STATE OF MICHIGAN

IN THE COURT OF APPEALS

HORACE SHEFFIELD III and RODRICK HARBIN, individuals,

Plaintiffs-Appellees,

vs.

JANICE WINFREY, in her official capacity as Clerk for the City of Detroit, and CITY OF DETROIT ELECTION COMMISSION,

Defendants,

and

DETROIT CHARTER REVISION COMMISSION,

Intervening Defendant-Appellant.

Court of Appeals No. 357298

Wayne County Circuit Court
Case No. 21-006043-AW
Hon. Chief Judge Timothy M. Kenny

BRIEF OF PLAINTIFFS-APPELLEES HORACE SHEFFIELD III AND RODRICK HARBIN

DECISION BY JUNE 1, 2021 REQUESTED PURSUANT TO MICHIGAN SUPREME COURT'S 06/01/21 ORDER TO EXPEDITE

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JURISDICTIONAL STATEMENT

Plaintiffs-Appellees do not contest the jurisdiction of this Court.

COUNTER-STATEMENT OF QUESTIONS INVOLVED

1. Does the Home Rule City Act of 1909 prohibit a city charter commission from submitting a proposed revised city charter to voters when the Governor expressly rejects the proposed revised city charter?

Plaintiffs-Appellees say: Yes

Intervening Defendant-Appellant says: No

Below, Defendants said: No[1]

The Trial Court said: Yes

2. Did the Circuit Court properly grant Plaintiffs' request for a Writ of Mandamus ordering Defendants to remove from the ballot the question of whether to adopt the proposed revised charter, where all elements for mandamus were fully established in the record?

Plaintiffs-Appellees say: Yes

Intervening Defendant-Appellant says: No

Below, Defendants said: No

The Trial Court said: Yes

[1] As of the filing of this Brief, Defendants have taken no position on appeal.

INTRODUCTION

This case is about whether the nine-member Detroit Charter Revision Commission (the "Charter Commission") has the authority to disregard the Governor's veto of a proposed city charter that the Governor has concluded contains "substantial and extensive legal deficiencies." All parties agree that the Charter Commission is required to transmit a proposed charter to the Governor for her signature. And they agree that, here, the Governor declined to sign the proposed charter after the Department of the Attorney General (the "Attorney General") determined that the proposed charter is "not consistent with the requirements of . . . state and federal law."

But the Charter Commission resolved to submit the proposed charter to voters anyway, notwithstanding the Governor's rejection of it. Accordingly, the Charter Commission submitted to the City's election officials a ballot question. The City of Detroit Election Commission (the "Election Commission") and the City Clerk decided to place the question on the ballot, despite their clear legal duties not to approve or certify unlawful ballot questions, and the Detroit Corporation Counsel's determination that the ballot question was unlawful.

Against this backdrop, the Circuit Court properly issued a writ of mandamus reversing this unlawful certification and "ordering the [City] Clerk and the Election Commission not certify Proposal P for the August 3, 2021 ballot." (See Opinion & Order ("Op"), AT App, Ex 1, p 10.[1]) As the Circuit Court correctly found, "[u]nder the Home Rule City Act, MCL 117.22 requires a revision of a City Charter to have the approval of the Governor before it can go on the ballot. The language of MCL 117.22 does not provide a mechanism whereby a revision of the Charter can be submitted to the voters without the approval of the Governor." (*Id.* at 7.)

[1] As used in this brief, "AT App" refers to the Appellant's Appendix and "AE App" refers to the Appellees' Appendix. Because the Appellant's Appendix is not consecutively paginated, Appellees have cited to the relevant exhibit number and subpart throughout this brief.

The Circuit Court got it right. As set forth more fully below, Michigan Home Rule City Act of 1909, MCL 117.1 *et seq.* (the "HRCA"), requires city charter commissions to transmit a proposed charter to the Governor for a reason: it serves as a check on irresponsible, unlawful decision-making, and ensures that local authorities are not the final arbiters on matters of statewide concern. The text, history, and purpose of the HRCA, as well as home rule jurisprudence in Michigan and elsewhere, all clearly demonstrate that city charter commissions have no authority to disregard a Governor's objections to a revised city charter.

Accordingly, this Court should affirm the trial court's decision and dismiss this appeal.

COUNTER-STATEMENT OF FACTS

A. The Detroit Charter Revision Commission.

In 2018, voters in the City of Detroit were presented with the question of "whether there shall be a general revision of the City Charter." (See 2012 Detroit Charter, AT App, Ex 4, § 9-403.) Under the HRCA, a "general revision" of a charter is different from an amendment to a charter, and entails a much more significant modification to the city's laws. (See Compl, AE App, Ex 6, ¶ 46.) The Michigan Supreme Court has explained that:

> Revision implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old. As applied to fundamental law, such as a constitution or charter, it suggests a convention to examine the whole subject and to prepare and submit a new instrument, whether the desired changes from the old be few or many. Amendment implies continuance of the general plan and purport of the law, with corrections to better accomplish its purpose. Basically, revision suggests fundamental change, while amendment is a correction of detail.

Kelly v Laing, 259 Mich 212, 217; 242 NW 891 (1932). "Revisions" to city charters are governed by MCL 117.18, whereas "amendments" are governed by MCL 117.21.

At the August 7, 2018 primary election, Detroit voters decided that the city charter should be revised and established the Charter Commission to prepare the revised charter. (See Compl,

AE App, Ex 6, ¶ 10.) Detroit voters elected eight of the nine members of the current Charter Commission at the general election on November 8, 2018. (*Id.* ¶ 11.) The ninth member of the current Charter Commission was appointed by the Charter Commission itself on November 23, 2019, following the resignation of a prior member. (See *id.* ¶ 12.)

Under the HRCA, the Charter Commission has a maximum of three years to complete its task. (*Id.* ¶ 13.) If no revised charter is adopted by August 6, 2021, the Charter Commission will "terminate and cease to exist." See MCL 117.18. The Charter Commission did not complete a proposed revision of Detroit's charter for about two and a half years. (Compl, AE App, Ex 6, ¶ 14.)

