418  
Phone 248 • 625-1559  
Fax 248 • 625-3770

August 11, 2022

Clarkston Cares 2022

Re: Clarkston Cares 2022  
Charter Initiatory Petition

Dear Ms. Stocker,

As the Clerk for the City of the Village of Clarkston, I received your initiatory petitions for a Charter Amendment for the November 8, 2022 election, on July 1, 2022 after approximately 4:00 p.m.


Pursuant to Michigan statutes MCL 117.21(2), 117.22 and MCL 117.25(3), as City Clerk, I have 45 days to review the petition to make sure it is signed by the requisite number of registered electors. The City of the Village of Clarkston has 803 electors and you have provided 88 signatures that are appropriate and valid, so your petition has the proper amount of signatures.

I will advise the City Council of all the facts of this petition and that the petition has the requisite number of signatures and will put this on a City Council agenda in the near future to apprise City Council of the petition and ballot language.

Thereafter, by law, I must send the petition out to the Attorney General and Governor for review.

As indicated by the governing guidelines (Attached Exhibit A), your July 1, 2022 filing was too late to be considered for the November 2022 election.

Sincerely,

  
Jennifer Spreagle, City Clerk

Attachment

cc: Jonathan Smith, City Manager  
Thomas J. Ryan, City Attorney

**EXHIBIT**

C

STATE OF MICHIGAN

6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CLARKSTON CARES 2022,

Plaintiff,

v

File No. 2022-195571-AW

JENNIFER SPEAGLE & CLERK OF THE  
CITY OF THE VILLAGE OF CLARKSTON,

Defendants.

\_\_\_\_\_ /

EX PARTE MOTION TO SHOW CAUSE

BEFORE THE HONORABLE RAE LEE CHABOT, CIRCUIT COURT JUDGE

Pontiac, Michigan - Tuesday, August 16, 2022

APPEARANCES:

For the Plaintiff: HANNAH LAUREN STOCKER (P82847)  
23332 Farmington Road #98  
Farmington, Michigan 48336-9991  
(248) 450-0950

For the Defendant: THOMAS J. RYAN (P19808)  
2055 Orchard Lake Road  
Sylvan Lake, Michigan 48320-1746  
(248) 334-9938

TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE  
Linda Bacon, CER #8970  
P.O. Box 21067  
Lansing, Michigan 48909-1067



TABLE OF CONTENTS

PAGE

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WITNESSES: PLAINTIFF

None

WITNESSES: DEFENDANT

None

OTHER MATERIAL IN TRANSCRIPT:

None

EXHIBITS:

None

INTRODUCED

ADMITTED

X

X

1 Pontiac, Michigan

2 Tuesday, August 16, 2022 - 10:42:57 a.m.

3 THE CLERK: Calling matter Clarkston versus  
4 Speagle, docket number 22-195571-AV (sic).

5 THE COURT: Can I -- can I ask you hold off  
6 for like five minutes? I've got a really quick thing --

7 UNIDENTIFIED SPEAKER: Okay.

8 THE COURT: -- that I need to get on the  
9 Record. Thank you. Sorry. It's -- it's --

10 UNIDENTIFIED SPEAKER: It's Cecilia's.

11 THE CLERK: Oh, Richardson?

12 UNIDENTIFIED SPEAKER: Yes, Richardson. And  
13 that is docket number 37.

14 (At 10:43:30 a.m., hearing recessed)

15 (At 10:46:45 a.m., hearing resumed)

16 THE CLERK: Recalling matter Clarkston versus  
17 Speagle, docket number 22-195571-AV (sic).

18 THE COURT: Good morning.

19 MS. STOCKER: Good morning, your Honor.  
20 Hannah Stocker for Clarkston Cares.

21 MR. RYAN: Good morning, your Honor. May it  
22 please the Court, Tom Ryan appearing on behalf of  
23 defendant, Jen Speagle, clerk for the city of the Village  
24 of Clarkston.

25 THE COURT: Come on, you used to appear in

1 criminal call.

