City of Troy

MEMORANDUM

TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney LGB
Allan T. Motzny, Assistant City Attorney ATM
DATE: December 13, 2012
SUBJECT: Special Elections Lawsuits

As you are aware, immediate action was required to defend the interests of the City and its officials in two separate lawsuits that requested a special Mayoral election for February 2013. These lawsuits were served on the City after the deadline for the December 3, 2012 City Council meeting. These cases were assigned to Oakland County Circuit Court Judge Denise Langford Morris, and were set for a hearing on December 12, 2012.

On November 29, 2012, Robert Davis and Citizens United Against Corrupt Government filed a lawsuit against the Michigan Secretary of State, State Director of Elections Christopher Thomas, City of Troy, Troy City Council, and the Troy City Clerk. In this attached lawsuit, Plaintiffs were seeking an order requiring a February 26, 2013 election in the City of Troy. Plaintiffs were also seeking penal damages in the amount of $250 from each defendant plus costs and attorney fees. Our office presented written and oral arguments on behalf of the Troy defendants. The Court issued her order on December 12, 2012, dismissing the case in its entirety. A copy of this order is attached for your convenience.

Michigan Secretary of State Ruth Johnson, represented by Michigan Attorney General Bill Schuette, filed a lawsuit against the Troy City Clerk and the Troy Election Commission members on November 30, 2012. A copy of this lawsuit is also attached. Through this case, the Secretary of State sought a writ of mandamus, compelling the City to hold a special election on February 26, 2013. Additionally, Plaintiff requested declaratory and injunctive relief. This case was consolidated with the case filed by Robert Davis, and the hearing was also scheduled at the same time on December 12, 2012. Attorneys Michael Hutson, Donald McGinnis, and Kurt Schnelz represented the interests of the individual Troy Election Commissioners on a pro-bono basis, and our office represented the Troy City Clerk. Written and oral arguments were submitted, and the Court made her ruling on December 12, 2012. Subsequently, the attached proposed order has been prepared for the Court's consideration and entry. The Court gave the parties five days to agree to the schedule.

The Court denied the request for a writ of mandamus, but did grant Plaintiff's request for a declaratory judgment and also the requested injunctive relief, ordering a special election for May to fill the vacancy left by the recall of the former Mayor. The Court also required the submission of the election schedule, which has been incorporated into the proposed order.

Please let us know if you have any questions concerning the above.

Received for Filing Oakland County Clerk 2012 DEC 13 AM 09:14

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ROBERT DAVIS, and
CITIZENS UNITED AGAINST CORRUPT
GOVERNMENT, a Michigan Non-Profit
Corporation,
Plaintiffs,

v.

Case No. 2012-130791-AW
Hon. Denise Langford Morris

MICHIGAN SECRETARY OF STATE,
DIRECTOR OF ELECTIONS,
CITY OF TROY, TROY CITY COUNCIL, and
M. AILEEN BITTNER,
Defendants.

/

Andrew A. Paterson (P18690)
Attorney for Plaintiffs
46350 Grand River Ave., Suite C
Novi, MI 48374
(248) 568-9712

Denise C. Barton (P41535)
Heather S. Meingast (P55439)
Assistant Attorneys General
Attorneys for Defendants Secretary of State
and Director of Elections
P.O. Box 30736
Lansing, MI 48909
(517) 373-6434

Troy City Attorney's Office
Lori Grigg Bluhm (P46908)
Allan T. Motzny (P37580)
Attorneys for Defendants City of Troy,
Troy City Council, and M. Aileen Bittner
500 W. Big Beaver Road
Troy MI 48084
(248) 524-3320

/

ORDER DENYING PLAINITFF'S REQUESTED RELIEF IN EMERGENCY COMPLAINT FOR WRIT OF MANDAMUS AND EMERGENCY MOTION AND DISMISSING CASE

At a session of said Court held in the
Courthouse in the City of Pontiac,
Oakland County, Michigan
on December 12, 2012

PRESENT: HONORABLE DENISE LANGFORD MORRIS

Received for Filing Oakland County Clerk 2012 DEC 13 AM 09:14

This matter was presented to the Court through Plaintiff's Emergency Complaint for Writ of Mandamus and Emergency Motion for Writ of Mandamus and Ex Parte Motion To Show Cause. The Court, by signing an Ex Parte Order, scheduled a hearing in this matter for December 12, 2012, and the parties had the opportunity to provide written and oral argument to the Court before the issuance of an order.

NOW THEREFORE,

IT IS HEREBY ORDERED that Plaintiff's Request for Writs of Mandamus, as set forth in Plaintiffs' Emergency Complaint for Writ of Mandamus and Plaintiffs' Emergency Motion for Writ of Mandamus, is hereby **DENIED** for the reasons stated on the record, and that the case against Defnd Ruth Johnson was voluntarily dismiss

IT IS FURTHER ORDERED that Plaintiffs' request for costs and an imposition of fines is also **DENIED** for the reasons stated on the record.

IT IS FURTHER ORDERED that this case is now dismissed, and that this is a final order disposing of the case.

Honorable Denise Langford Morris

Dated: December 12, 2012

Approved as to Form

Heather S Meingast

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SECRETARY OF STATE RUTH JOHNSON,

Plaintiff,

v.

Case No. 2012-130814-AW
HON. DENISE LANGFORD MORRIS

AILEEN BITTNER, Troy City Clerk, and
TROY ELECTION COMMISSION

Defendants.

_____/

BILL SCHUETTE
MICHIGAN ATTORNEY GENERAL
Denise C. Barton (P41535)
Heather S. Meingast (P55439)
Assistant Attorneys General/ Attorneys for Plaintiff
P. O. Box 30736
Lansing, MI 48909
(517) 373-6434

CITY OF TROY – CITY ATTORNEY'S OFFICE
BY: Lori Grigg Bluhm (P46908)
Allan T. Motzny (P37580)
Attorneys for Defendants
500 W. Big Beaver Road
Troy, MI 48084
(248) 524-3320
bluhmlg@troymi.gov

Kurt E. Schnelz (P37365)
SCHNELZ WELLS, P.C.
Co-Counsel for Defendant Tim Dewan Election Commissioner
280 N. Old Woodward Ave., Ste. 250
Birmingham, MI 48009
(248) 258-7074

Michael W. Hutson (P15310)
HUTSON, SAWYER, RUPP & SCHROEDER
Attorneys for Defendant, David C. Anderson, Election Commissioner
292 Town Center Drive
Troy, MI 48084-1774
(248) 689-5700
mhutson@hutsonsawyer.com

Donald E. McGinnis, Jr. (P22796)
DONALD E. MCGINNIS JR. PC
Attorney for Defendant, Tim Dewan Election Commissioner
1721 Crooks Rd., Ste. 101
Troy, MI 48084
(248) 643-6002
Dmcginnis@dmcginnis.com

_____/

PROPOSED

PROPOSED

ORDER DENYING PLAINITFF'S REQUEST FOR WRIT OF MANDAMUS AND GRANTING DECLARATORY AND INJUNCTIVE RELIEF

At a session of said Court held in the
Courthouse in the City of Pontiac,
Oakland County, Michigan
on December _____ , 2012

PRESENT: HONORABLE DENISE LANGFORD MORRIS

This matter was presented to the Court through Plaintiff's Verified Complaint for Writ of Mandamus with Motion for Immediate Consideration Pursuant to MCR 3.305(C), and For Declaratory Judgment and Injunctive Relief. The Court, by signing an Ex Parte Order, scheduled a hearing in this matter for December 12, 2012, and the parties had the opportunity to provide written and oral argument to the Court before the issuance of an order. The Court having found that MCL 168.971 requires a special election to be held on February 26, 2013, but also finding that it is impossible to meet the time frames for such an election because a timely notice of election as required by MCL 168.964 did not occur,

NOW THEREFORE,

IT IS HEREBY ORDERED that Plaintiff's Request for a Writ of Mandamus to compel Defendants to give notice of and conduct a special election on February 26, 2013 for the purpose of filling the vacancy in the office of City of Troy Mayor created by the recall of Mayor Janice Daniels is denied.

IT IS FURTHER ORDERED, based on the findings set forth above, that a special election to fill the vacancy in the Office of Mayor for the City of Troy for the unexpired term created by the recall of Mayor Janice Daniels shall be held on the May regular election date as set forth in MCL 168.641, which date is May 7, 2013.

IT IS FURTHER ORDERED that the following deadlines shall be applicable for the May 7, 2013 election to fill the Mayoral vacancy created by the recall of Janice Daniels on November 6, 2012:

January 25, 2013: Filing deadline for candidates for office (Charter 7.9 - 100 days)
January 29, 2013: Withdrawal deadline for candidates for office
January 30, 2013: Deadline to file challenges to petitions
February 1, 2013: Clerk forwards candidate names to County
February 21, 2013: AV applications accepted
March 23, 2013: AV Ballots must be available
March 28-April 16, 2013: Precinct Inspectors appointed
April 1, 2013: Notice of close of registration published
April 8, 2013: Last day to register to vote on May 7, 2013
April 26, 2013 4PM: Write-in candidate filing deadline
April 30, 2013: Notice of Election published
April 30, 2013: Notice of Public Accuracy Test published
May 2, 2013: Public Accuracy test
May 4, 2013 2PM: Deadline for AV ballots by mail
May 6, 2013 4PM: Deadline for AV ballots in person
May 7, 2013 4PM: Deadline for emergency AV ballots
May 7, 2013: Election Day

IT IS FURTHER ORDERED that except as set forth above, Troy's Charter, Section 7.9, shall govern nominations for the May 7, 2013 election.

IT IS FURTHER ORDERED that this is a final order disposing of the case.