B. The Governor Rejects the Proposed Charter.

On February 27, 2021, the Charter Commission finally announced and published the City of Detroit Proposed 2021 Revised Charter (the "Proposed Charter," see AE App, Ex 1, Tab C). The Charter Commission adopted the Proposed Charter for submission to the Governor on March 9, 2021. (See March 9 Resolution, AE App, Ex 1, Tab A.) The City Clerk certified a true and correct copy of the Proposed Charter and the resolution approving the Proposed Charter for submission to the Governor two days later. (See March 11 Certification, AE App, Ex 1.)

On March 5, 2021, the Charter Commission submitted the Proposed Charter to Governor Gretchen Whitmer pursuant to MCL 117.22. (See March 5 Letter, AT App, Ex 5.) Although the Charter Commission was aware that the Governor's review customarily takes up to 90 days, it requested an expedited 60-day review to ensure that the Governor's response was received before the August 3, 2021 primary election, which is the last election within the Charter Commission's term of existence. (See *id.* at 3; Election Calendar, AT App, Ex 11.)

As is custom, Governor Whitmer referred the Proposed Charter to the Attorney General for legal review. (See March 8 Letter, AT App, Ex 8.) The Attorney General returned its findings to Governor Whitmer on April 30, 2021, explaining that it sought "to identify provisions that are

not consistent with the requirements of the HRCA, and other applicable state and federal law." (See April 30 Attorney General Letter, AT App, Ex 8, p 4.)

The Attorney General identified several legal and practical problems related to the bankruptcy court's retained jurisdiction over the City of Detroit pursuant to the City's Eighth Amended Plan for the Adjustment of Debts of the City of Detroit (the "Chapter 9 Plan"), including:

- The Proposed Charter's provision regarding pension rates "may be impracticable because pension rates are not completely within the City's control";
- Based on an analysis by Detroit's CFO, the Proposed Charter's spending provisions would "spur an 'imminent fiscal crisis' by creating a $3.4 billion deficit within four years," which the Attorney General concluded would "likely trigger" the Detroit Financial Review Commission (the "FRC") to "regain strict control over the City's finances";
- The Proposed Charter's invalidation of contracts for the shared control of the Detroit water system violates the terms of the Chapter 9 Plan; and
- Many proposed revisions "would be void or ineffective if the City were to file bankruptcy again."

(See *id.* at 5–8.)

The Attorney General also identified a number of additional deficiencies in the Proposed Charter, independent of the City of Detroit's bankruptcy status, including:

- Direct conflict with provisions of the Michigan Election Law;
- Direct conflict with federal law that would render the City of Detroit ineligible to receive federal funding for transportation projects;
- Direct conflict with state law governing the ability of a municipality to fix utility rates;

- Direct conflict with state law that prohibits the imposition of a residency requirement on employment as a condition of employment or promotion;
- Provisions related to Water and Sewage that fail to acknowledge the City of Detroit's obligations to the Great Lakes Water Authority and that likely cannot be reconciled with the city's financial commitments and state and federal law;
- Provisions that exceed a municipality's legal ability to amend and enforce civil rights law; and
- Direct conflict with state law prohibiting enactment of a local wage ordinance.

(See *id.* at 8–15.)

Based on these and other issues, the Attorney General "concluded that the proposed charter includes provisions that are not consistent with the requirements of the HRCA, and other applicable state and federal law." (See *id.* at 16.)[2]

On April 30, 2021, Governor Whitmer responded to the Charter Commission's March 5, 2021 submission. (April 30 Governor Letter, AT App, Ex 8.) The Governor explained that "the obligations of a governor in this process are set forth in the Home Rule City Act. Specifically, MCL 117.22 states: 'If the governor shall approve it, he shall sign it; if not, he shall return the charter to the commission with his objections thereto.'" (See *id.* at 1 (cleaned up).) The Governor declined to sign the Proposed Charter, explaining that "the Department of Attorney General has determined that the current draft has substantial and extensive legal deficiencies.

[2] In its letter, the Attorney General indicated that, after a Governor declines to approve a proposed charter, "the customary practice" is that the charter commission makes changes in the proposed charter to address the Governor's objections and then resubmits a modified proposed charter for the Governor's approval. (*Id.* at 4.) But it suggested that "[a]nother option would be for the charter commission to submit the proposed charter to the voters for approval notwithstanding the Governor's objections." (*Id.*)

Given these defects . . . I cannot approve the Proposed 2021 Revised Charter at this time." (*Id.*) Governor Whitmer also highlighted the financial risk created by the Proposed Charter:

> Moreover, the Revised Charter includes several provisions that will require close study by the Detroit Financial Review Commission (FRC). If the proposed revisions cause a financial crisis, the FRC could then revoke the City of Detroit's and the Detroit Public School Community District's waiver, requiring the FRC to regain full oversight over the city's and school district's finances. A financial crisis could have adverse consequences for residents, businesses, and persons who receive a pension from the city.

(*Id.* at 1–2.)

The Governor made no comment regarding the legal effect of her objections or her refusal to approve and sign the Proposed Charter. (See *id.*)

C. Defendants Certify the Ballot Proposal in Spite of the Governor's Rejection.

On May 3, 2021, the Charter Commission requested information about "the proper procedure and protocol for submitting a ballot question intended to detail the revisions made to the Detroit City Charter." (See May 3 Letter, AE App, Ex 2.) In response, the City Clerk stated that "the Detroit Charter Revision Commission's Proposed Revised Charter cannot reach the ballot, because the Governor has not approved it," citing a legal memorandum prepared by Corporation Counsel for the City of Detroit. (See May 4 Letter, AE App, Ex 3.)

On May 6, 2021, the Charter Commission decided to forge ahead anyway, resolving to submit to voters the following ballot question: "***Proposal P – 'Shall the City of Detroit Home Rule Charter proposed by the Detroit Charter Revision Commission be adopted?'***" ("Proposal P"). (See March 6 Resolution, AT App, Ex 9 (emphasis in original).) The Charter Commission then submitted Proposal P to the City Clerk for "placement on the August 3, 2021 primary ballot." (See March 6 Letter, AT App, Ex 9.)

