STATE OF MICHIGAN
IN THE SUPREME COURT

Supreme Court No._____
Court of Appeals No. 316695
Lower Court No. 13-007068-AW
Hon. Lita M. Popke

TOM BARROW,
PLAINTIFF-APPELLEE,

-v-

CITY OF DETROIT ELECTION COMMISSION, and **JANICE M. WINFREY,** in her official capacity as City Clerk for the City of Detroit,
Jointly and Severally,
DEFENDANTS,
And

MICHAEL DUGGAN and MICHAEL DUGGAN FOR MAYOR COMMITTEE,
INTERVENING DEFENDANTS-APPELLANTS.

/

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/

Plaintiff-Appellee's Motion for Immediate Consideration of Application for Leave to Appeal Before Court of Appeals' Decision Pursuant to MCR 7.302(C)(1)(a)

PLAINTIFF-APPELLEE, TOM BARROW, by and through his attorney, ANDREW A. PATERSON, for his Motion for Immediate Consideration of Application for Leave to Appeal Before Court of Appeals' Decision Pursuant to MCR 7.302(C)(1)(a), states:

1. On Wednesday, June 12, 2013, Intervening Defendants-Appellants Michael Duggan and the Michael Duggan for Mayor Committee, filed with the Michigan Court of Appeals' Detroit office their Claim of Appeal, Brief on Appeal accompanied with a Motion for Immediate Consideration, seeking the reversal of Wayne County Circuit Court Chief Judge Pro-Tem Lita M. Popke's June 11, 2013 Opinion and Order, which removed Intervening Defendant-Appellant Michael Duggan from the August 2013 primary election ballot, as candidate for the office of Mayor of the City of Detroit, for his failure to meet the one (1) year voter registration requirement, as set forth in Sec. 2-101 of the 2012 Detroit City Charter. **(See Judge Popke's June 11, 2013 Opinion and Order attached hereto as Exhibit A)**.

2. The Commissioner for the Michigan Court of Appeals set a deadline of Thursday, June 13, 2013 at 12 noon for the Plaintiff-Appellee to respond to Intervening Defendants-Appellants' emergency appeal. Plaintiff-Appellee timely met that deadline.

3. Plaintiff-Appellee agreed with the Intervening Defendants-Appellants that there is an immediate need for the adjudication of the merits of this election case on an expedited basis. The Defendants, City of Detroit Election Commission and Janice M. Winfrey, City Clerk, indicated in the trial court that they need to send the election ballots to be printed, on or before Friday, June 14, 2013, in order for the ballots to be timely printed by June 22, 2013, which is the deadline set forth in MCL 168.759a(5) of Michigan Election Law, for absentee voters to receive their ballots, for the August 2013 primary election.

4. The Michigan Supreme Court has recognized the importance of election-related cases and has so required that election-related cases be heard in an expedited manner. See *Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011).

5. However, even if the Court of Appeals willingly addresses the merits of this case in an expedited fashion, because of the impending election, and the necessity for the Defendants to timely print and mail out absentee ballots, it is necessary for this Court, the State's highest court, to quickly adjudicate this matter before a decision can be rendered by the Court of Appeals.

6. This Court in *Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011), stated that Plaintiff-Appellee may avail himself of a "Bypass" because as this Court explained and directed:

> "In an effort to achieve "better timing of appeals to the judicial process," this Court suggested that appellate review of election-related legal issues would be facilitated if the party seeking review filed its papers "*in this Court,*" despite the absence of an explicit rule authorizing the same. *Carman v Secretary of State,* 384 Mich. 443, 449; 185 N.W.2d 1 (1971). **In this regard, MCR 7.302(C)(1)(b) now authorizes the filing of an application for leave to appeal in this Court prior to a decision by the Court of Appeals after an application for leave to appeal has been filed in the Court of Appeals. We encourage future litigants in election disputes to avail themselves of this provision, where appropriate.**" [*Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011).] (Emphasis supplied).

7. The present case is precisely such a case that requires this Court's immediate attention. Therefore, pursuant to MCR 7.302(C)(1)(a), and pursuant to this Court's holding and direction in *Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011), Plaintiff-Appellee respectfully requests this Court GRANT his motion for immediate

consideration and his Application for Leave to Appeal Before A Decision by the Michigan Court of Appeals is reached in this matter.

CONCLUSION

WHEREFORE, Plaintiff-Appellee prays that the Court GRANT his Motion for Immediate Consideration and GRANT Plaintiff-Appellee's Application for Leave to Appeal Before A Decision By the Michigan Court of Appeals is reached in this matter pursuant to MCR 7.302(C)(1)(a).

Respectfully submitted,

/S/ANDREW A. PATERSON

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DATED: June 13, 2013

STATE OF MICHIGAN
IN THE SUPREME COURT

TOM BARROW,
PLAINTIFF-APPELLEE,

-v-

CITY OF DETROIT ELECTION COMMISSION, and **JANICE M. WINFREY,** in her official capacity as City Clerk for the City of Detroit, Jointly and Severally,
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PLAINTIFF-APPELLEE'S EMERGENCY APPLICATION FOR LEAVE TO APPEAL PRIOR TO DECISION BY COURT OF APPEALS PURSUANT TO MCR 7.302(C)(1)(a)

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STATEMENT OF APPELLATE JURISDICTION

This Court in *Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011), stated that Plaintiff-Appellee may avail himself of a "Bypass" because as this Court explained and directed:

> "In an effort to achieve "better timing of appeals to the judicial process," this Court suggested that appellate review of election-related legal issues would be facilitated if the party seeking review filed its papers "*in this Court,*" despite the absence of an explicit rule authorizing the same. *Carman v Secretary of State,* 384 Mich. 443, 449; 185 N.W.2d 1 (1971). **In this regard, MCR 7.302(C)(1)(b) now authorizes the filing of an application for leave to appeal in this Court prior to a decision by the Court of Appeals after an application for leave to appeal has been filed in the Court of Appeals. We encourage future litigants in election disputes to avail themselves of this provision, where appropriate.**" [*Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011).] (Emphasis supplied).

This is such a case that requires this Court's immediate attention. Therefore, pursuant to MCR 7.302(C)(1)(a), and pursuant to this Court's holding in *Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011), this Court can assume jurisdiction of this election-related matter before a decision is reached by the Court of Appeals.

RELIEF SOUGHT

Plaintiff-Appellee respectfully requests this Court to **GRANT** Plaintiff-Appelle's Emergency Application for Leave to Appeal Before a Decision is reached by the Court of Appeals and **AFFIRM** the June 11, 2013 Opinion and Order of Wayne County Circuit Court Chief Judge Pro-Tem Lita M. Popke.

STATEMENT OF QUESTIONS/ISSUES PRESENTED

I. Did the trial court abuse its discretion by granting Plaintiff-Appellee's Emergency Motion for Writ of Mandamus?

The Plaintiff-Appellee Answers: "NO"

The Intervening Defendants-Appellants Answer: "YES"

The Trial Court Answers: "NO"

II. Did the trial court abuse its discretion by granting Plaintiff-Appellee's Emergency Motion for injunctive relief?

The Plaintiff-Appellee Answers: "NO"

The Intervening Defendants-Appellants Answer: "YES"

The Trial Court Answers: "NO"

III. Did Intervening Defendant-Appellant Michael Duggan meet the one (1) year registered voter requirement as set forth in Sec. 2-101 of the 2012 Detroit City Charter, as amended, at the time he filed for office on April 2, 2013?