_____
Honorable Denise Langford Morris

Dated: December _____, 2012

Approved as to Form:

_____
Heather S. Meingast (P55439)
Attorney for Plaintiff

_____
Donald E. McGinnis, Jr. (P22796)
Attorney for Defendant Dewan

_____
Lori Grigg Bluhm (P46908)
Attorney for Defendant Bittner

_____
Kurt E. Schnelz (P37365)
Co-Counsel for Defendant Dewan

PROPOSED

_____
Michael W. Hutson (P15310)
Attorney for Defendant Anderson

STATE OF MICHIGAN
IN THE 6TH JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

ROBERT DAVIS, and Case No.12-130791-AW
CITIZENS UNITED AGAINST CORRUPT GOVERNMENT, Hon. D. Langford Morris
A Michigan Nonprofit Corporation,
PLAINTIFFS,
-v-

MICHIGAN SECRETARY OF STATE,
DIRECTOR OF ELECTIONS,
CITY OF TROY, a municipal corporation,
TROY CITY COUNCIL, and
M. AILEEN BITTNER, in her official capacity as
City Clerk for the City of Troy,
Jointly and Severally,
DEFENDANTS.
_____/

ANDREW A. PATERSON (P18690)
Attorney for Plaintiffs Robert Davis and Citizens United
46350 Grand River Ave., Suite C
Novi, MI 48374
(248) 568-9712
_____/

Emergency Complaint for Writ of Mandamus

PLAINTIFFS, ROBERT DAVIS and CITIZENS UNITED AGAINST CORRUPT GOVERNMENT, by and through their attorney, ANDREW A. PATERSON, for their Emergency Complaint for Writ of Mandamus, filed and submitted pursuant to MCR 3.305(A)(2) and MCL 600.4401, states and alleges the following:

GENERAL ALLEGATIONS

1. Plaintiff, Robert Davis ("**Plaintiff Davis**"), is a citizen and registered and qualified voter of the State of Michigan.

2. Plaintiff, Citizens United Against Corrupt Government ("**Plaintiff Citizens United**"), is a Michigan nonprofit corporation organized for the purpose of promoting and ensuring corrupt-free and law-abiding civic government through social actions and court actions designed to eliminate unlawful illegal actions by all governmental officials, representatives and entities in all levels of government. Plaintiff Davis serves as the Director of Plaintiff Citizens United.

3. Plaintiff Citizens United, as of the date of the filing of this complaint, now has a member who is a citizen and resident of the City of Troy. Moreover, Plaintiffs will be exercising their constitutional right by financially supporting a candidate in the special election to fill the vacancy in the office of Mayor for the City of Troy. **(See Davis' affidavit attached hereto as Exhibit A)**.

4. Davis, as Director of Plaintiff Citizens United, has authorized the filing of this action and has verified the allegations contained and alleged in this complaint. **(See Davis' affidavit attached hereto as Exhibit A)**.

5. Defendant, Secretary of State ("**Defendant Secretary of State**") is the chief election officer for the State of Michigan that has supervisory control over all local election officials. MCL 168.21.

6. Defendant, Director of Elections ("**Defendant Director of Elections**"), is a duly appointed civil servant officer appointed by the Defendant Secretary that is vested with the powers and shall perform the duties of the Defendant Secretary under her supervision, with respect to the supervision and administration of the election laws. MCL 168.32.

7. Defendant, City of Troy (**"Defendant City"**), is a Home Rule Chartered City that is legally recognized as a municipal corporation and is governed by its Home Rule Charter and the Home Rule City Act, being MCL 117.1, *et seq*.

8. Defendant, Troy City Council (**"Defendant City Council"**), in accordance with the City of Troy's Home Rule City Charter, is the duly elected 7-member local legislative and governing body for the City of Troy charged with, and exercises, governmental and proprietary authority.

9. Defendant, M. Ailleen Bittner ("**Defendant City Clerk**"), is the duly appointed/elected city clerk for the Defendant City and in her capacity as the city clerk for the Defendant City, Defendant City Clerk is the chief elections official for the Defendant City.

JURISDICTION OF OAKLAND COUNTY CIRCUIT COURT

10. "Circuit courts are courts of general jurisdiction, and have original jurisdiction over all civil claims and remedies 'except where exclusive jurisdiction is given by the constitution *or by statute to some other court* or *where the circuit courts are denied jurisdiction by the constitution or statutes of this state*. [MCL 600.605]'" *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich App 153, 160; 610 NW2d 613 (2000), quoting *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241; 602 NW2d 588 (1999). (Emphasis supplied).

11. MCR 3.305 sets forth and expressly provides the proper venue for this original mandamus action against the named defendants.

12. MCR 3.305(A)(2) states:

> (2) All other actions for mandamus must be brought in the circuit court unless a statute or rule requires or allows the action to be brought in another court.

13. MCR 3.305(B)(1) and (2) state:

(1) The general venue statutes and rules apply to actions for mandamus unless a specific statute or rule contains a special venue provision.

(2) In addition to any other county in which venue is proper, an action for mandamus against a state officer may be brought in Ingham County.

14. In this original action for writ of mandamus, Plaintiffs seek this Court to issue a writ of mandamus compelling Defendants City of Troy, Troy City Council, and City Clerk to comply with and strictly adhere to and follow the directive given by the Defendants Secretary of State and Director of Elections on November 26, 2012, which was to schedule and hold a special election on February 26, 2012 to fill the vacancy created by the recall of its mayor.

15. Defendant Secretary and Defendant Director are state officers for purposes of mandamus. *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 282; 761 NW2d 210, aff'd in part 482 Mich 960 (2008); *Protect MI Constitution v Secretary of State*, ___ Mich App ____; ____ NW2d ____ (Docket No. 311504, issued August 14 2012), slip op at 7; reversed on other grounds *Protect MI Constitution v Secretary of State*, 492 Mich ___ (Docket No. 145698, entered August 24, 2012).

16. "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).

STANDARD FOR MANDAMUS

17. 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).

18. The plaintiffs must show that (1) the plaintiffs have a clear legal duty to the performance of the duty sought to be compelled, (2) the defendants have a clerk 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).

19. 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).

20. As discussed in further detail below, Plaintiffs have met all of the elements for this Court to issue a writ of mandamus against the Defendants City, City Council, and City Clerk compelling them to comply with and strictly adhere to the directive given by the Defendant Secretary of State on November 26, 2012 for them to hold a special election on February 26, 2013 to fill the vacancy created by the recall of the Defendant City's former Mayor at the November 6, 2012 General Election.

PLAINTIFFS' STANDING

21. Plaintiffs undeniably have standing to commence the instant action for mandamus against the Defendants.

22. The Court of Appeals recently addressed this very issue in *Protect MI Constitution v Secretary of State*, ___ Mich App ____; ____ NW2d ____ (Docket No. 311504, issued August 14 2012), slip op at 7; reversed on other grounds *Protect MI Constitution v Secretary of State*, 492 Mich ___ (Docket No. 145698, entered August 24, 2012), in which the Court of Appeals 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." Citations 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. [*Protect MI Constitution, supra*, slip op at pp 7-8.]

23. Plaintiffs, as ordinary citizens of this State, are seeking to enforce Michigan Election Law as it relates to this election case. Thus, Plaintiffs have standing to bring forth this mandamus action. Moreover, Plaintiffs will be exercising their constitutional right by financially supporting a candidate for the office of Mayor for the City of Troy in the special election that will be held.

COUNT I

WRIT OF MANDAMUS SHALL BE ISSUED COMPELLING DEFENDANTS CITY OF TROY, TROY CITY COUNCIL, AND TROY CITY CLERK TO ADHERE TO AND FOLLOW THE DIRECTIVE ISSUED BY DEFENDANTS SECRETARY OF STATE AND DIRECTOR OF ELECTIONS

24. On November 6, 2012, the qualified and registered voters of the Defendant Troy voted by a margin of 20,763 votes in favor to 18,993 votes against to exercise their constitutional right to recall Mayor Joyce Daniels from the office of mayor of the Defendant Troy.

25. The recall election of former Mayor Joyce Daniels was certified by the Oakland County Clerk and Board of Canvassers on November 9, 2012. **(See November 19, 2012 Letter from Oakland County Clerk attached hereto as Exhibit B)**.

26. On November 16, 2012, Defendant Director of Elections sent a letter to the Defendant Troy's City Attorney advising her that it was in the opinion of the Defendant Secretary of

State that the Defendants Troy, City Council, and City Clerk were required to hold a special election to fill the vacancy created by the recall of the former mayor in February 2013. **(See November 16, 2012 Letter from Defendant Director of Elections to Defendant Troy's City attorney attached hereto as Exhibit C)**.

27. On November 19, 2012, the Oakland County Clerk's Director of Elections sent a letter to Defendant City Clerk advising her that she was required to "give notice of an election, cause the ballots to be printed, provide election supplies and do all things necessary to conduct the election in the manner provided…" **(See Oakland County Clerk's November 19, 2012 Letter to Defendant City Clerk attached hereto as Exhibit B)**.

28. That in spite of Defendant Director of Elections' November 16, 2012 Letter to Defendant Troy's City Attorney, and the November 19, 2012 Letter from the Oakland County Clerk, Defendants City Clerk and City Council refused to follow the directives given.

29. On November 26, 2012, in accordance with MCL 168.31(1)(a),(b) and MCL 168.32, Defendant Director of Elections, on behalf of the Defendant Secretary of State, sent, via email, a "directive" to the Defendant City Clerk, directing her to schedule a special election to be held on February 26, 2013 in accordance with Michigan Election Law to fill the vacancy of the position of mayor that was created with the recall of the former mayor. **(See November 26, 2012 Directive from Defendants Director of Elections and Secretary of State to Defendant City Clerk attached hereto as Exhibit D)**.

30. On that same day, November 26, 2012, Defendant City Council held a special meeting in which they voted 4-2 to make Dane Slater's appointment as interim mayor permanent until the November 2013 election. Said vote was in violation of the Defendants Secretary of State and Director of Elections' November 26, 2012 directive.