On May 10, 2021, the City Clerk rejected the Charter Commission's submission, stating that "the law provides no path forward for a commission-proposed revision that lacks the Governor's approval." (See March 10 Letter, AE App, Ex 4.) Further, the City Clerk noted: "I presume that the 'Detroit Home Rule Charter' referenced in your May 6, 2021 letter is the 'Certified Draft for Review by Hon. Governor Whitmer,' approved by the Charter Revision Commission on February 27, 2021, and certified by me on March 11, 2021." (*Id.*)

The deadline for certifying a ballot question to the City Clerk—May 11, 2021 at 4:00 p.m., see MCL 168.646a—came and went with no further action by the Charter Commission, the City Clerk, or the Election Commission. After the 4:00 p.m. deadline, the Charter Commission adopted a modified draft of the Proposed Charter for resubmission to Governor Whitmer (the "Modified Proposed Charter," AT App, Ex 12). (See May 11 Resolution, AE App, Ex 5.)

On May 13, 2021, the Election Commission met to determine whether to certify Proposal P for the August 3, 2021 primary ballot. (See May 13 Meeting Minutes, AT App, Ex 10.) At that meeting, the commissioners expressly interpreted Proposal P to refer to the Proposed Charter and not the Modified Proposed Charter. (See *id.*) With that understanding, they voted 2–1 to place Proposal P on the August 3, 2021 primary ballot. (See *id.*)

D. The Governor Rejects the Modified Proposed Charter.

On May 13, 2021, the Charter Commission transmitted the Modified Proposed Charter to the Governor for her approval and signature. (See May 13 Letter, AT App, Ex 13.) In its letter, the Charter Commission argued that the Detroit Corporation Counsel's view was "specious" and at odds with "[the Governor's] determination and the Michigan Attorney General's opinion that a Charter lacking [the Governor's] 'approval' can be placed on the ballot." (See *id.* at 1.)

The Governor responded on May 24, 2021, and declined to review the Modified Proposed Charter because of "the legal questions doing so at this time could raise and because of the practical

difficulties that could follow." (See May 24 Letter, AT App, Ex 14, p 1.) The Governor also clarified: "The conclusion I reached in my April 30, 2021 letter stands. As to the legal effect of that decision on whether the City of Detroit Proposed 2021 Revised Charter can appear on the ballot for the August 3, 2021 election, I have not taken a position."[3] (See *id.* at 2.)

E. This Action.

Plaintiffs, residents and electors of the City of Detroit, filed this action on May 17, 2021, seeking an emergency writ of mandamus. (See Compl, AE App, Ex 6.) Plaintiffs alleged that the HRCA, MCL 117.22, requires the Governor to approve and sign every revised city charter or amendment to a city charter. (See *id.* ¶ 45.) And Plaintiffs argued that, because the Governor had not approved and signed the Proposed Charter, but had instead returned it to the Charter Commission with her objections, the requirements of the HRCA had not been met and the question of whether to adopt the Proposed Charter could not be submitted to voters. (See *id.* ¶¶ 45–59.) Pursuant to MCR 3.305(C), Plaintiffs also filed an ex parte motion for an order to show cause why a writ of mandamus should not issue. (Motion for Order to Show Cause, AE App, Ex 7.)

The Circuit Court held consolidated hearings in this action and a related case—*Lewis v Winfrey*, Wayne County Circuit Court Case No. 21-0006040-AW—on May 21, 2021. At the hearing, the Circuit Court accommodated the request of counsel for the City Clerk and the

[3] Incredibly, Appellant reads this to say that the Governor "did not locate any law preventing Proposal P from still being placed on the ballot." Appellant's Br at 7; see also *id.* at 1 (stating the Governor observed that "no statute requires the Governor's approval of a City Charter before it may be submitted to the electors for a vote"); *id.* at 4 (stating the Governor found that "despite the Governor's lack of approval, the Charter Revision Commission had the legal right to place the ballot question on the ballot"); *id.* at 17 (stating "the Governor . . . agree[s] with the Charter Revision Commission's interpretation . . . [and] expressly stated that the Governor's lack of approval did not prevent the City from putting Proposal P on the ballot"). There is simply no way to read "I have not taken a position" to mean what Appellant says it does.

Election Commission, setting a second hearing on May 25, 2021, and inviting the parties to submit responses and supplemental briefs by May 24, 2021 at 4 p.m.

On May 26, 2021, the Circuit Court issued a written opinion and order granting a writ of mandamus "ordering the [City] Clerk and the Election Commission not certify Proposal P for the August 3, 2021 ballot." (Op, AT App, Ex 1, p 10.) The Court focused its analysis on the HRCA:

> Under the Home Rule City Act, MCL 117.22 ***requires*** a revision of a City Charter to have the approval of the Governor ***before it can go on the ballot***. The language of MCL 117.22 does not provide for a mechanism whereby a revision of the Charter can be submitted to the voters without the approval of the Governor.

(*Id*. at 7 (emphasis added).) The Circuit Court found Appellant's argument that the Governor's approval is not required "unconvincing":

> To contend that the Governor's approval is not necessary for a revision of the Charter rather than an amendment makes the submission of the draft to the Governor an empty and useless gesture if the failure to gain approval of the revision is of no consequence.

(*Id.* at 8–9.) Accordingly, the Circuit Court held that Plaintiffs "have a clear legal right to the performance of the duty sought to be compelled." (*Id.* at 9.)

The Circuit Court also found the remaining elements of mandamus satisfied. Notably, the Circuit Court held that "[i]t is a ministerial act to refuse to submit the Proposal P for certification to go on the ballot in August 2021." (*Id.* at 10.)[4]

This appeal by Intervening Defendant followed. Intervening Defendant moved this Court to expedite the appeal. After allowing Appellees time to respond, the Court denied that motion to expedite by an Order dated May 28, 2021.

[4] Intervening Defendant filed a motion to stay pending appeal with the Circuit Court. On May 28, 2021, following oral argument, the Circuit Court denied Intervening Defendant's request, finding Intervening Defendant had not demonstrated a likelihood to succeed on the merits of its appeal or that the balancing of harms favored issuance of a stay.

Intervening Defendant also filed a bypass appeal to the Michigan Supreme Court, attempting to short circuit this Court's review. On June 1, 2021, without providing Appellees with an opportunity to respond, the Michigan Supreme Court granted Intervening Defendant's request to expedite the appeal but denied leave to appeal directly to the Michigan Supreme Court. In doing so, the Michigan Supreme Court stayed the order granting mandamus and directed this Court to "expedite consideration of the claim of appeal in this matter while maintaining the stay imposed by this Court."

STANDARD OF REVIEW

This Court reviews for an abuse of discretion a trial court's decision to issue or deny a writ of mandamus. *Stand Up for Democracy v Sec'y of State*, 492 Mich 588, 598; 822 NW2d 150 (2012). This Court reviews *de novo* questions of statutory interpretation. *Id.* at 598.