The Plaintiff-Appellee Answers: "NO"

The Intervening Defendants-Appellants Answer: "YES"

The Trial Court Answers: "NO"

IV. Is the language of Sec. 2-101 of the 2012 Detroit City Charter, as amended, clear and unambiguous, and constitutional?

The Plaintiff-Appellee Answers: "YES"

The Intervening Defendants-Appellants Answer: "NO"

The Trial Court Answers: "YES"

STATEMENT OF FACTS AND PROCEDURAL POSTURE OF CASE

As recognized by the trial court in its well-written opinion, the facts of this case are not in dispute. **(See Trial Court's June 11, 2013 Opinion and Order attached hereto as Exhibit AA)**. According to records from the Michigan Secretary of State and from the Defendant City Clerk, Intervening Defendant-Appellant Michael Duggan **changed his voter registration from the City of Livonia to the City of Detroit on April 16, 2012**. **(See Mr. Duggan's voter registration information obtained from the Michigan Secretary of State attached hereto as Exhibit D)**. However, **on April 2, 2013**, Intervening Defendant-Appellant Michael Duggan filed with the Defendant City Clerk his affidavit of identity and 993 signatures seeking to qualify as a candidate for the office of Mayor of the City of Detroit. Of the 993 signatures Intervening Defendant-Appellant Michael Duggan submitted, Defendant City Clerk determined that 832 were valid. Intervening Defendant-Appellant Michael Duggan needed only 500 valid signatures to qualify to appear on the August 2013 Primary Election ballot as a candidate for the office of Mayor of the City of Detroit *if he met all the other requirements set forth in Sec. 2-101 of the 2012 Detroit City Charter*, which Plaintiffs allege, *infra*, he did not. **(See Mr. Duggan's Affidavit of Identity dated April 2, 2013 attached hereto as Exhibit E**; and **See List of Candidates for the Office of Mayor attached hereto as Exhibit F)**.

Plaintiff-Appellee, on or about April 25, 2013, filed with the Defendant City Clerk his affidavit of identity and 989 signatures to qualify as a candidate for the office of Mayor of the City of Detroit. Of the 989 signatures Plaintiff-Appellee submitted, Defendant City Clerk determined 804 were valid. Plaintiff-Appellee needed only 500 valid signatures to qualify to appear on the August 2013 Primary Election ballot as a candidate for the office of

Mayor of the City of Detroit and he meets the other requirements therefore as set forth in the 2012 Detroit City Charter. **(See List of Candidates for the Office of Mayor attached hereto as Exhibit F).**

On May 20, 2013, Plaintiff-Appellee submitted a formal written challenge to the Defendant Election Commission and Defendant City Clerk challenging the legality of Intervening Defendant-Appellant Michael Duggan's candidacy on the basis that Intervening Defendant-Appellant Michael Duggan did not possess and/or meet all of the qualification requirements prescribed and set forth in Sec. 2-101 of the 2012 Detroit City Charter. Intervening Defendant-Appellant Michael Duggan's failure was that he was not a ***registered elector*** of the City of Detroit for one (1) year ***at the time of his filing for office*** as required and prescribed by Sec. 2-101 of the 2012 Detroit City Charter. **(See Plaintiff Barrow's May 20, 2013 Written Challenge to Mr. Duggan's candidacy attached hereto as Exhibit G).**

On May 22, 2013, Plaintiff-Appellee supplemented his May 20, 2013 challenge and informed the Defendants that they should recuse themselves from voting on whether to certify Intervening Defendant-Appellant Michael Duggan as a candidate due to their potential conflicts that existed. Plaintiff-Appellee further informed the Defendants of other candidates for other elective offices that were not certified for the August 2013 Primary Election as a result of their failures to comply with the voting requirements set forth in Sec. 2-101 of the 2012 Detroit City Charter. **(See Plaintiff Barrow's May 22, 2013 letter attached hereto as Exhibit G).**

On May 22, 2013, Citizens United Against Corrupt Government ("**Citizens United**"), an independent Michigan nonprofit corporation, through its Director, Robert Davis, filed a

formal written demand and request with the Michigan Secretary of State requesting that she take supervisory control over the election dispute surrounding Intervening Defendant-Appellant Michael Duggan's candidacy. Citizens United also requested the Michigan Secretary of State to issue a formal directive to the Defendants Election Commission and City Clerk prior to the Defendant Election Commission's May 23, 2013 meeting. **(See Citizens United's Letter to the Secretary of State attached hereto as Exhibit H).**

On May 23, 2013, pursuant to Sec. 3-103 of the 2012 Detroit City Charter, the Defendant Election Commission convened as a public body to certify the names of the candidates who will appear on the City's August 2013 Primary Election ballot for the offices of Mayor, City Council, City Clerk, and Board of Police Commissioners. **(See Article 3 of the 2012 Detroit City Charter attached hereto as Exhibit C).** At its May 23, 2013 meeting, the Defendant Election Commission also addressed Plaintiff-Appellee's challenge regarding the legality of Intervening Defendant-Appellant Michael Duggan's candidacy. After limited debate, the Defendant Election Commission, despite Sec. 2-101 of the 2012 Detroit City Charter's express requirement based upon its plain reading with respect thereto, voted 2-1 to certify Intervening Defendant Michael Duggan as a candidate for the office of Mayor of the City of Detroit.

City Council President Charles Pugh voted against certifying Intervening Defendant-Appellant Michael Duggan as a candidate for the office of Mayor because he agreed that the Defendant Election Commission's actions are governed by Sec. 2-101 of the 2012 Detroit City Charter and that Plaintiff-Appellee's challenge thereunder was proper and legal and that Intervening Defendant-Appellant Michael Duggan did not therefore qualify as a candidate. Intervening Defendant Michael Duggan was not a registered voter of the City of Detroit for

one (1) year at the time Intervening Defendant-Appellant Michael Duggan filed for office with the Defendant City Clerk on April 2, 2013 as required under Sec. 2-101 of the 2012 Detroit City Charter, as amended. **(See Detroit Free Press article attached hereto as Exhibit I).**

On May 23, 2013, after the Defendant Election Commission voted to certify Intervening Defendant-Appellant Michael Duggan as a candidate to appear on the City's August 2013 Primary Election ballot, the Michigan Secretary of State issued a written response to Citizens United's request for her to take supervisory control of this election issue. In her written response, the Michigan Secretary of State denied Citizens United's request for her to take supervisory control because, in her opinion, although she is the state's chief election official, it was a local election matter. **(See Secretary of State's written response attached hereto as Exhibit J).**

On May 30, 2013, Plaintiff-Appellee filed with the Wayne County Circuit Court his Verified Emergency Complaint for Writ of Mandamus, Declaratory Judgment, and Injunctive Relief, accompanied with his Emergency Motion for Writ of Mandamus, Declaratory Judgment, and Injunctive Relief ("**Emergency Motion**"). On May 31, 2013, Wayne County Circuit Court Chief Judge Pro-Tem Lita M. Poke ("**Judge Popke**") entered a scheduling order requiring all responses and supplemental briefs to Plaintiff-Appellee's Emergency Motion to be filed on or before 12 noon on June 5, 2013, with oral arguments being scheduled for June 12, 2013 at 2 p.m. On June 10, 2013, the trial court entered a stipulated order allowing Intervening Defendants-Appellants to intervene in the case.

