

STATE OF MICHIGAN
COURT OF APPEALS

CITIZENS ACTION GROUP OF PLYMOUTH
TOWNSHIP,

UNPUBLISHED
December 13, 2012

Plaintiff-Appellant/Cross-Appellee,

v

No. 308226
Wayne Circuit Court
LC No. 11-014579-AW

CHARTER TOWNSHIP OF PLYMOUTH,

Defendant-Appellee/Cross-
Appellant.

Before: JANSEN, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals by right from orders denying its petition for a writ of mandamus and request for injunctive relief. Defendant, Charter Township of Plymouth (the Township), cross-appeals by right from the same orders, arguing as an alternative ground for affirmance that plaintiff lacks standing. We affirm.¹

¹ The Township's brief on appeal challenges this Court's jurisdiction, but we have already rejected this challenge by denying the Township's motion to dismiss. *Citizens Action Group of Plymouth Twp v Charter Twp of Plymouth*, unpublished order of the Court of Appeals, entered April 26, 2012 (Docket No. 308226). Also, plaintiff challenges this Court's jurisdiction over the Township's cross-appeal, but plaintiff's challenge incorrectly assumes that the cross-appeal is dependent on an order entered in a prior action. In this case, the cross-appeal was timely filed. This is all that is required to vest this Court with jurisdiction to review the issue raised on cross-appeal. See MCR 7.207(A) and (B). We also note that the Township's cross-appeal is not seeking greater relief than was obtained in the trial court, but merely offers an alternative ground for affirming the relief granted to the Township by the orders on appeal. Thus, the argument raised on cross-appeal could have been raised in the appellee brief; it was not necessary to raise the standing issue by cross-appeal. See *Middlebrooks v Wayne Co*, 446 Mich 151, 166 n 41; 521 NW2d 774 (1994). In any event, as discussed below, we conclude that it is not necessary to reach the issue raised on cross-appeal.

Plaintiff first argues that the trial court erred in denying plaintiff's request for a writ of mandamus. We disagree.

Generally, an issue must have been raised before, addressed, and decided by the trial court to be preserved for appellate review. *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005). Also, “[a] party who waives a right is precluded from seeking appellate review based on a denial of that right because waiver eliminates any error.” *The Cadle Co v Kentwood*, 285 Mich App 240, 255; 776 NW2d 145 (2009). “[A] waiver is a voluntary and intentional abandonment of a known right.” *Quality Prod & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 374; 666 NW2d 251 (2003). “The usual manner of waiving a right is by acts which indicate an intention to relinquish it, or by so neglecting and failing to act as to induce a belief that it was the intention and purpose to waive.” *The Cadle Co*, 285 Mich App at 254-255, quoting *Book Furniture Co v Chance*, 352 Mich 521, 526-527; 90 NW2d 651 (1958). “A party who expressly agrees with an issue in the trial court cannot then take a contrary position on appeal.” *Grant v AAA Michigan/Wisconsin, Inc (On Remand)*, 272 Mich App 142, 148; 724 NW2d 498 (2006). “A party is not allowed to assign as error on appeal something which his or her own counsel deemed proper at trial since to do so would permit the party to harbor error as an appellate parachute.” *Marshall Lasser, PC v George*, 252 Mich App 104, 109; 651 NW2d 158 (2002), quoting *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989).

Plaintiff's argument on appeal is that a writ of mandamus should be issued requiring the Township to place on an election ballot the language stated in the petitions of the owners of more than 10 percent of the land in the Township, proposing under MCL 41.801(3) the creation of a special assessment district comprised of the entire Township, excluding tax exempt property, to raise funds for fire protection and emergency medical services. Plaintiff contends that the question submitted to voters should be framed exactly as it was in the landowner petitions, including the amount and duration of the special assessment. In particular, plaintiff seeks to compel the Township to submit to the voters a question regarding whether to permit the raising of one mill for a five-year period, instead of the Township's modified language asking whether the Township should be allowed to assess up to 10 mills without specifying a limit on the duration of the special assessment. We conclude that plaintiff waived that argument.