31. On November 27, 2012, Defendant Troy's City Attorney sent a letter to the Defendant Director of Elections explaining why the Defendants City, City Council, and City Clerk were not going to adhere to Defendants Secretary of State and Director of Elections' November 26, 2012 directive. **(See Defendant Tory's City Attorney's November 27, 2012 Letter to Defendant Director of Elections attached hereto as Exhibit E).**

32. Defendants City, City Council, and City Clerk's blatant disregard for the law and for Defendants Secretary of State and Director of Elections' November 26, 2012 directive violates Michigan Election Law.

33. Defendants City, City Council, and City Clerk are mandated and required to comply with the instructions and directives given by the Defendant Secretary of State. Thus, a writ of mandamus is necessary in order to compel Defendants City, City Council, and City Clerk to comply with the instructions and directives given by the Defendants Secretary of State and Director of Elections in its November 26, 2012 communication.

34. Under Michigan Election Law, being MCL 168.21, the Defendant Secretary of State is the Chief Election Officer of this State and "shall have supervisory control over local election officials in the performance of their duties under the provisions of this act." MCL 168.21.

35. Under Michigan Election Law, the Defendant Secretary of State is required to "issue instructions" and "[a]dvise and direct local election officials as to the proper methods of conducting elections." MCL 168.31(1)(a),(b).

36. Under Michigan Election Law, Defendant Director of Elections is authorized to act at the Defendant Secretary of State's behest "with respect to the supervision and administration of the election laws." MCL 168.32.

37. Local election officials are required to comply with the directives and instructions given by the Defendant Secretary of State. See *Secretary of State v Berrien Co Bd Of Election Comm'rs*, 373 Mich 526, 530-531 (1964); *Elliott v Secretary of State*, 295 Mich 245, 249 (1940).

38. Moreover, the "[secretary of state's] interpretation of the state's current election law is entitled to some weight when the meaning of those laws is not otherwise clear." *American Independent Party v Austin*, 420 F.Supp. 670 E.D. Mich 1976.atte'

39. Accordingly, Defendants City, City Council, and City Clerk are required to comply with the instructions and directives the Defendants Secretary of State and Director of Elections provided in their November 26, 2012 directive to Defendant City Clerk. *Secretary of State v Berrien Co Bd Of Election Comm'rs*, 373 Mich 526, 530-531 (1964); *Elliott v Secretary of State*, 295 Mich 245, 249 (1940).

40. More importantly, Defendants Secretary of State and Director of Elections' interpretation of Michigan Election Law on this issue is directly on point.

41. As noted above, on November 6, 2012, the registered and qualified electors of the Defendant Troy voted by a margin of 20,763 votes in favor to 18,993 votes against recalling the former mayor Joyce Daniels.

42. Under Michigan Election Law governing recalls, MCL 168.971(1), "[i]f the recall is successful, ***a special election*** to fill the vacancy ***shall*** **be held on the *next* regular election date**." MCL 168.971(1). (Emphasis supplied).

43. Michigan Election Law defines the terms "regular election date." MCL 168.641(1) states in pertinent part:

1) Except as otherwise provided in this section and sections 642 and 642a, beginning January 1, 2005, **an election held under this act *shall* be held on 1 of the following regular election dates**:

(a) **The February regular election date, which is the fourth Tuesday in February**.

(b) The May regular election date, which is the first Tuesday after the first Monday in May.

(c) The August regular election date, which is the first Tuesday after the first Monday in August.

(d) The November regular election date, which is the first Tuesday after the first Monday in November. (Emphasis supplied).

44. The Legislature's use of the mandatory term "shall" in MCL 168.971(1) and MCL 168.641(1) is significant and cannot be ignored by this Court. As our Supreme Court recognized, **"The Legislature's use of the term "shall" "'indicates a mandatory and imperative directive.'"** *Stand Up for Democracy v Secretary of State,* 492 Mich ___; ___ NW2d ____ (2012) (August 4, 2012, Docket No. 145387), slip op at 9. See also *Wolverine Power Supply Coop, Inc v DEQ*, 285 Mich App 548, 561; 777 NW2d 1 (2009) (The word "'shall' is mandatory; it expresses a directive, not an option.")

45. Moreover, when a statute defines a term, like the case here, that definition alone controls. "When a statute specifically defines a given term, that definition alone controls." *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007).

46. Michigan Election Law, further directs that a special election cannot be held on no other date other than those provided under MCL 168.641(1). MCL 168.641(3) states in relevant part: "Except as otherwise provided in this subsection and subsection (4), **a special election shall be held on a regular election date**."

47. Thus, it is mandatory, as the Defendant Secretary of State directed, for Defendants City, City Council, and City Clerk to schedule a special election to be held on February 26,

2012. February 26, 2012 is the ***next*** regular election date following the November 6, 2012 general election in which the former mayor was recalled as provided under MCL 168.641(1).

48. The wording and language of MCL 168.971(1) is clear and unambiguous. As this Court is aware, if a statute is unambiguous, it must be applied as it is written. *Driver v Naini*, 490 Mich 239, 247; 802 NW2d 311 (2011).

49. Accordingly, MCL 168.971(1) clearly requires that a special election is to be held on the ***next* regular election date** once a recall has been determined to be successful. The next regular election date immediately following the November 6, 2012 general election falls on February 26, 2013. MCL 168.641(1).

50. Defendant Secretary of State's directive to the Defendants City, City Council, and City Clerk has to be complied with. If Defendants City, City Council, and City Clerk are allowed to ignore the directive from the Defendant Secretary of State, it would render the Michigan Election Laws and the Defendant Secretary of State's supervisory powers meaningless.

51. Defendant City, City Council, and City Clerk's defense is meritless. In her November 27, 2012 letter to the Defendant Director of Elections, the Defendant City's Attorney states that the Defendant City's Charter allows them to ignore and violate state law. This defense defies logic and law.

52. As the Defendants Secretary of State and Director of Elections correctly opine and point out in their November 26, 2012 directive, the Home Rule Cities Act, being MCL 117.36, provides that, "**[n]o provision of any charter shall conflict with or contravene with provisions of any general law of the state.**" (Emphasis supplied).

53. Moreover, two Court of Appeals cases concerning charter counties clearly held that no charter provision could "trump" or "supersede" a general provisions of state election law. See *Ficano v Lucas*, 133 Mich App 268 (1984); *O'Hara v Wayne County Clerk*, 238 Mich App 611 (1999).

54. Thus, from the defiant and unlawful actions of the Defendants City, City Council, and City Clerk, it is necessary for this Court to issue a writ of mandamus against the Defendants City, City Council, and City Clerk to comply with and strictly adhere to the November 26, 2012 directive from the Defendant Secretary of State and schedule and hold a special election on February 26, 2012 to fill the vacancy created by the recall of the Defendant City's former mayor.

55. Defendants City, City Council, and City Clerk's unlawful and defiant actions have prevented potential candidates from timely filing for the special election for the office of mayor.

56. As noted in the Defendants Secretary of State and Director of Elections' November 26, 2012 directive, they have extended the time for candidates to file until Monday, December 3, 2012 at 4 p.m.

57. However, as referenced in the Defendant City's Attorney's November 27, 2012 letter, the Defendant City Clerk will refuse to accept said filings from potential candidates, one of which is a candidate that Plaintiffs are supporting. Accordingly, Plaintiffs are being denied their constitutional right to support the candidate of their choice by the unlawful and defiant actions of the Defendants City, City Council, and City Clerk.

58. Thus immediate action by this Court is necessary to remedy this situation.

COUNT II

AWARD OF COSTS AND ATTORNEY FEES AND ISSUANCE OF FINES

59. Plaintiff incorporates, repeats, and realleges, the foregoing allegations as though fully set forth herein.

60. MCL 600.4411 permits this Court to exercise its discretion to impose a fine upon an officer or member of a public body whenever a writ of mandamus has been issued against them.

61. The defiant and unlawful actions of the Defendants City, City Council, and City Clerk were without just excuse. Accordingly, pursuant to MCL 600.4411, Plaintiffs respectfully request this Court to impose a fine not exceeding $250.00 on the Defendant City Clerk, each member of the Defendant City Council, and on the Defendant City's Attorney.

62. MCL 600.4431 permits this Court to award damages and costs in an action for mandamus. Accordingly, pursuant to MCL 600.4431, Plaintiffs respectfully request this Honorable Court to award him court costs and damages for the unlawful actions of the Defendants City, City Council, and City Clerk.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiff prays and respectfully requests that the Court grants relief as follows:

A. ISSUE a Writ of Mandamus compelling Defendants City, City Council, and City Clerk to comply with and strictly adhere to the directive given by the Defendant Secretary of State on November 26, 2012, which requires them to schedule and hold a special election on February 26, 2013 to fill the vacancy of the office of mayor.

B. ISSUE a Writ of Mandamus compelling Defendant City Clerk to give notice of an election to be held on February 26, 2012, cause ballots to be printed, provide election supplies and do all things necessary to conduct the special election on February 26, 2012 in the manner provided by Michigan Election Law.

C. ISSUE its ORDER that Defendants City, City Council, and City Clerk, pursuant to MCL 600.4431, pay the Plaintiffs' court costs and attorney fees that Plaintiffs have been forced to incur as a result of having to bring this action.

D. ISSUE its ORDER imposing a fine of $250 on each member of the Defendant City Council, on the Defendant City Clerk, and on Defendant City's Attorney, pursuant to MCL 600.4411.

E. ORDER any and all such OTHER RELIEF as justice may so require.

Respectfully submitted,

ANDREW A. PATERSON (P18690)
Attorney for Plaintiffs
46350 Grand River Ave., Suite C
Novi, MI 48374
(248) 568-9712

DATED: November 29, 2012

This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit www.oakgov.com/clerkrod/efiling.

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 6TH JUDICIAL CIRCUIT
OAKLAND COUNTY

SECRETARY OF STATE RUTH JOHNSON,

Plaintiff,

v

AILEEN BITTNER, in her official capacity as the Clerk for the City of Troy, CITY OF TROY ELECTION COMMISSION, in their official capacity,

Defendants.