On June 11, 2013, after hearing nearly two (2) hours of oral arguments, Judge Popke issued her written opinion and order, which required the Defendants to remove the

Intervening Defendant-Appellant Michael Duggan from the August 2013 primary election ballot as a result of his failure to be a registered voter for one (1) year at the time he filed for office. On June 12, 2013, Intervening Defendants-Appellants Michael Duggan and the Michael Duggan for Mayor Committee filed an emergency claim of appeal with the Michigan Court of Appeals seeking a decision from the Court of Appeals by Friday, June 14, 2013. This appeal ensured thereafter.

ARGUMENT

I. SEC. 2-101 OF THE 2012 DETROIT CITY CHARTER, AS AMENDED, IS CLEAR AND UNAMBIGUOUS, AND THUS MUST BE ENFORCED AS WRITTEN.

A. Standard of Review

"This Court reviews de novo issues of statutory construction." *Davis v Detroit Financial Review Team*, 296 Mich App 568, at ___; 821 NW2d 896 (2012); see also *Taylor v Currie*, 277 Mich App 85, 94; 743 NW2d 571 (2007).

B. Analysis

In the instant appeal, Intervening Defendants-Appellants is seeking to have this Court to ignore the traditional and well-established rules of statutory construction in order for Intervening Defendant-Appellant Michael Duggan to qualify as a candidate for the office of Mayor of the City of Detroit.

MCL 168.321(1) of Michigan Election Law states in relevant part:

> (1) Except as provided in subsection (3) and sections 327, 641, 642, and 644g, **the qualifications, nomination, election,** appointment, term of office, and removal from office **of a city officer shall be in accordance with the charter provisions governing the city**. (Emphasis supplied).

The 2012 Detroit City Charter, as amended, has clearly and unambiguously provided for the qualifications that candidates for elective office must meet at the time they file for office in order to qualify to be a candidate for an elective office. Sec. 2-101 of the 2012 Detroit City Charter, as amended, states in relevant part:

> **A person seeking elective office *must be*** a citizen if the United States, a resident **and a qualified *and registered voter of the City of Detroit for one (1) year at the time of filing for office***, and retain that status throughout their tenure in any such elective office. (Emphasis supplied).

(See Sec. 2-101 of the Detroit City Charter attached hereto as Exhibit K).

Sec. 2-105(A) of the 2012 Detroit City Charter, as amended, defines the term "elective officers" to mean "the Mayor, each member of the City Council, elected Board of Police Commissioners and the City Clerk." **(See Sec. 2-105(A) of the 2012 Detroit City Charter attached hereto as Exhibit L).** Thus, the office of Mayor is an elective office within the meaning of Sec. 2-101 of the 2012 Detroit City Charter, as amended. Accordingly, any person seeking the office of Mayor, pursuant to Sec. 2-101 of the 2012 Detroit City Charter, as amended, "***must be*** a citizen if the United States, a resident and a qualified ***and registered voter of the City of Detroit for one (1) year at the time of filing for office.***" (Emphasis supplied). Therefore, at the time Intervening Defendant-Appellant Michael Duggan filed with the Defendant City Clerk to qualify as a candidate for the elective office of Mayor on April 2, 2013, Intervening Defendant-Appellant Michael Duggan was required to possess ALL of the qualifications set forth in Sec. 2-101 of the 2012 Detroit City Charter.

The merits of this case simply require this Court, as did the trial court, to interpret and construe and apply the plain provisions of the home rule city charter of the City of Detroit, the 2012 Detroit City Charter. The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances and city charters. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). "The prevailing rules regarding statutory construction are well established and extend to the construction of home rule charters." *Detroit v Walker*, 445 Mich 682, at 691; 520 NW2d 135 (1994). "Therefore, [this Court is] required to construe the charter's language by its commonly accepted meaning as long as it does not produce absurdity, hardship, injustice, or prejudice to the drafters and

ratifiers." *Id.* (citations omitted). "**When the language of a charter provision is unambiguous, it controls. The framers of the charter and the people who voted to adopt it, "must be presumed to have intended that the provision be construed as it reads.**"" *Hackel v Macomb Co Comm*, 298 Mich App 311, at 318; __ NW2d __ (2012). (Emphasis supplied).

Therefore, where language of a city charter is clear, there is no need for interpretation. **The city charter must be applied as written**. *In re Storm*, 204 Mich App 323, 327; 514 NW2d 538 (1994), overruled in part on other grounds *Detroit Police Officers Ass' v City of Detroit*, 452 Mich 339; 551 NW2d 349 (1996). (Emphasis supplied). Applying these rules of statutory construction to Sec. 2-101 of the 2012 Detroit City Charter, it is clear that Intervening Defendant-Appellant Michael Duggan did not qualify as candidate at the time he filed for office. He thus should not have been certified as a candidate to appear on the August 2013 Primary Election ballot by the Defendant Election Commission.

The Legislature is presumed to know the rules of grammar. *Greater Bethesda Healing Springs Ministry v Evangel Bldrs & Constr Mgrs, LLC*, 282 Mich App 410, 414; 766 NW2d 874 (2009). Statutory language must be read within its grammatical context unless something else was clearly intended. *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009). Generally, a modifying clause will be construed to modify only the last antecedent. *Sun Valley Food Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999).

Sec. 2-101 of the 2012 Detroit City Charter uses the word "and" throughout the provision. Generally, "or" is a disjunctive term indicating a choice between alternatives, **while "and" means "in addition to."** *Paris Meadows, LLC v Kentwood*, 287 Mich App 136, 148; 783 NW2d 133 (2010); *Amerisure Ins Co v Plumb*, 282 Mich App 417, 428; 766 NW2d

18 (2009). The literal meaning of "and" or "or" should be followed if they do not render the statute dubious. *Root v Ins Co of North America*, 214 Mich App 106, 110; 542 NW2d 318 (1995). (Emphasis supplied). In the case at bar, an accurate reading of the term "and" does not render Sec. 2-101 of the 2012 Detroit City Charter, as amended, dubious.

Sec. 2-101 of the 2012 Detroit City Charter is clear and unambiguous. Intervening Defendant-Appellant Michael Duggan, at the time of filing for office, had to have been "a citizen of the United States, a resident and a qualified ***and*** **registered voter of the City of Detroit for one (1) year at the time of filing for office**." (Emphasis supplied).

