

**Michigan Department of State****Campaign Finance Complaint Form**

BUREAU OF ELECTIONS 4 RICHARD H. AUSTIN BUILDING - 1st Floor
430 W. ALLEGAN STREET 4 LANSING, MICHIGAN 48918

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MICHIGAN DEPT OF STATE
2023 FEB -6 PM 1:59
BY J. A. B. ONE & SEAL

This complaint form may be used to file a complaint alleging that someone violated the Michigan Campaign Finance Act (MCFA). For instructions on how to complete this form, see the Campaign Finance Complaint Guidebook & Procedures document. All spaces are required unless otherwise indicated.

Section 1. Complainant		
Your Name Thomas A Craig		Daytime Telephone Number (586)206-1358
Mailing Address 31772 Beechwood Dr.		
City Warren	State MI	Zip 48088
Email (optional)		

Section 2. Alleged Violator		
Name James R. Fouts		
Mailing Address 28107 St. Louise Drive		
City Warren	State MI	Zip 48092
Email (optional)		

Section 3. Allegations (Use additional sheets if more space is needed.)
--

Section(s) of the MCFA alleged to be violated: MCL 169.206, MCL 169.203(1)(e)

Explain how those sections were violated:

See attached explanation

Evidence included with the submission of the complaint that supports the allegations:

See attached exhibits

Section 4. Certification (Required)

I certify that to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of this complaint is supported by evidence.

X

 2/13/2023
Signature of Complainant Date

Section 5. Certification without Evidence (Supplemental to Section 4)

If, after a reasonable inquiry under the circumstances, you are unable to certify that certain factual contentions are supported by evidence as indicated above, you may make the following certification:

I certify that to the best of my knowledge, information, or belief, there are grounds to conclude that the following specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry. Those specific contentions are:

X

Signature of Complainant Date

Section 15(8) of the MCFA provides that a person who files a complaint with a false certification is responsible for a civil violation of the MCFA. The person may be required to pay a civil fine of up to \$1,000.00 and some, or all, of the expenses incurred by the Michigan Department of State and the alleged violator as a direct result of the filing of the complaint.

Section 6. Submission

Once completed, mail or hand deliver the complaint form with your evidence to the address below. The complaint is considered filed upon receipt by the Bureau of Elections.

Michigan Department of State
Bureau of Elections
Richard H. Austin Building – 1st Floor
430 West Allegan Street
Lansing, Michigan 48918

Revised: 06/19

Warren Mayor James R. Fouts is ineligible to run for re-election as Mayor due to term limits in the city's charter, yet he has filed for re-election and is making campaign expenditures for re-election to a position for which is not eligible. In the November general election in 2020, the voters of Warren amended the city charter to reduce the number of terms that the mayor can serve from 5 complete terms or 20 years to 3 complete terms or 12 years. The ballot language is attached as **EXHIBIT A** to this complaint. The ballot language can be confirmed with the Macomb County Clerk's office. Please note that the ballot language stated, "Any terms or years served prior to this amendment are included." The voters overwhelmingly approved his amendment by a vote of 41,319 (67.8%) to 19,626 (32.2%) as shown in the election results attached as **EXHIBIT B**.

The ballot proposal amended both Sections 4.3 and 4.4 of the Warren City Charter, which is available on municode.com. Attached are amended sections 4.3 (**EXHIBIT C**) and 4.4 (**EXHIBIT D**) of the city charter. Section 4.3 is entitled "Certain persons ineligible for city office" and states in subsection (b) that "A person shall not be eligible to hold the position of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that office." Section 4.4 is entitled "Terms of office" and states in subsection (d) that "A person shall not be eligible to hold the position of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office."

James R. Fouts was first elected Mayor in 2007 to a 4-year term. He was subsequently re-elected to 4-year terms in 2011, 2015, and 2019. He is currently in his fourth term and his sixteenth year of being Mayor. In the 1998 November general election, the Warren voters approved term limits of three complete terms or 12 years for all city offices, including the mayor. In 2016, the prior city council put forth a charter amendment that extended the terms of the mayor from three complete terms or 12 years to five complete terms or 20 years. This was on an August primary ballot with a lower turnout and the voters approved a term limit extension by a vote of 7,821 (52.7%) to 7,015 (47.3%). See **EXHIBIT E**. This permitted Fouts to run for a fourth term in 2019, but in 2020 the City Council wished to put this matter back to the voters in a high-turnout November general election which resulted in the original term limits being restored.

James R. Fouts does not believe the city charter applies to him, but that does not relieve him from following the charter and the campaign finance laws of the State of Michigan. In spite of being barred for re-election by the city's charter, Mr. Fouts has announced he's running for re-election and is incurring expenses from his campaign committee in furtherance of his illegal attempt at re-election. Please see attached **EXHIBIT F**, a campaign flyer announcing the Mayor's re-election and a fundraiser in support of his re-election for January 25, 2023. This was paid for by the Committee to Elect (CTE) Jim Fouts. The Committee named CTE Jim Fouts is assigned Committee ID Number 137953 with the Macomb County Clerk and the committee's most recent filings show that the candidate is seeking the office of Mayor in Warren.

been in office since 2007. Despite that message from the voters in 2020, some tried get those rules changed recently, and it's how they went about it that's raising eyebrows. On two hot July days this summer, Warren residents trickled into a cool banquet hall with the promise of free lunch and free gas cards.

But prizes and pasta were not the only things on the menu. "We're also circulating a petition today. This is for term limit reform for our Warren elected officials. This is to place term limit reform on the ballot for November," said Sean Clark, Warren's Senior Housing Director of Administration, from the petition-signing table at the front door of the event.

Our undercover cameras were rolling inside the public events on July 20 and July 21, after we got a tip that Warren city employees were helping to gather signatures for a new ballot proposal. That proposal aimed to extend term limits for the mayor, clerk and treasurer, potentially allowing current Mayor Jim Fouts to stay in office longer than 16 years. The new effort would overturn what voters last decided in 2020: to limit the mayor's years allowed in office. "It's just to get it on the ballot, so all the residents can vote whether they're for it or not," said Gail Dietz at the petition table in July. Dietz works in the Mayor's office.

...

Mayor Fouts was the featured speaker at the event, where he spoke about Warren's city services, his fire and police commissioners, and how he likes to respond to resident phone calls. "All of you are my bosses, the city council is not my boss," said Fouts from the stage.

The Mayor and city staff were involved in an attempt to put the term limits question back on the ballot again in 2022 to give the mayor extra terms, but they did not submit sufficient signatures by the deadline to get the question on the November 2022 general election ballot. Why would the mayor and his staff be involved in a petition drive to (once again) amend the term limits to give himself more time in office in 2022? The question answers itself: Mayor Fouts knows the charter bars him from running for a fifth term in 2023. In spite of this, Fouts is flouting the law and moving forward.

There are likely other unlawful campaign expenditures that the general public is unaware of. As a basis for this complaint, I reviewed the Michigan Secretary of State "Candidate Manual" and specifically the section on Term Limited Candidates, see **EXHIBIT I**. The relevant portion of the Manual states:

Authorized Expenditures: An officeholder who is barred from seeking reelection may not use his or her Candidate Committee to make election-related expenditures. An expenditure is defined as the payment or transfer of anything of ascertainable monetary value in assistance of, or in opposition to,

Warren

City Charter Amendment

A proposal to require the office of mayor to have the same term limits as the other city elected offices

The proposed amendment would require all city elected offices to have the same term limits of three (3) terms or twelve (12) years. Currently the office of mayor has a limit of five (5) terms or twenty (20) years and the offices of city council, clerk, and treasurer have a limit of (3) three terms or twelve (12) years. Any terms or years served prior to this amendment are included.

PROPOSAL: Should the office of mayor have the same term limits as the other city elected offices, which is the greater of three (3) complete terms or twelve (12) years?



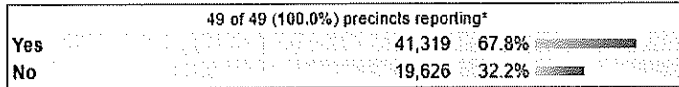
Warren Charter Amendment

A proposal to require the office of mayor to have the same term limits as the other city elected offices

[PDF Full Proposal Text](#)

Official results, updated November 17, 10:59 PM

[Race List](#) | [Race Summary](#) | [Race Details](#) | [Race Details \(Printer Friendly\)](#)



*Please Note: A precinct will not display in the percent of precincts reporting until both election day and AV (absentee) results are recorded for that precinct.

Sec. 4.3 - Certain persons ineligible for city office.

- (a) A person who has been convicted of violating any provision of the election laws of the state or of the city, or who has been convicted of a felony or of an offense involving a violation of his oath of office, or who is in default to the city, shall not be eligible for any city office.
- (b) No person shall simultaneously hold two city offices or a city office and a city employment, nor shall any person simultaneously hold an elective city office and an elective county and school district office. No person who holds an elective county or school district office shall be eligible to qualify for or to assume an elective city office to which he has been elected, until he first resigns from the elective county or school office held by him. Any elective officer who assumes an elective county or school district office shall thereupon be deemed to have vacated the city office held by him.
- (c) A person who holds or has held an elective city office shall not be eligible for appointment to a city office or employment, for which compensation is paid by the city, until one year has elapsed following the term for which he was elected or appointed.
- (d) A person shall not be eligible to hold the position of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that office.

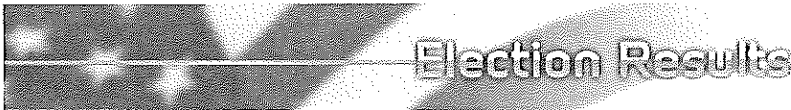
(Res. of 7-14-98; Amended by electors on 8-2-16; Res. of 06-30-20, amended by electors on 11-3-20)

State Law reference— Mandatory that Charter provide for qualifications of its officers, MCL 117.3(d).

Sec. 4.4 - Terms of office.

- (a) The terms of office of all elective officers shall be two years, commencing on and dating from the Monday following their election, unless otherwise provided in this charter.
- (b) Each appointive officer, except members of boards, shall serve at the pleasure of the officer or authority appointing him. The term of office of each appointive officer to serve on any city board except the library board, the board of review, and the civil service commission of the policemen's and firemen's civil service plan, shall be for three years and shall commence on that date from July 1 of the year in which his appointment is made, except where the appointment is to fill a vacancy.
- (c) With the consent of the council, and for so long as the council shall permit, an officer may continue, provisionally, in the office held by him, after the expiration of his term, until his successor has been elected or appointed and has qualified for the office.
- (d) A person shall not be eligible to hold the position of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

(Res. of 7-14-98; Amended by electors on 8-2-16; Res. of 06-30-20, amended by electors on 11-3-20)



Warren Charter Amendment Proposal to Extend Mayoral Term Limits

Official results, updated August 10, 11:30 AM

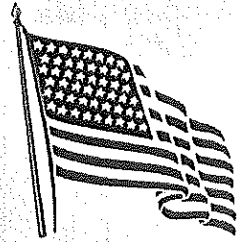
[Race List](#) | [Race Summary](#) | [Race Details](#) | [Race Details \(Printer Friendly\)](#)

53 of 53 (100.0%) precincts reporting*			
YES	7,821	52.7%	<div></div>
NO	7,015	47.3%	<div></div>

*Please Note: A precinct will not display in the percent of precincts reporting until both election day and AV (absentee) results are recorded for that precinct.



A Re-Election Party for **MAYOR JIM FOUTS**



28107 St. Louise • Warren, MI 48092 • Phone: (586) 573-8058

+ + + + + + + + + +
Thursday, January 25 from 5:30 to 8:30 P.M.

Dear Friend,

The data from the recently released 2020 census shows one clear fact, under the leadership of Mayor Jim Fouts, Warren is back! In every census since 1970 Warren has shown a declining population and that was not only stopped in 2020 but reversed with nearly 4% population growth. Today, Warren has a larger population than it did 20 years ago in 2000!

This growth is due to the policies put in place by Mayor Fouts which have been recognized by outside national rating agency WalletHub.com which showed Warren to be the best run big city in Michigan.

The best police and fire departments in Michigan, the strongest fund balance, stable tax rates, effective anti-blight programs, and government that is responsive to the needs of residents and businesses are hallmarks of Mayor Fouts' leadership of the great city of Warren.

This has created a business-friendly city that has allowed growth, new jobs, great opportunity, and a bright future!

Mayor Fouts is clearly focused on the future and continuing the progress that has resulted from his leadership. Pushing forward projects like the Warren Towne Center that will fulfill a decades long goal of creating a new downtown that will serve as the centerpiece for Warren's revival.

On **January 25, 2023** we will be hosting a special fundraiser to honor Mayor Fouts and celebrate the incredible progress he has led in the city. This event will be from 5:30 pm until 8:30 pm at Andiamo Italia Banquet Center at 7096 14 Mile Rd., west of Van Dyke, in Warren. Three sponsorship levels are available. Gold - \$1000, Silver - \$750, Bronze - \$500 and Individual - \$125. Tickets are enclosed and checks should be made out to CTE Jim Fouts (no corporate checks accepted).

If you have questions or need more tickets, please call (586) 573-8058. We can't wait to see you there!

Sincerely,

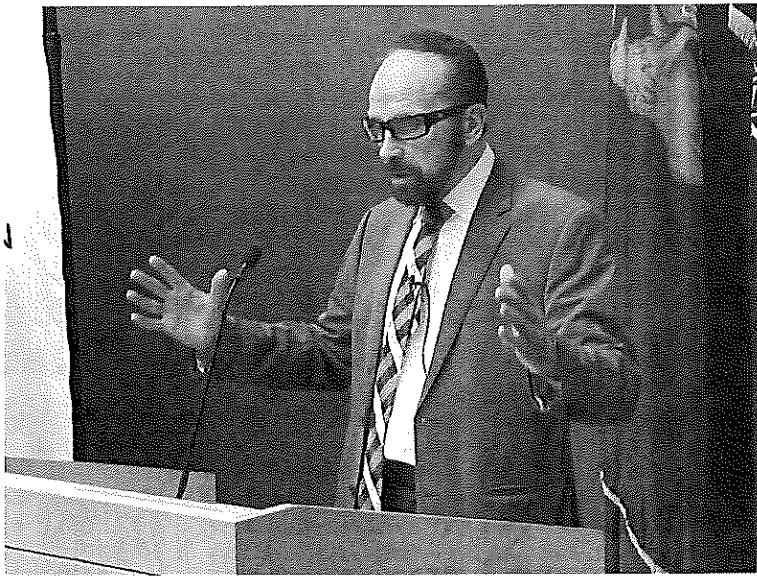
Committee to Elect Jim Fouts

Make checks payable to Committee to Elect (CTE) Jim Fouts
28107 St. Louise • Warren, MI 48092 • Phone: (586) 573-8058
No Corporate Checks • Paid for by CTE Jim Fouts

LATEST HEADLINES

Fouts holds re-election fundraiser, has not filed to run for Warren mayor

Four candidates have officially declared mayoral candidacy



Warren Mayor James Fouts announced last week he is running for re-election despite being term limited to three terms or 12 years. (MACOMB DAILY FILE PHOTO)



January 29, 2023 at 7:51 a.m.

Despite a 2020 charter amendment dictating that elected officials — including the mayor — may not serve more than three terms or 12 years, Warren Mayor James Fouts announced last week he intends to run for a fifth term.

Fouts has served as mayor of Michigan's third largest city since 2007.

"I am running for re-election as mayor," said Fouts.

A Jan. 25 fundraising event held at Andiamo Italia Banquet Center, and described in the invitation as a re-election party, kicked off the mayor's campaign. Although the invitation does not mention a specific office, leading some to speculate that he plans to run for clerk or treasurer, Fouts confirmed on Friday he is running for mayor.

The invitation indicated that checks should be made out to the Committee to Elect Jim Fouts.

Macomb County Board of Commissioners Chairman Don Brown, a Washington Township Republican, introduced Fouts at the event and praised the mayor for his service to the community and for sparking economic growth in the city.

"As Warren goes so goes Macomb County," said Brown. "Mayor Fouts is someone in the county who I can work with and I can support his initiatives."

According to information from the Macomb County Clerk, Fouts had not filed to run for any office as of Jan. 27. Four candidates – Council President Patrick Green, Councilman Ron Papandrea, Macomb County Commissioner Michelle Nard, and Rep. Lori Stone – have officially submitted petitions to run for mayor in the county's most populous city.

In Nov. 2020, Warren residents approved a ballot proposal limiting the mayor to three terms or 12 years in office. Fouts is currently serving his fourth term as mayor and is term limited by that charter amendment. The language in the charter amendment states that "any terms or years served prior to this amendment are included" which seems to indicate that there is no "grandfather

Fouts said he is running because he wants to see initiatives, in particular plans for a Towne Center development on Van Dyke Avenue just north of 12 Mile Road, come to fruition. A proposal for the Towne Center was introduced in 2021, but in 2022 the city council voted against the proposal citing issues with proposed bond funding and questions regarding the inclusion of a boutique hotel in project plans as the main reasons.

The project as presented calls for \$30 million of the \$170 million project to be funded by bonds. Retail and office space, restaurants, apartments, a grocery store and a small hotel were planned for the development. In November, Sterling Heights City Council approved a billion dollar redevelopment of Lakeside Mall into a mixed-use town center with apartments, retail, park space, a hotel, restaurants and office space.

"We can stay the same or we can move forward and this council doesn't seem interested; they seem to want to stop things from moving forward," said Fouts.

"Warren is the largest city in Michigan without a downtown.

"The project had bipartisan support from people including Mark Hackel and Candice Miller and Don Brown and it would have made Warren a destination."

A Jan. 3 press release from Papandrea declaring his candidacy echoed Fouts' comments regarding the Towne Center and also indicated he expected the mayor to run for re-election,

"Mayor Fouts has announced he is a candidate for re-election, but I fear he will be removed from the ballot by court action regarding term limits," Papandrea said in the statement.

Papandrea also said if elected, he would use his own funds to hire Fouts as deputy mayor.

In 2019, the Michigan Supreme Court ruled that four Warren City Council candidates were not eligible to run and should be removed from the Aug. 2019 primary ballot because all had reached the 12-year city council term limit. A lower court had previously ruled the Warren City Council was a bicameral body consisting of two separate chambers: at-large council members and district council members. The Supreme Court reversed that decision, saying a council person who had served 12 years at-large could not then serve another 12 years as a district councilperson.