2 MR. RYAN: Exactly. I'm comfortable here,  
3 your Honor.

4 THE COURT: You're used to it. Yeah.

5 MR. RYAN: Yes.

6 MS. STOCKER: Feel like I'm going up against  
7 a celebrity. Everyone's like, "Hey, Tom. How's it going?"

8 THE COURT: Hey, that's who he is, you know.

9 Okay, so this is an ex parte motion to show  
10 cause why a writ of mandamus should not issue. Let me just  
11 say a couple of things that I think I know. You have  
12 petitioned the city council to amend the city charter to  
13 allow for marijuana dispensary. Is that correct?

14 MS. STOCKER: It's two medical marijuana  
15 facilities, correct.

16 THE COURT: Okay.

17 MS. STOCKER: Stand.

18 THE COURT: And so the -- and you -- and the  
19 time -- the last day for having something placed on the  
20 ballot is tomorrow?

21 MS. STOCKER: The certification  
22 --(undecipherable)-- to have the ballot question certified  
23 to the Oakland County Clerk would be today. So the -- it  
24 would be the -- was it the eighty-fourth day before the  
25 election. So that would be today.

1 THE COURT: Okay. I always get these things  
2 at the dead-last moment, and this is always an emergency  
3 motion, which why you're here during criminal call. Why --  
4 why is that, in this case?

5 MS. STOCKER: So for this particular matter,  
6 we didn't get the letter saying that it was not going to be  
7 placed on the November 8, 2022 ballot until August 11. So  
8 that was last Thursday. And given that we had requested  
9 that it be placed on this ballot, that is why we asked --  
10 and we really appreciate it -- the expedited hearing to  
11 determine whether or not that language was to be certified.

12 THE COURT: Okay. And why can't they put it  
13 on the ballot? Let the voters decide.

14 MR. RYAN: Oh, that's right, your Honor. So  
15 thank you. So your Honor, if I may say Tom Ryan appearing  
16 on behalf of the defendant.

17 So some time, your Honor, I may retire, and  
18 I'm sure when I retire -- I don't know when that'll be --  
19 I'll look back on these days fondly when we spent our  
20 August afternoons here or mornings dealing with election  
21 matters. We were here last year on this same issue with a  
22 different community.

23 THE COURT: Right.

24 MR. RYAN: So the problem is, your Honor,  
25 respectfully, there's two statutes involved. There's the

1 election deadline statute, which plaintiffs trump it. And  
2 there's a Home Rule City Act to amend charters, which is  
3 MCL 117.21 to 117.25.

4 THE COURT: Yeah.

5 MR. RYAN: So what they do -- they  
6 cherry-pick, respectfully, the -- the -- they can't  
7 short-circuit the process. The filing of the petitions and  
8 the fact that they have sufficient number of signatures  
9 starts the process for them, which means that it goes to  
10 city council first. Then it goes to the governor and to  
11 the attorney general to determine the language if the -- if  
12 the language is appropriate. This takes time.

13 That's why we attach that memorandum from the  
14 governor last year -- a copy to the attorney general, that  
15 the -- these people that --(undecipherable)-- charter  
16 amendments have to understand the process. It is not just  
17 getting the number of petitions signed and filed, and going  
18 on the ballot. It has to go through the process which is  
19 city council, governor, attorney general. That's what the  
20 law is. That's what their statutory --(undecipherable)--  
21 is based on. And so now it's just in process.

22 THE COURT: Okay. You want to know what I  
23 think?

24 MR. RYAN: Sure.

25 THE COURT: I think that it's possible that

1 they don't want marijuana in their city. They don't want  
2 to amend the charter. They don't want the marijuana. And  
3 so they drag their feet on a petition until the last minute  
4 when it's too late to like scramble to pull it all  
5 together.

6 MR. RYAN: Well, I -- and you said that last  
7 year, your Honor, to Keego Harbor, and I understand that.  
8 And that -- you're gonna see that case again next  
9 Wednesday, believe it or not. That's the back end of it.  
10 I'm sorry, but -- but --

11 THE COURT: Yeah.

12 MR. RYAN: But respectfully, the clerk has 45  
13 days to act, and whether they want it or not -- right now  
14 medical marijuana's not allowed -- but it is in the process  
15 and going through the process. They -- they can't short-  
16 circuit the statutory process, your Honor.