ARGUMENT

The text, history, and purpose of the HRCA, and related home rule jurisprudence, all clearly demonstrate that city charter commissions have no authority to override a Governor's objections to a revised city charter. Accordingly, the Proposed Charter and the ballot proposal related to it are unlawful and ineligible for placement on the ballot. The Court should thus affirm the Circuit Court's threshold determination that Proposal P does not comply with the requirements to submit a ballot question to electors and affirm the Circuit Court's issuance of a writ of mandamus to remove Proposal P from the ballot for the August 3, 2021 primary election.

I. THE HRCA PROHIBITS SUBMITTING TO VOTERS A PROPOSED CITY CHARTER THAT THE GOVERNOR HAS EXPRESSLY REJECTED.

A. The Text of the HRCA Demonstrates that City Charter Commissions May Not Submit a Proposed Charter to Voters in Spite of the Governor's Objections.

City charters can be modified in two ways: the entire city charter can be revised—replacing the existing charter with "a new instrument" "without obligation to maintain the form, scheme, or

structure of the old"—or a discrete provision of the city charter can be amended. See *Kelly*, 259 Mich at 217. Amendments to a city charter can be proposed by the legislative body of a city or by an initiative petition. See MCL 117.21. Revised charters, by contrast, are proposed by nine-member city charter commissions that exist only for a short statutory term. See MCL 117.18.

All parties agree that both revised charters and amendments to city charters must be transmitted to the Governor for her approval and signature. See MCL 117.22 ("Every amendment to a city charter . . . and every charter . . . 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 . . . , with his objections thereto, which shall be spread at large on the journal of the body receiving them . . . ."). And the parties agree that, here, the Governor declined to approve, and did not sign, the Proposed Charter. Accordingly, the Circuit Court correctly determined that the Proposed Charter did not comply with the HRCA:

> Under the Home Rule City Act, MCL 117.22 ***requires*** a revision of a City Charter to have the approval of the Governor ***before it can go on the ballot***. The language of MCL 117.22 does not provide for a mechanism whereby a revision of the Charter can be submitted to the voters without the approval of the Governor.

(Op, AT App, Ex 1, p 7 (emphasis added).)

The Charter Commission challenges this determination. It submits that the Governor's decision not to approve or sign the Proposed Charter had no real-world effect, and that it is free to submit the Proposed Charter to electors—who may then vote it into law—in spite of the Governor's objections and refusal to sign. That interpretation violates several bedrock rules of statutory interpretation, and this Court should affirm the decision below.

First, a court "must give effect to every word, phrase, and clause [of a statute] and avoid an interpretation that would render any part of the statute surplusage or nugatory." *People v Pinkney*, 501 Mich 259, 282; 912 NW2d 535 (2018). Appellant's interpretation would give no

effect to the statutory words "approve" and "sign it." See MCL 117.22. The Legislature provided for the Governor to sign revised charters if she approves them. And it clearly intended for these actions to have real-world effect. See MCL 117.24 ("If the charter . . . ***be approved*** [and receive the requisite number of votes and be properly filed, it] ***shall thereupon*** become law." (emphasis added)); accord *Northrup v City of Jackson*, 273 Mich 20, 26; 262 NW 641 (1935) ("In this state, when approved by the Governor and properly filed, a Home Rule charter shall thereupon become law." (cleaned up)).

On Appellant's view that a Proposed Charter may be voted into law notwithstanding the Governor's objections, the Governor's acts of approving and signing a revised charter would be nothing more than empty gestures. As the Circuit Court found:

> To contend that the Governor's approval is not necessary for a revision of the Charter rather than an amendment makes the submission of the draft to the Governor an empty and useless gesture if the failure to gain approval of the revision is of no consequence.

(Op, AT App 1, pp 8–9.)

Requiring such "an empty and useless gesture" cannot be what the Legislature intended.[5] See *Klopfenstein v Rohlfing*, 356 Mich 197, 202; 96 NW2d 782, 785 (1959) ("It is a familiar rule of construction that it will not be presumed that the legislature intended to do a useless thing and

[5] In its brief, Appellant does not even try to explain why the HRCA requires the Governor's approval and signature, refusing to "hypothecate" on the issue. See Appellant's Br at 18. At most, Appellant suggests that "the Governor's input is valuable" and "may be"—but need not be—"considered by the Charter Revision Commission." *Id.* at 15, 18. But it makes no sense for the Legislature to require the Governor to take the formal act of signing a proposed charter if the sole purpose and effect of the Governor's approval is to offer "input" the Charter Commission is free to reject and need not even consider. See, e.g., *Merriam-Webster's Collegiate Dictionary* (11th ed) (defining "approve" to mean, as relevant, "to give formal or official sanction to: RATIFY <Congress *approved* the proposed budget>").

that if possible every part of a statute must be given effect."). The Court must give effect to the words "approve" and "sign," and cannot render nugatory the statutory language.

Further, as described in more detail below, the 1909 Legislature did not use the words "approve," "sign," and "return it with his objections" in a vacuum. This is the same language the 1908 Constitution uses to describe the Governor's veto power over state legislation. See 1908 Const, art 5, § 36 ("Every bill passed by the legislature shall be presented to the governor before it becomes a law. If he approve, he shall sign it; if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon its journal and reconsider it."). The Legislature's choice to use this identical language in the very next legislative session provides a strong indication that the Legislature intended the Governor's actions to have the force and effect of a veto, and not to be an idle gesture. See *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 227; 779 NW2d 304 (2009) ("Because the Legislature chose to use the same language in each provision, we conclude that the Legislature intended that the different sections be treated in the same manner to accomplish the same purpose.").

Second, Michigan courts employ the legal maxim *expressio unius est exclusio alterius*, meaning "[t]he expression of one thing is the exclusion of another." See *Hoerstman Gen Contracting, Inc v Hahn*, 474 Mich 66, 74-75 & n8; 711 NW2d 340 (2006). The HRCA provides a specific mechanism by which ***amendments***—which have a more limited effect than revised charters, and are enacted by more representative bodies—may be submitted to voters despite the Governor's objections. See MCL 117.22 ("***[I]f 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."). But the HRCA provides no such mechanism to submit a revised charter to voters in spite of the Governor's objections.