A challenge to Fouts' candidacy is expected similar to the one filed by council at-large candidate Connor Berdy in 2019 that resulted in the removal of incumbents Cecil St. Pierre, Robert Boccomino, Scott Stevens and Steven Warner from the Aug, 2019 primary ballot.



Susan Smiley | Multimedia Journalist

Susan Smiley is a multimedia journalist covering Warren, Center Line, Eastpointe and St. Clair Shores.

ssmiley@medianewsgroup.com

🐦 Follow Susan Smiley @leglace19

Join the Conversation

We invite you to use our commenting platform to engage in insightful conversations about issues in our community. We reserve the right at all times to remove any information or materials that are unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, pornographic, profane, indecent or otherwise objectionable to us, and to disclose any information necessary to satisfy the law, regulation, or government request. We might permanently block any user who abuses these conditions.

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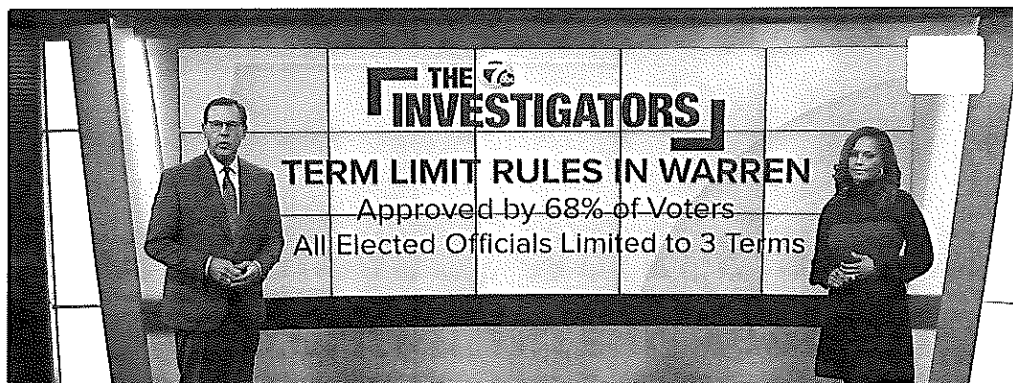
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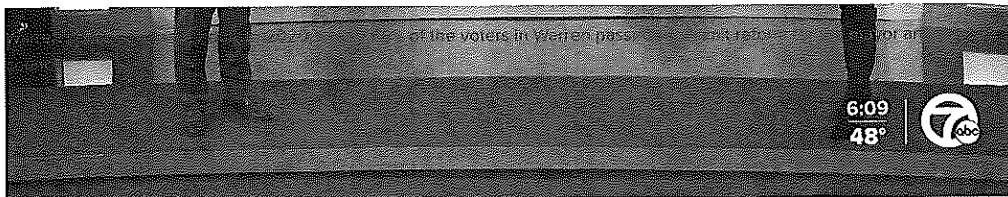


City employees worked to change term limits in Warren. How they tried to do it raised red flags.



<https://www.wxyz.com/news/local-news/investigations/city-employees-worked-to-change-term-limits-in-warren-how-they-tried-to-do-it-raised-red-flags>

1/14



Posted at 6:21 PM, Oct 27, 2022 and last updated 11:28 PM, Oct 27, 2022

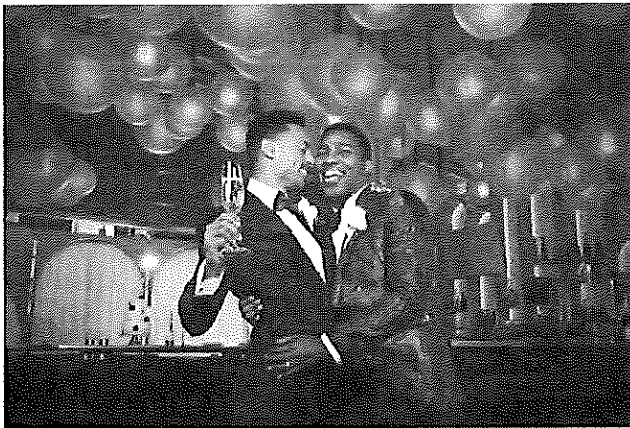
(WXYZ) — Warren politics are never dull. In 2020, nearly 68% of the voters in Warren passed term limit reform for the mayor and the city council.

Because that proposal passed, that means all elected city officials have the same limit of 3 terms.

Those new term limit rules mean Mayor Jim Fouts can't run again in 2023 after his current term is up. He's been in office since 2007.

Recent Stories from wxyz.com

AD



Despite that message from the voters in 2020, some tried get those rules changed recently, and it's how they went about it that's raising eyebrows.

On two hot July days this summer, Warren residents trickled into a cool banquet hall with the promise of free lunch and free gas cards.

But prizes and pasta were not the only things on the menu.

“We’re also circulating a petition today. This is for term limit reform for our Warren elected officials. This is to place term limit reform on the ballot for November,” said Sean Clark, Warren’s Senior Housing Director of Administration, from the petition-signing table at the front door of the event.

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THE EPOCH TIMES

Truth Is Stronger Than Spin

Telling the Truth
in an upside-down world

Get 2 month for \$1

Our undercover cameras were rolling inside the public events on July 20 and July 21, after we got a tip that Warren city employees were helping to gather signatures for a new ballot proposal. That proposal aimed to extend term limits for the mayor, clerk and treasurer, potentially allowing current Mayor Jim Fouts to stay in office longer than 16 years. The new effort would overturn what voters last decided in 2020: to limit the mayor’s years allowed in office.

“It’s just to get it on the ballot, so all the residents can vote whether they’re for it or not,” said Gail Dietz at the petition table in July. Dietz works in the Mayor’s office.

Next to her at the petition table was Clark. Also at the event: some city blight inspectors, and the supervisor of the city’s Property Maintenance Division,

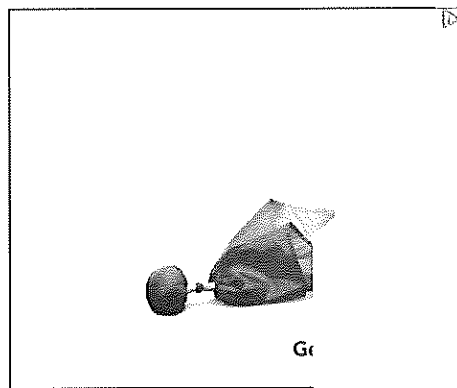
Robert Scott. Warren Economic Development Director Tom Bommarito was also seen leaving the luncheon.

“Hello everybody! Our property maintenance we feel is second to none,” said Scott from the stage, as he talked about the city’s maintenance program.

Mayor Fouts was the featured speaker at the event, where he spoke about Warren’s city services, his fire and police commissioners, and how he likes to respond to resident phone calls.

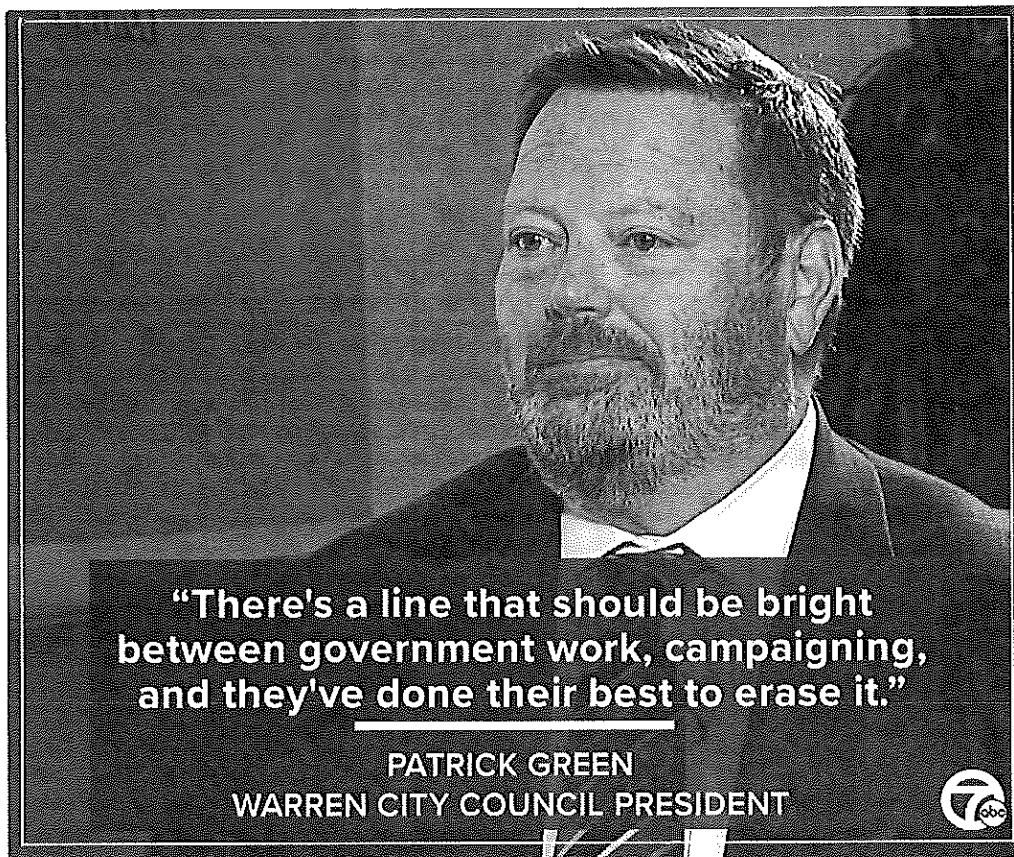
“All of you are my bosses, the city council is not my boss,” said Fouts from the stage.

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It’s no secret Fouts and the city council have been at odds lately. They’ve taken each other to court at least 7 times.

“They’re high-level people in City Hall,” said Warren City Council President Patrick Green as he watched the video of the city employees at the event.



“There's a line — that should be bright — between government work and campaigning. And they've done their best to erase it,” said Green.

Michigan election law prohibits city employees from campaigning on city time.

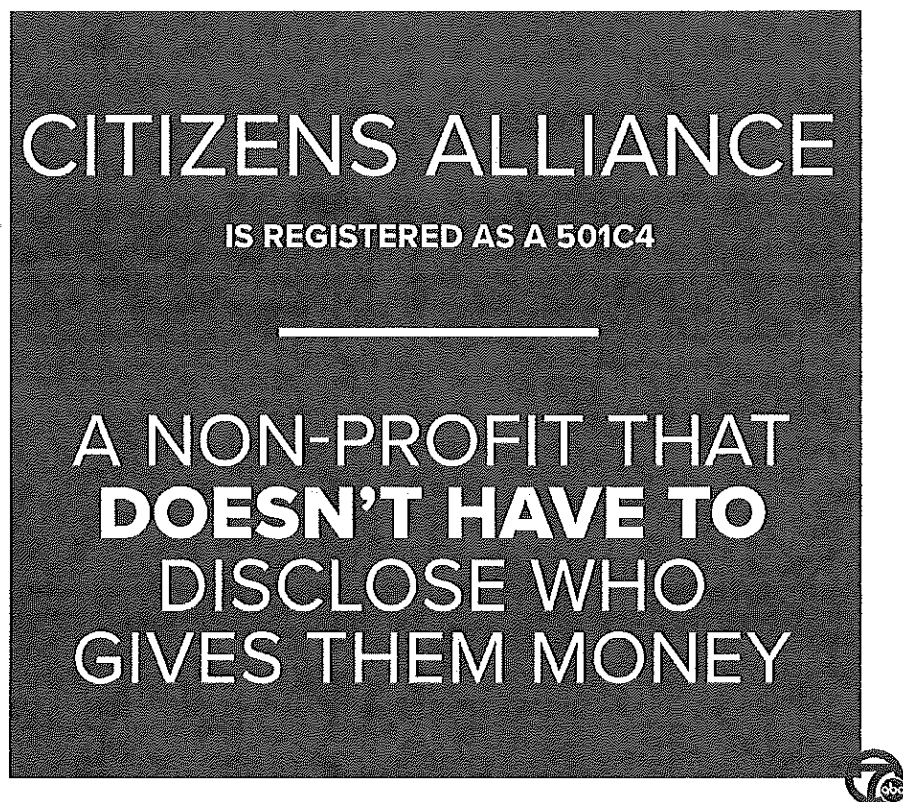
The 7 Investigators requested the timecards for the 8 employees we saw at the petition drive.

They all asked for the day off, but several of the approvals were handwritten with no computerized date stamp to determine whether the employees put in for time before the event or after we requested the information.

“A time and attendance system are to control the accountability of everyone. And for these appointees — I’m concerned this by all appearances looks like it was filled out after the fact,” said Green as he reviewed the time sheets.

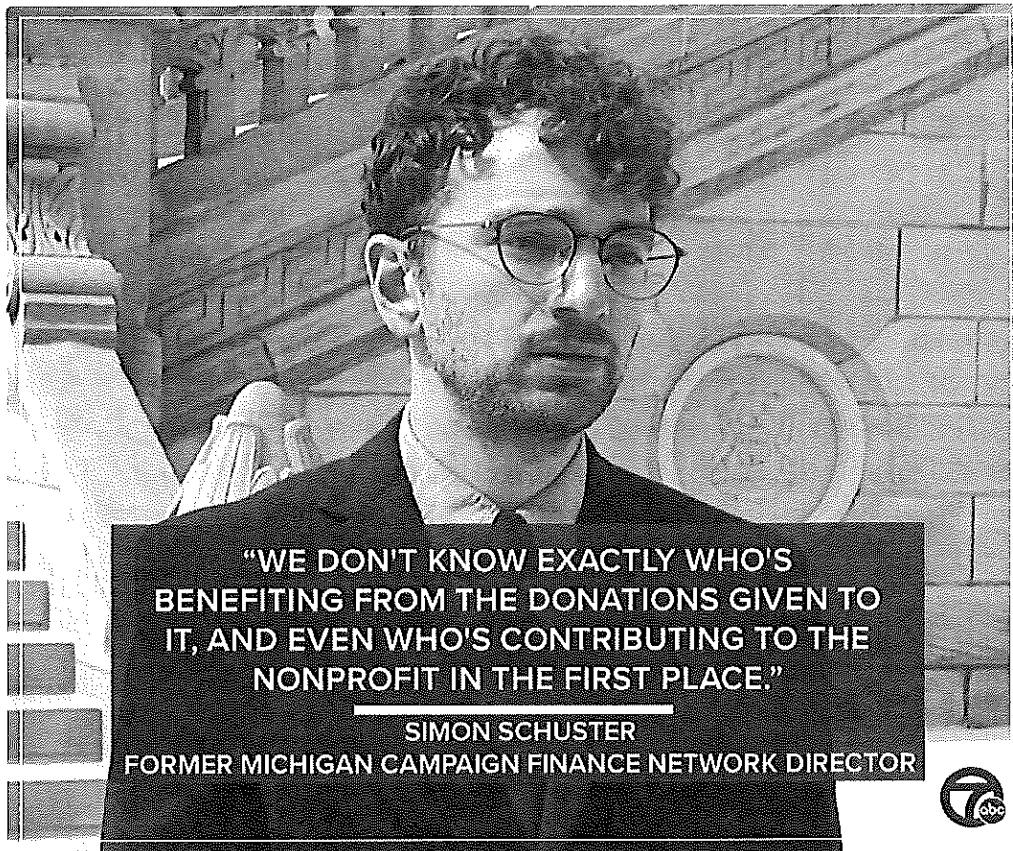
Beyond the use of city employees, there are questions about the group funding this petition drive.

According to newspaper ads and mailers sent out to Warren residents, a group called Citizens Alliance of Michigan hosted the events.



State of Michigan business records show Citizens Alliance is registered as a 501c4, which is a non-profit that doesn't have to disclose who gives them money.

"501c4 organizations become that black box that can obscure this origin of money... They're generally actually the primary source of dark money that gets into our elections," said Simon Schuster, the former Michigan Campaign Finance Network Director. "Because there's no transparency in this situation, we don't know exactly who's benefiting from the donations given to it and even who's contributing to the nonprofit in the first place."



Even though we can't see who's donating to the Citizens Alliance of Michigan, we can see where they've been spending their money. In late June, they gave \$10,000 to the Ballot Question Committee called Citizens for Term Limit Reform.

And that's not all.

The directors of Citizens Alliance are all City of Warren employees. Senior housing director of administration Sean Clark is the Secretary, Warren Public Service Director Gus Ghanam is the group's Treasurer, and their President is Cecil St. Pierre. The former Warren City Council President and probate lawyer is no stranger to the 7 Investigators. He was a key lawyer in a series of investigations into questionable real estate and probate practices in Macomb County. After that was exposed by the 7 Investigators, then-Attorney General Bill Schuette suspended St. Pierre as a Public Administrator. St. Pierre later resigned, but the probate practice we exposed prompted changes to the law.

Now members of the current city council say they are questioning St. Pierre's non-profit's financial contributions to the term limits effort that were recorded in campaign records just days before St. Pierre was hired as an assistant city attorney with the City of Warren this summer.

"If you give \$10,000 on a Friday and you get hired on a Monday, and then in that same week on the Thursday, the six-month probation that's required for a new hire is waived, it just it looks like corruption," said Green.

"Did this administration break the civil service and union rules to hire Cecil St. Pierre as a payoff for his dark money fundraising," asked Warren City Council Member Jonathan Lafferty at the July 12 meeting.

Fouts maintains he did not personally hire St. Pierre as an assistant city attorney; he said St. Pierre was hired through civil service rules. A union grievance has been filed over St. Pierre's hiring.

According to the IRS, non-profits like Citizens Alliance of Michigan are required to have their tax forms on site for the public to inspect.

But when the 7 Investigators visited the non-profit's address to request those tax forms, St. Pierre and his files were gone.

In an email, St. Pierre later told us he changed the address for Citizens Alliance, but state records show that wasn't done until four days after we went showed up at his (now former) office.

"Citizens Alliance was formed to foster communication about important issues in our state among members of our community, and to promote social welfare. Our spaghetti luncheons did exactly that, connecting various elected officials and candidates with members of the public. This grassroots organization is driven by unpaid volunteers, who help on their personal time. Citizens Alliance remains on watch, to hold accountable those elected officials who do not put the public's interest first."

CECIL ST. PIERRE
CITIZENS ALLIANCE PRESIDENT



St. Pierre would not talk to us on camera, but did release this statement:

"Citizens Alliance was formed to foster communication about important issues in our state among members of our community, and to promote social welfare. Our spaghetti luncheons did exactly that, connecting various elected officials and candidates with members of the public. This grassroots organization is driven by unpaid volunteers, who help on their personal time. Citizens Alliance

remains on watch, to hold accountable those elected officials who do not put the public's interest first."