No. 2012-130814-AW
JUDGE LANGFORD MORRIS

HON.

Denise C. Barton (P41535)
Heather S. Meingast (P55439)
Assistant Attorneys General
Attorneys for Plaintiff
P.O. Box 30736
Lansing, Michigan 48909
517.373.6434

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in Oakland County Circuit Court. The action remains pending. The docket number is 12-130791-AW and is assigned to Judge D. Langford Morris.

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS WITH MOTION FOR IMMEDIATE CONSIDERATION PURSUANT TO MCR 3.305(C), AND FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Secretary of State Ruth Johnson states in support of her Complaint:

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

NATURE OF THE ACTION

1. This complaint arises out of the City of Troy's refusal to schedule a special election on February 26, 2013, the next scheduled general election date, to fill the vacancy in the office of Mayor resulting from the November 6, 2012 recall of Mayor, Janice Daniels.

PARTIES

2. Ruth Johnson, Michigan Secretary of State, is the chief election officer for the State of Michigan with supervisory control over local election officials in the performance of their election related duties. MCL 168.21.

3. Aileen Bittner is the appointed City Clerk for the City of Troy, and has responsibility for conducting elections within the City of Troy pursuant to the Michigan Election Law, MCL 168.1 *et seq.*, and the Troy City Charter.

4. The City of Troy Election Commission is a public body created under the Michigan Election Law, MCL 168.1 *et seq.*, and the Troy City Charter, Section 7.13. The Troy Election Commission is charged with certain tasks relating to the conduct of elections within the City of Troy.

JURISDICTION

5. Jurisdiction is properly conferred upon this Court by MCL 600.605 and MCR 3.305(2) and MCR 2.605.

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

VENUE

6. Defendant Aileen Bittner has her principal place of business in the City of Troy, County of Oakland.

7. Defendant City of Troy Election Commission has its principal place of business in the City of Troy, County of Oakland.

8. Venue is appropriate in Oakland County.

COMMON ALLEGATIONS

9. Const 1963, art 2, § 8 requires the enactment of laws providing for the recall of all elective officers, except judges, "upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled."

10. The Legislature has implemented Const 1963, art 2, § 8 in Chapter XXXVI (36) of the Michigan Election Law, MCL 168.951 through MCL 168.976.

11. Pursuant to the Michigan Election Law, a petition was filed with the Oakland County Clerk to recall the City of Troy's Mayor, Janice Daniels. This petition was approved, and the recall question was posed to the voters during the November 6, 2012, general election. Troy voters recalled Mayor Daniels by a margin of 20,763 votes in favor to 18,993 votes against.[1]

---

[1] November 6, 2012 General Election unofficial results, available at: http://results.enr.clarityelections.com/MI/Oakland/43747/110709/en/summary.html.

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

12. On November 9, 2012, the Oakland County Board of Canvassers certified the results of the recall election and notified Defendant Bittner. (Exhibit 1, November 9, 2012, Rozell, letter).

13. Michigan law requires that a special election to fill the vacancy created by the recall of Mayor Daniels, "*shall be held on the next regular election date.*" MCL 168.971(1).

14. The "next regular election date," as determined by state law, is February 26, 2013. MCL 168.3(k) and MCL 168.641(1)(a) and (3).

15. Nominating petitions or payment of the statutory filing fee for the "special election" resulting from the recall of Mayor Daniels were required to be filed or paid "not later than 4 p.m. on the fifteenth day after the clerk of the county where the petition was filed announces the official result of the recall election." MCL 168.972(1).

16. Nominating petitions or payment of the statutory filing fee for the special election to fill the City of Troy's mayoral vacancy resulting from the recall of Mayor Daniels were required to be filed or paid by 4:00 p.m. on November 26, 2012, 15 days after the Oakland County Board of Canvassers certified the recall election results. MCL 168.972(1).

17. Troy City Charter, Section 7.9-Nominations requires Defendant Bittner to publish notice of the last day permitted for filing as a candidate for the special election for mayor at least one week and not more than three weeks before the filing deadline.

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

18. Defendant Bittner did not provide notice of the November 26, 2012 filing deadline for the special election required by the successful recall of Mayor Daniels. As a result, residents of the City of Troy who might be interested in running to fill the remaining term for the office of Mayor were not notified of the filing deadline as required by the City's Charter.

19. The Oakland County Clerk's Office did not provide notice of the required special election until November 19, 2012, 10 days after certification of the recall results. (Exhibit 2, November 19, 2012, Rozell letter). That notice also did not specify a date for when a special election would be held.

20. On or about November 13, 2012, Plaintiff, and her Director of Elections, Christopher Thomas, through a media account, became aware of the City of Troy's intent to delay holding an election to fill the vacancy created by the recall of Mayor Daniels until November 5, 2013, contrary to the mandate in MCL 168.971(1). (Exhibit 3, Affidavit of Christopher M. Thomas, ¶ 4); (Exhibit 4, September 5, 2012, Memorandum).

21. Under Michigan Election Law, Plaintiff is the Chief Election Officer of this State with supervisory control over local election officials in the performance of their duties. MCL 168.21. These supervisory duties include issuing instructions and advising and directing local election officials on the proper methods of conducting elections. MCL 168.31(1)(a), (b).

22. On November 16, 2012, at the direction of the Secretary of State, Director Thomas sent a letter to Ms. Lori Grigg Bluhm, City Attorney for the City of

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Troy, explaining that the City was required to hold a special election on February 26, 2013, under MCL 168.971(1). (Exhibit 3, Thomas Affidavit, Exhibit A, November 16, 2012, Thomas letter).

23. Ms. Grigg Bluhm, City Attorney for the City of Troy, did not respond to Director Thomas' November 16, 2012 letter.

24. On November 26, 2012, Director Thomas sent a letter to Defendant Bittner in which she was "directed to conduct a special election to fill the vacancy created by former Mayor Daniels' recall." (Exhibit 3, Thomas Affidavit, Exhibit B, November 26, 2012, Thomas letter).

25. On November 26, 2012, based on information and belief, two individuals – Dan Brake and Edward Kempen – appeared at Defendant Bittner's office and attempted to submit their respective Affidavits of Candidacy and statutory filing fees to run as candidates for mayor in a special election. Defendant Bittner refused to accept the filings and payments. (Exhibit 5, Detroit News, 11/27/12).

26. On November 27, 2012, the City Attorney for the City of Troy responded to Director Thomas's directive to Defendant Bittner rejecting the Secretary of State's direction that a special election be held on February 26, 2013, and confirming that Brake and Kempen were turned away and their filings were rejected. (Exhibit 6, November 27, 2012, Bluhm letter.)

27. Defendants Bittner and the City of Troy Election Commission have failed to call the "special election" for February 26, 2013 as required by state law,

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

MCL 168.971(1) and the City of Troy City Charter, Section 7.6; failed to accept Affidavits of Candidacy and the statutory filing fee from at least 2 individuals seeking to fill the vacancy created by the recall of Mayor Daniels by the due date of 4:00 p.m. on November 26 2012; and, failed to fulfill any duties imposed by state law for the operation of the "special election" required as a result of the recall of Mayor Daniels.

28. Defendants have ignored and/or disregarded the Secretary of State's direction that a special election must be held February 26, 2013.

29. Defendants have violated their clear legal duties and obligations under state law.

COUNT I

MANDAMUS

30. Plaintiff incorporates paragraphs 1 through 29 of this Complaint.

31. Mandamus is the appropriate remedy for a party seeking to compel the ministerial functions of public officials for which a clear legal duty to perform exists.

32. Troy City Charter Section 7.6-Special Election, imposes a duty on the Election officials for the City of Troy to call a special city election "in the manner and time as provided by State Statute."

33. Defendants have a clear legal duty to a call a special election to fill the vacancy resulting from the recall of Mayor Daniels for February 26, 2013, as provided by State Statute. Defendants have failed to comply with this clear legal duty.

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

34. The date for the special election is mandated by state law and is not subject to the Defendants' discretion. MCL 168.971(1) requires this special election *"shall be held on the next regular election date."* By state law, the next regular election date is February 26, 2013, the fourth Tuesday in February. MCL 168.3(k); MCL 168.641(1)(a) and (3).

35. Defendants have a clear legal duty to cause the ballots to be printed, provide election supplies, and do all things necessary to conduct the special election in the manner provided state statute. City of Troy Charter, Section 7.6; MCL 168.964.

36. Defendant Bittner had a clear legal duty to accept the timely candidate filings for Brake and Kempen on November 26, 2012. MCL 168.972(1).

COUNT II

MCR 3.305(C) MOTION FOR ORDER TO SHOW CAUSE FOR IMMEDIATE ACTION

37. Plaintiff incorporates paragraphs 1 through 36 of this Complaint.

38. On ex parte motion and a showing of the necessity for immediate action, the court may issue an order to Defendants to show cause. MCR 3.305(C). The motion may be made in the Complaint. *Id.*

39. A special election to fill the vacancy for the office of Mayor is required to be held February 26, 2013. The filing deadline for candidates for this election was 4:00 p.m. November 26, 2012, unless otherwise extended by this Court. MCL 168.972(1).

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

40. Defendants have indicated they do not intend to call the special election for February 26, 2013 as required by state law.

41. Defendants have refused to accept the candidate filings of at least two individuals, who attempted to file by the 4:00 p.m. November 26, 2012 deadline.

42. Immediate consideration of Plaintiff's Complaint for Writ of Mandamus is necessary in order to:

a. clarify the date of the special election;

b. direct the Defendants to accept the timely filings of the two candidates for the office of Mayor; and

c. determine if the circumstances compel an extension of the filing deadline to assure proper notice of the election of the date, acceptance of all candidate filings, and a full and fair election process.

COUNT III

DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

43. Plaintiff incorporates paragraphs 1 through 42 of this Complaint.

44. By failing to call a special election for February 26, 2013 to fill the vacancy in the office of mayor resulting from the November 6, 2012 recall of Mayor Daniels, Defendants are violating state law and the Troy City Charter.