Because the statute expressly provides a mechanism to submit amendments to the electors in spite of the Governor's objections, but provides no such mechanism for revisions, there is no such mechanism for revisions. See, e.g., *Hoerstman*, 474 Mich at 74-75 & n8. Indeed, the Legislature expressly provided for ***the exact mechanism*** Appellees seek here—submission "to the electors notwithstanding such objections"—elsewhere in the statute. See MCL 117.22. If modifications to a city charter could be submitted to voters "notwithstanding a Governor's objections" without this language, it would be mere surplusage. See *Pinkney*, 501 Mich at 282.

Finally, "[s]tatutes must be construed to prevent absurd results." See *People v Tennyson*, 487 Mich 730, 741; 790 NW2d 354 (2010) (citation omitted). "[A] result is absurd where it is clearly inconsistent with the purposes and policies of the act in question." See *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 128-129, 718 NW2d 784 (2006) (Kelly, J., dissenting).

The purposes and policies of the HRCA reflect the need to protect the public from irresponsible, unlawful modifications to a city charter. To this end, the HRCA requires submission of such modifications to the Governor and provides a tiered system for overriding the Governor's rejection. Initiative petitions are the most democratically accountable form of modifying a charter, and they are typically not subject to the Governor's veto power. See 1908 Const, art 5, § 1 ("No act initiated or adopted by the people, shall be subject to the veto power of the governor . . . ."); 1963 Const, art 2, § 9 (same). The Legislature thus provided that initiative petitions may be submitted to electors in spite of the Governor's objections. See MCL 117.22. Amendment by local legislative body is less democratically accountable than by initiative petition, and legislative bodies generally can only overcome a Governor's veto upon 2/3 vote. See 1908 Const, art V, § 36.

The Legislature thus decided that amendments by legislative bodies may only be submitted to electors in spite of the Governor's objections upon 2/3 vote. See MCL 117.22.

Unlike amendments by initiative petition or local legislative body, revised charters do not need to meet the approval of a critical mass of the population or a legislative body before the question of whether to approve them is submitted to the city's electors. Instead, they need only be approved by a nine-member body that does not face reelection. See MCL 117.18. And they make much more sweeping changes to a city's laws than mere amendments. The Legislature thus provided a layer of public protection by requiring a charter commission to obtain the Governor's approval and signature before voters can enact a revised charter into law. And it provided no path for the commission to submit a proposed charter to electors in spite of a Governor's objections.

Appellant's position would have the absurd result of leaving the public without any protection from irresponsible lawmaking by a nine-member commission of short-term existence, while providing the public with greater protections from more responsible lawmaking of more limited effect. The need for public protection is well-illustrated here, where the Governor's and Attorney General's reviews revealed "substantial and extensive legal deficiencies" in the Proposed Charter, including several violations of the United States and Michigan Constitutions. See *supra*, Counter-Statement of Facts, § B.

In sum, the text of the HRCA is clear: a revised charter may not be voted into law without the Governor's approval and signature. Because the Governor expressly declined to provide her approval and signature, and instead objected to the Proposed Charter, Defendants are prohibited from placing Proposal P on the ballot and have a clear duty to ensure ballots are not printed and distributed containing the ineligible Proposal P. The Circuit Court's Opinion should be affirmed.

B. The History and Purpose of the HRCA Demonstrate that a City Charter Commission May Not Submit a Proposed Charter to Voters in Spite of the Governor's Objections.

The history and purpose of the HRCA confirm this interpretation. Before 1908, every city charter in Michigan was enacted through a state law passed by the Legislature and signed by the Governor. This process was called "special legislation," as opposed to "general legislation," because city charters do not apply generally to the state. By the late 1800s, there was widespread criticism of this sort of "special legislation." As one commentator explained:

> There were two distinct evils involved in this system. First, the statute-books became loaded with an enormous mass of purely local regulations, which did not interest the people as a whole, while a great deal of the legislature's time was taken up in their passage. The results were long legislative sessions, partial neglect of general interests and increased expense. Second, laws were passed for individual localities with no sufficient guarantees that the people of the localities wanted or needed such laws.

D.F. Wilcox, *Municipal Government in Michigan and Ohio*, AE App, Ex 10, p 12 (1896), available at <https://babel.hathitrust.org/cgi/pt?id=hvd.hx4rvz&view=1up&seq=1> (accessed May 28, 2021).

The framers of the 1908 Michigan Constitution agreed with the critics of special legislation. See Paul H. King, *Journal of the Constitutional Convention of the State of Michigan: 1907–1908*, AE App, Ex 11, p 1571 (1908). They decided to eliminate the old system and directed the Legislature to enact "general laws" providing the electors of each city with the "power and authority to frame, adopt and amend its charter . . . ***subject to the constitution and general laws of this state***." 1908 Const, art 8, § 21 (emphasis added). In making this change, the framers noted that "[t]he transfer of the powers of legislation from the state legislature to the people of the municipalities or their representatives necessitated ***the imposition of certain checks and***

prohibitions designed to secure conservative action on the part of those to become responsible for the future conduct of such affairs." See King, AE App, Ex 11, p 1571 (emphasis added).

During the next legislative session, the Legislature enacted the HRCA, which is the "general law" providing cities with home rule. See 1909 PA 279, as amended, MCL 117.1 *et seq.* As the framers contemplated, the Legislature included several "checks" in the HRCA "designed to secure conservative action" by municipalities. *First*, the Legislature provided an extensive list of provisions that must be, and that cannot be, included in municipal charters. See MCL 117.3–117.5k. *Second*, the Legislature imposed the same "check" that applies to all legislation, and which applied to special charters before the 1908 Constitution was enacted: all charters and amendments must be transmitted to the Governor for her signature. See MCL 117.22.

It is no coincidence that the HRCA uses the same language that the 1908 Constitution used to describe the Governor's veto power over state legislation.[6] Compare *id.*, *with* 1908 Const, art 5, § 36. The legislative history of the HRCA makes clear the intent of the legislature: to require the Governor's approval of a charter prior to its submission to the people for a vote.[7]

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[6] Early commentators referred to MCL 117.22 as providing a "Veto of the Governor." See William K. Clute, *The Law of Modern Municipal Charters*, AE App, Ex 12, p 483 (1920), available at <https://www.google.com/books/edition/The_Law_of_Modern_Municipal_Charters_and/kWYGAAAAMAAJ?hl> (accessed May 28, 2021); see also *id.* at 101 ("The check in Michigan's home rule act, is the statutory right of the governor to veto a freeholders' charter . . . .").