We have requested the IRS forms from the non-profit again (multiple times in writing and in person) but so far St. Pierre has not provided them, despite IRS rules that require them to be available to the public.

The city employees who were at the luncheon have not returned our phone calls or emails asking for comment.

Ultimately, the petition drive did not gather enough signatures in time so the new term limits question did not make it onto the ballot. But questions still remain about who donated to the non-profit and why.

“Transparency in government is enormously important. We really have no insight into how that money is being spent.”

SIMON SCHUSTER
FORMER MICHIGAN CAMPAIGN FINANCE NETWORK DIRECTOR



“Transparency in government is enormously important,” said Schuster. “We really have no insight into how that money is being spent.”

The 7 Investigators did talk to Mayor Fouts by phone. He was asked at least five times to talk to us on camera about this, but would not grant us on interview. He did say he doesn’t know much about the non-profit group, even though he’s spoken at several of their events. He also said as long as his employees took the day off, he’s fine with them working at the Citizens Alliance event.

Fouts did also make a public Facebook post in late June saying he supported the Citizens for Term Limits Reform effort to change the term limits.

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Term Limited Candidates

In Michigan the number of terms an individual may serve in a certain elective office is limited. At the state level, those offices are:

State House of Representatives	Three two-year terms
State Senate	Two four-year terms
Governor	Two four-year terms
Lieutenant Governor	Two four-year terms
Attorney General	Two four-year terms
Secretary of State	Two four-year terms

Contact the County Clerk of the applicable county for information regarding term limits for city, county, township, school or village offices.

Authorized Expenditures: An officeholder who is barred from seeking reelection may **not** use his or her Candidate Committee to make election-related expenditures. An expenditure is defined as the payment or transfer of anything of ascertainable monetary value in assistance of, or in opposition to, the nomination or election of a candidate. An officeholder who is seeking election to a new elective office may not make expenditures for the nomination or election to the new office from the bank account of the Candidate Committee that was used to run for the term-limited office.

An officeholder who is constitutionally barred from seeking reelection may make the following types of expenditures or disbursements from his or her existing Candidate Committee bank account:

Disposing of Debts from a Previous Election Cycle: Debts may be carried forward and paid in subsequent election cycles. Section 52(6) of the MCFA, MCL 169.252(6), sets out the requirements for paying debts from a previous election cycle with funds received in a current election cycle. There are two options provided in Section 52(6) for the payment of debt from a previous election cycle.

Option 1: Written designation from contributor is required.

A contribution received by a candidate committee is considered to be for the current election cycle unless designated by the contributor for a previous election cycle. A designated contribution applies

only to the limit of the cycle so designated. A contributor can designate a contribution for a previous election cycle if:

- The designation is made in writing for a specific election cycle identified by the contributor by the date of the election or the year of the election.
- It can be substantiated that the contributor did not reach the contribution limit set for the candidate in the election cycle identified in the designation; and
- The designated contribution does not exceed the candidate committee's outstanding debts from the election cycle identified in the designation.

Option 2: Written designation from contributor is **not** required.

A contribution received by a candidate committee is considered to be for the current election cycle and is applied to the contribution limit of the current election cycle. The debt is paid using the current cycle funds without a written designation up to the contribution limit of the current cycle. The contribution limit of the previous cycle is not considered in this option. Once the contribution limit is reached, additional contributions from the contributor can only be used to pay debts from a previous election cycle using option 1 above.

Committees are encouraged to resolve all debts promptly to avoid future filing requirements and potential violations.

Make Disbursements For Incidental Office Expenses: The Candidate Committee account of a candidate who is holding office may be used to make disbursements to pay expenses that are incidental to holding that office. See the section on Incidental Expense Disbursements.

Transfer Unexpended Funds To Another Candidate Committee Held By The Same Person: See section on *Transfer of Funds*.

In-Kind Transfers: The remaining value of any transferred assets should be reported as an in-kind expenditure on the In-kind Expenditure Schedule. The recipient committee would report the receipt of the transferred assets as an in-kind contribution on the Itemized In-kind Contribution Schedule as "Goods or Services donated" with the description as "Transferred Assets".

Partial Terms: A candidate that is appointed or elected as a State Representative or State Senate is considered to serve one term if the partial term period is greater than half of a term for that office.



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

February 9, 2023

James R. Fouts
28107 St. Louise Drive
Warren, MI 48092

Re: *Craig v. Fouts*
Campaign Finance Complaint No. 23-015

Dear Mr. Fouts:

The Department of State (Department) has received a formal complaint filed against you by Thomas A. Craig alleging that you violated the Michigan Campaign Finance Act (MCFA or Act). Specifically, the complaint alleges that the Committee to Elect Jim Fouts is making campaign expenditures, including those for a letter advertising a “re-election party for Mayor Jim Fouts,” when you are term-limited from running for that position again. A copy of the complaint is included with this notice.

The Department’s candidate manual provides for term-limited candidates that officeholders who are barred from seeking reelection may not use their candidate committees to make election-related expenditures. In relevant part, the MCFA defines expenditure as a payment or transfer of anything of ascertainable monetary value in assistance of, or in opposition to, the nomination or election of a candidate. MCL 169.206.

The purpose of this letter is to inform you of the Department’s examination of these matters and your right to respond to the allegations before the Department proceeds further. It is important to understand that the Department is neither making this complaint nor accepting the allegations as true. The investigation and resolution of this complaint is governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.* An explanation of the process is included in the enclosed guidebook.

If you wish to file a written response to this complaint, you are required to do so within 15 business days of the date of this letter. Your response may include any written statement or additional documentary evidence you wish to submit. Materials may be emailed to BOERegulatory@michigan.gov or mailed to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918. If you fail to submit a response, the Department will render a decision based on the evidence furnished by the complainant.

A copy of your answer will be provided to Mr. Craig, who will have an opportunity to submit a rebuttal statement to the Department. After reviewing the statements and materials provided by the parties, the Department will determine whether “there may be reason to believe that a violation of [the MCFA] has occurred [.]” MCL 169.215(10). Note that the Department’s enforcement powers include the possibility of entering a conciliation agreement, conducting an administrative hearing, or referring this matter to the Attorney General for enforcement.

If you have any questions concerning this matter, you may contact the Regulatory Section of the Bureau of Elections at BOERegulatory@Michigan.gov.

Sincerely,

Regulatory Section
Bureau of Elections
Michigan Department of State

c: Thomas A. Craig

YORK, DOLAN & TOMLINSON, P.C.

Attorneys and Counselors at Law
22600 Hall Road, Suite 205
Clinton Township, Michigan 48036
586-263-5050
Fax 586-263-4763

John A. Dolan (jdolan@yorkdolanlaw.com)
Timothy D. Tomlinson (ttomlinson@yorkdolanlaw.com)
Linda M. McGrail (lmcgrail@workdolanlaw.com)

Fred A. York (1930-1989)

February 23, 2023

Via Email (BOERegulatory@Michigan.gov) & First Class Mail
Regulatory Section - Bureau of Elections
Michigan Department of State
Richard H. Austin Building, 1st Floor
430 W. Allegan
Lansing, MI 48918

RE: ***Craig v Fouts***
Campaign Finance Complaint No. 23-015
ANSWER TO COMPLAINT

Dear Sir/Madam:

I represent Mayor James R. Fouts in regard to the above-captioned matter. He has asked me to respond to your correspondence dated February 10, 2023. On behalf of Mayor Fouts, we respectfully state as follows:

1. **Complainant's Complaint is a Frivolous Collateral Attack on the Determination Made by the Warren Election Commission Regarding the Eligibility of James R. Fouts to Run for Mayor**

The complainant in this matter asserts that Mayor James R. Fouts is ineligible to run for mayor, and accordingly has violated the Campaign Finance Act by conducting a fundraiser associated with his re-election. Complainant appears to primarily rely on a series of news stories which he attaches, as well as the language of the Charter and the language of ballot proposal involving term limits.

Respondent submits that the complainant, a political ally of a present councilmember who has announced an intention to run for mayor, has deliberately omitted known facts in a misleading way.

At the request of elected City Clerk Sonja Buffa, City Attorney Ethan Vinson issued a legal opinion dated October 14, 2022. See Exhibit 1. The legal opinion concludes that James R. Fouts is eligible to run for re-election as mayor. Following an analysis of relevant legal principles, the City Attorney Vinson correctly concludes that the ballot language is insufficient to meet the high

legal standard required for “retroactivity” to apply, and that it fails to clearly and unequivocally notify electors that retroactivity is intended to apply to the actual ballot language. See attached Ex. 1.

Complainant further fails to disclose to the Bureau of Elections that the Warren City Election Commission met on November 8, 2022, considered and found James R. Fouts to be eligible as a candidate to run for mayor. MCL 168.321 provides that the qualifications and term of office of a city officer “must be in accordance with the charter provisions governing the city.” The Warren City Charter was amended by the electors on November 3, 2020. Notably, the Charter section enactment, Section 4.4(d), attached as Exhibit 2, within its terms makes no reference as to whether the limitations included are to be applied retroactively or prospectively only for future terms after the date of enactment.

James R. Fouts, as a citizen seeking election, is entitled to rely and proceed upon the rulings made by the public officials charged under State law and the Charter of the City of Warren with the duty of determining his eligibility for office. Further challenges to these determinations are properly ruled upon in proceedings authorized for such challenges, i.e. the Courts. Complainant cannot sidestep the proper process for challenging the eligibility of James R. Fouts by filing a Campaign Finance Act complaint. Determining whether a person is qualified for office involves proceedings in mandamus which is the correct legal remedy. *Barrow v City of Detroit Election Commission, et al*, 301 Mich App 404, 412-413 (2013). Furthermore, the complainant in this matter, as a citizen, explicitly has standing to bring such an action. *Berry v Garrett, et al*, 316 Mich App 37, 46-47 (2016). Currently pending in Macomb County Circuit Court is the case: *Ronald J. Papandrea v Warren City Election Commission for the City of Warren*, Case No. 2023-000493-AW. A copy of the Court’s docket information is attached as Exhibit 3. In this case, raised is the issue of whether James R. Fouts is eligible to run as a candidate for mayor of the City of Warren.

Proceedings before the Bureau of Elections in this matter initiated by complainant at its core involves the same legal issue pending in Court, whether James R. Fouts is eligible to run for the office of mayor of the City of Warren. The law contemplates that this issue properly be resolved in Court with the parties joined in proceedings who have legal duties involving the question.

2. The Ballot Question Underpinning the Charter Amendment from which Retroactivity is Claimed is Replete with Confusing, Inaccurate Assertions, and When Read as a Whole Does Not Establish Retroactivity Barring James R. Fouts from Running for Mayor.

Attached as Exhibit 4, and also, included in complainant’s complaint as Exhibit A, is the relevant City Charter amendment presented to the voters which is further set forth below:

City Charter Amendment
A proposal to require the office of mayor to have the same term limits
as the other city elected offices.

The proposed amendment would require all city elected offices to have the same term limits of three (3) terms or twelve (12) years. Currently the office of mayor has a limit of five (5) terms or twenty (20) years and the offices of city council, clerk, and treasurer have a limit of three (3) terms or twelve (12) years. Any terms or years served prior to this amendment are included.

PROPOSAL: Should the office of mayor have the same term limits as the other city elected offices, which is the greater of three (3) complete terms or twelve (12) years?

Suffice it to say, the language is a ball of confusion. The first sentence refers to all city offices having the same term limits of three (3) terms or twelve (12) years, yet the actual proposal is different referring to the greater of three (3) complete terms or twelve (12) years. So, which applies? Three (3) "terms" or three (3) "complete terms"? Further, which applies three (3) terms or twelve (12) years or the greater of three (3) complete terms or twelve (12) years? The confusion only gets worse. Next the reference is made to the current office of the mayor having a limit of five (5) terms or twenty (20) years, while the offices of city council, clerk and treasurer have a limit of three (3) terms or twelve (12) years. So now in the case of the office of mayor, the sentence is referring to what exists rather than what is proposed. We then move to the final sentence of this paragraph which says "any terms or years served prior to this amendment are included," so are we referring to the current existing terms for Mayor Fouts which includes terms or years served previously, or something else?

It is indisputable that the subject matter of the first paragraph, "three (3) complete terms or twelve (12) years" is substantially different from the subject matter of the second paragraph, "the greater of three (3) complete terms or twelve (12) years".

By any measure, the ballot language is not clear and not unequivocal. The high legal burden of retroactivity is not met.

Michigan law requires that retroactivity be clear, direct and unequivocal:

"The expression of an intent for a statute to apply retroactively must be clear, direct and unequivocal as it appears from the context of the statute itself." *Davis v State Employees Retirement Board*, 272 Mich App 151, 156-157 (2006).

As already noted by the City Attorney Vinson, the rules for interpreting city charters, and the ballot language from which they are derived are the same as those that govern an interpretation of statutes. *Gora v Ferndale*, 456 Mich 704, 711 (1998); *Barrow v Detroit Election Commission*, 301 Mich App 404, 413 (2013). Prospective application applies, unless the contrary intent is “clearly manifested.”

As stated, the same rules for interpreting statutes apply to city charters. *Barrow v Detroit Election Commission*, 301 Mich App 404, 413 (2013). “Statutes are presumed to operate prospectively, unless the contrary intent is clearly manifested.” *Frank v White Pine Copper Division*, 422 Mich 636, 671 (1985). The same is especially true if retroactive application impairs vested rights, creates new obligations,, and imposes a new duty, or attaches a disability with respect to a past transaction. *Frank* Id at 671-674.

James R. Fouts has endured unrelenting attacks by political enemies seeking to garner negative media attention directed toward him. This complaint and the failure of the complainant to reveal the relevant facts and appropriate parties involved in the process illustrate that this complaint is nothing more than a pretext to get Mayor Fouts negative media attention, meanwhile needlessly diverting State resources.

James R. Fouts, at this point and time, has every right to rely upon the determinations made by the City Attorney and Warren Election Commission, rather than adhere to the opinion of Mr. Craig as the issues raised are currently and properly pending determination in Macomb County Circuit Court. Thank you for your consideration. Should you have any question, or wish to discuss this matter further, please do not hesitate to contact the undersigned. We remain,

Very truly yours,

YORK, DOLAN & TOMLINSON, P.C.

John A. Dolan

John A. Dolan
Attorney for Mayor James R. Fouts
jdolan@yorkdolanlaw.com
(586) 321-9008

JAD/jabh
Attachments

EXHIBIT 1



RECEIVED

OCT 14 2022

Warren City Clerk

CITY ATTORNEY'S OFFICE

One City Square, Suite 400

WARREN, MI 48093

(586) 574-4671

FAX (586) 574-4530

www.cityofwarren.org

October 14, 2022

Ms. Sonja Djurovic Buffa
City Clerk
City of Warren

**Re: Request for an Opinion regarding the Application or Non-Application
of Charter Amendments to Sections 4.3(d), Section 4.4(d) of the Warren
City Charter to a Prospective Candidate for a City Office**

Dear Ms. Buffa:

You have requested that I provide you with a legal opinion regarding how the recent Charter amendments to sections 4.3(d) and 4.4(d) are to be applied. More specifically, the question raised, as I understand it, is whether or not the Mayor is precluded from seeking a fifth term as Mayor.

As you may recall, Mayor Fouts won his first term as Mayor in 2007. He has since been re-elected in 2011, 2015, and 2019. After the 2019 election, while he was serving his fourth term, a proposal was placed on the November 2020 ballot for voters in the City of Warren.

The 2020 proposal would require all city elected officials to have the same term limits of three (3) terms, or twelve (12) years. Prior to this proposal, the Office of the Mayor had a limit of five (5) terms, or twenty (20) years while the other elected city offices had a limit of three (3) terms, or twelve (12) years.

It is not clear that the term limit proposal may be applied to James Fouts. The Michigan Supreme Court has explained that unless there is a clear indication to the contrary, legislation is generally applied prospectively only.

Ms. Sonja Buffa
October 14, 2022
Page 2

"In determining whether a statute should be applied retroactively or prospectively only," [t] primary and overriding rule is that legislative intent governs. All of the rules of construction and operation are subservient to this principle." Frank v. White Pine Copper Division, 422 Mich 636, 670 (1985). Moreover, "Statutes are presumed to operate prospectively unless the contrary intent is clearly manifested. Id. at 671; see also Hughes v. Judges Retirement Bd., 407 Mich 75, 85 (1979). This is especially true if retroactive application of a statute would impair vested rights, create new obligation and imposing new duty, or attach a disability with respect to past transaction. See Frank Supra 671-674. See also Frank W. Lynch and Co. v. Flex Technologies, Inc., 463 Mich 578, 583 (2001).

The rules for interpreting City Charters are equivalent to those that govern interpretation of statutes. *Gora v. Ferndale*, 456 Mich 704, 711 (1998); *Barrow v. Detroit Election Commission*, 301 Mich App 404, 413 (2013). The proposal should be presumed to apply only prospectively "unless the contrary intent is clearly manifested." See discussion supra.

It is equally well established that courts may not read anything into legislation that is not plain from the wording of the law itself. See e.g., *Bay City v. Co. Treasurer*, 292 Mich App 156, 166-167 (2011); *Cherry Growers, Inc. v. Agricultural Marketing Bargaining Board*, 240 Mich App 153, 166 (2000). The ballot language did not express a clear intention for retroactive effect. The beginning of the proposal explains, "Currently the office of Mayor has a limit of five (5) terms or twenty (20) years..." The question voters decided was should the office of Mayor have the same term limits as the other City elected offices, which is the greater of three (3) complete terms or twelve (12) years?" In between these two statements, is the sentence, "Any terms or years served prior to this amendment are included."

This language is not a specific indication of retroactive effect. There is no explanation of what "terms or years served" are included in, then the ultimate question for voters said nothing about retroactive effect or impact on current office holders. Warren voters could easily have voted in favor of a proposal without intending to make the Mayor's extant fourth term illegal. In the two years since the proposal was approved, no one has come forward to challenge the Mayor's ability to continue as Mayor, despite his having been in office for more than twelve (12) years.

Ms. Sonja Buffa
October 14, 2022
Page 3

Moreover, the plain language of the proposal reveals it was an effort to control the office of Mayor. The proposal goes out of its way to announce that the term limits applicable to the office of the city council, clerk, and treasurer are shorter than for mayor. If the intention was to put Mayor Fouts out of office and make him ineligible for a fifth term, the ultimate question in the Proposal, as it appeared on the ballot, should have read: "Should Mayor Fouts and all future Mayors be limited to three (3) terms in office?" or "should Warren adopt a policy that applies to the future as well as the past, holding all the elected officials of city government have the same term limits of three (3) complete terms or twelve (12) years - whichever is greater?"