During the December 1, 2011, show cause hearing, defense counsel noted that the landowner petitions requested a one mill assessment for five years, but MCL 41.801 allows an assessment up to 10 mills for an unlimited duration. Defense counsel also noted that under MCL 41.801, if a special assessment district is proposed under subsection (3), a public hearing process is required under subsection (4). Defense counsel continued:

. . . The Township Board should be given its due in terms of following the statute, Judge. And if the Township Board members, some of whom may reach the conclusion that, and I'm of the opinion that, you misled the people that signed the petition. You told them it was one year and five mills [sic] and that's not true. And the Township can't fix it even if they trim the language, the ballot language that's been submitted by the petitioners — by the property owners. They're going to vote for it thinking it's a one mill limit, and it will never be a one mill limit. It's created an unlimited special assessment district.

The only reason I bring all this up, Judge, is for you to order the Township Board, it's ministerial, put it on the ballot. It's wrong. It does not give them their due under the statute to do what they're suppose [sic] to do, which is public hearing, inform the voters. And that language is a problem. If you order them to put that language on the ballot it is indefensible.

MR. STEMPIEN [plaintiff's counsel]: Your Honor, I don't why he says it's indispensable (sic) because *the Township Board has the plenary authority to limit it to any amount that they want to limit it to*. And if you look at the proposed Writ of Mandamus —

THE COURT: *What does that mean? Does that mean they have authority to change the language in the petition?*

MR. STEMPIEN: Pardon.

THE COURT: *Does that mean they have the authority to change the language that goes on the ballot?*

MR. STEMPIEN: *Yes*. Because if you read the statute and read the —

* * *

THE COURT: *Okay. So your point is there is opportunity for the Board to remedy the petition language for the special assessment so that it is a SAD [Special Assessment District] as opposed —*

MR. STEMPIEN: *They have that power*.

THE COURT: So it is a SAD as opposed to something —

MR. CRONIN [defense counsel]: A hybrid.

THE COURT: *Yes*. That is a good word. Hybrid language that seems to imply limited time period such as the case with the millage.

So he's saying that there is chance to remedy that. Is that the way petitions go?

MR. CRONIN: It doesn't remedy that the petitions were signed based on the representation that it's one mill and five years. It does not change that ultimate thought. In the Board meeting where the 8.8868 figure came up, this issue was discussed. The attorney — pardon me — different attorney for the proponents of the petition. I told them to their face on the record, you can get more signatures on your petitions, but you've still got this ballot language question. Now I'm just a lawyer. I don't have a vote, Judge, but this ballot language issue taints the whole process.

* * *

MR. CRONIN: After what happens is the Township Board, by resolution, approves the language to go on the ballot.

THE COURT: That's what he [plaintiff's counsel] just said. That's just his point. [Emphasis added.]

Later in the hearing, plaintiff's counsel again said that the Township Board "can have their public hearing, and *they can draft the resolution that they have the authority to draft and give it to the Clerk.*" (Emphasis added.) Plaintiff's counsel further stated, "But even if there is a problem with that petition, the Township Board in doing their ministerial act, *one of the last things they have to do is to prepare the language that goes on the ballot. They do that. That's their responsibility.* And they give it to the [Township] Clerk and the Clerk then submits it to the County Clerk. . . ." (Emphasis added.)

Thus, plaintiff's counsel conceded below that the Township Board had the authority to prepare the language that appears on the ballot and that the Board could change and remedy the language stated on the landowner petitions. Plaintiff's counsel made these concessions during a discussion of the very point in contention on appeal, i.e., whether the special assessment would be for one mill or up to 10 mills, when defense counsel raised this precise issue at the hearing. Accordingly, because plaintiff's counsel expressly agreed below that the Township Board could change the language from the petitions and prepare the language that appears on the ballot, plaintiff cannot take a contrary position on appeal. *Grant*, 272 Mich App at 148. Plaintiff may not assign as error something that its "own counsel deemed proper [in the trial court] since to do so would permit [plaintiff] to harbor error as an appellate parachute." *Marshall Lasser, PC*, 252 Mich App at 109 (internal quotation marks and citation omitted).