Intervening Defendant-Appellant Michael Duggan had not been a registered voter of the City of Detroit for one (1) year at the time he filed for office with the Defendant City Clerk on April 2, 2013. As noted above, Intervening Defendant-Appellant Michael Duggan only registered to vote in the City of Detroit on April 16, 2012. Intervening Defendant-Appellant Michael Duggan would only have been a registered voter in the City of Detroit for one (1) year after April 16, 2013. On April 2, 2013 he was not a registered voter for one (1) year. Thus, Intervening Defendant-Appellant Michael Duggan did not and does not now qualify as a candidate on the date he filed to run for office.

The 2012 Detroit City Charter does not define the word "year" or the phrase "at the time of filing for office" as used in Sec. 2-101. However, "...where a statute does not define words contained within it, we must construe and understand them according to the common and approved usage of the language. And to determine the common, ordinary meaning, courts may consult dictionary definitions." *Davis v City of Detroit Financial Review Team,* 296 Mich App 568, at __; 821 NW2d 896 (2012) (citations omitted). We first will examine the word "year". The Merriam-Webster Dictionary New Edition, 2004, defines the word

"year" to mean "a **cycle of 365 or 366 days** beginning with January 1." (Emphasis supplied). As of April 2, 2013, which is the date in which Mr. Duggan filed with the Defendant City Clerk to run for the office of Mayor, Mr. Duggan had only been a registered voter of the City of Detroit for **only 351 days**. A year is not 351 days. As defined by Merriam-Webster Dictionary, a "year" is **365 or 366 days**. Thus, by definition, Intervening Defendant-Appellant Michael Duggan did not qualify as a candidate because he was not a registered voter of the City of Detroit for one (1) year or 365 days at the time he filed for office as Sec. 2-101 of the 2012 Detroit City Charter requires.

The Trial Court, in its June 11, 2013 Opinion and Order (**Exhibit AA**), thoroughly analyzed the meaning of the phrase "at the time of filing for office" as used in Sec. 2-101 of the 212 Detroit City Charter. In accordance with this Court's and the Supreme Court's well-established rules of statutory construction, the Trial Court, in its June 11, 2013 Opinion and Order, defined the phrase "at the time of filing for office" as follows:

> "According to the American Heritage College Dictionary (4th ed), the phrase "at the time," id at p 89, is synonymous with the word "when," whose common definitions include the meanings of "what or which time" or "the time or date." *Id* at p 1560. It is also important to note that the framers of the Charter chose to use the definite article "the" within the phrase "at the time," thus connoting a definite point in time. Robinson v City of Lansing, 486 Mich 1, 14; 782 NW2d 171 (2010) (noting that "the" is defined as a definite article which when before a noun, has a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article "a"). Thus, the phrase "at the time is indicative of a specific moment in time not a generalized timeframe.
>
> "The other phrase used in that portion of § 2-101 that is at is issue is "of filing for office." "'Filing' has been variously defined, but it invariably involves delivery to and receipt by a proper official." *Schultz v United States*, 132 F Supp 953, 955-956; (Ct Cl, 1955). For example, MCR 7.202(4) defines "filing" to mean "the delivery of

a document to a court clerk and the receipt and acceptance of the document by the clerk with the intent to enter it in the record of the court." Similarly, in *Biafore v Baker*, 119 Mich App 667, 669; 326 NW2d 598 (1982), the Michigan Court of Appeals noted, in the context of determining when a complaint is filed, "A paper or document is filed when it is delivered to and received by the proper officer to be kept on file, and the endorsement of the officer with whom it is filed is but evidence of the time of filing." *Id.*

***

"Thus, construing the words and phrases of the relevant portions of § 2-101 according to their ordinary definitions leads to the conclusion that a candidate for mayor must have been a registered voter at least one year prior to the date on which that particular candidate filed his or her affidavit and nominating petitions with the City Clerk. In the case at bar, consistent with the foregoing and the undisputed facts, Mr. Duggan filed his affidavit of identity and his nominating petitions on April 2, 213 and therefore on that date became a candidate. Therefore, Defendants had a clear legal duty to determine whether Mr. Duggan had met the registered voter requirement by using the date of April 2, 2013 as the criteria and not some other date." **(See pp 8-10 of Trial Court's June 11, 2013 Opinion and Order attached hereto as Exhibit AA).**

Additionally, Section 2-101 of the 2012 Detroit City Charter, as amended, uses the mandatory term "must". The use of the term "must" indicates something that is mandatory. *Vyletel-Rivard v Rivard*, 286 Mich App 13, 25; 742 NW2d 627 (2009). "'Shall' is equivalent to the word 'must.'" *Granger v Naegele Advertising Cos, Inc*, 46 Mich App 509, 512; 208 NW2d 575 (1973). The word **"'shall' is mandatory; it expresses a directive, not an option**." *Wolverine Power Supply Coop, Inc v DEQ*, 285 Mich App 548, 561; 777 NW2d 1 (2009). (Emphasis supplied). Thus, it was mandatory for Intervening Defendant-Appellant Michael Duggan to have been a registered voter for one (1) year or 365 days at the time in which he filed with the Defendant City Clerk to qualify as a candidate for the office of

Mayor for the City of Detroit. As the undisputed record clearly reflects, Intervening Defendant-Appellant Michael Duggan was not a registered voter for one (1) year or 365 days at the time he filed to be a candidate on April 2, 2013. His one-year anniversary as a registered voter for the City of Detroit did not occur until after April 16, 2013, some 14 days ***AFTER*** he had so filed to qualify as a candidate for the office of Mayor.

Defendants and Intervening Defendants-Appellants were of the flawed belief and assertion that Intervening Defendant-Appellant Michael Duggan did not have to meet the qualifications as set forth in Sec. 2-101 of the 2012 Detroit City Charter on the date in which he filed for office, but rather that as long as Intervening Defendant-Appellant Michael Duggan met these qualifications on the filing deadline date -- May 14, 2013 – Intervening Defendant-Appellant Michael Duggan was qualified to be a candidate for the office of Mayor. Sec. 2-101 of the 2012 Detroit City Charter does not state such. Thus, the argument of the Defendants and Intervening Defendants are without merit and are contrary to the 2012 Detroit City Charter and the precedent of the Michigan Court of Appeals and Michigan Supreme Court.

Contrary to Defendants and Intervening Defendants-Appellants' flawed assertion and position, under Sec. 2-101 of the 2012 Detroit City Charter, a candidate has to meet the residency and voter requirements of said office ***on the date he or she files for office***, and not on the filing deadline date. As the Trial Court recognized in its June 11, 2013 Opinion and Order, "One becomes a candidate when he files for election to office." *Okros v Myslaowski*, 67 Mich App 397, at 401; 241 NW2d 223 (1976). (citation omitted). This very issue of whether a candidate has to meet the residency and voter requirements of the office sought on the date in which they file for office or on a future date -- like the date of the primary or the

filing deadline date -- has been examined by our Michigan Court of Appeals in *Gallagher v Keefe*, 232 Mich App 363; 591 NW2d 297 (1998). In *Gallagher v Keefe*, our Court of Appeals held:

> "Even if we agreed with defendant that his Court's statement in *Okros, supra* at 401-402, was dicta, we would adopt the reasoning of the panel in *Okros* and hold **in this case that the status of a candidate regarding residency and voter requirements is determined *as of the date that the candidate files for election to the office*, not the date of the primary**. The requirements of MCL 46.411; MSA 5.359(110 apply to "[c]andidates for the office of commissioner." Defendant became a candidate by filing an affidavit of identification with the clerk's office and paying the filing fee. See MCL 168.558(1); MSA 6.1558(1); Grand Rapids, supra at 330 ("a participant in a primary election is a candidate for office"). **Because defendant did not meet the requirements of MCL 46.411; MSA 5.359(11) at the time she filed the affidavit and paid the fee, she was ineligible to run for the office of commissioner in Ingham County**. See *Okros, supra* at 401. Therefore, defendant's subsequent nomination and election were void." [*Gallagher v Keefe,* 232 Mich App at 374-375.] (Emphasis supplied).