This is especially true given the wording of the November 3, 1998 ballot proposal to amend the Charter which included the phrase, "This limitation on the number of terms a person may hold office, shall include the term the office that took effect after the November 7, 1995 election." Whoever drafted the 2020 proposal must have been aware of the November 3, 1998 proposal on term limits, and his or her decision to submit such language argues against finding a "clear manifestation of an intent for retroactive effect".

There is no clear expression of retroactive effect and voters may not have understood a "yes" vote on the proposal to bar Mayor Fouts from serving beyond twelve (12) years and/or seeking a fifth term. Consequently, it is my opinion that the Warren City Charter amendment on term limits approved by the citizens in the 2020 ballot proposal does not prohibit James Fouts from appearing on the ballot in search of a fifth term for office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ethan Vinson", with a stylized flourish at the end.

Ethan Vinson
City Attorney

EXHIBIT 2

Sec. 4.4 - Terms of office.

- (a) The terms of office of all elective officers shall be two years, commencing on and dating from the Monday following their election, unless otherwise provided in this charter.
- (b) Each appointive officer, except members of boards, shall serve at the pleasure of the officer or authority appointing him. The term of office of each appointive officer to serve on any city board except the library board, the board of review, and the civil service commission of the policemen's and firemen's civil service plan, shall be for three years and shall commence on that date from July 1 of the year in which his appointment is made, except where the appointment is to fill a vacancy.
- (c) With the consent of the council, and for so long as the council shall permit, an officer may continue, provisionally, in the office held by him, after the expiration of his term, until his successor has been elected or appointed and has qualified for the office.
- (d) A person shall not be eligible to hold the position of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

(Res. of 7-14-98; Amended by electors on 8-2-16; Res. of 06-30-20, amended by electors on 11-3-20)

EXHIBIT 3

2023-000493-AW PAPANDREA, RONALD J vs. WARREN CITY ELECTION COMMISSION FOR THE CITY OF WA JT

- Case Type:
AW-OTHER WRITS
- Case Status:
Open
- File Date:
02/10/2023
- DCM Track:
- Action:
COMPLAINT FILED - CIVIL
- Status Date:
02/10/2023
- Case Judge:
TOIA, JOSEPH
- Next Event:
03/06/2023

All Information Docket Party Event Financial Receipt Disposition

Docket Information

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Amount Due</u>
02/10/2023	ENTRY FEE	ENTRY FEE Receipt: 1366739 Date: 02/10/2023	\$150.00	\$0.00
02/10/2023	ELECTRONIC FILING SYSTEM FEE - CIVIL	ELECTRONIC FILING SYSTEM FEE - CIVIL Receipt: 1366739 Date: 02/10/2023	\$25.00	\$0.00
02/10/2023	COMPLAINT/PETITION FILED - CIVIL	COMPLAINT/PETITION FILED - CIVIL WITH INDEX OF EXHIBITS AND EXHIBITS RONALD J PAPANDREA (APPELLANT); WARREN CITY ELECTION COMMISSION FOR THE CITY OF WA (APPELLEE);		
02/10/2023	SUMMONS ISSUED	SUMMONS ISSUED *EXP 5/12/23*		
02/10/2023	CASE PLACED ON E-FILING STATUS PER ADMINISTRATIVE ORDER 2010-6	CASE PLACED ON E-FILING STATUS PER ADMINISTRATIVE ORDER 2010-6		
02/10/2023	MOTION FOR ORDER TO SHOW CAUSE	PLTS MOTION FOR IMMEDIATE EX PARTE ORDER TO SHOW CAUSE WITH PROPOSED ORDER		
02/17/2023	ORDER SIGNED:	ORDER TO SHOW CAUSE - SGD/JT		
02/17/2023	SHOW CAUSE HEARING SCHEDULED	SHOW CAUSE HEARING SCHEDULED Event: SHOW CAUSE HEARING Date: 03/06/2023 Time: 10:30 am Judge: TOIA, JOSEPH Location: COURT BUILDING - 4TH FLOOR - COURTROOM 4SW		
02/17/2023	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=118232677)		
02/22/2023	APPEARANCE (LITIGANT'S ATTORNEY)	APPEARANCE (LITIGANT'S ATTORNEY) (OBDH=118338929) APPEARANCE (LITIGANTS ATTORNEY) WARREN CITY ELECTION COMMISSION FOR THE CITY OF WA (APPELLEE);		
02/22/2023	TRUEFILING PROOF OF SERVICE	TRUEFILING PROOF OF SERVICE (OBDH=118338923)		

EXHIBIT 4

EXHIBIT A

Warren

City Charter Amendment

A proposal to require the office of mayor to have the same term limits as the other city elected offices

The proposed amendment would require all city elected offices to have the same term limits of three (3) terms or twelve (12) years. Currently the office of mayor has a limit of five (5) terms or twenty (20) years and the offices of city council, clerk, and treasurer have a limit of (3) three terms or twelve (12) years. Any terms or years served prior to this amendment are included.

PROPOSAL: Should the office of mayor have the same term limits as the other city elected offices, which is the greater of three (3) complete terms or twelve (12) years?

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 16th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 2023-000493 -AW
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Court address

40 N. Main St., Mt. Clemens, MI 48043

Court telephone no.
(586) 469-7171

Plaintiff's name(s), address(es), and telephone no(s).

Ronald J. Papandrea

v

Defendant's name(s), address(es), and telephone no(s).

Warren City Election Commission for the City of Warren
1 City Square
Warren, MI 48093

Plaintiff's attorney, bar no., address, and telephone no.

Ronald J. Papandrea (P26581)
Plaintiff, In Pro Per
29432 Dequindre Rd., Apt. 104
Warren, MI 48092

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ 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 ☐ this court, ☐ _____ Court, where

it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date

FEB 10 2023

Expiration date*

MAY 12 2023

Court clerk

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

MC 01 (9/19) **SUMMONS**

MCR 1.409(D), MCR 2.102(B), MCR 2.103, MCR 2.104, MCR 2.105
ANTHONY G. FORLINI

SUMMONS

Case No. _____

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____

List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
Attachments

_____ on _____
Day, date, time

Signature _____ on behalf of _____

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

RONALD J. PAPANDREA,

Plaintiff, In Pro Per,

v.

Case No.: 2023- 000493 -AW
Hon.:

WARREN CITY ELECTION
COMMISSION FOR THE CITY
OF WARREN,

Defendant.

**JOSEPH TOIA
RECEIVED**

FEB 10 2023

ANTHONY G. FORLINI
Macomb County Clerk

RONALD J. PAPANDREA (P26581)
Plaintiff, In Pro Per
29432 Dequindre Rd., Apt. 104
Warren, MI 48092
(586) 925-2580
ronpapandrea@gmail.com

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

NOW COMES Plaintiff, Ronald J. Papandrea, In Pro Per, and for his Verified
Complaint for a Writ of Mandamus and Declaratory Relief, states:

Parties Jurisdiction and Venue

1. Plaintiff is a resident of the City of Warren in Macomb County, Michigan. He is a lifetime resident of the City of Warren and is a former City Attorney. He is currently a Warren City Councilman in District 1 and Candidate for Mayor. He filed to run for election to the office for Mayor in 2023. He is currently actively campaigning for

election to the office for Mayor of Warren City and plans to vote in the primary election and general election to be held in August and November 2023, respectively.

2. Defendant, Warren City Election Commission, is a commission of the City of Warren, a municipal corporation in Macomb County, Michigan organized under the Home Rule City Act, MCL 117.1 *et seq.* The Warren City Election Commission is established pursuant to the Warren City Charter and subject to the charter and ordinances of the City of Warren as well as the laws of the United States and the State of Michigan.

3. The Circuit Court has jurisdiction over claims for mandamus and other relief under the Home Rule City Act and the Michigan Election Law. See MCL 117.25(7), MCL 168.590f(1), MCL 168.552(6), and MCR 3.3005(A)(2).

4. The Circuit Court has jurisdiction over claims for declaratory relief. MCR 2.605.

5. Venue is proper because the City of Warren is a municipal corporation exercising its authority in Macomb County, Michigan, and Sonja Buffa is an officer of that municipal corporation. MCL 600.1615, MCL 117.25(7), and MCR 3.305(B)(1).

The City Charter

6. Plaintiff incorporates the preceding paragraphs.

7. The City of Warren is a home rule city.

8. Voters of the City of Warren have approved a locally drafted city charter in accordance with the Home Rule City Act, MCL 117.1 *et seq.*

9. The Warren city charter provides that the mayor, the seven council members, the city clerk, and the treasurer are the elected officers of the City. **(Exhibit**

A - Relevant Sections of the Warren City Charter at §4.1)

10. The Home Rule City Act provides that a charter must provide for the election of a legislative body and for the qualifications and duties of the members of that legislative body and the other officers of the City. MCL 117.3(a) and (d).

11. The city charter provides, among other duties, the city clerk is the chief elections officer of the City. **(Exhibit A at §7.11(7))**

12. The city charter also provides that a registered elector who has resided in the City for at least two years preceding the election or appointment is eligible to hold the office of city clerk and the other elected offices. **(Exhibit A at §4.2)**

13. The city charter further provides that certain people are ineligible to hold City office. **(Exhibit A at §4.3)**

14. In relevant part, §4.3(d) of the city charter now provides the term limits. **(Exhibit A at §4.3(d))**

15. In addition, §4.4(d) of the city charter provides in relevant part the term limits for mayor. **(Exhibit A at §4.4(d))**

16. The city charter also provides for the manner of elections for city offices. **(Exhibit A at Chapter 13, §13.1 - §13.26)**

17. The city charter also creates an election commission for the City that consists of the city clerk, the city attorney, and the city assessor. **(Exhibit A at §3.11)**

18. The Warren City Election Commission has the duty to prepare and print ballots for City elections and to have general supervision over all elections in the City.

(Exhibit A at §13.15)

19. Elections for city offices are held in November of the odd-numbered year (e.g. 2015 and 2019) with a primary held in August of that year if there are a sufficient number of candidates to justify a primary. If, however, there are not a sufficient number of candidates, then no primary is held. **(Exhibit A at §13.5)**

20. The city charter provides the length of each term for the office of city council is 2 years, but the actual length of each term is 4 years pursuant to resolution of the city council, as permitted by State law.

The Office of Mayor Its Organization and Term Limits

21. Plaintiff incorporates the preceding paragraphs.

22. The legislative power of the city is vested in the city council. **(Exhibit A)**

23. The city charter's provisions regarding the Mayor has been amended a number of times over the past 25 years.

24. Before 1998, the city council consisted of 9 members elected at large that corresponded to the entire city.

25. In 1998, the city charter was amended to provide for term limits of 3 years or 12 years on the position of Mayor.

26. The 2010 amendments to the City Charter did not amend the term limits sections in §§ 4.3(d) and 4.4(d).

27. In 2016, the voters amended Sections 4.3(d) and 4.4(d) of the city charter to extend the Mayor's term limits to the greater of 5 complete terms or 20 years in office and to count all years of service in city elective office, not just those years or terms after 1995, by striking the following sentence from Sections 4.3(d) and 4.4(d): "This provision

shall be applied to commence with the term of the office that took effect after the election on November 7, 1995." **(Exhibit B – 2016 Charter Amendment Resolution available at https://www.cityofwarren.org/images/stories/city-council/agenda/4.12.2016_CC_ePacket.pdf, last retrieved May 9, 2019)**

28. The City Council Resolution adopted April 12, 2016 also shows the ballot language that was submitted to the electors in 2016: .

"Shall the Charter of the City of Warren (sections 4.3(d) and 4.4(d)) be amended to extend the term limits for the office of mayor from the greater of (3) complete terms or 12 years, to the greater of five (5) complete terms 'or 20 years? Any years or terms served prior to this amendment are included." **Exhibit B** (emphasis added).

29. The assertion by the City Council 'in the ballot language summarizing the ballot proposal to the voters indicated that "[a]ny years or terms served prior to this amendment are included." **(Exhibit B)**

30. As a result of the 2016 amendment all years and terms served prior to 1995 are subject to the term limit provisions and included when applying term limits.

31. Another City Council Resolution was made in 2016 whereby the Mayor's term of office was changed back to 12 years. **(Exhibit C)**

32. The ballot language was approved and passed by the electorate and the Charter once again.

The 2023 Election for the Office of Mayor

32. Plaintiff incorporates the preceding paragraphs.

33. The filing deadline for city offices for the 2023 city elections is April 2023 and the withdrawal deadline was April 2023.

34. Candidates for city offices filed their candidacy with the City Clerk in its capacity as Warren City Clerk.

35. The City Clerk and Defendant, Election Commission, have the duty under the City Charter to "prepare and print election ballots (or ballot labels or slips to be placed on voting machines if used) for all city officers for whom the electors are entitled to vote..." **(Exhibit A at § 13.15(2)(emphasis added))**

36. The City Clerk and Defendant, Election Commission, also have statutory duties to print and prepare election ballots and submit the names of only the eligible candidates for the primary election pursuant to Michigan Election Law at MCL 168.323 and MCL 168.719. **(Exhibit G)**

37. Evaluation of the candidates for the office of mayor in accordance with the standards set forth in the Warren City Charter, the Home Rule City Act, the Michigan Election Law, and other applicable law should not have resulted in placement of Mayor Fouts who will have served 3 or more terms in the office of the Mayor City on the ballot for the August 2023 primary election should not have been approved by the Defendant, Elections Commission.

38. The voters of Warren are not entitled to vote for candidates that are not eligible to run for the office of mayor.

39. The City Attorney, Ethan Vinson, has opined in a written opinion dated October 14, 2022 that the Mayor is eligible to run for the office of mayor in 2023. **(Exhibit B)**

Count I — Mandamus

40. Plaintiff incorporates the preceding paragraphs.

41. Plaintiff has a clear legal right to vote and stand as a candidate in an election that is conducted fairly and in accordance with Michigan law and to have Defendants evaluate Mayor Fouts candidacy and the candidacy of the other candidates in accordance with the standards set forth in the Warren City Charter, the Home Rule City Act, the Michigan Election Law, and other applicable law.

42. Defendant, Election Commission, had a clear legal duty to evaluate Mayor Fouts candidacy and the candidacy of the other candidates in accordance with the standards set forth in the Warren City Charter, the Home Rule City Act, the Michigan Election Law, and other applicable law.

43. If a candidate meets the legal standards set forth in the Warren City Charter, the Home Rule City Act, the Michigan Election Law, and other applicable law, Defendants must accept and certify the candidate.

44. In contrast, if a candidate does not meet the legal standards set forth in the Warren City Charter, the Home Rule City Act, the Michigan Election Law, and other applicable law, Defendant, Election Commission must not accept and certify the candidate.

45. Accepting and certifying an individual's candidacy in accordance with the legal standards set forth in the Warren City Charter, the Home Rule City Act, the Michigan Election Law, and other applicable law involves no exercise of discretion or judgment by Defendant.

46. Defendant has breached its clear legal duties by certifying Mayor Fouts who will have served 3 or more terms in the office of City Council and placing their names on the ballot for the August 2023 primary election.

47. The Home Rule City Act provides that a person aggrieved by the actions of the Election Commission may bring an action for mandamus. MCL 117.25(7).

48. Similarly, the Michigan Election Law provides that a person who has filed a qualifying petition for nomination to nonpartisan local elected office may bring an action for mandamus against the official receiving the petition. MCL 168.590f(1) and MCL 168.552(6).

49. Mandamus is the only remedy that will achieve the results needed by Plaintiff: certification of the eligible candidates and decertification of the ineligible candidates with the corresponding placement of the proper names on the ballot at the August 2023 primary election.

Wherefore, Plaintiff requests this Honorable Court issue a Writ of Mandamus that:

A. Compels Defendant to remove the names of candidates who will have served 3 or more terms in the office of Mayor from the ballot for the August 2023 primary election;

B. Orders Defendant to pay attorney fees, costs, and expenses; and

C. Grants all other relief to which Plaintiff may be entitled.

Count II — Declarator Relief

50. Plaintiff incorporates the preceding paragraphs.

51. Defendants have certified Mayor Fouts who have served 3 or more terms in the office of City Council and placed the names of that candidate on the ballot for the August 2023 primary election.

52. Defendant, Election Commission, violated the Warren City Charter, the Home Rule City Act, the Michigan Election Law, and other applicable law.

53. Under Michigan law, this Court may determine and declare the rights and interest of the parties in cases of actual controversy. MCR 2.605.

54. An actual justiciable controversy exists between the parties as to conduct of this election and the placement of names on the ballot, which can be determined by a declaratory judgment. MCR 2.605.

Wherefore, Plaintiff requests this Honorable Court issue a judgment that:

A. Declares Defendant have a duty to remove a candidate, Mayor Fouts, who has served 3 or more terms in the office of City Council from the ballot for the August 2023 primary election;

B. Orders Defendant to pay attorney fees, costs, and expenses; and

C. Grants all other relief to which Plaintiff may be entitled.

I declare under the penalties of perjury that the foregoing statements are true to the best of my knowledge, information, and belief.

Dated: 2/10/2023

Ronald J. Papandrea
RONALD J. PAPANDREA
Plaintiff, In Pro Per
29432 Dequindre Rd., Apt. 104
Warren, MI 48092
(586) 925-2580
ronpapandrea@gmail.com

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

RONALD J. PAPANDREA,

Plaintiff, In Pro Per,

v.

Case No.: 2023-
Hon.:

-AW

WARREN CITY ELECTION
COMMISSION FOR THE CITY
OF WARREN,

Defendant.

RONALD J. PAPANDREA (P26581)
Plaintiff, In Pro Per
29432 Dequindre Rd., Apt. 104
Warren, MI 48092
(586) 925-2580
ronpapandrea@gmail.com

INDEX OF EXHIBITS TO PLAINTIFF'S COMPLAINT

NOW COMES Plaintiff, Ronald J. Papandrea, In Pro Per, and lists the following exhibits submitted in support of his Complaint:

<u>Exhibit</u>	<u>Description</u>
A.	Relevant Sections of the Warren City Charter
B.	Legal Opinion
C.	2016 Charter Amendment Resolution
D.	2020 Resolution and Charter Amendment
E.	Mayor Fouts request to be on ballot for August 2023 Primary
F.	Sonja Buffa request for opinion from City of Warren Attorney

Dated: 2/10/2023

Ronald J. Papandrea

RONALD J. PAPANDREA

Plaintiff, In Pro Per

29432 Dequindre Rd., Apt. 104

Warren, MI 48092

(586) 925-2580

ronpapandrea@gmail.com

EXHIBIT A

RECEIVED

FEB 10 2023

ANTHONY G. FORLINI
Macomb County Clerk

CHAPTER 4. - OFFICERS

Sec. 4.1 - City officers.