[7] The 1909 Legislature also recognized that "the municipality performs dual functions, some local in character, the others as agent of the state." See *Attorney General v City of Detroit*, 225 Mich 631, 636; 196 NW 391 (1923), *overruled on other grounds by Associated Builders & Contractors v City of Lansing*, 499 Mich 177; 880 NW2d 765 (2016). And the popular view at the time was that, although "the city may fix a public policy applicable to its matters of local and municipal concern," it had no power "to declare a public policy applicable to matters of state concern." See *id.* Requiring the Governor's approval thus provided a layer of protection for statewide interests, which are often implicated by city charters but could not be governed by local commissions. Those statewide interests are especially salient where, as here, a proposed charter contains a multitude of provisions that violate state law.

C. Related Home Rule Jurisprudence Demonstrates that City Charter Commissions May Not Submit a Proposed Charter to Voters in Spite of the Governor's Objections.

Michigan cities are not the only home rule entities that must obtain approval from a democratically accountable state official before they may enact a local charter. Other states also require the Governor's approval before a local charter may be effective.[8] And Michigan similarly requires villages and counties to obtain the Governor's approval before they may enact a new charter. See MCL 78.18 (Villages); MCL 45.516 (Counties).

The Michigan Home Rule Villages Act ("HRVA") was enacted by the same Legislature that enacted the HRCA. Like the HRCA, it requires both revisions and amendments to be presented to the Governor for approval. See MCL 78.18. And it provides that ***amendments*** may be submitted to voters, in spite of the Governor's objections, upon 2/3 vote by the Village's legislative body. See *id.* But it provides no similar path for revised charters. See *id.*

Counties did not obtain home rule until the 1963 Constitution was enacted, see 1963 Const, art 7, § 2, and implemented by the Michigan Charter Counties Act of 1966, MCL 45.501 *et seq* ("CCA"). The CCA is even clearer than the 1909 laws as to the requirement to obtain the Governor's approval before a charter may be submitted to voters. It provides:

> The charter shall be submitted to the governor for approval within 30 days after its completion. . . . ***The governor either shall approve or reject the charter*** within 30 days of its submission. If the governor rejects the charter, he shall return it to the charter commission together with a copy of his reasons therefor.

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[8] See, e.g., Ariz Const, art 13, § 2 ("If a majority of such qualified electors voting thereon shall ratify such proposed charter, it shall thereupon be submitted to the governor for his approval, and the governor shall approve it if it shall not be in conflict with this Constitution or with the laws of the state."); Okla Const, art 18, § 3(a) ("[I]f a majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the Governor for his approval, and the Governor shall approve the same if it shall not be in conflict with the Constitution and laws of this State.").

MCL 45.516 (emphasis added).

Like the HRCA and HRVA as to amendments, the CCA is ***explicit*** about the circumstances in which a county may enact a charter notwithstanding the Governor's objections. It says:

> Upon the return of the unapproved charter, the commission shall reconvene, consider the reasons for rejection, revise the proposed charter and submit the revised charter to the governor within a period of 45 days. Upon resubmission, the governor either shall approve or reject the charter within 30 days of its resubmission. If the governor rejects the charter, he shall notify the commission of his action and his reasons therefor. Upon the second rejection of the charter, the commission, within 30 days, either shall reconvene and revise the charter to comply with the governor's objections or it shall take all steps necessary to obtain a judicial interpretation to determine whether the charter conforms to the provisions of the constitution and statutes of this state. Upon approval of the charter by the governor or upon a final favorable judicial interpretation, the commission, within 10 days, shall fix the date, by resolution, for the submission of the proposed charter to the electorate for its adoption.

Id.

Because the HRCA, HRVA, and CCA all concern the process for submitting local charters to electors in spite of a Governor's objections, they should be read together. See *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127, 146–147; 662 NW2d 758 (2003) ("If two or more statutes arguably relate to the same subject or have the same purpose, they are considered in pari materia and must be read together to determine legislative intent. . . . Statutes need not be enacted at the same time or even refer to each other to be read in pari materia.").

Reading the HRCA, HRVA, and CCA together confirms three things. *First*, home rule entities have no inherent right to submit a proposed charter to voters. All such entities in the State of Michigan are required to first submit their proposed charter to the Governor for approval. *Second*, the Governor's refusal to approve a proposed charter ***is a rejection***. See MCL 45.516. It is not mere "input" that a charter commission is free to ignore. See Appellant's Br at 15, 18. *Third*, when the Legislature has chosen to allow a home rule entity to submit a charter to voters

in spite of the Governor's rejection, it has been explicit and has provided a mechanism beyond simply ignoring the Governor and charging ahead, as the Charter Commission has done here.

In short, the history and purpose of the HRCA, and related home rule jurisprudence, confirm what was already clear: because the Legislature has required the Charter Commission to transmit the Proposed Charter to the Governor for her approval and signature, and has provided no mechanism to submit it to voters in spite of the Governor's objections, there is none.

D. Appellant's Arguments Lack Merit.

Appellant attempts to avoid this straightforward conclusion through a series of arguments that misconstrue the law and address issues not before the Court. *First*, the Charter Commission repeatedly mischaracterizes Appellees' position to be that the Governor has "unfettered discretion" and "the sole power to determine a City's Charter." See Appellant's Br at v, vi, 1, 2, 9, 17. Not so.

Interpreting the Governor's approval to be a meaningful gesture does not somehow usurp the electors' power regarding city charters. No one doubts, for example, that the Legislature has the power to enact laws, even though the Governor must sign and approve them. See 1908 Const, art 5, § 1 ("The legislative power of the state of Michigan is vested in a senate and house of representatives . . . ."); *id.* § 36 ("Every bill passed by the legislature shall be presented to the governor before it becomes a law. If he approve, he shall sign it; if not, he shall return it with his objections . . . .").