45. By refusing Brake's and Kempen's candidate applications on November 26, 2012, Defendants have violated state law and the Troy City Charter.

46. By failing to take all actions necessary to hold a special election on February 26, 2013, Defendants have violated state law and the Troy City Charter.

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

47. By refusing to follow the directions and supervision of Michigan's Secretary of State requiring a special election for the office of mayor be held February 26, 2013, Defendants have violated state law and the Troy City Charter.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Secretary of State Ruth Johnson respectfully requests that this Court:

(1) Enter an Ex Parte Order directing the Defendants to show cause why Plaintiff's complaint for writ of mandamus and declaratory judgment and injunctive relief should not be heard and decided immediately.

(2) Issue a Writ of Mandamus compelling Defendant Bittner and Defendant City of Troy Election Commission to:

a) notice a special election for February 26, 2013, for the purpose of filling the vacancy in the office of Mayor created by the successful recall of Mayor Janice Daniels;

b) take any and all actions required by the Michigan Election Law, MCL 168.1 *et seq.*, in order to prepare for the conducting of such special election; and

c) accept for filing the $100 nominating fees and paperwork that were timely submitted by Dan Brake and Edward Kempen to run as candidates in the February 26, 2013 special election;

(3) Alternatively, enter a Declaratory Judgment that:

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

a) the City of Troy is required to hold a special election on February 26, 2013 for the purpose of filling the vacancy in the office of Mayor created by the successful recall of Mayor Janice Daniels;

b) the Defendants accept the candidate filings of Dan Brake and Edward Kempen to run as candidates in the February 26, 2013 special election;

c) the deadline for accepting filings to run as candidates in the February 26, 2013 special election be extended to 4:00 p.m. on the fifteenth day from entry of the Court's judgment; and

d) the Defendants take all actions required by state law and the City of Troy Charter to assure a fair and orderly election process for the special election on February 26, 2013.

(4) Enter a permanent injunction against the Defendants

a) enjoining them from taking any action preventing or prohibiting a special election for the office of Mayor on February 26, 2013;

b) requiring the City of Troy hold a special election on February 26, 2013 for the purpose of filling the vacancy in the office of Mayor created by the successful recall of Mayor Janice Daniels;

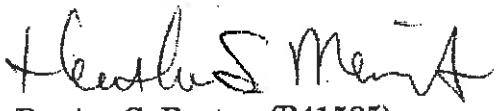
c) requiring Defendants to accept the candidate files of Dan Brake and Edward Kempen to run as candidates in the February 26, 2013 special election;

d) requiring the deadline for accepting filings to run as candidates in the February 26, 2013 special election be extended to 4:00 p.m. on the fifteenth day from entry of the Court's judgment; and

e) requiring the Defendants take all actions required by state law and the City of Troy Charter to assure a fair and orderly election process for the special election on February 26, 2013.

Respectfully submitted,

BILL SCHUETTE
Attorney General



Denise C. Barton (P41535)
Heather S. Meingast (P55439)
Assistant Attorneys General
Attorneys for Plaintiff
P.O. Box 30736
Lansing, Michigan 48909
517.373.6434

Dated: November 30, 2012

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

VERIFICATION

STATE OF MICHIGAN)
) SS
COUNTY OF INGHAM)

Christopher M. Thomas, Director of the Bureau of Elections, Department of State for the State of Michigan, being first duly sworn, deposes and says that I am authorized to verify this complaint. I have read this verified complaint and attest that the assertions in this complaint are either facts stated of my own knowledge that are true or are matters that on information and belief I believe to be true after reasonable inquiry.

Christopher M. Thomas

Subscribed and sworn to before me this
30th day of November, 2012.

Carol E Pierce
Notary Public
County of ~~Ingham~~ Livingston, State of Michigan
Acting in Ingham County
My Commission Expires: 11-5-2013

CAROL E PIERCE
NOTARY PUBLIC-STATE OF MICHIGAN
COUNTY OF LIVINGSTON
My Commission Expires Nov 5, 2013
Acting in the County of Ingham

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Exhibit 1

BILL BULLARD JR.
OAKLAND COUNTY CLERK/REGISTER OF DEEDS
WWW.OAKGOV.COM/CLERKROD
ELECTIONS DIVISION

BILL BULLARD JR.
COUNTY CLERK/REGISTER OF DEEDS

JOSEPH J. ROZELL
DIRECTOR OF ELECTIONS

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

November 9, 2012

Ms. Aileen Bittner, Clerk
City of Troy
500 West Big Beaver Rd.
Troy, MI 48084

VIA HAND DELIVERY

Dear Ms. Bittner,

Enclosed please find a certified copy of the canvass of votes from the November 6, 2012 Recall election.

In accordance MCL 168.968 you are hereby notified that as of 1:30 p.m., November 9, 2012, Janice Daniels was recalled from the office of Mayor, City of Troy. The office is declared vacant as of 1:30 p.m.

Sincerely,
COUNTY OF OAKLAND

Joseph J. Rozell, CERA
Director of Elections

c: Maureen McGinnis, Mayor Pro Tem, City of Troy

ADMINISTRATIVE OFFICE
1200 N. TELEGRAPH RD., DEPT. 415
PONTIAC, MICHIGAN 48341-0415
(248) 858-0560
CLERK@OAKGOV.COM

ELECTIONS DIVISION
1200 N. TELEGRAPH RD., DEPT. 417
PONTIAC, MICHIGAN 48341-0417
(248) 858-0564
ELECTIONS@OAKGOV.COM

LEGAL & VITAL RECORDS
1200 N. TELEGRAPH RD., DEPT. 413
PONTIAC, MICHIGAN 48341-0413
(248) 858-0581
CLERKLEGAL@OAKGOV.COM

REGISTER OF DEEDS
1200 N. TELEGRAPH RD., DEPT. 480
PONTIAC, MICHIGAN 48341-0480
(248) 858-0605
DEEDS@OAKGOV.COM

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Exhibit 2

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

BILL BULLARD JR.
OAKLAND COUNTY CLERK/REGISTER OF DEEDS
WWW.OAKGOV.COM/CLERKROD
ELECTIONS DIVISION

BILL BULLARD JR.
COUNTY CLERK/REGISTER OF DEEDS

JOSEPH J. ROZELL, CERA
DIRECTOR OF ELECTIONS

November 19, 2012

City of Troy
Ms. Aileen Bittner, Clerk
500 W. Big Beaver Rd.
Troy, MI 48084

Dear Ms. Bittner,

On November 9th, 2012, at the conclusion of the official canvass, I declared the office of Mayor vacant.

This letter is to inform you that in accordance with MCL 168.964, you are required to "give notice of an election, cause the ballots to be printed, provide election supplies and do all things necessary to conduct the election in the manner provided..." for the office of Mayor.

Please contact me should you have any questions.

Sincerely,
COUNTY OF OAKLAND

Joseph J. Rozell
Director of Elections

c: Bill Bullard, Jr., Oakland County Clerk/Register of Deeds

ADMINISTRATIVE OFFICE
1200 N. TELEGRAPH RD., DEPT. 415
PONTIAC, MICHIGAN 48341-0415
(248) 858-0560
CLERK@OAKGOV.COM

ELECTIONS DIVISION
1200 N. TELEGRAPH RD., DEPT. 417
PONTIAC, MICHIGAN 48341-0417
(248) 858-0564
ELECTIONS@OAKGOV.COM

LEGAL & VITAL RECORDS
1200 N. TELEGRAPH RD., DEPT. 413
PONTIAC, MICHIGAN 48341-0413
(248) 858-0581
CLERKLEGAL@OAKGOV.COM

REGISTER OF DEEDS
1200 N. TELEGRAPH RD., DEPT. 480
PONTIAC, MICHIGAN 48341-0480
(248) 858-0505
DEEDS@OAKGOV.COM

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Exhibit 3

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 6TH JUDICIAL CIRCUIT
OAKLAND COUNTY

SECRETARY OF STATE RUTH JOHNSON,

Plaintiff,

No. _____

v

AILEEN BITTNER, in her official capacity as the Clerk for the City of Troy, CITY OF TROY ELECTION COMMISSION, in their official capacity,

HON. _____

Defendants.

Denise C. Barton (P41535)
Heather S. Meingast (P55439)
Attorneys for Plaintiff
Public Employment, Elections & Tort Division
P.O. Box 30736
Lansing, MI 48909
(517) 373-6434

Affidavit of Christopher M. Thomas

Christopher M. Thomas, being first duly sworn, deposes and says as follows:

1. I bring this Affidavit in support of Plaintiff's Complaint for Writ of Mandamus and Declaratory and Injunctive Relief.

2. I have been employed by the Secretary of State as Director of Elections since June 21, 1981 and in such capacity serve as Director of the Bureau of Elections and Secretary to the Board of State Canvassers.

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

3. I am personally knowledgeable about provisions of Michigan Election Law and procedures of the Bureau of Elections that govern recall, the filling of a vacancy created by recall, and the conduct of elections. Further, I am knowledgeable about federal and state laws that guide ballot printing and distribution deadlines relevant to military and overseas civilian absent voter ballots.

4. On or about November 13, 2012, I read a news article regarding the recall of the former Mayor of the City of Troy, Janice Daniels, and the city's intention to delay the election of a successor for a full year. This was the first time that I personally learned of the city's plans for delaying the election to fill the vacancy created by former Mayor Daniels' recall. Later that day, I contacted Ms. Lori Grigg Bluhm, the Troy City Attorney, and expressed my concern that the City of Troy was out of compliance with the Michigan Election Law, MCL 168.1 *et seq.*

5. On November 16, 2012, I sent Attorney Bluhm a letter advising that the Michigan Election Law requires the City of Troy to conduct an election on the next regular election date immediately following the successful recall of an elected official, MCL 168.971(1), which would be February 26, 2013. And that upon certification of the official election result under MCL 168.968, the Oakland County Clerk was required to issue the call of election, a "public notice of the election," issued to the Troy City Clerk. MCL 168.964, 168.971(1) ("The provisions in section 964 for calling and conducting of the recall election govern the calling and conducting of the election to fill the vacancy created, except as otherwise provided in this section.") (Exhibit A, November 16, 2012, Thomas Letter.)