- (a) The elective officers shall be the mayor, the seven council members, the clerk, and treasurer.
- (b) The appointive officers shall be the city attorney, the assessor, the controller, the police commissioner, the fire commissioner, the director of public service and other department heads, and members of the several boards and commissions created by or under authority of this charter.

(Amended by electors on 11-2-10)

Editor's note— The municipal court was abolished by MCL 600.9921, which created the district court system.

State Law reference— Mandatory that Charter provide for election or appointment of a mayor, clerk and treasurer, and such officers as may be deemed necessary, MCL 117.3(a).

Sec. 4.2 - Eligibility for city office; general qualifications.

Except as otherwise provided in this charter, a person is eligible to hold an elective city office if he has been a registered elector of the city, or of territory annexed to the city, or both, for at least two years immediately preceding his election or appointment. This requirement may be waived as to persons appointed to the offices of assessor, controller, and any office created by the council, other than membership on a board, by resolution concurred in by not less than five members of the council. When such requirement is waived, the appointment shall be provisional, until the appointee becomes a registered elector of the city. No person shall hold office under a provisional appointment after one year from the date of his first appointment. The council shall be the judge of the election and qualifications of its members, subject to the general election laws of the state and review by the courts, upon appeal.

State Law reference— Mandatory that Charter provide for qualifications of its officers, MCL 117.3(d).

Sec. 4.3 - Certain persons ineligible for city office.

- (a) A person who has been convicted of violating any provision of the election laws of the state or of the city, or who has been convicted of a felony or of an offense involving a violation of his oath of office, or who is in default to the city, shall not be eligible for any city office.
- (b) No person shall simultaneously hold two city offices or a city office and a city employment, nor shall any person simultaneously hold an elective city office and an elective county and school district office. No person who holds an elective county or school district office shall be eligible to qualify for or to assume an elective city office to which he has been elected, until he first resigns from the elective county or school office held by him. Any elective officer who assumes an elective county or school district office shall thereupon be deemed to have vacated the city office held by him.
- (c) A person who holds or has held an elective city office shall not be eligible for appointment to a city office or employment, for which compensation is paid by the city, until one year has elapsed following the term for which he was elected or appointed.
- (d) A person shall not be eligible to hold the office of mayor for more than the greater of five (5) complete terms or twenty (20) years. A person shall not be eligible to hold the position of city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that office.

(Res. of 7-14-98; Amended by electors on 8-2-16)

State Law reference— Mandatory that Charter provide for qualifications of its officers, MCL 117.3(d).

Sec. 4.4 - Terms of office.

- (a) The terms of office of all elective officers shall be two years, commencing on and dating from the Monday following their election, unless otherwise provided in this charter.
- (b) Each appointive officer, except members of boards, shall serve at the pleasure of the officer or authority appointing him. The term of office of each appointive officer to serve on any city board except the library board, the board of review, and the civil service commission of the policemen's and firemen's civil service plan, shall be for three years and shall commence on that date from July 1 of the year in which his appointment is made, except where the appointment is to fill a vacancy.
- (c) With the consent of the council, and for so long as the council shall permit, an officer may continue, provisionally, in the office held by him, after the expiration of his term, until his successor has been elected or appointed and has qualified for the office.
- (d) A person shall not be eligible to hold the office of mayor for more than the greater of five (5) complete terms or twenty (20) years. A person shall not be eligible to hold the position of city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

(Res. of 7-14-98; Amended by electors on 8-2-16)

Sec. 4.5 - Notice of appointments.

Within three days after a person has been elected to office or an appointment has been made or confirmed, if confirmation is required, the clerk shall mail to the person elected or appointed a certificate of such election or appointment.

Sec. 4.6 - Compensation of officers.

The council shall fix the compensation for all officers, except as otherwise provided by law. The council shall not act to change the compensation of any elected officer after the thirtieth day preceding the last day for filing nomination petitions for that office, or of an appointive officer, serving for a definite term, after his appointment. Reasonable expenses may be allowed to officers when actually incurred and after they have been audited by the controller.

State Law reference— Mandatory that Charter provide for the compensation of its officers, MCL 117.3(d).

Sec. 4.7 - Oath of office.

Every officer, before entering upon his duties, and all employees designated by the council, before entering upon their employment, shall take and subscribe to the oath prescribed by Section 2 of Article XVI of the Constitution, and shall file the same with the clerk. Such oath shall, in each case be taken and subscribed before the clerk, except that the clerk shall do so before the mayor.

Editor's note— The constitutional oath of office found in Article XVI, Section 2 of the 1908 Michigan Constitution was incorporated without change into Article XI, Section 1 of the 1963 Michigan Constitution.

Sec. 4.8 - Surety bonds.

The council may require any officer or employee to give a bond, to be approved by the city attorney, in such sum as the council determines. The bond shall be conditioned upon the faithful and proper performance of the duties of the office or employment concerned. All officers and employees who receive, distribute, or are responsible for city funds or investments shall be bonded. The resignation, removal, or discharge of any officer or employee, or the appointment of another person to the office or employment, shall not exonerate the officer or employee or his sureties from any liability incurred by them. All official bonds shall be corporate surety bonds and the premiums thereof shall be paid by the city. No official bonds shall be issued for a term exceeding three years, except bonds which are required of officers serving terms of office which are longer than three years. No bond shall be renewed upon its expiration but a new bond shall be furnished in each case. The bonds of all officers and employees shall be filed with the clerk, except that the clerk's bond, unless he is covered within the scope of a blanket surety bond, shall be filed with the treasurer. The requirements of this section may be met by the purchase by the city of one or more blanket corporate surety bonds covering all or any group or groups of the officers and employments of the city. Any officer or employee who is covered by a blanket surety bond need not be bonded individually for the purpose of qualifying for office.

Sec. 4.9 - Giving of surety by officers forbidden.

No officer shall give or furnish any bail or recognizance in connection with any complaint or warrant charging the violation of a city ordinance, give or become surety, or be the agent of any surety or insurer in connection with any license granted by the city or with respect to which the approval of the council or any officer of the city is required. A violation of this section shall be a violation of this charter.

Sec. 4.10 - Vacancies of office.

A city office shall become vacant upon the occurrence of any of the following events: expiration of the term of office; death of the incumbent; resignation; removal from office; ceasing to be an inhabitant of the city; conviction of an infamous crime or of an offense involving a violation of oath of office, default to the city, unless such default is eliminated within thirty days after written notice thereof by the clerk upon the direction of the council, or, unless the officer, in good faith, contests his liability for the default; a decision of a competent tribunal declaring the officer's election or appointment void; failure to take the oath or file the bond required for the office within ten days from the date of election or appointment or within such other time as the council may fix; in the case of councilmen, absence from four consecutive regular meetings of the council unless such absences be excused by the council at the time they occur, or from ten regular meetings in any calendar year; in the case of other elective officers, absence from the city or failure to perform the duties of such office for ninety days, unless such absence from the city or failure to perform the duties of office shall be excused by the council prior to the expiration of such ninety day period; or any other event which, by law, creates a vacancy. In any case, absence from council meetings or from the city on city business at the direction or with the approval of the council shall not be included in the number of meetings or duration of absence set herein for creating a vacancy.

Sec. 4.11 - Resignations.

A resignation from office shall become effective immediately upon the acceptance thereof by the appointing authority in the case of appointive officers, and by the council in the case of elective officers. Resignations of elective officers shall be made in writing and filed with the clerk. Resignations of appointive officers shall be made in writing to the appointing officer. The appointing officer or the clerk, as the case may be[,] shall announce the resignation of any officer to the council at its next meeting.

Sec. 4.12 - Removal of officers.

- (a) With the consent of the council, the mayor may remove any appointive officer whose appointment was required to be approved by the council. He may suspend any such officer pending an investigation of any complaint or charge against him.

- (b) Officers appointed by the mayor not requiring council confirmation, may be suspended or removed by him at any time.

Sec. 4.13 - Recall.

An elective officer may be recalled, and the vacancy thereby created shall be filled, in the manner prescribed by law.

State Law reference— Permissible that Charter provide for recall of its officers, MCL 117.4i(6); recall generally, MCL 168.951 et seq. See also Mich. Const. 1963, Art. 11, § 8.

Sec. 4.14 - Filling vacancies.

- (a) If a vacancy occurs in the office of city clerk, city treasurer, or one of the five city council districts, other than by recall, the council shall, within thirty days thereafter fill the vacancy for the balance of the unexpired term thereof.
- (b) If a vacancy occurs in the membership of council at-large district, the unexpired term of such member shall be filled by the person receiving the highest number of votes of those who did not finish in the top two at the last council election. If for any reason said person would not then qualify for said office, the unexpired term would pass to the next highest eligible vote recipient of said election. However, if the vacancy occurs in the membership of any council position within forty days prior to a regular city election, it shall not be filled.
- (c) Except as otherwise provided in this charter, if a vacancy occurs in an appointive office, such vacancy shall be filled within thirty days thereafter in the manner provided for making the original appointment: provided that such time may be extended, for not to exceed sixty days[,] by council resolution setting forth the reasons therefor. (Amended by electors on 11-8-77; amended by electors on 11-2-10)

Sec. 4.15 - Delivery of office to successor.

Whenever an officer or employee resigns, or is removed from office, or his tenure in office expires, he shall deliver, forthwith, to his successor in the office or to the mayor all books, records, papers, moneys, and effects in his custody which were necessary to or were obtained as a part of the performance of his duties. A violation of this section shall be a violation of this charter.

CHAPTER 5. - THE CITY COUNCIL

Sec. 5.1 - The city council.

- (a) The council shall consist of seven members, one of whom shall be the mayor pro-tem. There shall be five council districts and one at-large district established in the city. One member shall be elected from each of the five (5) council districts and two members shall be elected at-large. Each candidate for a city council district shall be a resident of the council district he or she seeks to represent. A city council member's office is vacated if the member moves his or her residence outside of the council district that the member represents.
- (b) Within 60 days after voter approval of the charter amendment herein, the redistricting commission shall meet and adopt an apportionment plan for the five (5) council districts. The redistricting commission shall consist of five (5) members, which shall be the three (3) members of the election commission and 2 citizen representatives appointed by the mayor and confirmed by the city council. The redistricting commission shall thereafter meet within 30 days after publication of the latest official figures of the federal decennial census to reapportion the city. The city redistricting commission shall adopt its own rules of procedure. Three (3) members constitute a quorum and all actions shall be by majority vote. The redistricting commission shall provide for equal representation for each single-member council district, and each single-member council district shall be as nearly equal in

population and compact as is practicable based on the latest federal decennial census. In subsequent reapportionments, the apportionment plan shall make only incremental changes to the single-member election district boundaries that are necessary to accommodate population change requirements. Each single-member election district shall be designated by number.

- (c) Candidates seeking nomination for the office of city council shall continue to follow section 13.6 of this charter. However, a candidate for city council district member may submit a petition signed by a number of voters of the district equal in number to not less than one per cent nor more than four per cent of the number of votes cast in the district for the office of secretary of state at the last preceding November election. In lieu of a petition, all candidates may submit a \$100 filing fee pursuant to the provisions in section 13.6 of this charter.
- (d) Any charter provision which requires the affirmative majority vote of five (5) members of the council is hereby superseded and shall hereafter require the affirmative vote of four (4) members of council. Any charter provision which requires a supermajority vote of six (6) members of the council is hereby superseded and shall hereafter require the affirmative vote of five (5) members of council. Four (4) members of city council shall constitute a quorum.

(Amended by electors on 11-2-10)

Editor's note— Compensation of the council has been superseded by Code of Ordinances Section 2-181 et seq., which created the Local Officers Compensation Commission pursuant to MCL 117.5c.

State Law reference— Mandatory that Charter provide for election of a body vested with legislative power, MCL 117.3(a).

Sec. 5.2 - Organization of the council.

The council shall meet and organize on the first Monday following each regular city election. At such meeting, or within two weeks thereafter, the council shall appoint such standing committees as it shall deem fit and do such other acts as may be required for its organization and the conduct of its business. The council shall appoint a secretary of the council who shall attend all its meetings and keep a permanent journal, in [the] English language, of its proceedings, which journal shall become official when approved by the council and filed with the clerk.

State Law reference— Mandatory that Charter provide for keeping of a journal of every session, MCL 117.3(m).

Sec. 5.3 - Meetings of the council.

- (a) The council shall meet in the established council chambers or such other place as may be established by ordinance and shall hold at least two regular meetings in each month. All regular meetings of the council shall be held in the evening at the time and on the days established by ordinance. If any time set for the holding of a regular meeting of the council shall be a holiday, then such regular meeting shall be held at the same time and place on the next secular day which is not a holiday.
- (b) Special meetings of the council shall be held at the regular meeting place of the council. Special meetings shall be called by the secretary of the council on the written request of the mayor or any three members of the council, on at least six hours written notice to each member of the council, designating the time and purpose of such meeting, and served personally on each member of the council, or left at his usual place of residence by the secretary of the council or by someone designated by him. Notwithstanding the foregoing requirements for the calling of special meetings,

any special meeting of the council shall be a legal special meeting if all members are present thereat, or in the event that any member or members be absent, if all absent members have, in writing, waived the requirement that notice be given: provided, that a quorum be present. At the time of sending out or the delivery of notices for any special meeting, a copy of the notice of such meeting shall be also sent out or delivered to the offices of the newspaper or newspapers published in the city. Proof of the service of notices required by this section or of the waiver thereof shall be entered in the journal of such meeting. (Amended by electors on 4-3-61)

- (c) No business shall be transacted at any special meeting of the council, except that stated in the notice of the meeting.
- (d) All regular and special meetings of the council shall be public meetings and the public shall have a reasonable opportunity to be heard.
- (e) Five members of the council shall be a quorum for the transaction of business at all of its meetings. In the absence of a quorum, any number less than a quorum may adjourn any meeting to a later date.
- (f) The council shall determine its own rules and order of business and shall keep a journal, in the English language, or all its proceedings. The journal of each meeting of the council shall be signed by the secretary of the council. The vote upon the passage of all ordinances, and upon the adoption of all resolutions shall be taken by "yes" or "no" votes and shall be entered upon the record, except that, where the vote is unanimous, it shall only be necessary to so state. The public shall have access to the minutes and records of all regular and special meetings of the council.
- (g) The secretary of the council shall prepare an agenda of business to be considered at each regular council meeting, and, except when this rule is waived by the affirmative vote of five members of the council, no item of business shall be placed on the agenda for a council meeting, unless notice thereof was filed in the office of the secretary of the council by 5:00 o'clock, p.m., on the third secular day preceding such meeting. The council shall prescribe by rule the items of routine business which shall be placed on each agenda without the necessity of giving notice thereof to the secretary of the council. The council may consider any matter not on the agenda by the vote of five members.
- (h) Each member of the council shall attend all council meetings. The council may compel the attendance of its own members and of all other officers and department heads of the city at its meetings, and may enforce fines for nonattendance in such amount and manner as it may, by ordinance, prescribe. Any member of the council, or other officer of the city, who refuses to attend such meetings, for reasons other than confining illness, or to conduct himself in an orderly manner thereat, shall be deemed guilty of a violation of this charter. The police chief, or such other person as the council shall designate, shall serve as the sergeant-at-arms of the council in the enforcement of the provisions of this section to maintain order at council meetings.
- (i) Each member of the council shall vote on each question before the council for a determination, unless excused therefrom by the affirmative vote of at least five of the members, but no member of the council shall vote on any question upon which he has a private interest or a financial interest other than as a citizen of the city. If a question is raised under this section at any council meeting, such question shall be determined before the main question shall be voted on, but the council member affected shall not vote on such determination.
- (j) Except in those cases where a large majority is required by law or the provisions of this charter, no ordinance or resolution shall be adopted or passed, nor shall any other official action be taken, except by the affirmative vote of at least five members.

Editor's note— The Open Meetings Act (MCL 15.261 et seq.) supersedes all local Charter provisions which relate to requirements for meetings of local public bodies to be open to the public.

State Law reference—Mandatory that Charter provide that all meetings of the council shall be open to the public, MCL 117.3(l); mandatory that Charter provide for keeping of a journal of every session, MCL 117.3(m).

Sec. 5.4 - Health functions of council.

To the extent and for the time that the health functions of the city are joined with or absorbed by the health department of the county of Macomb, as provided or permitted by law, the powers normally exercised by boards of health in cities shall be exercised for the city by such health department. In the event that the health department of Macomb county shall cease to exist or to exercise and perform any of the health functions of cities which are normally exercised by the boards of health thereof, the council shall constitute the board of health of the city and shall exercise and perform such functions.

Sec. 5.5 - Restrictions of power of the council.

The council shall not have the power to make any contract with or give any official position to any person who is in default to the city. Except in the course of an investigation, neither the council, nor any of its committees shall deal directly with any appointive administrative officer or department of the city, but shall conduct its affairs with such officers and departments through the mayor. Further, the council shall not have the power to sell any park, cemetery, or any part thereof, except where such park is not required under an official master plan of the city, or any property bordering on a water front, or to engage in any business enterprise requiring an investment of money in excess of ten cents per capita, unless approved by three-fifths of the electors of the city, voting thereon at any general or special election.

CHAPTER 13. - ELECTIONS^[15]

Footnotes:

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State Law reference—Michigan election laws, MCL 168.1 et seq., mandatory that Charter provide for the time, manner and means of holding elections, MCL 117.3(c).

Sec. 13.1 - Non-partisan elections.

The nomination and election of all city officers shall be on a non-partisan basis.

State Law reference—Mandatory that Charter provide for the nomination of elective officers by partisan or nonpartisan primary or by petition, MCL 117.3(b).

Sec. 13.2 - Qualifications of electors.

Each person who has the constitutional qualifications of an elector in the state of Michigan or who will have such qualifications at the next primary or regular or special election to be held in the city, shall be entitled to register as an elector of the city of Warren in the election precinct in which he resides.

State Law reference—Mandatory that Charter provide for registration of electors, MCL 117.3(c); registration of electors generally, MCL 168.491 et seq.