Sec. 2-101 of the 2012 Detroit City Charter makes it very clear that a person had to meet the voter requirements at the time of filing for office. Thus, like the defendant in *Gallagher, supra*, because Intervening Defendant-Appellant Michael Duggan did not meet the requirements of Sec. 2-101 of the 2012 Detroit City Charter at the time he filed his affidavit of identity and petitions with the Defendant City Clerk on April 2, 2013, Intervening Defendant-Appellant Duggan was ineligible to run for the office of Mayor of the City of Detroit. *Gallagher, supra* at 374. Although Defendants and Intervening Defendants-Appellants may believe that the one (1) year requirement is trivial, the People of the City of Detroit chose to have this provision in its city charter and the will of the People cannot be

ignored or overruled by this Court. "Fundamental principles of democratic self-government preclude the judiciary from substituting its judgment for that of the people." *In re Proposals D & H*, 417 Mich 409, 423; 339 NW2d 848 (1983). Moreover, as this Court and the Defendants are well aware of, the 2012 Detroit City Charter is the supreme law that governs its elected officials and the operation of its city government. **"The charter of a city stands as its 'constitution;' it is the 'definition of [a city's] rights and obligations as a municipal entity, so far as they are not otherwise legally granted or imposed**." *Bivens v Grand Rapids*, 443 Mich 391, 400; 505 NW2d 239 (1993). (Emphasis supplied). For this Court to uphold the Defendants' decision to certify Mr. Duggan as a candidate for the office of Mayor of the City of Detroit would cause this Court to render a portion of Sec. 2-101 of the 2012 Detroit City Charter surplusage and nugatory. "When construing a statute, every word should be given meaning in order to avoid a construction that would render any part of the statute surplusage or nugatory." *Hackel v Macomb Co Comm*, 298 Mich App 311, at 318 (2012).

Additionally, to reverse the decision of the Trial Court and endorse and sanction the decision of the Defendants to certify Intervening Defendant-Appellant Michael Duggan as a candidate would require this Court to read words into Sec. 2-101 of the 2012 Detroit City Charter that are simply not present. Indeed, as the Trial Court pointed out in its June 11, 2013 Opinion and Order on p 13 (**Exhibit AA**), "adoption of Mr. Duggan's contention would involve this Court in substituting the phrase "by the filing deadline" for the phrase "at the time of filing for office. Yet it is well settled that courts will not read words into a statute. *Omelenchuk v City of Warren*, 461 Mich 567, 575 (2000)." In order for the Defendants' decisions to be upheld and for Intervening Defendant-Appellant Michael Duggan to stay on

the ballot, it would require this Court to read words into Sec. 2-101 of the 2012 Detroit City Charter. This is not permitted. The words are just not there. Sec. 2-101 clearly states that the qualifications must be met *at the time of filing* for office, and not the filing deadline date.

ARGUMENT

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN GRANTING PLAINTIFF-APPELLEE'S EMERGENCY MOTION FOR WRIT OF MANDAMUS.

A. Standard of Review

A trial court's decision on a request for mandamus is reviewed for an abuse of discretion. *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 367; 820 NW2d 208 (2012). "An abuse of discretion exists when the decision is outside the range of principled outcomes. The exercise of this discretion may not be arbitrary, but rather must be in accordance with the fixed principles of equity jurisdiction and the evidence in the case." *Davis v Detroit Financial Review Team*, 296 Mich App 568, at ___; 821 NW2d 896 (2012). "However, we review de novo the first two elements required for issuance of a writ of mandamus – that defendants have a clear legal duty to perform, and plaintiffs have a clear legal right to performance of the act requested – as questions of law." *Coalition for a Safer Detroit*, 295 Mich App at 367. Additionally, issues of statutory interpretation are reviewed de novo. *Taylor v Currie*, 277 Mich App 85, 94; 743 NW2d 571 (2007).

B. Analysis

In the instant appeal, Intervening Defendants-Appellants attack the trial court's proper granting of Plaintiff-Appellee's Emergency Motion for Writ of Mandamus, Declaratory Judgment and Injunctive Relief. Particularly, Intervening Defendants-Appellants focus on the trial court's granting of mandamus. As recognized by the trial court

in its June 11, 2013 Opinion and Order, as a citizen, registered voter, and certified candidate for the office of Mayor of the City of Detroit, Plaintiff-Appellee had standing to seek a writ of mandamus against the named Defendants in this election action. **(See p 4 of Trial Court's June 11, 2013 Opinion and Order attached hereto as Exhibit AA).**

It is well-established, that ordinary citizens and persons have standing to seek a writ of mandamus against election officials in election related cases. "**It is generally held in the absence of a statute to the contrary, that a private person as relator may enforce by mandamus a public right or duty relating to elections without showing a special interest distinct from the interest of the public.**" *Helmkamp v Livonia*, 160 Mich App 442, 445; 408 NW2d 470 (1987). (citation and quotations omitted) (Emphasis supplied). The rights of an ordinary citizen and/or private person to "enforce by mandamus a public right or duty relating to elections without showing a special interest distinct from the interest of the public" was recently upheld by the Michigan Court of Appeals in *Deleeuw v Bd of State Canvassers*, 263 Mich App 497; 688 NW2d 847 (2004), where the Court of Appeals said:

> "Election cases are special, however, because without the process of elections, citizens lack their ordinary recourse. **For this reason we have found that ordinary citizens have standing to enforce the law in election cases.**" [*Deleeuw v Bd of State Canvassers*, 263 Mich App at 505-506.] (Citations omitted) (Emphasis supplied).

Citing *Deleeuw, supra*, and *Helmkamp, supra*, the Michigan Court of Appeals only last year addressed the standing issue in *Protect MI Constitution v Secretary of State*, 297 Mich App 553; 824 NW2d 299 (2012), reversed on other grounds 492 Mich 860 (2012), and it held:

> Michigan jurisprudence recognizes the special nature of election cases and the standing of ordinary citizens to enforce the law in election cases. *Deleeuw v State Bd*

of Canvassers, 263 Mich App 497, 505-506; 688 NW2d 847 (2004). See also *Helmcamp v Livonia City Council*, 160 Mich App 442, 445; 408 NW2d 470 (2987) ("[I]n the absence of a statute to the contrary, [] a private person... may enforce by mandamus a public right or duty relation to elections without showing a special interest distinct from the interest of the public." [Quotation marks omitted]. The general interest of ordinary citizens to enforce the law in election cases is sufficient to confer standing to seek mandamus relief. See *Citizens Protecting Michigan's Constitution*, 280 Mich App at 282 (permitting a ballot question committee to challenge a petition). [*Protect MI Constitution,* 297 Mich App at 566-567.]