6. Additionally, the Oakland County Clerk was required to "publicly announce the result of the recall election at the conclusion of the meeting held by the board of county canvassers to certify the recall election." MCL 168.972(1). These notices trigger the Troy City Clerk's duty to "cause the ballots to be printed, provide election supplies, and do all things necessary to conduct the election in the manner provided in this act." MCL 168.964. (Exhibit A, November 16, 2012, Thomas Letter.)

7. Generally, the notices required under MCL 168.968 (result of the recall) and MCL 168.964 (notice of need for special election), are provided concurrently because the period for filing nominating petitions or filing fees

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

to run for the vacancy created by the recall runs from the date of the certification of the results. MCL 168.972(1).

8. Under MCL 168.972(1), the Troy City Clerk was required to accept nominating petitions or filing fees from interested candidates that were submitted "not later than 4 p.m. on the fifteenth day after the clerk of the county where the petition was filed announces the official result of the recall election." The Oakland County Clerk certified the recall election results on November 9, 2012, and notified the Troy City Clerk by letter, but did not provide notice of the special election under MCL 168.964 until November 19, 2012.

9. The November 9, 2012, letter technically triggered the nominating process, and, by operation of law, the filing deadline elapsed on Monday, November 26, 2012 at 4:00 p.m. On information and belief, the Troy City Clerk refused to accept the affidavits of identity and filing fees timely presented by two individuals who sought to become candidates in the election to succeed former Mayor Daniels. But the failure of the Oakland County Clerk to timely call the special election until November 19, 2012 – 10 days after certifying the recall results – and the public statements by Troy City officials asserting that no February special election would be held, seriously undermined the purpose of the 15-day filing period. Thus, the period could be viewed as elapsing on December 4, 2012, at 4:00 p.m., 15 days from the November 19, 2012, letter providing notice of election under MCL 168.964.

10. Because no response was forthcoming, on November 26, 2012, I sent a letter to Aileen Bittner, the Troy City Clerk, similarly advising her that the City of Troy was out of compliance with the Michigan Election Law, and "direct[ing] [her] to conduct a special election to fill the vacancy created by former Mayor Daniels' recall." (Exhibit B, November 26, 2012, Thomas letter).

11. With respect to election preparation deadlines for a special election in February 2013, absent voter ballots must be printed and delivered by the Board of County Election Commissioners to the County Clerk by the 47th day prior to the February 26, 2013 election, or by January 10, 2013. MCL 168.713, 168.714(4). Absent voter ballots must be available for distribution to all voters, and especially military and overseas voters, no later than the 45th day before the election, or by January 12, 2013. The deadline for distribution of absent voter ballots is governed by both the Federal Military and Overseas Voters Empowerment Act (MOVE Act), 42 USC 1973ff-1(a)(8), and Michigan Election Law, MCL 168.714 and 759a.

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

12. The City Election Commission is responsible for printing ballots for a special election. MCL 168.690. Prior to printing, the City Election Commission must submit proof copies of the ballot to each candidate whose name appears on the ballot. MCL 168.711, 168.714(4). The candidates are allotted two business days in which to review the ballot proofs and notify the City Election Commission of any corrections. Id. After the expiration of the period for review of the ballots and any necessary corrections are made, the City Election Commission may proceed with ballot printing. Id. This is a process that ordinarily takes 3-5 business days to complete.

13. In view of the ballot printing and issuance deadlines described above, if the period for accepting nominating petitions or filing fees is extended for the February 26, 2013, special election to fill Ms. Daniels' vacancy, nominations could not be accepted any later than January 2, 2013.

14. This affidavit is based on personal knowledge. If called as a witness, I can testify competently to the facts stated in this affidavit.

Christopher M. Thomas

Subscribed and sworn to before me
November 30, 2012.

Ana L. Valles

ANA L. VALLES
NOTARY PUBLIC, INGHAM COUNTY, MI
MY COMMISSION EXPIRES JULY 31, 2013

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

November 16, 2012

Lori Grigg Bluhm, City Attorney
City of Troy
500 West Big Beaver Road
Troy, Michigan 48084
Via email: bluhmlg@troymi.gov

Dear Ms. Bluhm:

This letter is a follow up to our conversations about the City of Troy's intention to delay the election to fill the vacancy caused by the recent recall of the City's Mayor until November 5, 2013. For the reasons set forth below, it is the position of the Bureau of Elections that the City is required to conduct a special election to fill the vacancy on February 26, 2013.

Former Mayor Janice Daniels was recalled from office on November 6, 2012 by 20,763 votes in favor of recall to 18,993 against recall.[1] Under the Michigan Election Law, 1954 PA 116, as amended, MCL 168.1 *et seq.*, "[i]f the recall is successful, a special election to fill the vacancy *shall* be held on the next regular election date." MCL 168.971(1) (emphasis added). The next regular election date falls on February 26, 2013. MCL 168.641(1).

Through discussions with you, I understand the City's legal position to be that pursuant to the Troy City Charter, the City intends to allow the person who was recently appointed to temporarily fill the vacancy in the office of Mayor to serve until a successor is elected at the next regularly scheduled city election, which will be held on November 5, 2013. Further, I understand that the City intends to permit the winner of that election to serve the remaining 2 years of the 4-year term of office for Mayor until the next regularly scheduled city election on November 3, 2015. The City's position is primarily based upon MCL 168.321(1), which provides: "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."

However, it is our position that the mandate in MCL 168.971(1) to fill the vacancy at the next regular election date applies here. Had the legislature intended to spare communities the trouble and expense of conducting a special election to fill a vacancy created by recall, it could have explicitly done so. For example, MCL 168.321(1) provides that "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 added). Notably omitted from the conditions that fall within the exclusive purview of the city charter are "recall" and

[1] November 6, 2012 General Election unofficial results, viewed November 16, 2012, available at: http://results.enr.clarityelections.com/MI/Oakland/43747/110709/en/summary.html.

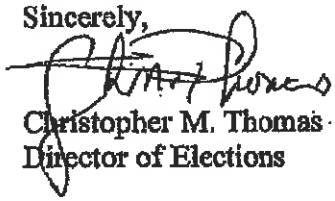
"filling a vacancy caused by recall." Moreover, the term "election" as used in section 321(1) cannot be equated with the term "recall" or interpreted to encompass recalls. Rather, recall is a process for removing someone from an elected office. And arguably, interpreting the term "election" in section 321(1) to include a recall would free cities from compliance with any of the recall statutes set forth in Chapter 36.

In addition, the Home Rule City Act, MCL 117.1 *et seq*., provides that, "[n]o provision of any charter shall conflict with or contravene the provisions of any general law of the state." MCL 117.36. Two Court of Appeals cases concerning the rights of charter counties are instructive here, and by extension, their rationale is applicable to city charters. In *Ficano v Lucas*, 133 Mich App 268 (1984) and *O'Hara v Wayne County Clerk*, 238 Mich App 611 (1999), the Court of Appeals held that Wayne County charter provisions that conflicted with the Michigan Election Law could not "trump" or override the general provisions of state election law. The statute that mandates that an election be held on the next regular election date following a successful recall is a law of general application within the meaning of the Home Rule City Act. MCL 117.36, 168.971.

In fact, the Troy City Charter incorporates section 971(1) by providing that "[a] vacancy created by [ ] recall shall be filled in the manner prescribed by this charter *and by statute*." (Charter, Section 7.17 – Recall, p 26). (Emphasis added). The Charter itself does not prescribe any specific method for filling a vacancy created by recall, and of course, even if it did the Charter could not conflict with section 971(1). See MCL 117.36.[2]

If you have any additional questions concerning our position, please do not hesitate to contact me.

Sincerely,



Christopher M. Thomas
Director of Elections

[2] The Troy City Charter has a general vacancy filling provision for elective offices in Chapter 6, Section 6.7 – Filling Vacancies in Elective Office. That section prescribes the method for filling vacancies that arise under Chapter 6, Section 6.2 – Vacancies in Elective Office. But Section 6.2 does not include a vacancy created by recall.

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

November 26, 2012

Aileen Bittner, Clerk
City of Troy
500 West Big Beaver Road
Troy, Michigan 48084
Via email: bittnera@troymi.gov

Dear Ms. Bittner:

I write in regard to the City of Troy's plans to delay the election to fill the vacancy caused by the recent recall of the City's former Mayor, Janice Daniels, contrary to the Michigan Election Law, 1954 PA 116, as amended, MCL 168.1 *et seq*. For the reasons set forth below, you are hereby directed to conduct a special election to fill the vacancy created by former Mayor Daniels' recall on February 26, 2013.

Any further delay in making preparations for this election may jeopardize the ability of candidates to seek election to the office of Mayor. I am aware that the Oakland County Clerk's office did not issue the notice required by MCL 168.964 until November 19, 2012. Pursuant to that provision, "the official shall give notice to the official or officials required by the general election, the school, or the library laws of this state or a city charter to give public notice of the election, cause the ballots to be printed, provide election supplies, and do all things necessary to conduct the election in the manner provided in this act." MCL 168.964. Given the delay in the issuance of the mandatory section 964 notice, the candidate filing deadline will elapse at 4:00 p.m. on December 4, 2012, the fifteenth day following the issuance of the November 19, 2012 notice. MCL 168.972(1).[1]

Under the Michigan Election Law, 1954 PA 116, as amended, MCL 168.1 *et seq*., the Secretary of State is the Chief Election Officer of this State and "shall have supervisory control over local election officials in the performance of their duties under the provisions of this act." MCL 168.21. The Secretary of State is required by law to "issue instructions" and "[a]dvise and direct local election officials as to the proper methods of conducting elections." MCL 168.31(1)(a), (b). County clerks and Boards of Commissioners are required to comply with the instructions given by the Secretary of State. *Secretary of State v Berrien Co Bd of Election Comm'rs*, 373 Mich 526, 530-531 (1964). The Director of Elections is authorized to act at the Secretary's behest "with respect to the supervision and administration of the election laws." MCL 168.32.