Sec. 13.3 - State laws to govern; party procedure not to apply.

The general election laws of the state shall apply to and control all procedure relating to registration of electors in the city and to the conduct of primary, regular, and special city elections therein, except as such general laws relate to political parties or partisan procedure, and except as otherwise provided by this charter. Subject to the provisions of this charter relative to political parties and partisan procedure, and until and except as otherwise provided by the council, the ballots or votes cast at all elections held in the city shall be cast, registered, recorded, and counted as provided by law.

State Law reference— Michigan election laws, MCL 168.1 et seq.

Sec. 13.4 - Informalities in conducting elections.

No informalities in conducting any city primary or election shall invalidate the same, if they have been conducted fairly, in substantial conformity with the requirements of this charter and the general law of the state, and no elector can be said to have been misled or deceived by such informalities.

Sec. 13.5 - Primary elections.

A primary election for the nomination of candidates for all elective municipal offices to be filled at the succeeding regular municipal election shall be held on the date prescribed by law for the holding of the general primary election for the biennial spring election. If upon the expiration of the time for filing nomination petitions for any elective city office, it appears that petitions have been filed for no more than twice the number of positions in such office to be filled at the next city election, then no primary election shall be held with respect to that office.

Editor's note— The city has opted for an odd-year primary election on the Tuesday following the second Monday in September in each odd-numbered year pursuant to MCL 168.644b. See Code of Ordinances Section 2-61.

Sec. 13.6 - Nominating petitions.

No candidate's name shall be placed upon primary election ballots for nomination for any city office, unless there shall be filed with the clerk a nominating petition therefor, containing signatures of registered electors of the city equal in number to not less than one per cent nor more than four per cent of the number of votes cast in the city for the office of secretary of state at the last preceding November election. In lieu of such a petition there may be deposited with the clerk a declaration of candidacy and a filing fee in the sum of one hundred dollars. Such declaration of candidacy shall contain the same information as is required to be set forth on nominating petitions. Such nominating petitions and declarations shall be received by the clerk up to the hour of five o'clock in the afternoon of the seventh Monday preceding such primary election. A nominating petition or declaration of candidacy may be accepted by the clerk only when signed by the candidate or accompanied by his written consent to the filing thereof. Filing fees so deposited with the clerk shall be deposited by him with the treasurer not later than the day following his receipt thereof and shall not be refunded, except as provided in this chapter. No person shall seek more than one city office at any primary or election and, if petitions are filed for two or more offices by any candidate, or on his behalf, he shall withdraw all or all but one of the petitions or declarations of candidacy for office filed by him or on his behalf, subject to the provisions of section 13.7 and 13.8 of this chapter. If there be no such withdrawal, such a person shall be deemed to be a candidate for the office for which a petition or declaration of candidacy was first filed with the clerk.

State Law reference— Mandatory that Charter provide for nomination of elective officers, MCL 117.3(b); non-partisan nominating petitions, MCL 168.544a.

Sec. 13.7 - Withdrawal of candidates.

After the filing of a nominating petition or declaration of candidacy by or on behalf of any candidate for any elective city office, such candidate shall not be permitted to withdraw, unless written notice is served on the clerk not later than three days after the last day for filing such petition. A candidate who so withdraws and a person who files a declaration of candidacy on behalf of a candidate shall not be entitled to a refund of any filing fee deposited with the clerk.

Sec. 13.8 - Return of certain filing fees.

Within three days subsequent to the final certification of the results of any primary election by the board of city canvassers, on account of which such deposits were made, the clerk shall file with the treasurer a certificate, showing the total number of votes cast at such primary election for each candidate for the various city offices, and the address as shown on the nominating petition or declaration of candidacy. If a candidate, at any such primary election, shall have received a number of votes sufficient to nominate him for election or to place him among the persons receiving the next three highest number of votes received by persons who were not so nominated, the treasurer shall refund to such candidate or to the person filing a declaration of candidacy on his behalf, the sum deposited with the declaration. Any candidate who receives a number of votes less than as above set forth shall be notified by the treasurer that any fee deposited by him or on his behalf has been forfeited. Deposits forfeited under this section shall be paid into and credited to the general fund of the city.

Sec. 13.9 - Form of nominating petition.

The form of nominating petition shall be substantially the same as that designated by law or the secretary of state for the nomination of nonpartisan judicial officers. A supply of official petition and declaration forms shall be provided and maintained by the clerk.

State Law reference— Non-partisan nominating petitions, MCL 168.544a.

Sec. 13.10 - Notification of candidates.

Within three days after the last date for filing petitions, the clerk shall make his final determination as to the validity of each nominating petition and shall write the date of his determination thereof on the face of the petition. Immediately, after making such determination, the clerk shall give written notice to each candidate whose petitions are invalid.

Sec. 13.11 - Election commission and duties.

A city election commission, consisting of the clerk, city attorney, and assessor is hereby created.

Sec. 13.12 - Meeting and quorum.

The meetings of the city election commission shall be held in the council chambers or in the office of the clerk and shall be public. At all meetings a majority of the members shall constitute a quorum. If a quorum is not present the commission or commissioners present shall appoint one or more administrative officers of the city to make a quorum. Such officers shall take the oath of office and their acts shall be valid as members of the commission. The commission shall be in continuous session on all election days and on such other days as its duties may require. The clerk shall serve as chairman of the commission.

Sec. 13.13 - Appointments by election commission.

The commission shall have authority to employ and appoint such inspectors of election and other assistants as may be necessary to carry out the duties herein prescribed and those required of it by law.

Sec. 13.14 - Compensation.

The inspectors of election and other assistants of the commission engaged in the conduct of an election shall receive such compensation for their services as the council may direct.

Sec. 13.15 - General powers and duties.

The elections commission shall have power and it shall be its duty:

- (1) To provide places for voting which shall, insofar as possible, be located in school houses, or in police and fire stations and other buildings owned by the city, and in cases where voting places cannot be so provided, to build or otherwise provide places for use at elections;
- (2) To prepare and print election ballots (or ballot labels or slips to be placed on voting machines if used) for all city officers for whom the electors are entitled to vote and for all questions to be submitted to the electors of the city;
- (3) To have general supervision of all elections in the city, including power to prevent any and all manner of fraud and corruption in the registration, voting, or counting of votes thereat;
- (4) To select and appoint registered electors of the city, who shall be qualified to discharge the duties of election officers, for each election precinct thereof, which qualifications shall be determined in such manner as shall be provided by the commission. No precinct election officer so appointed shall hold any city employment or office, or be a relative within the third degree of consanguinity or affinity of a candidate for any city office;
- (5) To provide, when necessary, for the examination of any applicant for appointment as a precinct election officer, to be appointed by the commission and the passage of a qualifying examination prior to the applicant's employment;
- (6) To remove any precinct election officer, for cause, at any time and to appoint some suitable and qualified person to act in his place;
- (7) To make complaint and to prosecute any person whom the commission shall have good cause to believe has been guilty of violation of the election laws; and
- (8) To adopt, prescribe, and publish rules of procedure not inconsistent with the provisions of law.

Sec. 13.16 - Election notice; contents, how published and posted.

The clerk shall give notice of each primary, regular, or special city election as required by law. Proof of publication and posting such notices shall be made by proper affidavits filed in the office of the clerk.

Sec. 13.17 - Time of regular city elections.

Regular city elections shall be held biennially in the odd numbered years on the first Monday in April.

Editor's note— The city now has an odd-year general election held on the Tuesday succeeding the first Monday in November in every odd-numbered year pursuant to MCL 168.644a.

Sec. 13.18 - Names on ballot.

- (a) The printing and numbering of the ballots used in any city primary or election or the preparation of voting machines therefor shall conform to that prescribed by the general laws of the state, except that no party designation or emblem shall appear upon any city ballot.
- (b) The order of offices on any primary or election ballot shall be mayor, council, and municipal judges. ^[16] Names of candidates shall be placed on the primary ballot for only such offices as shall have more than twice the number of candidates to be elected seeking such office to be filed at the following regular city election. Where a primary election is required to be held with respect to any office or offices, the two candidates at the primary election receiving the highest number of votes cast, for mayor, and the four such candidates receiving the highest number of votes for the office of municipal judge, and eighteen persons receiving the highest number of votes cast for candidates for

councilman, together with the names of candidates not required to be placed on the primary election ballot shall be printed on the ballot for the regular city election.

Footnotes:

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Editor's note— Municipal courts were abolished by MCL 600.9921.

Sec. 13.19 - Special city elections.

Special city elections shall be held when called by resolution of the council passed at least sixty days in advance of such election, or when required by law. Any resolution calling a special election shall set forth the purpose of such election. No more than two special city elections shall be held in any calendar year.

State Law reference— Special election approval, MCL 168.631, 168.639.

Sec. 13.20 - Voting hours.

The voting hours for all city elections shall be those established by law for state and county elections.

State Law reference— Opening and closing of polls, MCL 168.720.

Sec. 13.21 - Canvass of elections.

At two o'clock in the afternoon on the day next succeeding any city primary or election the election commission shall convene in the office of the clerk, or other public place which has been publicly announced, and shall determine the results of the election upon each question and proposition voted upon and which persons were duly nominated or elected at the primary or election. Thereupon the clerk shall make triplicate certificates showing what persons were declared nominated for or elected to each of the several offices respectively. He shall forward one copy of each such certificate to the county clerk, file one of each of such certificates in his office, and forward the other by certified mail to each person nominated for or elected to a city office, addressed to him at the address given in his nomination petition or declaration, which certificate shall constitute a notice of nomination or election.

Editor's note— Canvassing in cities having more than five (5) precincts is governed by MCL 168.30a et seq.

Sec. 13.22 - Election by lot, in case of tie vote.

If there be no choice for any office by reason of two or more candidates having received an equal number of votes, the election commission shall name a date for the appearance of such persons for the purpose of determining the tie by lot, as provided by law. Should any person or persons fail or refuse to appear, in person or by representative, to determine the result of any tie election at the time and place named by the election commission, such determination shall be made by lot in his or their absence, at the direction and under the supervision of the election commission. Such determination shall, in any event, be final.

State Law reference— Determination of election by lot, MCL 168.851, 168.852.

Sec. 13.23 - Election expenses.

A duplicate copy of the detailed account of election expenses required by law to be filed with the county clerk by candidates for city offices shall be filed with the clerk within the time limited by law for filing the same with the county clerk. The holding of the city office to which a candidate has been elected and the payment of the remuneration provided for such office shall be subject to the provisions of law relating to the filing of such accounts with the county clerk.

Sec. 13.24 - Employee political activity prohibited.

No employee of the city shall make any contribution to the campaign funds of any candidate for nomination for or election to public office of the city, other than himself, but such employee may take part in the political campaign of any such candidate outside of his working hours.

State Law reference— Political activities by public employees, MCL 15.401 et seq.

Sec. 13.25 - Acts to influence electors prohibited.

No person shall give, offer to give, or promise any money or other consideration to any elector or to any person for the purpose of influencing the vote of any elector at any election provided for in this charter, or to or for any elector for the purpose of securing support for any candidate at such election.

State Law reference— Similar provisions, MCL 168.931(1)(a).

Sec. 13.26 - Recount.

A recount of the votes cast at any city primary or election for any office, or upon any proposition, may be had in accordance with the general election laws of the state.

State Law reference— Recounts, MCL 168.861 et seq.

EXHIBIT B



RECEIVED

OCT 14 2022

Warren City Clerk

CITY ATTORNEY'S OFFICE

One City Square, Suite 400

WARREN, MI 48093

(586) 574-4671

FAX (586) 574-4530

www.cityofwarren.org

October 14, 2022

Ms. Sonja Djurovic Buffa
City Clerk
City of Warren

**Re: Request for an Opinion regarding the Application or Non-Application
of Charter Amendments to Sections 4.3(d), Section 4.4(d) of the Warren
City Charter to a Prospective Candidate for a City Office**

Dear Ms. Buffa:

You have requested that I provide you with a legal opinion regarding how the recent Charter amendments to sections 4.3(d) and 4.4(d) are to be applied. More specifically, the question raised, as I understand it, is whether or not the Mayor is precluded from seeking a fifth term as Mayor.

As you may recall, Mayor Fouts won his first term as Mayor in 2007. He has since been re-elected in 2011, 2015, and 2019. After the 2019 election, while he was serving his fourth term, a proposal was placed on the November 2020 ballot for voters in the City of Warren.

The 2020 proposal would require all city elected officials to have the same term limits of three (3) terms, or twelve (12) years. Prior to this proposal, the Office of the Mayor had a limit of five (5) terms, or twenty (20) years while the other elected city offices had a limit of three (3) terms, or twelve (12) years.

It is not clear that the term limit proposal may be applied to James Fouts. The Michigan Supreme Court has explained that unless there is a clear indication to the contrary, legislation is generally applied prospectively only.

“In determining whether a statute should be applied retroactively or prospectively only,” [t] primary and overriding rule is that legislative intent governs. All of the rules of construction and operation are subservient to this principle.” Frank v. White Pine Copper Division, 422 Mich 636, 670 (1985). Moreover, “Statutes are presumed to operate prospectively unless the contrary intent is clearly manifested. Id. at 671; see also Hughes v. Judges Retirement Bd., 407 Mich 75, 85 (1979). This is especially true if retroactive application of a statute would impair vested rights, create new obligation and imposing new duty, or attach a disability with respect to past transaction. See Frank Supra 671-674. See also Frank W. Lynch and Co. v. Flex Technologies, Inc., 463 Mich 578, 583 (2001).

The rules for interpreting City Charters are equivalent to those that govern interpretation of statutes. *Gora v. Ferndale*, 456 Mich 704, 711 (1998); *Barrow v. Detroit Election Commission*, 301 Mich App 404, 413 (2013). The proposal should be presumed to apply only prospectively “unless the contrary intent is clearly manifested.” See discussion supra.

It is equally well established that courts may not read anything into legislation that is not plain from the wording of the law itself. See e.g., *Bay City v. Co. Treasurer*, 292 Mich App 156, 166-167 (2011); *Cherry Growers, Inc. v. Agricultural Marketing Bargaining Board*, 240 Mich App 153, 166 (2000). The ballot language did not express a clear intention for retroactive effect. The beginning of the proposal explains, “Currently the office of Mayor has a limit of five (5) terms or twenty (20) years...” The question voters decided was should the office of Mayor have the same term limits as the other City elected offices, which is the greater of three (3) complete terms or twelve (12) years?”. In between these two statements, is the sentence, “Any terms or years served prior to this amendment are included.”

This language is not a specific indication of retroactive effect. There is no explanation of what “terms or years served” are included in, then the ultimate question for voters said nothing about retroactive effect or impact on current office holders. Warren voters could easily have voted in favor of a proposal without intending to make the Mayor’s extant fourth term illegal. In the two years since the proposal was approved, no one has come forward to challenge the Mayor’s ability to continue as Mayor, despite his having been in office for more than twelve (12) years.

Ms. Sonja Buffa
October 14, 2022
Page 3

Moreover, the plain language of the proposal reveals it was an effort to control the office of Mayor. The proposal goes out of its way to announce that the term limits applicable to the office of the city council, clerk, and treasurer are shorter than for mayor. If the intention was to put Mayor Fouts out of office and make him ineligible for a fifth term, the ultimate question in the Proposal, as it appeared on the ballot, should have read: "Should Mayor Fouts and all future Mayors be limited to three (3) terms in office?" or "should Warren adopt a policy that applies to the future as well as the past, holding all the elected officials of city government have the same term limits of three (3) complete terms or twelve (12) years - whichever is greater?"

This is especially true given the wording of the November 3, 1998 ballot proposal to amend the Charter which included the phrase, "This limitation on the number of terms a person may hold office, shall include the term the office that took effect after the November 7, 1995 election." Whoever drafted the 2020 proposal must have been aware of the November 3, 1998 proposal on term limits, and his or her decision to submit such language argues against finding a "clear manifestation of an intent for retroactive effect".

There is no clear expression of retroactive effect and voters may not have understood a "yes" vote on the proposal to bar Mayor Fouts from serving beyond twelve (12) years and/or seeking a fifth term. Consequently, it is my opinion that the Warren City Charter amendment on term limits approved by the citizens in the 2020 ballot proposal does not prohibit James Fouts from appearing on the ballot in search of a fifth term for office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ethan Vinson", with a stylized flourish at the end.

Ethan Vinson
City Attorney

EXHIBIT C

RESOLUTION

At a Special Meeting of the City Council of the City of Warren, County of Macomb, Michigan, held on March 1, 2016, at 7 p.m. Daylight Savings Time, in the Council Chamber of the Edward A. Rea Judicial Building.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and resolution were offered by Councilmember _____ and supported by Councilmember _____:

In 1998, the electors in the City of Warren voted to impose terms limits on the office of mayor, city council, city clerk and city treasurer of three terms or 12 years.

Subsequently, the voters changed the council offices by creating five districts and two at-large position, which the Court of Appeals has ruled created a new office, resulting in a possible intg in tulwrthe term deemed rs w ns. wcositionsposhrst from fform all at-large to ivearge districts When the at-large council districts wree In rfo liity cltilcouncil and Arern WHEREAS, the City Charter for the City of Warren does not include any limitation on the number of terms an elected officer may serve in office; and

WHEREAS, the City Council has determined that it would promote the public interest and welfare to propose a charter amendment to limit the number of times a person may serve in an elected office to three (3) complete terms or twelve (12) years, whichever is greater; and

WHEREAS, Council proposes that this limitation be applied to include a term of office currently held by an elected officer; and

WHEREAS, the City Council finds that the proposed ballot question should be submitted to the city voters for consideration and final approval or disapproval:

NOW, THEREFORE, BE IT RESOLVED, that it is hereby proposed, pursuant to the provision of Act No. 279 of the Public Acts of Michigan, 1909, as amended, that Section 4.3 of the Charter of the City of Warren shall be amended to read as follows:

Sec. 4.3 Certain persons ineligible for city office.

(a) A person who has been convicted of violating any provision of the election laws of the state or of the city, or who has been convicted of a felony or of an offense involving a violation of his oath of office, or who is in default to the city, shall not be eligible for any city office.

(b) No person shall simultaneously hold two city offices or a city office and a city employment, nor shall any person simultaneously hold an elective city office and an elective county and school district office. No person who holds an elective county or school district office shall be eligible to qualify for or to assume an elective city office to which he has been elected, until he first resigns from the elective county or school office held by him. Any elective officer who assumes an elective county or school district office shall thereupon be deemed to have vacated the city office held by him.