Further, the ***scope*** of the Governor's authority to reject a city charter is not an issue in this litigation. Appellees have never suggested that "the Governor could object on the basis that the charter is on the wrong color paper, or that she didn't feel like reading it, that it has a scrivener error, a semi-colon is missing, a typo was made, that she has policy disagreements with it, or that she believes the proposed charter is contrary to the law." See Appellant's Br at 17–18. And Appellant has never suggested that the ***actual*** basis for the Governor's rejection of the

Proposed Charter—"substantial and extensive legal deficiencies," including a litany of constitutional violations, see April 30 Governor Letter, AT App, Ex 8—was somehow improper. The Circuit Court made no ruling on whether and to what extent the Governor's power is "fettered." No one asked it to do so. Nor has anyone asked this Court.[9]

Second, the Charter Commission repeatedly suggests that the constitution gives cities unchecked power to revise city charters, such that construing the HRCA's language to have any real-world effect would be unconstitutional. See Appellant's Br at 1 ("The power and authority to frame, adopt and amend a City Charter is granted *solely* to the electors of the City." (citing 1963 Const, art 7, § 22)); Appellant's Response Br, AE App, Ex 9, p 2 ("[T]he State Constitution gives a city's electors the absolute right to 'frame, adopt, and amend its charter.'" (same)).

That argument falters from the get go. The constitutional provision on which Appellant relies does not empower cities at all. Instead, it directs the Legislature do so "[u]nder general laws." See 1963 Const, art 7, § 22. The "general law" that empowers the city's electors is the HRCA, which the Legislature enacted during the next legislative session. See 1909 PA 279, title. The Michigan Supreme Court has long recognized that the city's home rule powers are subject to the "general law" that implements them. In fact, it has explained that this was part of the essential "compromise" envisioned by the constitution's framers:

> In [1895], a uniform village charter act was adopted by the legislature and a uniform city charter act, providing for the incorporation of cities of the fourth class. The people were not satisfied with the results attained under the so-called uniform charter provisions, and in the constitutional convention of 1908 home rule

[9] Although the Attorney General suggested that the Governor's power is discretionary, it appears the Governor's decision is customarily guided by whether a proposed charter contains "provisions that are not consistent with the requirements of the HRCA, and other applicable state and federal law." (See April 30 Attorney General Letter, AT App, Ex 8, p 4.) Appellees take no position on the scope of the Governor's power under the HRCA, but note that this is consistent with the review required by similar laws. See MCL 45.516; Ariz Const, art 13, § 2; Okla Const, art 18, § 3(a).

> was demanded, that is, the right of cities to frame and adopt their own charters. ***The constitutional convention compromised between these two ideas by giving cities the right to frame, adopt and amend their charters, subject, however, to certain broad general restrictions and limitations fixed by the legislature in the so-called home rule act***.

See *City of Detroit v Walker*, 445 Mich 682, 689 n7; 520 NW2d (1994) (quoting *Streat v Vermilya*, 268 Mich 1, 4; 255 NW 604 (1934)).

Further, the power that the framers of the Michigan Constitution directed the Legislature to confer on cities was not and is not "absolute." Instead, it is expressly "subject to the constitution and general laws of this state." See 1908 Const, art 8, § 21; 1963 Const, art 7, § 22 (same). Michigan courts have consistently held that, as a "general law of this state," the HRCA restricts the authority of electors to frame, adopt, or amend a city charter. See, e.g., *City of Hazel Park v Municipal Fin Comm*, 317 Mich 582, 596–603; 27 NW2d 106 (1947) (collecting cases). It does so not only by requiring a city charter commission to obtain the Governor's approval, but also by imposing substantial restrictions on the content of what electors can and cannot include in their municipal charters. See MCL 117.3–117.5k.

Accordingly, the Circuit Court properly rejected Appellant's argument, finding it belied by the plain text of the constitution. (Op, AT App, Ex 1, p 7 ("Clearly, the constitutional provision requires home rule cities to abide by the constitution, but also statutes and case law.").)

The Charter Commission attempts to undermine that ruling, in part, by making an argument it did not present to the Circuit Court: although "the power and authority of electors to enact and amend their charters was expressly 'subject to the constitution and general laws of the state,'" the 1963 Constitution fundamentally changed that—and invalidated whole sections of the HRCA—by splitting one sentence into two. See Appellant's Br at 13–14. This new argument finds no support in the 1963 Constitution's text. And it is flatly contradicted by the Address to the People

that accompanied its enactment, see 2 Official Record, Constitutional Convention 1961, p 3393 ("The new language is a more positive statement of municipal powers, ***giving home rule cities and villages full power*** over their own property and government, ***subject to this constitution and law***." (emphasis added)); well-established post-1963 case law, see, e.g., *Walker*, 445 Mich at 689; and the Charter Commission's own work, see 2012 Detroit Charter, AT App, Ex 4, § 1-102 ("The City has the comprehensive home rule power conferred upon it by the Michigan Constitution, subject only to the limitations on the exercise of that power contained in the Constitution or this Charter or imposed by statute."). This Court should not be persuaded.

Third, Appellant attempts to focus the Court's attention on yet another issue that is not before it: the timeliness of the Charter Commission's transmission of the Proposed Charter to the Governor. Appellant argues at length that it was not required to transmit the Proposed Charter to the Governor until August 6, 2021, which it contends is the date of "the final adjournment of the commission." See Appellant's Br at 15–16. But ***when*** the Charter Commission was required to transmit the Proposed Charter to the Governor is not at issue in this case. The Charter Commission ***did*** transmit the Proposed Charter to the Governor, and she declined to approve it and returned it to the Charter Commission with her objections. The only dispute here is whether the Governor's actions had any real-world effect.

At any rate, Appellant's position is at odds with its own conduct, see March 5 Letter, AT App, Ex 5, p 3 (requesting an expedited 60-day review due to the "timeline for revision of the Charter and submission to the voters"), and—more importantly—finds little support in the statute. Appellant construes "the final adjournment of the commission," MCL 117.22, to mean the date on which the commission "shall terminate and cease to exist," see MCL 117.18. That cannot be right. The HRCA provides that, if the Governor declines to approve a proposed charter, she shall "return

the charter to the commission" with her objections. See MCL 117.22. And if Appellant's interpretation were correct, there would be no commission to return the charter to.