Plaintiff also conceded below that the Township Board was required to determine the amount of the special assessment levy, directly contrary to its argument on appeal that the Township Board may not determine the amount of the levy when landowners petition for the creation of a special assessment district. Plaintiff's complaint alleged that the Township Board had to complete the duties set forth in MCL 41.801(4), including estimating the cost and expenses of the fire motor vehicles, apparatus, equipment, and housing and fire protection; fix a day for a public hearing on the estimate and the question of creating a special assessment district; publish notice of the hearing at least five days before the hearing; and determine the boundaries of the district *and the amount of the levy* by resolution. Likewise, in its December 1, 2011, brief supporting its request for a writ of mandamus and injunctive relief, plaintiff expressly argued that MCL 41.801(4) required the Township Board to estimate the cost of fire equipment, housing and fire protection; fix a day for a public hearing to hear objections on the estimate and on the question of creating a special assessment district; publish notice five days before the hearing; and determine the boundaries of the special assessment district *and the amount of the special assessment levy for fire protection.* On December 2, 2011, the trial court entered an order providing, in relevant part, that the Township had received petitions from the owners of 10 percent of the land in the Township that is to be made into a special assessment district, thus activating the mandatory duties of the Township stated in MCL 41.801. Thus, having conceded below that the Township Board was required to determine the amount of the special assessment

levy, plaintiff may not assert a contrary position on appeal as an appellate parachute. *Grant*, 272 Mich App at 148; *Marshall Lasser, PC*, 252 Mich App at 109.

It is true that, later in the trial court proceedings, after the Township Board had issued a resolution with proposed ballot language, plaintiff did argue, in conjunction with its renewed request for a writ of mandamus, that the Township Board had failed to submit the specific question from the landowners' petitions, instead submitting a question asking for an amount 10 times greater than the one mill increase requested in the petitions. Likewise, later, when requesting injunctive relief, plaintiff argued that MCL 41.801 provides no discretion to the Township Board to submit a question to the electors that differs from the question stated in the landowners' petitions. By this point, however, plaintiff had already conceded earlier in the litigation that the Township Board had authority to prepare the ballot language and to change or remedy the language stated in the landowners' petitions, and that the Township Board was required to determine the amount of the special assessment levy, and this waiver thereby eliminated any error. *The Cadle Co*, 285 Mich App at 254-255. Accordingly, because this issue has been waived, there is no error to review.

Nonetheless, even if plaintiff's argument was not waived, we would conclude that it lacks merit. This Court "review[s] for an abuse of discretion a [trial] court's decision on a request for mandamus." *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 367; 820 NW2d 208 (2012). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *Bay City v Bay Co Treasurer*, 292 Mich App 156, 164; 807 NW2d 892 (2011). "However, [this Court] review[s] de novo the first two elements required for issuance of a writ of mandamus — that defendants have a clear legal duty to perform, and plaintiffs have a clear legal right to performance of the act requested — as questions of law." *Coalition for a Safer Detroit*, 295 Mich App at 367. "Similarly, this Court reviews de novo the legal question of the interpretation of a statute." *Bay City*, 292 Mich App at 164. In addition, this Court "review[s] de novo constitutional issues and any other questions of law that are raised on appeal." *Cummins v Robinson Twp*, 283 Mich App 677, 690; 770 NW2d 421 (2009).

Initially, this issue is not moot. "This Court's duty is to consider and decide actual cases and controversies." *Morales v Parole Bd*, 260 Mich App 29, 32; 676 NW2d 221 (2003). Hence, this Court generally does not address moot questions or declare legal principles that have no practical effect in a case. *Id.* Nonetheless, "[t]his Court will entertain cases that are technically moot if the issues involved are of public significance and are likely to recur in the future and yet evade judicial review." *Id.* Here, although plaintiff's complaint sought to place this proposal on the February 28, 2012, election, which has now passed, it is possible that plaintiff's proposed ballot language could be placed on the ballot in a future election. Thus, the issue whether the Township is required to place the precise language stated in the petitions on the ballot is not moot as a decision by this Court could have a practical effect in the case. Moreover, even if the issue was moot, it involves an issue of public significance that is likely to recur yet evade review. As the Michigan Townships Association's amicus curiae brief explains, "[p]roper resolution of this case is of major importance to townships throughout the state" given that "[s]pecial assessments, as set forth in [MCL 41.801], are levied on an annual basis throughout the state as a funding mechanism for the maintenance and operation of township police and fire departments."

Further, as this case demonstrates, disputes over ballot language may evade review as election deadlines pass. Therefore, this issue may be reviewed even if it is moot.

“A writ of mandamus is an extraordinary remedy that will only be issued if (1) the party seeking the writ has a clear legal right to the performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result. The party seeking mandamus has the burden of establishing that the official in question has a clear legal duty to perform.” *Coalition for a Safer Detroit*, 295 Mich App at 366-367 (internal quotation marks and citations omitted). “An act is ministerial in nature if it is prescribed and defined by law with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 439; 722 NW2d 243 (2006) (internal quotation marks and citations omitted).