(c) A person who holds or has held an elected city office shall not be eligible for appointment to a city office or employment, for which compensation is paid by the city, until one year has elapsed following the terms for which he was elected or appointed.

(d) A person shall not be eligible to hold the office of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office. This provision shall be applied to commence with the term of office that took effect after the election on November 7, 1995.

and that Section 4.4 of the City Charter shall be amended to add subsection (d) as follows:

Sec. 4.4 Terms of office.

(d) A person shall not hold the office of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

and the purposes of such proposed Charter Amendment shall be designated on the ballot to be submitted to the electorate as follows:

CHARTER AMENDMENT PROPOSAL

Shall the Charter of the City of Warren be amended to provide that no person shall hold the office of mayor for no more than five (5) full terms or twenty (20) years in that office, whichever is greater? Any years served prior to this limitation will be include in the computation.

Yes _____

No _____

BE IT FURTHER RESOLVED, that the proposed charter amendment shall be, and the same is hereby ordered to be, submitted to the qualified electors of the city at the Primary Election to be held in the City of Warren, the 2nd day of August, 2016, and the City Clerk is hereby directed to give notice of the election and notice of registration therefore in the manner prescribed by law and to take all action necessary to submit such charter amendment to the vote of the electors as required by law.

AYES: Councilmembers _____

NAYS: Councilmembers _____

RESOLUTION DECLARED ADOPTED this _____ day of _____, 2016.

By a three-fifths vote of its membership pursuant to the authority granted by Act 279 of the Public Acts of 1909, as amended.

KELLY COLEGIO
Secretary to the Council
Mayor Pro Tem

CERTIFICATION

STATE OF MICHIGAN)
)SS.
COUNTY OF MACOMB)

I, LYNN ARMSTRONG, duly appointed City Clerk for the City of Warren, Macomb County, Michigan, hereby certify that the foregoing is a true and correct copy

EXHIBIT D

CITY OF WARREN
Office of the Council Secretary

Item 14a

INTER-OFFICE COMMUNICATION

DATE: July 14, 2020

TO: Sonja Buffa, City Clerk

SUBJECT: Council President Patrick Green along with co-sponsors Councilmember Watts and Councilmember Kabacinski proposed resolution approving ballot proposal regarding term limits. CONSIDERATION AND ADOPTION OF A RESOLUTION addressing term limits. (5 votes needed).

At a video conference meeting of the City Council held Tuesday, July 14, 2020, Council by formal motion overrode the Mayor's veto of this item, filed on 7.2.2020 with a unanimous vote of 7-0. The original motion to approved the above listed item, placing a ballot proposal on the November 3, 2020 ballot, to address term limits in returning the Mayoral term limit to 12 years or 3 terms to be in line with all City of Warren elected officials, stands.

Trusting this information to be of value.



Mindy Moore
Council Secretary

cc: Attorney
Clerk
Mayor

RESOLUTION

At a Special meeting of the City Council of the City of Warren, County of Macomb, Michigan, held on June 30, 2020, at 7:00 p.m. Daylight Savings Time, via Zoom Video Conference, under Executive Order 2020-75 of the Governor.

PRESENT: Councilmembers Green, Kabacinski, Lafferty, Moore, Papandrea, Rogensues, Watts _____

ABSENT: Councilmembers None _____

The following preamble and resolution were offered by

Councilmember Moore and supported by

Councilmember Watts

In November 1998, the electors in the City of Warren voted to establish terms limits on the office of mayor, city council, city clerk and city treasurer to three terms or 12 years.

Subsequently, in 2010, the voters approved a ballot proposal to change the size and composition of City Council from nine at-large members to two at-large members and five district members.

A City Attorney opinion on December 26, 2014 concluded that the Warren City Council is a bicameral legislature and that the term limits provisions of the charter apply separately to the councilpersons elected at-large and those elected in districts.

The City Attorney further concluded that councilpersons could serve up to 12 years as an at-large member and 12 years in a district for a total of 24 years on council.

In the 2015 municipal elections for the City of Warren, the City Clerk permitted candidates on the ballot for City Council that exceeded 12 years in that particular office in conformance with the City Attorney's December 26, 2014 opinion; the City Clerk's decision was upheld by the Macomb County Circuit Court after a challenge.

In the 2019 municipal elections for the City of Warren, a newly appointed City Clerk again permitted candidates on the ballot for City Council that exceeded 12 years in that particular office in conformance with the City Attorney's December 26, 2014 opinion; however the City Clerk's decision was overturned by the Michigan Supreme Court in the case of *Connor Berdy v. Sonja Buffa*, Supreme Court Case No. 159725.

The Michigan Supreme Court held that "the Warren Charter provides for a single class of city council members, subject to the term limits of the greater of three complete terms or 12 years in that office. See Warren Charter, §§ 4.3(d) and 4.4(d)."

On April 12, 2016, the prior City Council adopted a Resolution on the ballot to amend the City Charter to extend term limits for the Office of Mayor from three terms to five terms of office.

The April 12, 2016 Resolution of City Council stated that "council and mayor should have more equal terms of eligibility for office, to continue to attract strong leaders, and to preserve a governmental system with an equally balanced distribution of power and effective system of checks and balances."

On April 12, 2016, it was believed that councilmembers could serve up to three full terms in a district and three full terms at-large for a total of 24 years and this was the basis to extend Mayoral term limits.

The prior City Council believed that "council and mayor should have more equal terms of eligibility for office," but that is no longer the case since the decision by the Michigan Supreme Court in *Berdy v. Buffa*.

Therefore, the public interest would be served by allowing the electorate to determine whether to amend the city charter to decrease the number of terms a person may serve in the elected office of mayor from five terms or 20 years; back to the original term limit of three terms or 12 years, whichever is greater.

A governmental system with an equally balanced distribution of power and effective system of checks and balances would be best served by having equal term limits for all elected city offices and allowing the voters to revisit this issue after a major change in the interpretation of the charter by the Supreme Court.

The City Council proposes to submit the proposed ballot question to amend the city charter to the city voters for consideration and final approval or disapproval at the November 3, 2020 general election.

THEREFORE, IT IS RESOLVED, that it is hereby proposed, pursuant to the provision of Act No. 279 of the Public Acts of Michigan, 1909, as amended that Sections 4.3(d) and 4.4 (d) of the Charter of the City of Warren which currently read:

Sec. 4.3 - Certain persons ineligible for city office.

(d) A person shall not be eligible to hold the office of mayor for more than the greater of five (5) complete terms or twenty (20) years. A person shall not be eligible to hold the position of city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that office.

Sec. 4.4 - Terms of office.

(d) A person shall not be eligible to hold the office of mayor for more than the greater of five (5) complete terms or twenty (20) years. A person shall not be eligible to hold the position of city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

Shall, if approved by voters, be amended to read as follows:

Sec. 4.3 - Certain persons ineligible for city office.

(d) A person shall not be eligible to hold the office of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that office.

Sec. 4.4 - Terms of office.

(d) A person shall not be eligible to hold the office of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

And the purposes of such proposed Charter Amendments shall be designated on the ballot to be submitted to the electorate as follows:

CITY CHARTER AMENDMENT

A PROPOSAL TO REQUIRE THE OFFICE OF MAYOR TO HAVE THE SAME TERM LIMITS AS THE OTHER CITY ELECTED OFFICES

The proposed amendment would require all city elected offices to have the same term limits of three (3) terms or twelve (12) years. Currently the office of mayor has a limit of five (5) terms or twenty (20) years and the offices of city council, clerk, and treasurer have a limit of (3) three terms or twelve (12) years. Any terms or years served prior to this amendment are included.

PROPOSAL: Should the office of mayor have the same term limits as the other city elected offices, which is the greater of three (3) complete terms or twelve (12) years?

YES _____

NO _____

IT IS FURTHER RESOLVED, that the proposed charter amendment shall be, and the same is hereby ordered to be, submitted to the qualified electors of the city at the General Election to be held in the City of Warren on November 3, 2020, and the City Clerk is hereby directed to give notice of the election and notice of registration therefore in the manner prescribed by law and to take all action necessary to submit such charter amendment to the vote of the electors as required by law.

AYES: Councilmembers Moore, Watts, Lafferty, Kabacinski, Rogensues,
Papandrea, Green

NAYS: Councilmembers None

RESOLUTION DECLARED ADOPTED this 30th Day of June, 2020 by a three-fifths vote of its membership pursuant to the authority granted by Act 279 of the Public Acts of 1909, as amended.

Mindy Moore

MINDY MOORE
Secretary of the Council

* CERTIFICATION

STATE OF MICHIGAN)
) ss.
COUNTY OF MACOMB)

I, SONJA BUFFA, duly elected City Clerk for the City of Warren, Macomb County, Michigan, certify that the foregoing is true and correct copy of the resolution adopted by the Council of the City of Warren at its meeting on June 30, 2020.

Sonja Buffa

* SONJA BUFFA
Clerk

*This action was subject to Mayoral VETO. Council voted to override the VETO on July 14, 2020.

EXHIBIT E

March 25, 2022

RECEIVED

MAR 30 2022

Mrs. Sonja Buffa,
Warren City Clerk
1 City Square
Warren, MI 48093

WARREN CITY CLERK

Dear Clerk Buffa:

In 2007, I was elected to my first term as Mayor. I have been re-elected three times since then, in 2011, 2015 and 2019. Serving the residents of the City of Warren has been my life's work and my greatest passion. I hope to win a fifth term as Mayor in the 2023 election, and I write this letter in search of answers to two important questions.

Since 13.6 of Warren's Charter provides that candidates for elected office may not be placed on the primary election ballot unless they have filed, "a nominating petition therefor, containing not less than one percent nor more than four percent of the number of votes cast in the city for the office of secretary of state," in the last election. In lieu of such a petition, there may be a deposit with the clerk a declaration of candidacy and filing fee in the sum of \$100.

Generally, term limits serve many valuable public policies, including diversity of representation and preventing political control. Yet no merit is achieved when a term limitation is imposed in an unreasonable, non-transparent and unconstitutional manner. In this particular case, the term limitation for mayor was changed from five to three terms, to apply retroactive to the current mayor. This term limitation imposed a new qualification of office in direct conflict with pre-existing law, and its retroactive application was unclear and did not allow voters to make an informed decision. Also at issue are the circumstances underlying this ballot proposal, and the constitutional concern for measures imposed that are punitive in nature. Provided that I comply with all filing and nominating petition requirements and otherwise qualify, will you certify my name on the 2023 ballot(s)?

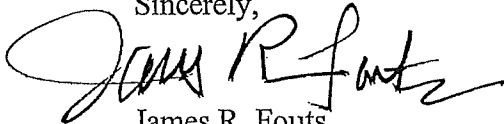
For these reasons, I question whether I am allowed to follow the 2016 charter, and seek the final term of office allowed under that provision. I ask this question to assert the right of voters to transparency in elections, the right of candidacy and to participate in government without retroactive changes to eligibility requirements, as well as for other constitutional protections.

Mrs. Sonja Buffa,
Warren City Clerk
1 City Square
Warren, MI 48093

In the past, late-arriving decisions have disrupted Warren's ballots, and they have dramatically changed the options available to voters, after filing deadlines had passed. I am seeking the information requested from you well in advance, in hopes of avoiding a last-minute ruling that would change options available on Election Day.

I thank you in advance for your prompt consideration of my questions and thank you for your honorable service to the citizens of our community.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Fouts". The signature is fluid and cursive, with a large initial "J" and a stylized "F".

James R. Fouts
28107 Saint Louse Drive
Warren, Michigan 48092

EXHIBIT F

mayoral term limit opinion request

Sonja Buffa <sbuffa@cityofwarren.org>

Wed 3/30/2022 5:12 PM

To: Ethan Vinson <evinson@cityofwarren.org>

📎 1 attachments (933 KB)

term inquiry.march30.2022.pdf;

Good Afternoon Mr. Vinson,

I am requesting an opinion relative to a potential mayoral candidate filing for the 2023 municipal elections (see attached letter). The resident questions which year Charter amendment of Sections 4.3 (d) and 4.4 (d) should he follow? The sections amended by electors in 2016, or in 2020 when the same section for mayor only was reversed back the electors vote of November 3, 1998 for all offices including mayor, *council, clerk, and treasurer?

**(Amended sections Section 4.1, 4.14(a)(b), Section 5.1 (a)(b)(c)(d), and Section 7.4. The city council office was amended by the electors November 2, 2010: Reduced Council from nine to seven members, with five elected in districts and two members at-large.*

Amended by Electors on August 2, 2016

Section 4.3 Certain persons ineligible for city office:

(d) A person shall not be eligible to hold the office of Mayor for more than the greater of five (5) complete terms or twenty (20) years. A person shall not be eligible to hold the position of city council, city clerk, or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

Section 4.4 Term of Office:

(d) A person shall not be eligible to hold the office of Mayor for more than the greater of five (5) complete terms or twenty (20) years. A person shall not be eligible to hold the position of city council, city clerk, or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

Amended by Electors on November 3, 2020:

Section 4.3 Certain persons ineligible for city office:

(d) A person shall not be eligible to hold the office of mayor, city council, city clerk, or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that office.

Section 4.4 Term of Office:

(d) A person shall not be eligible to hold the office of mayor, city council, city clerk, or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that

particular office.

Amended by Electors on November 3, 1998:

No person shall hold the office of mayor, city council, city clerk or city treasurer for more than three (3) full terms or twelve (12) years in that particular office, whichever is greater. This limitation on the number of times a person may hold office shall include the term of the office that took effect after the November 7, 1995 election.

Please note the deadline for candidate filing for the City of Warren municipal elections in 2023 is fifteen weeks prior to the primary August 8, 2023, election (April 25, 2023 at 4:00 pm).

Thank you in advance for your attention to this request for an opinion. Should you require additional information, please do not hesitate to contact me.

Respectfully submitted,

Sonja Djurovic Buffa

City Clerk, CMC, MMC

City of Warren Clerk's Office

1 City Square, Suite 205, Warren, MI 48093-2393

P: 586.574.4555

F: 586.574.4556

sbuffa@cityofwarren.org

www.cityofwarren.org

128119 - per Zthan, 2007 doesn't count

November 2, 2010 – voters changed Council members from 9 to 7 members, and approved Council Districts and At Large seats.

Does this mean their official terms according to the Charter would begin with the 2011 city election year?

City Charter Amendment November 2, 2010

Proposal 1:

A proposal to reduce City Council from Nine (9) to Seven (7) members and require that Five (5) members be elected from single-member districts and two (2) members elected At-Large

Proposal 2:

Should Five City Council members be elected from single-member districts and two members be elected At Large?

Clerk, Treasurer and Council: 3 four year terms

Mayor: 5 four year term (*voted August 2, 2016 to change term from 3 to 5 four year terms*)

Current Offices/Terms in their current office:

Mayor: Fouts (2007, 2011, 2015 to present)

Clerk: Wojno (2007, 2011, 2015 to December 31, 2018 / now Senate)

Treasurer: Barnwell (2015 to present)

*District 1: Papandrea (filled in term of Patrick Green after he went to State Rep/ December 2016 to present)

District 2: Sadowski (2007, 2011, 2015 to present)

District 3: St. Pierre Jr. (2011, 2015 to present)

District 4: Warner (2007, 2011, 2015 to present)

District 5: Boccomino (2007, 2011, 2015 to present)

At Large: Stevens (2007, 2011, 2015 to present)

At Large: Colegio (2011, 2015 to present)

*District 1: Patrick Green (2007, 2011, 2015-December 2016 - *Served only 2 terms.*)



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

March 2, 2023

Thomas A. Craig
31772 Beechwood Dr.
Warren, MI 48088

Re: *Craig v. Fouts*
Campaign Finance Complaint No. 23-015

Dear Mr. Craig:

The Department of State received a response from James R. Fouts to the complaint you filed against him alleging a violation of the Michigan Campaign Finance Act, 1976 P.A. 388, MCL 169.201 *et seq.* A copy of the response is provided as an enclosure with this letter.

You may file a rebuttal statement after reviewing the enclosed response. If you elect to file a rebuttal statement, you are required to do so within 10 business days of the date of this letter. The rebuttal statement may be emailed to BOERegulatory@Michigan.gov or mailed to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

Regulatory Section
Bureau of Elections
Michigan Department of State

c: James R. Fouts

MDOS-BOERegulatory

From: Tom Craig <tcraig300@gmail.com>
Sent: Monday, March 13, 2023 5:44 PM
To: MDOS-BOERegulatory
Subject: Craig v. Fouts, Campaign Finance Complaint No. 23-015

Categories: Jessica

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

To whom it may concern:

This is my rebuttal to the statement filed by a lawyer hired by James R. Fouts to argue that the city charter's term limits of three terms or 12 years do not apply to him. The Mayor argues that the Election Commission determined that he doesn't have to follow the city charter term limits of three terms or 12 years. The Mayor does not point out that he appointed a majority of the individuals on the Election Commission and that this Election Commission and the City Clerk have been overturned by the courts multiple times on their term limits interpretations (which always favor Fouts no matter what the charter says). The Mayor and his attorney chose to attack me, a taxpayer and resident, when I am simply asking that the Mayor follow the city charter and the state campaign finance laws. These attacks are a distraction from the simple truth that he is violating the term limits laws and the campaign finance act.

It is probably not the job of the Department of Elections to make a ruling on the Mayor's long and confusing argument about why the city charter's term limits don't apply to him. The Macomb County Circuit Court is going to make that determination in a lawsuit that has been filed against the Election Commission. Since the filing of my complaint, a lawsuit was filed against the Election Commission for its flawed determination that Fouts is eligible for a fifth term when the city charter only allows three terms. The case is in Macomb County Circuit Court and the case number is 2023-000611-AW. A Judge is hearing arguments on the case on March 20, 2023 and my understanding is that there will be a quick ruling. Once there is a ruling, I will forward it to your attention. If the Warren Election Commission loses yet another case in court trying to circumvent term limits for the Mayor and his allies, then there is no doubt that the Mayor violated the Campaign Finance Act. A rogue Election Commission cannot give its blessing to any official to violate term limits or other laws to shield that person from liability under the campaign finance laws. Thank you for your attention to this matter.

Sincerely,
Thomas A Craig

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

WARREN CITY COUNCIL and
RONALD J. PAPANDREA,

Plaintiffs,

vs.

Case No. 2023-000611-AW

SONJA BUFFA, in her official capacity as
CITY OF WARREN ELECTION COMMISSIONER,
WARREN CITY CLERK, CITY OF WARREN
ELECTION COMMISSION, and

ANTHONY FORLINI, in his official capacity as
MACOMB COUNTY CLERK

Defendants.