17 THE COURT: See, I don't --

18 MR. RYAN: That's all.

19 THE COURT: I don't believe that. I -- I'm  
20 not saying you're wrong on the law. I'm sure you're right  
21 on the law. But I don't buy that. I think --

22 MR. RYAN: Okay.

23 THE COURT: -- it's politics. I think it's  
24 all manipulation by the city council, and --

25 MR. RYAN: Well -- well, respectfully, your

1 Honor --

2 THE COURT: -- anyone else, and I realize I'm  
3 defaming people on the Record, but --

4 MR. RYAN: But the city council had nothing  
5 to do with this. This -- this -- this was a petition  
6 --(multiple speakers)--

7 THE COURT: Well, I got notice last Thursday.

8 MR. RYAN: Well -- right. This was brought  
9 to them. Right. But -- but, your Honor, you're gonna --  
10 you're gonna understand this, because next week we're gonna  
11 be here. That case has been pending for over a year. We  
12 sent all the language to the attorney general and the  
13 governor months ago for that case --(multiple speakers)--

14 THE COURT: Yeah.

15 MR. RYAN: Okay. And -- and that -- that  
16 there was a primary election this year, so the attorney  
17 general ask us -- ask everybody to hold off because they  
18 had ballot elections on the primary on August 2nd.

19 So it -- it's nobody's -- it's -- it's what  
20 the process is, your Honor. Nobody's doing anything except  
21 going through the process. They chose to go -- ask for a  
22 charter amendment. They got to follow the process. They  
23 can't short-circuit. You ruled that last year. It's the  
24 same case --

25 THE COURT: I know.

1 MR. RYAN: -- respectfully.

2 THE COURT: Go ahead.

3 MS. STOCKER: In regards to Mr. Ryan's point,  
4 this case is different than the Keego Harbor -- Harbor case  
5 in the fact that this petition was submitted on the  
6 forty-seventh day before this particular date.

7 So whereas the Michigan -- the Home Rule City  
8 Act, it allows for the clerk to determine the sufficiency  
9 within 45 days. In this particular matter, she did have  
10 the 45 days. And Keego Harbor, I believe that the issue  
11 was whether or not she still had the duties to certify when  
12 she hadn't completed that 45-day time frame of sufficiency.

13 This is a little bit different. She's  
14 canvassed the signatures. It appears that after she  
15 canvassed it, she did absolutely nothing.

16 In regards to Mr. Ryan's point that it has to  
17 go to the city council first for ballot language approval,  
18 that's not -- as far as I'm aware, that is not accurate  
19 because the Michigan election law, MCL 117.21, in regards  
20 to the actual ballot question language, if it has been set  
21 forth in the initiative petition, which is has been herein,  
22 it does not have to go to the city council for them to  
23 draft a new language.

24 I -- I am really astonished that, after she  
25 determined there was enough signatures, she -- she didn't



1 even try to send it to the attorney general for approval.  
2 That's -- that's really my issue here.

3 Also, in regards to this alleged process,  
4 there's controlling case law by the Michigan Court of  
5 Appeals, that would be *Buffa versus the City of Warren*,  
6 which Mr. Tom -- Mr. Ryan actually reference in his brief.  
7 And that case is the one that says that the city council --  
8 the city clerk has a duty to certify even if the governor  
9 hasn't, you know, said yes or no as to whether or not it is  
10 a sufficient proposal.

11 And in regards to initiative petitions, it's  
12 --

13 THE COURT: Yes.

14 MS. STOCKER: -- a little bit different  
15 because it's gonna be submitted to the people  
16 notwithstanding any objections from the governor.

17 So there's still time for her to weigh in,  
18 you know. But what we're here today is to figure out  
19 whether or not it should be certified and whether it should  
20 be placed on the ballot.