[1] Further, MCL 168.972(1) expressly allows candidates who seek a nonpartisan office such as Mayor to be nominated by filing a nominating petition containing a sufficient number of valid signatures or paying a $100.00 filing fee in lieu of tendering a nominating petition.

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

An election on the question of recalling the former Mayor was included on the November 6, 2012 general election ballot issued to Troy voters, who decided by a margin of 20,763 votes in favor to 18,993 votes against[2] to exercise their constitutional right to recall Ms. Daniels. MI Const. Art. II, §8. Under the Election Law, "[i]f the recall is successful, a special election to fill the vacancy *shall* be held on the next regular election date." MCL 168.971(1) (emphasis added). The next regular election date immediately following the November 6, 2012 general election falls on February 26, 2013. MCL 168.641(1).

Through discussions with your City Attorney, Lori Grigg Bluhm, I understand the City's legal position to be that pursuant to the Troy City Charter, the City intends to allow the person who was recently appointed to temporarily fill the vacancy in the office of Mayor to serve until a successor is elected at the next regularly scheduled city election, which will be held on November 5, 2013. Further, I understand that the City intends to permit the winner of that election to serve the remaining 2 years of the 4-year term of office for Mayor until the next regularly scheduled city election on November 3, 2015. The City's position is primarily based upon MCL 168.321(1), which provides: "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."

As explained to Ms. Bluhm, the mandate of MCL 168.971(1) is clear and unambiguous. The City's position is in direct contravention of this provision, which reads, "[i]f the recall is successful, a special election to fill the vacancy shall be held on the next regular election date. The provisions in section 964 [,]for calling and conducting of the recall election govern the calling and conducting of the election to fill the vacancy created, *except as otherwise provided in this section*." (Emphasis added). Subsection (2) creates the only exception by establishing the procedure for holding an election if an emergency manager has been appointed, a circumstance that is inapplicable here. No exception was created for local governments with differing charter provisions.

Had the legislature intended to spare communities the trouble and expense of conducting a special election to fill a vacancy created by recall, it could have explicitly done so. For example, MCL 168.321(1) provides that "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 added). Notably omitted from the conditions that fall within the exclusive purview of the city charter are "recall" and "filling a vacancy caused by recall." Moreover, the term "election" as used in section 321(1) cannot be equated with the term "recall" or interpreted to encompass recalls because a recall is not an election. Rather, it is a process for removing someone from an elected office. And arguably, interpreting the term "election" in section 321(1) to include a recall would free cities from compliance with any of the recall statutes set forth in Chapter 36.

This sound public policy preserves the purity of elections and effectuates the voters' exercise of their constitutional right of recall. The voters of Troy have spoken and they are entitled under state law to elect a successor at the first opportunity – the next regular election date that falls on February 26, 2013.

---

[2] November 6, 2012 General Election unofficial results, viewed November 16, 2012, available at: http://results.enr.clarityelections.com/MI/Oakland/43747/110709/en/summary.html

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

In addition, the Home Rule City Act, MCL 117.1 *et seq.*, provides that, "[n]o provision of any charter shall conflict with or contravene the provisions of any general law of the state." MCL 117.36. Two Court of Appeals cases concerning the rights of charter counties are instructive here, and by extension, their rationale is applicable to city charters. In *Ficano v Lucas*, 133 Mich App 268 (1984) and *O'Hara v Wayne County Clerk*, 238 Mich App 611 (1999), the Court of Appeals held that Wayne County charter provisions that conflicted with the Michigan Election Law could not "trump" or override the general provisions of state election law. The statute that mandates that an election be held on the next regular election date following a successful recall is a law of general application within the meaning of the Home Rule City Act. MCL 117.36, 168.971.

In fact, the Troy City Charter incorporates section 971(1) by providing that "[a] vacancy created by [ ] recall shall be filled in the manner prescribed by this charter *and by statute*." (Charter, Section 7.17 – Recall, p 26) (Emphasis added). The Charter itself does not prescribe any specific method for filling a vacancy created by recall, and of course, even if it did the Charter could not conflict with section 971(1). See MCL 117.36.[3]

Simply put, there is no legal authority to refrain from conducting an election to fill the vacancy caused by the former Mayor's recall until a time of the City's choosing. In accordance with my authority under the Michigan Election Law, you are directed to take all necessary steps in preparation for a special election to be held on February 26, 2013.

Please contact me tomorrow by the close of business to inform me of what actions you intend to take to prepare for the upcoming election. You may reach me at 517 373 2540.

Sincerely,

Christopher M. Thomas
Director of Elections

Cc: Lori Grigg Bluhm

[3] The Troy City Charter has a general vacancy filling provision for elective offices in Chapter 6, Section 6.7 – Filling Vacancies in Elective Office. That section prescribes the method for filling vacancies that arise under Chapter 6,Section 6.2 – Vacancies in Elective Office. But Section 6.2 does not include a vacancy created by recall.

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Exhibit 4

MEMORANDUM

TO: Members of the Troy City Council
FROM: Michael W. Culpepper, Acting City Manager
Lori Grigg Bluhm, City Attorney
M. Aileen Bittner, City Clerk
DATE: September 5, 2012
SUBJECT: Procedure In Event of Successful Recall

As requested at the August 27, 2012 City Council meeting, we reviewed the State Statutes concerning recall elections, as well as City Charter provisions and the City Council Rules of Procedure. The following procedure is based on this research.

- **November 6, 2012:** City Election with Recall Question

- **November 7-11, 2012:** County Board of Canvassers certifies results and notifies City Clerk
  - If more persons voted No than Yes- no change
  - If more persons voted Yes than No- current Mayor Pro Tem is sworn in immediately as Acting Mayor to serve until new Mayor Pro Tem appointed

- **November 12, 2012:** Official Declaration of Vacancy & Annual Election of Mayor Pro Tem
  - Office of Mayor declared vacant by City Council
  - Council Rules of Procedure call for election of Mayor Pro Tem annually on specific rotating basis
  - New Mayor Pro Tem sworn in as Mayor Pro Tem and Acting Mayor
  - Acting Mayor serves until City Council appoints a new Mayor

- **On or before December 11, 2012:** City Council is required to appoint a Mayor within 30 days of the County Board of Canvassers certification. Appointed Mayor serves until 7:30 pm on November 11, 2013.
  - If a City Council member wishes to be appointed as Mayor, the Member must submit a letter of resignation of the City Council position to the City Clerk. City Council acts upon letters of resignation at the next City Council meeting. There are two meetings in the 30-day period: November 26 and December 3. Resigning will shorten the term of office if that Member's term expires later than November 11, 2013.
  - City Council declares a seat vacant upon acceptance of a letter of resignation (as set forth above). This vacancy is required to be filled by City Council appointment within 30 days of the vacancy.
  - Since no process for appointment is specified, there could be an application/interview process or any other process decided on by City Council. The only restrictions have to do with term limits and eligibility requirements.
  - Failure to appoint a Mayor within 30 days could be official misconduct

- **November 5, 2013:** Regular City Election for City Council and unexpired Mayor's term

- **November 11, 2013:** Newly elected Mayor and City Council are sworn in to office

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Exhibit 5

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

The Detroit News

NOVEMBER 27, 2012

Troy City Council appoints Councilman Slater as mayor until Nov. 2013

BY CANDICE WILLIAMS / THE DETROIT NEWS

Troy — Troy Councilman Dane Slater was officially appointed mayor Monday night until November 2013 amid controversy over whether the city must hold an election to name a new mayor.

The selection followed failed attempts earlier Monday by two city residents to file to run for a mayoral election. Monday was the deadline to file.

"I'm not ready to support any candidate as interim mayor until we get a resolution from the state," Councilman Doug Tietz said, referring to the controversy with the state over how the city must choose a mayor after the recall of Mayor Janice Daniels. He and Councilman Wade Fleming opposed Slater's appointment Monday.

The state's elections director told the city in a letter Nov. 16 that it must hold a special election Feb. 26, and not wait until 2013 to fill the mayor's position.

After it received the letter from the state, the City Council voted Wednesday not to seek an opinion from the state Attorney General's Office about whether it needs to hold a special election.

"What a blatant disregard for the rule of law," said Dan Brake, one of two men whose petition to run for mayor was turned down Monday. Edward Kempen also filed.

The group Concerned Troy Citizens said Brake and Kempen left their paperwork with City Clerk Aileen Bittner after she told them the city was not accepting the paperwork.

According to the release, City Attorney Lori Grigg Bluhm watched as Bittner turned the two would-be candidates away.

Tietz and Fleming said during the vote Monday night that they wanted to wait so the city could investigate the election issue.

"There's wisdom in waiting until Dec. 3 to see if we get new information," Fleming said.

Bluhm had recommended that the council appoint an acting mayor for the next year, saying she based her advice on state law, the city charter, and the guidance of the Oakland County elections office and other cities that had successful recall elections.

"I have the faith in the city attorney that she can defend this," Slater said.

Resident James Savage said he would have preferred the city consult with the state first on its process for filing the vacancy.

"That would have been the safer thing to do," he said.

cwilliams@detroitnews.com

(313) 222-2311

© Copyright 2012 The Detroit News. All rights reserved.

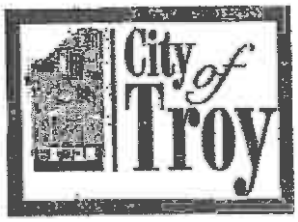
Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Exhibit 6

500 W. Big Beaver
Troy, MI 48084
(248) 524-3300

The City of Tomorrow...