Plaintiff-Appellee, as a citizen, registered voter of the City of Detroit, and as a certified candidate for the office of Mayor of the City of Detroit, was seeking to enforce Michigan Election Law in this election case. Plaintiff-Appellee thus had standing to bring this mandamus action. (**See pp 4-6 of Trial Court's June 11, 2013 Opinion and Order attached hereto as Exhibit AA**). Moreover, Plaintiff-Appellee is not only a citizen and registered voter of the City of Detroit, but he also is a duly certified candidate for the office of Mayor, whose name will appear on the City's August 2013 Primary Election ballot. Accordingly, Plaintiff-Appellee possesses standing and a legally protected right to participate in a fair and honest election without fear of having votes for him lost as a result of having an unqualified candidate on the ballot. *Deleeuw v Bd of State Canvassers*, 263 Mich App at 506; see also *Treasurer of the Committee to Elect Gerald D Lostracco v Fox*, 150 Mich App 617, 621; 389 NW2d 446 (1986).

In the present case, **no** Michigan statute expressly limits those who may seek to enforce Michigan Election Law or to enforce the provisions of the 2012 Detroit City Charter with respect to elections and candidates for election. Pursuant to the holdings in *Helmkamp, surpa, Deleeuw, supra*, and *Protect MI Constitution, supra*, Plaintiff Barrow has standing to

bring this action because this action relates to "a public right or duty relating to elections." *Helmkamp, supra* at 445.

"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, aff'd in part 482 Mich 960 (2008). A writ of mandamus is an extraordinary remedy. *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 367-367; ___NW2d ___ (2012).

The plaintiff must show that (1) the plaintiff has a clear legal duty to the performance of the duty sought to be compelled, (2) the defendants have a clear legal duty to perform the requested act, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result. *Id.* See also *White-Bey v Dep't of Corrections*, 239 Mich App 221, 223-224; 608 NW2d 833 (1999). An act is ministerial if it is "prescribed and defined by law with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Citizens Protecting Michigan's Constitution*, 280 Mich App at 286, quoting *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 439; 722 NW2d 243 (2006). As set forth in *Helmkamp v Livonia, supra, Deleeuw v Bd of State Canvasser, surpa, and Protect MI Constitution v Sec of State, supra*, Plaintiff Barrow has a clear legal right to the performance sought to be compelled, which is the proper administration of Michigan Election Law in the City of Detroit's contested August 2013 Primary Election. Additionally, Plaintiff Barrow, as a certified candidate for the office of Mayor, as other candidates in the election, certainly has an interest in ensuring that only properly certified candidates are placed on the ballot. Plaintiff Barrow has a clear legal right to the performance of the Defendant Clerk's duty to certify only the names of candidates who complied with the statute. See *Anderson v Wayne*

County Clerk, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2000 (Docket No.213191), slip op p 2. (**Exhibit M**). Defendant Election Commission has a clear legal duty to perform the requested act. Defendant Election Commission can only certify candidates to be placed on the primary election ballot who meet the qualifications that are set forth in Sec. 2-101 of the 2012 Detroit City Charter, as amended, at the time they file for office.

Under MCL 168.323 of Michigan Election Law, it is the duty of the Defendant Election Commission to prepare the primary election ballots. MCL 168.323 states:

> It ***shall*** be the duty of the board of city election commissioners to prepare the primary ballots to be used by the electors. The returns shall be canvassed by the board of city canvassers and the results certified to the board of city election commissioners, who shall thereupon prepare and furnish ballots for the ensuing election. The printing and distribution of ballots, equipment and supplies, the conduct of the primary and election, the canvass and certification of the returns and all other particulars shall be in accordance, as nearly as may be, with the provisions of this act governing general primaries and elections. (Emphasis supplied).

Under MCL 168.719 of Michigan Election Law, it is the duty of the Defendant Election Commission to prepare and print the ballots for the primary election with the names of qualified candidates. MCL 168.719 of Michigan Election Law states in relevant part:

> The election commission of each city, township and village ***shall*** perform such duties relative to the preparation, printing, and delivery of ballots as are required by law of the boards of election commissioners of counties.... (Emphasis supplied).

The act sought to be compelled of the Defendant Election Commission is ministerial, in that it is "prescribed and defined by law with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Citizens Protecting Michigan's Constitution*, 280 Mich App at 286. Furthermore, MCL 168.558(1) of Michigan Election

also provides that the Defendant Clerk "shall not certify to the board of election commissioners the name of a candidate who fails to comply with this section." As noted by our Court of Appeals in *Anderson v Wayne County Clerk*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2000 (Docket No.213191), 2000 WL 33434071 (Mich App):

> "Therefore, if appellant did not comply with the statute, the clerk owed a clear, non-discretionary legal duty to remove his name from the election ballot. Plaintiffs, as other candidates in the election, certainly had an interest in ensuring that only properly certified candidates were placed on the ballot. They had a clear legal right to the performance of the clerk's duty to certify only the names of candidates who complied with the statute. Due to the exigencies of an impending election, plaintiffs had no other adequate remedy at law or equity. Therefore, if appellant provided a false address on the affidavit, the court properly issued the writ of mandamus." [*Anderson v Wayne County Clerk*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2000 (Docket No.213191), slip op p 2.] (**Exhibit M**).

The term "shall" denotes mandatory conduct. *Manual v Gill*, 481 Mich 637, 647; 753 NW2d 48 (2008). The word "'**shall' is mandatory; it expresses a directive, not an option**." *Wolverine Power Supply Coop, Inc v DEQ*, 285 Mich App 548, 561; 777 NW2d 1 (2009). (Emphasis supplied). As our Michigan Court of Appeals recently recognized, "The Legislature's use of the word "shall" denotes mandatory conduct, *Manual*, 481 Mich at 647, and a court may not ignore the Legislature's instruction of mandatory conduct, or make a different policy choice than has already been made by the Legislature, *People v McIntire*, 461 Mich 147, 152-153; 599 NW2d 102 (1999)." *Stand Up for Democracy v Secretary of State*, ___ Mich App ___; ___ NW2d ____ (2012), Opinion issued on June 8, 2012 (Docket No.310047), slip op at 14.

As explained by the trial court in its June 11, 2013 Opinion and Order:

> "As applied to the case at bar, if Mr. Barrow was successful in his request for declaratory judgment, the function of mandamus and injunction would be respectively to compel the Defendants to perform their legal duties under the Charter and to restrain the Defendants from placing the name of Mr. Duggan on the primary ballot." **(See pp 5-6 of Trial Court's June 11, 2013 Opinion and Order attached hereto as Exhibit AA).**

Finally, there was no other adequate remedy at law than mandamus that would have achieved the correct legal result. Due to the exigencies of an impending election, Plaintiff-Appellee had no other adequate remedy at law or in equity, although he sought and was properly granted alternative relief. See *Anderson v Wayne County Clerk*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2000 (Docket No.213191), 2000 WL 33434071 (Mich App). **(Exhibit M)**.