21 MR. RYAN: And -- and she can't certify, your  
22 Honor, by law until the attorney general's ruled on it.  
23 That's MCL 172.21, paren (2). It has -- I mean, and -- and  
24 even though it's -- (undecipherable) -- and the governor can  
25 say yes or no, but it won't have any merit, it still has to

1 go to the governor for review, not that he or she controls  
2 what happens after that.

3 But the attorney general does control.

4 THE COURT: And you say it doesn't?

5 MS. STOCKER: Well, it says -- let's see,  
6 "shall be placed" -- "the text of the statement shall be  
7 submitted to the attorney general for approval as  
8 compliance with this requirement before be -- before being  
9 printed." So before being printed, that's key here because  
10 it's not gonna be printed until probably the first week of  
11 September.

12 So the fact that she waited -- she  
13 --(undecipherable)-- returned in July 13th of 2022, she  
14 waited and did not do anything, it can still be submitted  
15 to the attorney general before it gets printed  
16 --(undecipherable)--

17 THE COURT: Just think about marijuana in  
18 Clarkston at Pine Knob.

19 MR. RYAN: (Undecipherable) Independence  
20 Township --(undecipherable)--

21 THE COURT: Oh. But that's not where Pine  
22 Knob it?

23 MR. RYAN: Oh, it -- it's in independence  
24 Township.

25 THE COURT: Oh.

1 MR. RYAN: We're just a little part of  
2 independent --(multiple speakers)--  
3 THE COURT: I got you. I got you. But  
4 that's big. I'm gonna grant the motion. Sorry, Mr. Ryan.  
5 MS. STOCKER: Thank you, your Honor.  
6 MR. RYAN: Really?  
7 THE COURT: Yes.  
8 MR. RYAN: In spite of your decision last  
9 year on the same fact?  
10 THE COURT: In spite of it.  
11 MR. RYAN: Okay. Thank you, your Honor.  
12 MS. STOCKER: I'll draft the order.  
13 THE COURT: You have to do the order.  
14 MS. STOCKER: Okay.  
15 THE COURT: We'll see what happens.  
16 MS. STOCKER: Thank you.  
17 MR. RYAN: Have a good day, your Honor.  
18 THE COURT: (Undecipherable).  
19 MS. STOCKER: Thank you.  
20 (At 10:56:47 a.m., hearing concluded)

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of thirteen (13) pages, before the 6th Judicial Circuit Court, Oakland County in the matter of:

CLARKSTON CARES 2022

v

JENNIFER SPEAGLE & CLERK OF THE  
CITY OF THE VILLAGE OF CLARKSTON

\_\_\_\_\_ /

Location: Circuit Court

Date: Tuesday, August 16, 2022

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ Linda Bacon

Linda Bacon, CER #8970  
Certified Electronic Recorder

Dated: August 18, 2022

Theresa's Transcription Service, P.O. Box 21067  
Lansing, Michigan 48909-1067 - 517-882-0060

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

CLARKSTON CARES 2022,

Plaintiff,

vs.

Case Number: 2022-195571-AW  
Hon. Rae Lee Chabot

JENNIFER SPEAGLE, as  
CLERK OF  
CITY OF THE VILLAGE OF  
CLARKSTON, in  
her Official Capacity.

Defendant.

HANNAH STOCKER (P82847) Attorney for Plaintiff 23332 Farmington #98 Farmington, MI 48336 (248) 252-6405 (telephone) hannah@stockerlawpllc.com	THOMAS J. RYAN (P19808) Attorney for Defendant 2055 Orchard Lake Road Sylvan Lake, MI 48320 (248) 334-9938 <a href="mailto:sylvanlawtr@gmail.com">sylvanlawtr@gmail.com</a>
--	--

**ORDER GRANTING PLAINTIFF'S MOTION FOR WRIT OF MANDAMUS**

At a session of said Court, held in the Oakland County Courthouse,  
located in the City of Pontiac, Oakland County, Michigan on  
8/16/2022, 2022.

RAE LEE CHABOT

PRESENT: HONORABLE \_\_\_\_\_  
Circuit Court Judge

THIS MATTER having come before the Court and the Court being advised in the  
premises,;

IT IS HEREBY ORDERED that Clarkston Cares 2022's Motion for Writ of Mandamus  
is granted for the reasons stated on the record.