Determining whether a clear legal duty exists in this case requires this Court to apply the language of MCL 41.801. “If the language in a statute is clear and unambiguous, this Court assumes that the Legislature intended its plain meaning, and the statute must be enforced as written. This Court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.” *Bay City*, 292 Mich App at 166-167 (internal quotation marks and citations omitted). “It is not the prerogative of this Court to judicially legislate by adding language to a statute.” *Id.* at 168 (internal quotation marks, brackets, and citation omitted). “When construing a statute, a necessary corollary to the plain meaning rule is that courts should give the ordinary and accepted meaning to the mandatory word ‘shall’ and the permissive word ‘may’ unless to do so would clearly frustrate legislative intent as evidenced by other statutory language or by reading the statute as a whole.” *Grabow v Macomb Twp*, 270 Mich App 222, 229; 714 NW2d 674 (2006) (internal quotation marks, brackets, and citation omitted). In addition, “[p]rovisions of a statute are not construed in isolation but, rather, in the context of other provisions of the same statute to give effect to the purpose of the whole enactment.” *Chiles v Machine Shop, Inc*, 238 Mich App 462, 472; 606 NW2d 398 (1999).

MCL 41.801 provides, in relevant part:

(1) The township board of a township, or the township boards of adjoining townships acting jointly, whether or not the townships are located in the same county, may purchase police and fire motor vehicles, apparatus, equipment, and housing and for that purpose may provide by resolution for the appropriation of general or contingent funds. Before January 1, 1999, the appropriation for fire motor vehicles, apparatus, equipment, and housing in a 1-year period shall not exceed 10 mills of the assessed valuation of the area in their respective townships for which fire protection is to be furnished. After December 31, 1998, the appropriation for fire motor vehicles, apparatus, equipment, and housing in a 1-year period shall not exceed 10 mills of the taxable value of the area in their respective townships for which fire protection is to be furnished. . . .

(2) The township board of a township, or the township boards of adjoining townships acting jointly, whether or not the townships are located in the same

county, may provide annually by resolution for the appropriation of general or contingent funds for maintenance and operation of police and fire departments.

(3) *The township board, or the township boards of adjoining townships acting jointly, may provide that the sums prescribed in subsection (2) for purchasing and housing equipment, for the operation of the equipment, or both, may be defrayed by special assessment on the lands and premises in the township or townships to be benefited, except, beginning in 2002, lands and premises exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, and may issue bonds in anticipation of the collection of these special assessments. The question of raising money by special assessment may be submitted to the electors of the township or townships by the township board, or township boards acting jointly, at a general election or special election called for that purpose by the township board or township boards. The question of raising money by special assessment shall be submitted by the township board, or township boards acting jointly, if in the affected township, or in each of the affected townships, the owners of 10% of the land to be made into a special assessment district petition the township board or boards.*

(4) If a special assessment district is proposed under subsection (3), the township board, or township boards acting jointly, shall estimate the cost and expenses of the police and fire motor vehicles, apparatus, equipment, and housing and police and fire protection, and fix a day for a hearing on the estimate and on the question of creating a special assessment district and defraying the expenses of the special assessment district by special assessment on the property to be especially benefited, except, beginning in 2002, property exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157. The hearing shall be a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. In addition, the township board, or township boards acting jointly, shall publish in a newspaper of general circulation in the proposed district a notice stating the time, place, and purpose of the meeting. If there is not a newspaper of general circulation in the proposed district, notices shall be posted in not less than 3 of the most public places in the proposed district. This notice shall be published or posted not less than 5 days before the hearing. On the day appointed for the hearing, the township board, or township boards acting jointly, shall be in session to hear objections that may be offered against the estimate and the creation of the special assessment district. Before January 1, 1999, if the township board, or township boards acting jointly, determine to create a special assessment district, they shall determine the boundaries by resolution, determine the amount of the special assessment levy, and direct the supervisor or supervisors to spread the assessment levy on all of the lands and premises in the district that are to be especially benefited by the police and fire protection, according to benefits received, except, beginning in 2002, lands and premises exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, to defray the expenses of police and fire protection.