Plaintiff-Appellee met all of the elements required for the trial court to issue its writ of mandamus against the Defendants compelling them to remove the name of candidate Michael E. Duggan from the August 2013 Primary Election for the office of Mayor of City of Detroit.

ARGUMENT

III. THE TRIAL COURT PROPERLY GRANTED PLAINTIFF-APPELLEE'S EMERGENCY MOTIONS FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF.

A. Standard of Review

This Court reviews a decision to grant or deny a declaratory judgment *de novo*. *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 469; 556 NW2d 517 (1996). "This Court reviews *de novo* issues of statutory construction." *Davis v Detroit Financial Review Team*, 296 Mich App 568, at ___; 821 NW2d 896 (2012). However, a trial court's decision

whether to grant injunctive relief is reviewed for an abuse of discretion. Pontiac Fire Fighters Union Local 376 v City of Pontiac, 482 Mich 1, 8; 753 NW2d 595 (2008); see also *Davis v Detroit Financial Review Team*, 296 Mich App 568, at ___; 821 NW2d 896 (2012). "An abuse of discretion occurs when an unprejudiced person considering the facts upon which the decision was made would say that there was no justification or excuse for the decision." *City of Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 254; 701 NW2d 144 (2005).

B. Analysis

Notably, Intervening Defendants-Appellants do not challenge in their Brief on Appeal, the trial court's decision in granting Plaintiff-Appellee's Emergency Motions for Declaratory Judgment and Injunctive Relief nor does the Intervening Defendants-Appellants challenge the trial court's determination that an "actual controversy" existed between Plaintiff-Appellee, Defendants, and Intervening Defendants-Appellants.

A plaintiff may seek a declaratory judgment if 'the requirements of MCR 2.605 are met." *Lansing Schools Education Association v Lansing Board of Education*, 487 Mich 349, at 373 (2010). MCR 2.601(A)(1) provides:

> "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

Therefore, a condition precedent to the invocation of declaratory relief under MCR 2.605(A)(1), is the existence of an actual controversy. *Lansing Schools Education Association v Lansing Board of Education (On Remand)*, 293 Mich App 506, at 515 (2011). In the absence of an actual controversy, the trial court lacks subject-matter jurisdiction to

enter a declaratory judgment. *Id.* An "actual controversy" exists where declaratory relief is needed to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights. *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, at 55 (2000).

It is not disputable that an "actual controversy" exists in this case. As set forth above, Plaintiff-Appellee submitted a formal written challenge to the Defendants challenging the legality of Intervening Defendant-Appellant Michael Duggan's candidacy as a candidate for the office of Mayor of the City of Detroit. As a duly qualified and certified candidate for the office of Mayor of the City of Detroit, Plaintiff-Appellee has a legal right to participate in a fair election with those candidates who meet the qualifications of the office as set forth in Sec. 2-101 of the 2012 Detroit City Charter. Plaintiff-Appellee, as other candidates in the election, certainly has an interest in ensuring that only properly certified candidates are placed on the ballot. See *Anderson v Wayne County Clerk*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2000 (Docket No.213191), slip op p 2.] **(Exhibit M)**.

Moreover, as a candidate in the race for Mayor of the City of Detroit, Plaintiff-Appellee has an imminent, permanent and irreparable injury of a loss of votes if Intervening Defendant-Appellant Michael Duggan as an unqualified candidate is allowed to stay in the race. As the Michigan Court of Appeals explained in *Lostracco Comm. Treas. v Fox*, 150 Mich App 617, at 621; 389 NW2d 446 (1986):

> "... the injury-- the loss of votes for plaintiff's candidate in the election-- would have been irreparable and permanent. Because plaintiff proved by a preponderance of the evidence an actual or threatened invasion of his candidate's right to seek office in a fair election and demonstrated that he had no adequate remedy at law, injunction was the proper remedy." (citations omitted).

Plaintiff-Appellee has been told by many voters of the City of Detroit that they would vote for him if Intervening Defendant-Appellant Michael Duggan was not in the race. Accordingly, Plaintiff-Appellee is losing votes as a result of Intervening Defendant-Appellant Michael Duggan being allowed to stay in the race for the office of Mayor of the City of Detroit. (**See Plaintiff's affidavit attached hereto as Exhibit A**). Thus, the issuance of a declaratory judgment was necessary and proper to guide Plaintiff-Appellee's future conduct as he seeks to earn the votes of the citizens of the City of Detroit, while he seeks to preserve his legal right to seek office in a fair election with candidates who meet the qualifications set forth in Sec. 2-101 of the 2012 Detroit City Charter without the threat of a loss of votes. *Lostracco Comm. Treas., supra.*

As the Trial Court explained in is June 11, 2013 Opinion and Order:

> "Indeed, in *Martin v Secretary of State*, 482 Mich 956; 755 NW2d 153 (2008), the Supreme Court held that a candidate for elective office "suffers a cognizable injury in fact of, due to the improper interpretation and enforcement of election law, he or she is prevented from being placed on the ballot or must compete against some improperly placed on the ballot." Because placing Mr. Duggan's name on the primary ballot in contravention to legal requirements would cause cognizable injury in fact to Mr. Barrow, this Court finds that there is an actual controversy between Mr. Barrow and the Defendants and Mr. Duggan, and this case is an appropriate case in which the Court may enter a declaratory judgment." (**See p 4 of Trial Court's June 11, 2013 Opinion and Order attached hereto as Exhibit AA**).

Thus, it was necessary and proper for the trial court to issue a declaratory judgment declaring that Intervening Defendant-Appellant Michael Duggan did not meet the qualifications to qualify as a candidate for the office of Mayor of the City of Detroit on the date in which he filed for office, and thus, the trial court made the correct decision and declared that Intervening Defendant-Appellant Michael Duggan must be removed from the

August 2013 Primary Election ballot because he was not qualified under Sec. 2-101 of the 2012 Detroit City Charter at the time he filed for office. Accordingly, the issuance of an injunction was just and proper in order to enjoin the Defendants from improperly placing the Intervening Defendant-Appellant Michael Duggan on the August 2013 primary election ballot. "The granting of an injunction constitutes an extraordinary judicial power that is only justified when the party seeking an injunction can show a likelihood that it will succeed on the merits of the claim." *Scott v Director of Elections*, 490 Mich 897; 804 NW2d 551 (2011). In the case at bar, the trial court correctly decided that the Plaintiff-Appellee was likely to succeed on the merits of his declaratory judgment claim and thus the issuance of an injunction was proper "because placing [Intervening Defendant-Appellant Michael] Duggan's name on the primary ballot in contravention to legal requirements would cause cognizable injury in fact to [Plaintiff-Appellee]." **(See p 4 of Trial Court's June 11, 2013 Opinion and Order attached hereto as Exhibit AA)**. Moreover, as a result of Intervening Defendants-Appellants failing to challenge in the instant appeal the trial court's decision in granting Plaintiff-Appellee's motions for declaratory judgment and injunctive relief, the trial court's decision must be affirmed and upheld.