...Today

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

November 27, 2012

Christopher M. Thomas
Director of Elections
Michigan Secretary of State
Richard H. Austin Building
1st Floor
430 W. Allegan
Lansing, MI 48918

Dear Mr. Thomas,

This letter is in response to your letter of November 26, 2012 to Troy City Clerk M. Aileen Bittner, which was sent via e-mail at 5:30 pm. It was received after the fifteen day candidate filing deadline set forth in MCL 168.971, which is the statutory recall provision that you rely upon for your legal analysis. Unfortunately, the letter was received after the City had already turned away two persons who were vying to be a candidate by paying $100 prior to the 4 pm filing deadline yesterday. These attempted filings were not accepted at the City, since there has not been a February 2013 election called.

The attached November 19 letter from the Oakland County Director of Elections does not mandate a special February 2013 election. If this were the case, the notification would explicitly reference the date of this special election, as well as the applicable filing deadlines. Oakland County's letter confirms only that an election is required to fill the unexpired mayoral term. The City does not dispute this, and has planned since September of this year to hold the election for the remaining two year mayoral term at the same time as our regular election in November 2013.

In determining the procedure that we would follow in the event of a successful recall, we necessarily looked to the election law provisions that are applicable to City Offices, found in Chapter XV of the Election Law. Under this Chapter of Election Law, cities are treated differently than other types of government. MCL 168.321 (1) specifically provides: "*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 added)

In your letter, you claim that MCL 168.321 is not applicable to this situation, since a recall is not "an election." You have not provided any authority for this position, which is actually contradicted by the presence of the statutory procedure being located in the state election law provisions. Recalls to remove officers are subject to the same

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

deadlines, certification, signature requirements, etc. as other elections. According to MCL 168.964: "*The procedure governing the election on the question of the recall of an officer shall be the same, so far as possible and unless otherwise provided in this act, as that by which the officer is elected to office.*" The legislature's use of the phrase "*on the question of the recall*" in this statutory provision arguably limits the application to the removal of the elected official. If a recall is successful, then MCL 168.968 provides that: "Upon certification, the office is vacant". It is at this point that MCL 168.321 (1) mandates deference to the City's Charter.

According to your letter, recall encompasses not only the removal of an officer, but also a subsequent election for a replacement for a recalled officer. Your authority for this claim stems from MCL 168.971, which states: *"If the recall is successful, a special election to fill the vacancy shall be held on the next regular election date."*
Prior to election consolidation in 2005, the term "regular election date" was defined in election law as those elections occurring in November or even year August. The infrequently used recall election provisions were not amended when the term "regular election date" was expanded to also include February, May, and August odd year elections. It is this expansion of the term "regular election date" that has caused a conflict between MCL 168.321 synthesized with the Troy City Charter and MCL 168.971. Prior to 2005, the City of Troy's charter process would have mirrored the process set forth in MCL 168.971, with both provisions calling for an election in November 2013.

In your letter, you indicate that a February special election in the City of Troy "*preserves the purity of elections and effectuates the voters' exercise of their constitutional right of recall. The voters of Troy have spoken and they are entitled under state law to elect a successor at the first opportunity- the next regular election date that falls on February 26, 2013.*"

In actuality, mandating a February special election actually thwarts the voters' exercise of their constitutional right of recall, since the City is required to comply with its Charter provisions as well as state law. Under Troy's charter, vacancies in elective office are required to be filled within thirty days through appointment. Section 6.7 states: "*City Council shall fill vacancies of an elective office that are declared vacant pursuant to Section 6.2 within 30 days by a majority vote of the remaining members of the Council, said appointee to hold office until the successor takes office, the election of which shall be on the next November or even year August election date.*" Section 6.2 provides: *Any elective city office shall be declared vacant by the Council upon the occurrence of any of the following events before the expiration of the term of such office: (a) For any reason specified by statute or by this charter as creating a vacancy in office...* MCL 168.968 expressly declares that a successful recall creates a vacancy in office. The City of Troy, in compliance with this Charter provision, has officially appointed Mayor Pro Tem Dane Slater as Mayor within the allocated thirty days. As a condition of his appointment, Mr. Slater was required to resign his City Council position in order to be appointed as Mayor. City Council is now accepting applications from Troy citizens, and is expected to appoint a new City Council member for the remainder of the term, which

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

expires on November 2013. If a February 2013 election were required, and Mr. Slater chose not to run for the unexpired Mayoral term, then this elected official's term would be shortened by about eight months. If one or two other elected Troy City Council members decided to run for the unexpired mayoral term in a forced February 2013 election, Troy's Charter requires each candidate for an office other than the one currently held to submit an irrevocable letter of resignation. As a result, a February 2013 election could entirely change the composition of Troy's elected body into a legislative body that is largely appointed.

Troy is also concerned about the ability to pay a $100 filing fee under MCL 168.972, whereas Troy's Charter requires prospective candidates to demonstrate a modicum of support (60 signatures on a petition) before being entitled to placement on the ballot.

The cases that you have relied upon, *Ficano v. Lucas, 133 Mich. App. 268 (1984) and O'Hara v. Wayne County Clerk, 238 Mich. App. 611 (1999)*, are distinguishable. First, neither one of these cases involves a recall election. More importantly, these cases discuss the powers of counties, not home rule cities. Under the Michigan Constitution of 1963, Section 34 requires "*the provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor.*" MCL 117.4i (g) expressly allows Home Rule Cities, such as the City of Troy, to provide in its charter for "*The initiative and referendum on all matters within the scope of the powers of that city **and the recall of city officials.***" Emphasis added.

Troy's Charter, Section 7.17, was adopted in accordance with the authority granted under the Home Rule City Act. It provides: "*Any elected official may be recalled from office by the electors of the city in the manner provided by statute. A vacancy created by such recall shall be filled in the manner prescribed **by this charter and by statute.**" (Emphasis added).*

The City's process, outlined in September in the event of a successful recall, synthesizes the charter and MCL 168.321. Although it is understandable that the State, seeking uniformity in the election process, would prefer a special February election rather than acknowledge the ambiguity in State election law, it is the City of Troy's position that whenever state election law can be read consistently with local home rule city charters, then it is this interpretation that must be followed.

In our telephone conversation, you opined that there was a need for an immediate election after a recall to protect against the temporary appointment of a person with credentials very similar to the person just removed. However, the City publicly communicated the post recall process back in September of this year, and it was published in many different newspapers and websites, and this process was not challenged. Requiring the City to now conduct a special election in February will deprive many of our residents of the ability to participate in the political process. This will place the City of Troy at risk for an equal protection challenge.

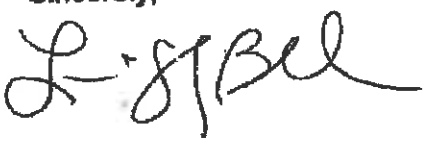
Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

Perhaps most interesting is your unilateral extension of the candidate filing deadline by a week. You have neglected to specify the authority that allows this unprecedented action, which is inconsistent MCL 168.971 and MCL 168.321. Although you rely on MCL 168.31 (1)(b) as your authority to require a February 2013 election and also to extend the candidate filing deadline by a week, this statutory provision provides authority only for the "*proper methods of conducting elections.*" A unilateral candidate filing deadline extension exceeds the scope of this authority. A mandate for a special election also falls outside the scope of the authority of the Secretary of State. These two examples are not decisions about the proper equipment to use, or the determination to use a punch card or an optical scan method of voting.

The mandate of a February 2013 special election, under the authority of MCL 168.971, would cause the City of Troy to violate several of its Charter provisions, including but not limited to the requirement for advance notice and publication of all open elective offices. It is for this reason that the City is obligated to adopt the interpretation of state election law, as set forth in MCL 168.321, which also allows the City to comply with its Charter provisions.

I encourage you to share this letter with the Attorney General's Office, so that they can have a condensed version of our legal research available in deciding whether or not to initiate proceedings to force our community to endure a special February election, at an estimated cost of approximately $50,000 plus untold political costs and further turmoil.

Sincerely,



Lori Grigg Bluhm
City Attorney

Received for Filing Oakland County Clerk 2012 NOV 30 PM 01:09

BILL BULLARD JR.
OAKLAND COUNTY CLERK/REGISTER OF DEEDS
WWW.OAKGOV.COM/CLERKROD
ELECTIONS DIVISION

BILL BULLARD JR.
COUNTY CLERK/REGISTER OF DEEDS

JOSEPH J. ROZELL, CERA
DIRECTOR OF ELECTIONS

November 19, 2012

City of Troy
Ms. Aileen Bittner, Clerk
500 W. Big Beaver Rd.
Troy, MI 48084

Dear Ms. Bittner,

On November 9th, 2012, at the conclusion of the official canvass, I declared the office of Mayor vacant.

This letter is to inform you that in accordance with MCL 168.964, you are required to "give notice of an election, cause the ballots to be printed, provide election supplies and do all things necessary to conduct the election in the manner provided..." for the office of Mayor.

Please contact me should you have any questions.

Sincerely,
COUNTY OF OAKLAND

Joseph J. Rozell
Director of Elections

c: Bill Bullard, Jr., Oakland County Clerk/Register of Deeds

ADMINISTRATIVE OFFICE
1200 N. TELEGRAPH RD., DEPT. 415
PONTIAC, MICHIGAN 48341-0415
(248) 858-0560
CLERK@OAKGOV.COM

ELECTIONS DIVISION
1200 N. TELEGRAPH RD., DEPT. 417
PONTIAC, MICHIGAN 48341-0417
(248) 858-0584
ELECTIONS@OAKGOV.COM

LEGAL & VITAL RECORDS
1200 N. TELEGRAPH RD., DEPT. 413
PONTIAC, MICHIGAN 48341-0413
(248) 858-0581
CLERKLEGAL@OAKGOV.COM

REGISTER OF DEEDS
1200 N. TELEGRAPH RD., DEPT. 480
PONTIAC, MICHIGAN 48341-0480
(248) 858-0505
DEEDS@OAKGOV.COM