After December 31, 1998, *if the township board, or township boards acting jointly, determine to create a special assessment district, they shall determine the boundaries by resolution, determine the amount of the special assessment levy,* and direct the supervisor or supervisors to spread the assessment levy on the taxable value of all of the lands and premises in the district that are to be especially benefited by the police and fire protection, according to benefits received, except, beginning in 2002, lands and premises exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, to defray the expenses of police and fire protection. The township board, or township boards acting jointly, shall hold a hearing on objections to the distribution of the special assessment levy. This hearing shall be held in the same manner and with the same notice as provided in this section. *The township board, or township boards acting jointly, shall annually determine the amount to be assessed in the district for police and fire protection,* shall direct the supervisor or supervisors to distribute the special assessment levy, and shall hold a hearing on the estimated costs and expenses of police and fire protection and on the distribution of the levy. The assessment may be made either in a special assessment roll or in a column provided in the regular tax roll. The assessment shall be distributed and shall become due and be collected at the same time as other township taxes are assessed, levied, and collected, and shall be returned in the same manner for nonpayment. If a township has a July property tax levy, not more than 2 mills of the assessment may be collected at the same time and in the same manner as the July levy. If the collections received from the special assessment levied to defray the cost or portion intended to be defrayed for police and fire protection are, at any time, insufficient to meet the obligations or expenses incurred for the maintenance and operation of the police and fire departments, the township board of the township, or township boards acting jointly, may, by resolution, authorize the transfer or loan of sufficient money from the general fund of the township or townships, to the special assessment police and fire department fund. This money shall be repaid to the general fund of the township or townships out of special assessment funds when collected. [Emphasis added.]

MCL 41.802 provides: “After the creation of a special assessment district under [MCL 41.801], the township board, or township boards of adjoining townships acting jointly, may appropriate annually that sum necessary for the maintenance and operation of the police and fire departments.”

No case law has addressed the issue presented here, i.e., whether a township board must submit to the electors the precise language stated in the landowners’ petitions, including the amount of the mills proposed to be raised and the duration of the special assessment district.²

² Although no case has addressed this precise question, there are cases in which the facts summarized indicated that the amount and/or duration of the special assessment was submitted to the electors. In *St Joseph Twp v Muni Fin Comm*, 351 Mich 524, 526-527; 88 NW2d 543

We conclude that the plain language of MCL 41.801(3) unambiguously supports the Township's position that it is not required to use the language stated in the landowners' petitions. MCL 41.801(3) states that the township board "may provide that the sums . . . for purchasing and housing equipment, for the operation of the equipment, or both, may be defrayed by special assessment on the lands and premises in the township. . . ." That is, *the township board* may decide to create a special assessment district. Subsection (3) then goes on to provide that "[t]he question of raising money by special assessment *may* be submitted to the electors of the township . . . by the township board . . . at a general election or special election called for that purpose by the township board. . . ." MCL 41.801(3) (emphasis added). The word "may" is generally understood to be permissive. *Grabow*, 270 Mich App at 229. Thus, the statute says that if the township board decides to create a special assessment district, the board on its own initiative is permitted to submit the question of raising money by special assessment to the voters. Subsection (3) then goes on further to provide that "[t]he question of raising money by special assessment *shall* be submitted by the township board . . . if in the affected township . . . the owners of 10% or more of the land to be made into a special assessment district petition the township board. . . ." MCL 41.801(3) (emphasis added). The word "shall" is generally considered a mandatory term. *Grabow*, 270 Mich App at 229. Thus, if the owners of 10 percent or more of the land to be made into a special assessment district petition the township board, the board *must* submit the question of raising money by special assessment to the electors.

Notably absent from MCL 41.801(3) is any indication that landowners may petition to create a special assessment in a particular amount of money for a particular length of time. The statute merely says that *the township board* may provide for defraying certain costs by special assessment, that the township board may submit "the question of raising money by special assessment" to the electors, and that the township board must submit the question to the electors if the owners of 10 percent of the land petition the board to do so. MCL 41.801(3). In other words, it is the township board that may decide to provide for defraying costs by a special assessment. The affected landowners, i.e., the persons who will be subject to the proposed special assessment, then have a right to petition the board to hold an election on the question whether to create the special assessment district. The statute thus provides a way for landowners who will be subject to the proposed special assessment to *stop* the creation of a special assessment district proposed by the township board. The statute does not say that petitioning landowners may provide for or initiate the creation of a special assessment district.