OPINION AND ORDER

Plaintiff Warren City Council (“Plaintiff”) has filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Defendants Sonja Buffa and the City of Warren Election Commission (“Defendants”) have also filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Both Parties have filed a response to the opposing party’s motion.

I. Factual and Procedural History

This case arises out of a dispute regarding whether the City of Warren (“Warren”) Mayor, James R. Fouts (“Fouts”) is eligible for re-election in 2023.¹ Fouts won his first term as Mayor in

¹ On March 10, 2023, this case was consolidated with Macomb County Circuit Court Case No. 2023-000493-AW (*Ronald Papandrea v. Warren City Election Commission*) via stipulation of all Parties.

2007 and was re-elected in 2011, 2015, and 2019. He is currently serving his fourth term. On January 30, 2023, Fouts filed for re-election. Due to 2020 amendments to the Warren City Charter (“the Charter”) regarding term limits, which will be thoroughly discussed below, Plaintiff is challenging Fouts’s eligibility to run again in 2023. On February 21, 2023, Plaintiff filed their complaint in this matter seeking mandamus and declaratory relief. On March 13, 2023, Plaintiff filed a motion for summary disposition arguing that Fouts is ineligible from running for re-election in 2023. On March 13, 2023, Defendants filed a motion for summary disposition arguing that Fouts is eligible for re-election in 2023. On March 17, 2023, both Parties filed a response to the opposing party’s motions requesting that they be denied. On March 20, 2023, this Court heard the motions and took the matter under advisement.

II. Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party has failed to state a claim upon which relief may be granted. A motion under MCR 2.116(C)(10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.* at 121.

III. Arguments and Analysis

The issue in this case is whether Fouts is eligible for re-election in 2023. Plaintiff argues that he is not eligible for re-election and that mandamus is appropriate. Defendants argue that he is eligible for re-election and that mandamus is not appropriate.

A. Standing

Defendants argue that Plaintiff lacks standing. The Michigan Supreme Court provided the following explanation of standing in *Lansing School Education Association v Lansing Board of Education*, 487 Mich 349, 355; 792 NW2d 686 (2010):

The purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to ensure sincere and vigorous advocacy. Thus, the standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable. (quotation marks and citations omitted).

In *Michigan Alliance for Retired Americans v Secretary of State*, 334 Mich App 238; 964 NW2d 816 (2020), the plaintiff voter organization argued that the Legislature lacked standing to appeal a Court of Claims order granting declaratory relief regarding the absentee ballot receipt deadline and ballot-handling restrictions. *Id.* at 243. The Court of Appeals ultimately found that the Legislature did have standing and reasoned that the “plaintiffs overlook[ed] the Legislature’s interests given that the Legislature is ‘an entity that certainly has an interest in defending its own work.’” *Id.* at 250 (citation omitted).

In this case, Plaintiff is the entity that drafted the 2020 ballot proposal and Charter language at issue. Therefore, similar to the Legislature in *Michigan Alliance*, Plaintiff certainly has an interest in defending its own work. For these reasons, this Court finds that Defendants’ argument that Plaintiff lacks standing is without merit.

B. Mandamus

Plaintiff is seeking a writ of mandamus. “A plaintiff has the burden of establishing entitlement to the extraordinary remedy of mandamus. The plaintiff must show that (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform such act, (3) the act is ministerial in nature such that it involves no discretion or judgment, and (4) the plaintiff has no other adequate legal or equitable remedy.” *Barrow v City of Detroit Election Com’n*, 301 Mich App 404, 411-12; 836 NW2d 498 (2013) (internal citation omitted).

Mandamus is not appropriate where the legal right or duty is disputed or doubtful. *McLeod v Kelly*, 304 Mich 120, 125; 7 NW2d 240 (1942). “A clear legal right is a right clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.” *League of Women Voters of Michigan v Secretary of State*, 333 Mich App 1, 6; 969 NW2d 1 (2020) (citation omitted). Here, whether Plaintiff has satisfied the necessary elements and is entitled to mandamus requires an analysis of the Charter language, which is thoroughly discussed below.

C. The Charter Language

A history of the relevant Charter amendments is laid out below.

1. 1998 Amendment

Term limits for elected officials were first included in the Charter in 1998 with an amendment that read as follows:

Sec. 4.3 Certain persons ineligible for city office.

(d) A person shall not be eligible to hold the office of the mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office. This provision shall be applied to commence with the term of office that took effect after the election on November 7, 1995.

Sec 4.4 Terms of office.

(d) A person shall not hold the office of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

See Plaintiff's Exhibit 1 – 1998 Resolution.

The language of the 1998 Charter amendment that was placed on the ballot and resulted in the above term limits reads as follows:

Shall the Charter of the City of Warren be amended to provide that no person shall hold the office of mayor, city council, city clerk or city treasurer for more than three (3) full terms or twelve (12) years in that particular office, whichever is greater? This limitation on the number of times a person may hold office shall include the term of office that took effect after the November 7, 1995 election. *Id.*

The above amendment was approved by 77% of voters. See Plaintiff's Exhibit 2 – 1998 Election Result.

2. 2016 Amendment

In 2016, Warren passed an amendment related to the term limits of elected officials which read as follows:

Sec. 4.3 Certain persons ineligible for city office.

(d) A person shall not be eligible to hold the office of the mayor for more than the greater of five (5) complete terms or twenty (20) years. A person shall not be eligible to hold the position of city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

Sec 4.4 Terms of office.

(d) A person shall not hold the office of mayor for more than the greater of five (5) complete terms or twenty (20) years, and a person shall not hold the office of city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

See Plaintiff's Exhibit 4 – 2016 Resolution.

The language of the 2016 Charter amendment that was placed on the ballot and resulted in the above term limits reads as follows:

Shall the Charter of the City of Warren (sections 4.3(d) and 4.4(d)) be amended to extend the term limits for the office of mayor from the greater of (3) complete terms or 12 years, to the greater of five (5) complete terms or 20 years? Any years or terms served prior to this amendment are included. *Id.*

The above amendment was approved by 52.7% of voters. See Plaintiff's Exhibit 5 – 2016 Election Result. Notably, the language that appeared on the ballot stating “any years or terms served prior to this amendment are included” did not appear in the amended Charter language.

3. 2020 Amendment

In 2020, the Charter was again amended by electors and currently imposes the following term limits:

Sec. 4.3 – Certain persons ineligible for city office.

(d) A person shall not be eligible to hold the position of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that office.

Sec. 4.4 – Terms of office.

(d) A person shall not be eligible to hold the position of mayor, city council, city clerk or city treasurer for more than the greater of three (3) complete terms or twelve (12) years in that particular office.

See Plaintiff's Exhibit 8 – 2020 Resolution.

The language of the 2020 Charter amendment that was placed on the ballot and resulted in the above term limits reads as follows:

The proposed amendment would require all city elected offices to have the same term limits of three (3) terms or twelve (12) years. Currently the office of mayor has a limit of five (5) terms or twenty (20) years and the offices of city council, clerk, and treasurer have a limit of three (3) terms or twelve (12) years. Any terms or years served prior to this amendment are included.

PROPOSAL: Should the office of mayor have the same term limits as the other city elected offices, which is the greater of three (3) complete terms or twelve (12) years?

See Plaintiff's Exhibit 9 – 2020 Ballot Proposal.

The above amendment was approved with 67.8% of the vote. See Plaintiff's Exhibit 10 – 2020 Proposal Election Result. As laid out above, the explanatory caption states that “any terms or years served prior to this amendment are included.” However, that language is notably absent from both the actual “Proposal” section on the ballot and the amended Charter language. The failure to include this language in the “Proposal” section of the ballot and in the Charter itself is a significant discrepancy. Additionally, the explanatory caption states that that the amended term limits would be “three (3) terms or twelve (12) years.” However, the actual “Proposal” section states that the amended term limits would be “the greater of three (3) complete terms or twelve (12) years.” These phrases are not equivalent and this is a discrepancy on the ballot itself between the explanatory caption and the actual “Proposal” language.

Since the passage of the 2020 amendment and with the 2023 election approaching, confusion has ensued surrounding Fouts's eligibility to re-run this year. This confusion is based on the fact that the “any terms or years served prior to this amendment are included” language was included in the ballot's explanatory caption, but was not included in the “Proposal” section on the ballot or in the amended Charter. This is especially troubling considering Plaintiff previously included similar limiting language regarding prior terms served on the ballot proposal and in the amended Charter language in 1998, but failed to do so with the 2020 amendment and Charter language at issue here. Specifically, as laid out above, the following language was included on the 1998 ballot proposal and in the amended Charter: “[t]his provision shall be applied to commence with the term of office that took effect after the election on November 7, 1995.” See Plaintiff's

Exhibit 1 – 1998 Resolution. This language was removed in 2016. See Plaintiff’s Exhibit 4 – 2016 Resolution. No similar language regarding prior terms served was included in the 2020 ballot “Proposal” section or Charter language. See Plaintiff’s Exhibit 8 – 2020 Resolution & Exhibit 9 – 2020 Ballot Proposal.

D. Warren City Attorney Opinion

As a result of the confusion surrounding Fouts’s eligibility to run again, on October 14, 2022, the Warren City Attorney issued an opinion regarding the 2020 Charter amendments to sections 4.3(d) and 4.4(d) in relation to Fouts’s eligibility to run for a fifth term. See Plaintiff’s Exhibit 12 – Opinion. In the opinion, the Warren City Attorney determined that the 2020 Charter amendment does not preclude Fouts from running for a fifth term. *Id.* In reaching that determination, the Warren City Attorney explained the following:

It is not clear that the term limit proposal may be applied to James Fouts. The Michigan Supreme Court has explained that unless there is a clear indication to the contrary, legislation is generally applied prospectively only.

There is no clear expression of retroactive effect and voters may not have understood a “yes” vote on the proposal to bar Mayor Fouts from serving beyond twelve (12) years and/or seeking a fifth term. Consequently, it is my opinion that the Warren City Charter amendment on term limits approved by the citizens in the 2020 ballot proposal does not prohibit James Fouts from appearing on the ballot in search of a fifth term for office. *Id.*

The Warren City Attorney’s opinion correctly notes that legislation is generally applied prospectively only. In *Selk v Detroit Plastic Prods*, 419 Mich 1, 9-10; 345 NW2d 184 (1984), the Michigan Supreme Court explained that “statutes are presumed to operate prospectively unless contrary intent is clearly manifested.” As laid out above, there is no clearly manifested intent for the term limits to include prior terms served in the Charter language.

Plaintiff argues that “it is clear from the plain language of the 2020 ballot proposal that – rather than impact the terms that Mayor Fouts won prior to 2020 – the resulting term limit applies only prospectively to candidates for all city offices.” See Plaintiff’s Motion, p. 15. In *Doe v Dept of Corrections*, 249 Mich App 49, 59; 641 NW2d 269 (2001), the Court of Appeals provided the following explanation on determining whether a new law applies retrospectively or prospectively:

First, is there specific language in the new act which states that it should be given retrospective or prospective application. See headnote no. 1, *Hansen–Snyder Co. v. General Motors Corp.*, 371 Mich. 480, 124 N.W.2d 286 (1963). Second, “[a] statute is not regarded as operating retrospectively [solely] because it relates to an antecedent event.” *Hughes v. Judges’ Retirement Board*, 407 Mich. 75, 86, 282 N.W.2d 160 (1979). Third, “[a] retrospective law is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past.” *Hughes, supra*, p. 85, 282 N.W.2d 160; *Balog v. Knight Newspapers, Inc.*, 381 Mich. 527, 533–534, 164 N.W.2d 19 (1969). Fourth, a remedial or procedural act which does not destroy a vested right will be given effect where the injury or claim is antecedent to the enactment of the statute. *Rookledge v. Garwood*, 340 Mich. 444, 65 N.W.2d 785 (1954).

In this case, there is no specific language in the Charter indicating that prior years served are counted towards the amended term limits. Additionally, even though this Court acknowledges that Fouts does not have a vested right at stake, Plaintiff’s position certainly would attach a new disability with respect to transactions or considerations already past, as it would prevent Fouts from running again based solely on his prior terms served. Ultimately, this Court agrees with the Warren City Attorney’s determination that it is unclear whether the term limit proposal may be applied to Fouts.

E. Home Rule City Act

The process of amending city charters in Michigan is governed by the Home Rule City Act (“HRCA”). The HRCA provides, in relevant part, as follows:

A proposed charter amendment shall be confined to 1 subject. If the subject of a charter amendment includes more than 1 related proposition, each proposition shall be separately stated to afford an opportunity for an elector to vote for or against each proposition. MCL 117.21(3).

If the 2020 ballot amendment was meant to address both the term limits and the impact of prior terms served on those term limits, as Plaintiff claims it does, that would be a direct violation of the above statute. Although the term limits and prior terms served are certainly related, each proposition would have been required to be separately stated to allow the voters to vote for or against each proposition. That was not done in this case and this further supports Defendants' position that the ballot language was not clear.

In support of its position, Plaintiff relies on the fact that the 2020 proposed Charter amendment and ballot proposal were submitted to the Attorney General for review and approved. See Plaintiff's Exhibit 15 – Attorney General Review Letter. As Plaintiff points out, the letter states that the ballot proposal conformed with Section 21 of the HRCA as “accurate, impartial, and limited to 100 words, exclusive of caption.” *Id.* However, Plaintiff's reliance on this letter is misplaced, as this letter does not address the particular issue in this case. This letter does not address how prior terms served would be accounted for and it does not take into account the historic language of the Charter. This letter simply permitted Plaintiff to put this amendment on the ballot.

For the reasons discussed above, this Court finds that Plaintiff has failed to establish the existence of “a clear legal right,” which is the first element necessary to prove entitlement to a writ of mandamus. Rather, the evidence presented demonstrates that the ballot language and Charter are not clear on whether previous terms served are counted towards the current term limits.

Conclusion

For the reasons set forth above, Plaintiff's motion for summary disposition and request for a writ of mandamus is DENIED. Defendants' Motion for summary disposition is GRANTED. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and closes the case.

IT IS SO ORDERED.



A handwritten signature in black ink, reading "Joseph Toia", is written over a horizontal line.

HON. JOSEPH TOIA, CIRCUIT COURT JUDGE

Date: March 23, 2023
cc: Attorneys of Record via e-service



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

March 30, 2023

James R. Fouts
28107 St. Louise Drive
Warren, MI 48092

Re: *Craig v. Fouts*
Campaign Finance Complaint No. 23-015

Dear Mr. Fouts:

The Department of State (Department) has finished investigating the campaign finance complaint filed against you by Thomas A. Craig alleging that you violated the Michigan Campaign Finance Act (MCFA or Act). Specifically, the complaint alleges that the Committee to Elect Jim Fouts is making campaign expenditures, including those for a letter advertising a “re-election party for Mayor Jim Fouts,” when you are allegedly term-limited from running for that position again. This letter concerns the disposition of that complaint.

You responded to the complaint in a letter dated February 23, 2023. In your response, you claimed that the complaint was based primarily on news stories and the plain language of the charter and ballot proposal. You argued that these allegations intentionally omit relevant facts and characterize the situation in a misleading way.

For instance, you included in your response a legal opinion drafted by the Warren City Attorney which concludes that Mr. Fouts is eligible to run for re-election as mayor. The opinion states that the ballot language by which term limits were adopted failed to meet the high legal standard required for retroactivity to apply and failed to clearly and unequivocally notify electors that retroactivity was intended to apply to the actual ballot language.

Additionally, you argue that Mr. Craig failed to disclose that the Warren City Election Commission met on November 8, 2022 and found Mr. Fouts to be eligible to run for mayor. The commission determined at that time that the city charter, as amended in 2020, made no reference to whether term limits were to be applied retroactively or prospectively.

Accordingly, you argued that Mr. Fouts was entitled to rely on the determinations of the city attorney and the city election commission in assessing his eligibility for office and conducting any campaign accordingly.

Mr. Craig was given the opportunity to provide a rebuttal, which he did in an email submitted March 13, 2023. In the rebuttal, he argued that Mr. Fouts appointed the majority of individuals on the city election commission, which he implies discounts their determination. He argued that Mr. Fouts and his attorney “chose to attack me, a taxpayer and resident, when I am simply asking that the Mayor follow the city charter and the state campaign finance laws.” Finally, he acknowledges that a lawsuit regarding the applicability of the city charter amendments to Mr. Fouts eligibility to run for re-election is being considered by the Macomb County Circuit Court, and he would forward the ruling to the Department’s attention.

Instead, Mr. Fouts’ attorney forwarded the court’s opinion and order to the Department on March 23, 2023, on the date it was issued. The court granted the Warren city clerk and Warren election commission’s motion for summary disposition. The opinion stated that legislation is generally applied prospectively only unless contrary intent is clearly manifested. While the explanatory caption regarding the 2020 term limits proposal stated that the provision would apply retroactively, that language was absent from the actual “Proposal” section of the ballot and the city charter itself. Accordingly, the court found that the contrary intent required for retroactive applicability was not present, that the term limits provision instead applied only prospectively, and that mandamus to prohibit Mr. Fouts from re-election was not appropriate.

The Department’s candidate manual provides for term-limited candidates that officeholders who are barred from seeking reelection may not use their candidate committees to make election-related expenditures. In relevant part, the MCFA defines expenditure as a payment or transfer of anything of ascertainable monetary value in assistance of, or in opposition to, the nomination or election of a candidate. MCL 169.206. Officeholders that are not seeking or are unable to seek election may only make incidental office expenses. See MCL 169.209.

The Department has reviewed the evidence submitted in this matter and finds that insufficient evidence has been presented to support a finding of a potential violation of the MCFA.

The Warren city attorney, Warren election commission, and Macomb County Circuit Court have all determined that the ballot language imposing term limits does not bar Mr. Fouts from running for reelection in 2023. Because he is an eligible candidate, he is entitled to make election expenditures as would any other candidate, provided that he reports them appropriately, and there has been no allegation that he has failed to do so.

Because the violation of the MCFA alleged in the complaint has not been substantiated by sufficient evidence, the Department dismisses the complaint and will take no further enforcement action. If you have any questions concerning this matter, you may contact me at BOERegulatory@Michigan.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jenny McInerney". The signature is fluid and cursive, with the first name "Jenny" being more prominent than the last name "McInerney".

Jenny McInerney, Regulatory Attorney
Regulatory Section
Bureau of Elections
Michigan Department of State

c: Thomas A. Craig