ARGUMENT

IV. THE TRIAL COURT CORRECTLY DETERMINED THAT SEC. 2-101 OF THE 2012 DETROIT CITY CHARTER WAS CONSTITUTIONAL.

A. Standard of Review

Whether Sec. 2-101 of the 2012 Detroit City Charter is constitutional is a question of law which this Court reviews *de novo*. *People v Swafford*, 483 Mich 1, 7; 762 NW2d 902 (2009).

B. Analysis

In an effort to overturn the will of the electorate of the City of Detroit, Intervening Defendants-Appellants, in an act of desperation, now asserts that one (1) year voter registration requirement as set forth in Sec. 2-101 of the 2012 Detroit City Charter is unconstitutional. As the trial court in its June 11, 2013 Opinion and Order determined, Intervening Defendants-Appellants' argument in this regard is simply without merit.

As noted by the trial court in its June 11, 2013 Opinion and Order, "In considering this argument, the Court notes that "[s]tatutes are presumed to be constitutional, and courts have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent." *In re Request For Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 307; 806 NW2d 683 (2011)." **(See p 18 of Trial Court's June 11, 2013 Opinion and Order attached hereto as Exhibit AA)**. As the Court surely knows, the People -- the electorate -- of the City of Detroit, voted to amend the City's charter in the November 2012 General Election. Among the many changes to the Charter, was the amendment to Sec. 2-101, which now requires a candidate to be a registered voter for one (1) year at ***the time of filing for office***. Again, Intervening Defendants cite outdated law in support of their "constitutional" argument.

As the adopters commentary to Sec. 2-101 of the 2012 Detroit City Charter points out, the one (1) year durational residency requirements have been held to be constitutional by the United States Supreme Court, and by the 6th Circuit Court of Appeals. For example, in *Akron v Bell*, 660 F. 2d 166 (6th Cir., 1981), the 6th Circuit held that a one-year residency requirement for a candidate for city council **did not violate** rights to equal protection and to travel and was rationally related to a legitimate state purpose. The court went on to state that even if a 'compelling state interest' test had been applied to this requirement, it would remain

valid and constitutional. The 6th Circuit Court of Appeals, with its decision in *Akron,* **overruled its decision** in *Green v McKeon*, 468 F. 2d 883 (6th Cir., 1972), in which it held that a two-year residency requirement for the position of city commissioner violated the Equal Protection Clause of the Fourteenth Amendment because it created a classification that restricted the right to travel and held that such a residency requirement was to be viewed with strict scrutiny.

The 6th Circuit Court reversed *Green* because of the United States Supreme Court's summary affirmances in *Chimento v. Stark*, 414 U.S. 802 (1973), and *Sununu v. Stark*, 420 U.S. 928 (1975). In those actions a durational residency requirement of seven years for state senator and seven years for governor **were held not to violate** the Equal Protection Clause. Therefore, contrary to Intervening Defendants' assertions, the one (1) year voter registration requirement is constitutional and does not violate the Intervening Defendants' right of free travel or equal protection rights afforded them under the 14th Amendment of the United States Constitution or the equal protection clause of the Michigan Constitution of 1963.

Intervening Defendants-Appellants' reliance on the holdings of *Grano v Ortisi*, 86 Mich App 482; 272 NW2d 693 (1978), and *Musto v Redford Twp*, 137 Mich App 30; 357 NW2d 791 (1984) is misplaced and are distinguishable from the case at bar. Plaintiff-Appellee relies upon the reasoning and analysis provided by the trial court in its June 11, 2013 Opinion and Order. In addressing Intervening Defendants-Appellants' misplaced reliance on the holdings of *Grano* and *Musto*, the trial court provided the following thoughtful and thorough analysis in its June 11, 2013 Opinion and Order:

> "Turning to the specific cases relied on by Mr. Duggan, it is true, as noted in his argument that neither *Grano* nor *Musto* have been overruled. Yet, applying their results blindly is not warranted, given further developments in Michigan case law.

For example, the Court of Appeals in *Gallagher, supra* at 374 and *Okros, supra* at 401-402 has applied residency requirements without questioning their constitutionality. Further, as noted in *Akhtar v Charter Co of Wayne*, unpublished opinion per curiam of the Court of Appeals, issued February 11, 2003 (Docket No. 233879); 2003 WL 327624, p 4, n 2, "durational residency requirements for candidates for elective office have been upheld by the United States Supreme Court and the Sixth Circuit. *Sununu v Stark*, 420 U.S. 958, 958; 95 S Ct 1346; 43 L Ed2d 435 (1975) (seven-year residency requirement for state senator constitutional); *Biel v City of Akron,* 660 F2d 166, 169 (CA 6, 1981) (one-year durational residency requirement for city ward commission position constitutional)." In *Akhtar*, the Michigan Court of Appeals distinguished the result reached in *Musto*, in that *Musto* involved employment, and *Akhtar* involved residency requirements imposed on a candidate for county office.

"Neither the *Grano* nor the *Musto* cases are binding on this Court's decision. *Grano* is distinguishable because it involved a two-year residency requirement for a municipal judge, whereas the instant case involves a one-year voter registration requirement to run for the Mayor of Detroit. *Musto* is distinguishable because it does not involve a residency requirement for elective office." **(See p 19 of Trial Court's Opinion and Order attached hereto as Exhibit AA).**

As further noted by the trial court in its June 11, 2013 Opinion and Order:

"The constitutionality of durational requirements was discussed at length in *Joseph v City of Birmingham*, 510 F Supp 1319 (ED Mich 1981). In that case, the federal court analyzed both Michigan and federal case law interpreting such requirements. While recognizing that Michigan has applied a strict scrutiny standard to residency requirements, the U.S. District Court for the Eastern District of Michigan rejected such an analysis and instead adopted an intermediate standard. The court also recognized that durational requirements are constitutional and rarely has a one year requirement been struck down. The court upheld a one year residency requirement. The analysis is instructive and persuasive." **(See pp 19-20 of Trial Court's June 11, 2013 Opinion and Order attached hereto as Exhibit AA).**

Thus, for the reasons stated in the trial court's thorough and well-reasoned June 11, 2013 Opinion and Order, Intervening Defendants-Appellants' argument that Sec. 2-101 of the 2012 Detroit City Charter is unconstitutional is without merit and the trial court's June 11, 2013 Opinion and Order must be AFFIRMED by this Court.

CONCLUSION

For the reasons set forth herein and in the trial court's thorough and well-reasoned June 11, 2013 Opinion and Order, Plaintiff-Appellee prays that this Honorable Court **GRANTS** Plaintiff-Appellee's Emergency Application for Leave to Appeal Before A Decision from the Court of Appeals pursuant to MCR 7.302(C)(1)(a) and **AFFIRM** the trial court's June 11, 2013 Opinion and Order.

Respectfully submitted,

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DATED: June 13, 2013