FILED Received for Filing Oakland County Clerk 8/16/2022 2:39 PM

IT IS FURTHER ORDERED that Defendant, Jennifer Speagle, as City Clerk of the City of the Village of Clarkston, shall certify Clarkston Cares 2022's ballot question language to the Oakland County Clerk by August 16, 2022 for placement on the ballot for the November 8, 2022 election.

IT IS SO ORDERED.

***THIS ORDER RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.***

*/s/ Rae Lee Chabot*

YB \_\_\_\_\_  
CIRCUIT COURT JUDGE  
RAE LEE CHABOT

APPROVED AS TO FORM AND CONTENT:

*Agreed as to form and Content:*

*/s/ Hannah Stocker* \_\_\_\_\_

Hannah Stocker (P82847)  
Attorney for Clarkston Cares 2022

*/s/ Thomas J. Ryan (w/ permission)* \_\_\_\_\_

THOMAS J. RYAN (P19808)  
Attorney for Defendant

**Subject:** Re: Proposed Order

**Date:** Tuesday, August 16, 2022 at 12:24:47 PM Eastern Daylight Time

**From:** Thomas Ryan

**To:** Hannah Stocker

You have permission to sign my name to the Order.

Tom

On Tue, Aug 16, 2022 at 11:59 AM Hannah Stocker <[hannah@stockerlawpllc.com](mailto:hannah@stockerlawpllc.com)> wrote:

Tom,

Please see the attached Order and let me know if I have your approval to sign so I can submit.

Best,

Hannah Stocker, Esq.

23332 Farmington Rd. #98

Farmington, MI 48336

P: 248-252-6405

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Thomas J. Ryan, Esquire  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248)334-9938 - office  
(248)858-8508 - fax

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR OAKLAND COUNTY

CLARKSTON CARES 2022,

Plaintiff,

vs.

Case Number: 2022-195571-AW  
Hon. Rae Lee Chabot

JENNIFER SPEAGLE, as  
CLERK OF  
CITY OF THE VILLAGE OF  
CLARKSTON, in  
her Official Capacity.

Defendant.

HANNAH STOCKER (P82847) Attorney for Plaintiff 23332 Farmington #98 Farmington, MI 48336 (248) 252-6405 (telephone) hannah@stockerlawpllc.com	THOMAS J. RYAN (P19808) Attorney for Defendant 2055 Orchard Lake Road Sylvan Lake, MI 48320 (248) 334-9938 <a href="mailto:sylvanlawtr@gmail.com">sylvanlawtr@gmail.com</a>
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**AMENDED ORDER GRANTING PLAINTIFF'S MOTION FOR WRIT OF  
MANDAMUS**

At a session of said Court, held in the Oakland County Courthouse,  
located in the City of Pontiac, Oakland County, Michigan on  
8/16/2022, 2022.

PRESENT: HONORABLE RAE LEE CHABOT  
Circuit Court Judge

THIS MATTER having come before the Court and the Court being advised in the  
premises;

IT IS HEREBY ORDERED that Clarkston Cares 2022's Motion for Writ of Mandamus  
is granted for the reasons stated on the record.

FILED Received for Filing Oakland County Clerk 8/16/2022 3:54 PM



IT IS FURTHER ORDERED that Defendant, Jennifer Speagle, as City Clerk of the City of the Village of Clarkston, shall certify Clarkston Cares 2022's ballot question language to the Oakland County Clerk by August 16, 2022 for placement on the ballot for the November 8, 2022 election.

IT IS SO ORDERED.

***THIS ORDER RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.***

/s/ Rae Lee Chabot

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CIRCUIT COURT JUDGE  
RAE LEE CHABOT

JSG

APPROVED AS TO FORM:

*Agreed as to form:*

*/s/ Hannah Stocker*

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Hannah Stocker (P82847)  
Attorney for Clarkston Cares 2022

*/s/ Thomas J. Ryan (w/ permission)*

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THOMAS J. RYAN (P19808)  
Attorney for Defendant