(1958), our Supreme Court indicated that a township board had submitted to the voters "the question of creating a special assessment district (namely, all real property in the township), of levying a special assessment at the rate of 2 mills per year for 5 years, of issuing \$50,000 of special assessment bonds, and of establishing a fire department from the proceeds." And in *Niles Twp v Berrien Co Bd of Comm'rs*, 261 Mich App 308, 310; 683 NW2d 148 (2004), this Court indicated that "township voters approved two special assessments, one for capital improvements for fire protection for up to three mills, and one for operation and maintenance of fire protection for up to 2-1/2 mills." However, in neither *St Joseph Twp* nor *Niles Twp* was any issue raised regarding whether a township was *required* to submit to the electors language prescribing the amount and/or duration of the special assessment. Thus, this issue has not been addressed previously.

But even if landowners could, by petition, provide for or initiate the creation of a special assessment district, and not merely block a special assessment proposed by the township board, there is no statutory language requiring the township board to submit to the electors a question regarding the *amount or duration* of the special assessment as set forth in the landowners' petitions. MCL 41.801(3) merely provides for submitting to the electors "the question of raising money by special assessment. . . ." The statute does not define the term "question." Appellate courts may rely on a dictionary definition to give an otherwise undefined word its plain and ordinary meaning. *Johnson v Pastoriza*, 491 Mich 417, 436; 818 NW2d 279 (2012). *Random House Webster's College Dictionary* (2001) defines the word "question," in relevant part, as "a subject of dispute or controversy" or "a proposal to be debated or voted on, as in a meeting or a deliberative assembly." Therefore, the phrase "the question of raising money by special assessment" is reasonably understood as referring to a dispute or a proposal regarding whether to raise money by special assessment. MCL 41.801(3) thus requires, on petition by the requisite percentage of landowners, submitting to the electors the proposal or dispute regarding whether to raise money by special assessment. But the question *whether* to create a special assessment district is distinct from questions regarding the *amount or duration* of the special assessment, and no language in MCL 41.801(3) provides for submitting the latter questions to the electors.

And, indeed, other portions of the statute support the conclusion that the township board itself decides the amount of the assessment. The language of MCL 41.801(3) must not be "construed in isolation but, rather, in the context of other provisions of the same statute to give effect to the purpose of the whole enactment." *Chiles*, 238 Mich App at 472. MCL 41.801(1) indicates that the township board "may purchase fire motor vehicles, apparatus, equipment, and housing and for that purpose may provide by resolution for the appropriation of general or contingent funds." MCL 401.801(2) says that the township board "may provide annually by resolution for the appropriation of general or contingent funds for maintenance and operation of police and fire departments." MCL 401.801(4) requires the township board to "estimate the costs and expenses of the police and fire motor vehicles, apparatus, equipment, and housing and police and fire protection, and fix a day for a hearing on the estimate and on the question of creating a special assessment district and defraying the expenses of the special assessment district by special assessment on the property to be especially benefited. . . ." A later provision in subsection (4) says that "if the township board . . . determine[s] to create a special assessment district, [the board] shall determine the boundaries by resolution [and] determine the amount of the special assessment levy. . . ." MCL 401.801(4). In addition, the township board must "annually determine the amount to be assessed in the district for police and fire protection. . . ." MCL 401.801(4). MCL 41.802 provides that "[a]fter the creation of a special assessment district under [MCL 41.801], the township board . . . may appropriate annually that sum necessary for the maintenance and operation of the police and fire departments." These provisions reflect that it is the township board that decides whether to purchase fire motor vehicles, equipment, and housing, makes the necessary appropriations to fund the fire department, estimates the costs and expenses for a special assessment district, determines the amount of the special assessment levy, and annually determines the amount to be assessed. No provision in MCL 401.801 indicates that the petitioning landowners may make such determinations or mandate submission of those questions to the electors.