Finally, Appellant's other constitutional arguments fare no better. The Charter Commission suggests that ordinary canons of statutory interpretation do not apply to this case because the Michigan Constitution calls for the liberal construction of a city's powers. See Appellant's Br at 11–15 (citing 1963 Const, art VII, §§ 22, 34). But that argument misunderstands the relevant constitutional provisions. The Michigan Supreme Court has explained that:

> [Local governments] have no inherent jurisdiction to make laws or adopt regulations of government; they are governments of enumerated powers, acting by a delegated authority; so that while the State legislature may exercise such powers of government coming within a proper designation of legislative power as are not expressly or impliedly prohibited, the local authorities can exercise those only which are expressly or impliedly conferred, and subject to such regulations or restrictions as are annexed to the grant.

City of Taylor v Detroit Edison Co, 475 Mich 109, 115; 715 NW2d 28 (2006) (citation omitted).

Because municipalities may only exercise delegated power, the question of what power has been delegated is often important. In the early days of home rule, courts took a narrow view and routinely struck down municipal legislation on the basis that it exceeded the municipality's delegated authority. See, e.g., *Lennane*, 225 Mich at 638. The framers of the 1963 Constitution sought to end this practice, and included language in 1963 Const, art 7, §§ 22, 34, to ensure that the powers delegated to municipalities were liberally construed. See *Associated Builders*, 499 Mich at 193–198 (Zahra, J. concurring).

Here, there is no question that the electors of a city have the power to "frame, adopt and amend its charter . . . subject to the constitution and law." 1963 Const, art 7, § 22. The only question is whether the relevant "law" prohibits city charter commissions from disregarding a Governor's veto. To answer that question, the Court should apply traditional canons of statutory interpretation.

And, in any event, the text, history, and purpose of the HRCA all demonstrate that city charter commissions have no authority to override a Governor's objections to a revised city charter. The answer is thus clear no matter what method of interpretation the Court applies.

II. THE CIRCUIT COURT PROPERLY GRANTED MANDAMUS.

"Mandamus is the appropriate remedy for a party seeking to compel action by election officials." *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 283; 761 NW2d 210 (2008). A writ of mandamus should be issued if: "(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. The Circuit Court properly found each element satisfied, and this Court should affirm.

Appellant's position betrays a fundamental misunderstanding of the writ of mandamus. Appellant first suggests that the Court had no authority to issue the writ because Appellees did not file a motion for summary disposition. See Appellant's Br at 21–22. There is absolutely nothing in the court rules that would require that. To the contrary, MCR 3.305(C) provides that the proper procedure when immediate action is needed is to file an ex parte motion for an order to show cause. See MCR 3.305(C). That is exactly what Appellees did. See AE App, Ex 7. The Court permitted Appellant to file an answer, see MCR 3.305(D); AE App, Ex 9, and held two hearings on whether the writ should issue, see MCR 3.305(F); *supra*, Counter-Statement of Facts, § E. There was no procedural defect in the issuance of the Order. See MCR 3.305(G).

Next, Appellant argues that removing a question from the ballot is not "ministerial." Appellant's Br at 22. There is no merit to that suggestion. "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." *Berry v Garrett*, 316 Mich App 37, 42; 890

NW2d 882 (2014). Removing Proposal P is clearly a ministerial act. Cf, e.g., *Barrow v City of Detroit Election Comm*, 301 Mich App 404, 419; 836 NW2d 498 (2013) ("The inclusion or exclusion of a name on a ballot is ministerial in nature." (citing MCL 168.323 and 168.719)). Indeed, the City Clerk initially recognized as much when she advised the Charter Commission that she could not certify for placement on the ballot the question of whether to adopted a revised charter the Governor had declined to approve. (See March 10 Letter, AE App, Ex 4.)

As the Circuit Court correctly ruled:

> The act required of the Detroit City Clerk and the Detroit Election Commission is ministerial. In the absence of an approval from the Governor, the proposed Charter revision cannot be placed on the ballot and submitted to the voters. There is no discretionary action or investigative action needed by either the Clerk or the Election Commission. It is a ministerial act to refuse to submit the Proposal P for certification to go on the ballot in August 2021.

(Op, AT App, Ex 1, p 10 (citing *Berry*, 316 Mich App at 37).)

Moreover, mandamus is also appropriate for an even more fundamental reason. The Circuit Court has made a "threshold determination" that placing Proposal P on the ballot would violate the HRCA and ordered "the [City] Clerk and the Election Commission not to certify Proposal P for the August 3, 2021 ballot." (See Op, AT App, Ex 1, p 10.) Unless this Court disagrees, the City Clerk and the Election Commission thus have a clear and ministerial legal duty, which Appellees have a right to enforce, to remove Proposal P from the ballot. See *Berdy v Buffa*, 504 Mich 876; 928 NW2d 204 (mem) (2019); *Barrow*, 301 Mich App at 412; *Citizens Protecting Michigan's Constitution*, 280 Mich App at 291–292.

Finally, aside from this action, Appellees have "no other adequate legal remedy, particularly given that the election is mere weeks away and the ballot printing deadline is imminent." See *Barrow*, 301 Mich App at 412; Election Calendar, AT App, Ex 11; Corporation

Counsel Email, AT App, Ex 15. As the Circuit Court found, "[t]he only appropriate legal remedy is for the Charter Commission revisions to be kept of the ballot." (Op, AT App, Ex 1, p 10.)

Accordingly, all of the elements have been satisfied, and this Court should affirm the Circuit Court's grant of a writ of mandamus. See *Citizens Protecting Michigan's Constitution*, 280 Mich App at 291–292.

CONCLUSION

The Circuit Court correctly determined that placing Proposal P on the ballot, in spite of the Governor's rejection of the Proposed Charter, violates the HRCA. See MCL 117.22. Because the City Clerk and the Election Commission have a clear, ministerial duty to remove this unlawful question from the ballot, and Plaintiffs are entitled to enforce that duty and citizens and electors of the City of Detroit, the Circuit Court properly ordered mandamus, and this Court should affirm.

RELIEF REQUESTED

WHEREFORE, Appellees respectfully request this Court to affirm the Order and ruling of the Wayne County Circuit Court and order such other and further relief as is necessary and appropriate to provide complete relief to Appellees.

Respectfully submitted,

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Dated: June 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2021, I electronically filed the foregoing document and this certificate of service with the Clerk of the Court using the MiFile e-filing system, which will send notification of such filing to the attorneys of record. I declare under penalty of perjury that these statements are true to the best of my information, knowledge, and belief.

Dated: June 1, 2021 By: /s/ Andrew M. Pauwels