Plaintiff contends that the portion of MCL 41.801(4) providing that the township board shall determine the amount of the special assessment levy does not apply where landowners have

petitioned for submission of the question to the electors. Plaintiff relies on the sentence of MCL 41.801(4) providing such authority to the township board by stating “if the township board . . . determine[s] to create a special assessment district. . .” Plaintiff argues that the Township Board here did not determine to create a special assessment district because the petitioning landowners initiated the proposal. But, as discussed above, MCL 41.801(3) begins by stating that it is *the township board* that may provide for a special assessment; subsection (3) then goes on to state that the township board may submit to the electors the question of creating a special assessment district, and that the question must be submitted to the electors on petition of the requisite percentage of landowners. Plaintiff misreads MCL 41.801(3) to permit petitioning landowners to provide for or initiate creation of a special assessment district. A proper reading of subsection (3) reflects that the requisite percentage of landowners possess the authority to submit to the electors the question of creating a special assessment district once the township board itself has determined to provide for defraying costs by special assessment. Thus, because it is the township board that may provide for defraying costs by special assessment, the sentence in MCL 41.801(4) allowing the township board to determine the amount of the special assessment levy after having determined to create a special assessment district is applicable if a special assessment district is created.

Moreover, permitting an entity other than the township board to determine the amount of the special assessment cannot be reconciled with the Legislature’s grant of authority to the township board to decide whether to purchase fire motor vehicles, equipment, apparatus, and housing, to make appropriations for such items and the operation of the fire department, and to make an estimate of the costs and expenses. MCL 41.801(1), (2), and (4). Given the township board’s unquestioned authority to make these determinations, it follows that the board also must be permitted to determine the amount of the special assessment needed to fund the fire department. As the Township observes, expenses may vary from year to year depending on how busy or idle the fire department is in a given year. Plaintiff’s argument would allow the petitioning landowners to set in stone the amount of the special assessment several years in advance without reference to the needs of the fire department in a given year. Such an interpretation has no basis in the statutory text or the purpose of the overall enactment. “[I]n general, the amount of the special assessment must bear a reasonably proportionate relationship to the benefit accruing to the property assessed.” *Niles Twp v Berrien Co Bd of Comm’rs*, 261 Mich App 308, 324; 683 NW2d 148 (2004).

Next, plaintiff has failed to establish a violation of the constitutional right to petition the government for redress of grievances and to instruct representatives. Const 1963, art 1, § 3 provides: “The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.” “The right to petition for redress of grievances may be exercised grandly or humbly as the means of the petitioner, the popularity of his cause, or the dedication of his adherents may permit.” *Jensen v Menominee Circuit Judge*, 382 Mich 535, 541; 170 NW2d 836 (1969) (opinion of T. E. BRENNAN, C.J.). Plaintiff has presented no evidence that it or any of its members have been denied the right to instruct their representatives or to petition the government for redress of grievances. To be sure, the Township has made decisions different from what plaintiff has advocated, but plaintiff has failed to cite authority establishing that it is entitled not merely to petition and instruct its representatives, but to have the government act in exactly the manner plaintiff wishes. Indeed, such an interpretation of the constitutional right is illogical, given that

citizens in a representative democracy often express differing positions on issues and it would thus be impossible for the government to act according to every petitioning citizen's instructions. This Court "will not search for authority to sustain or reject a party's position." *Spires v Bergman*, 276 Mich App 432, 444; 741 NW2d 523 (2007). Given plaintiff's failure to cite relevant authority supporting its interpretation of the constitutional right, this aspect of its argument on appeal is deemed abandoned. *Id.*

Accordingly, we conclude that MCL 41.801 does not create a clear legal duty of the Township to place on the ballot the exact language set forth in the landowners' petitions, including the amount and duration of the special assessment. Because no clear legal duty exists, plaintiff lacks a clear legal right to the performance of the specific duty sought. Plaintiff has thus failed to establish that it is entitled to the extraordinary remedy of a writ of mandamus. *Coalition for a Safer Detroit*, 295 Mich App at 366-367.

Plaintiff's next argument on appeal is that the trial court improperly denied its request for a preliminary injunction. We disagree. This Court reviews for an abuse of discretion a trial court's decision whether to grant a preliminary injunction. *Oshtemo Charter Twp v Kalamazoo Co Rd Comm*, 288 Mich App 296, 302; 792 NW2d 401 (2010). "An abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 146; 809 NW2d 444 (2011) (internal quotation marks, brackets, and citation omitted).

"A court's issuance of a preliminary injunction is generally considered equitable relief. The objective of a preliminary injunction is to maintain the status quo pending a final hearing regarding the parties' rights." *Mich AFSCME Council 25*, 293 Mich App at 145 (internal quotation marks, footnote, and citations omitted). "The status quo which will be preserved by a preliminary injunction is the last actual, peaceable, noncontested status which preceded the pending controversy." *Fancy v Egrin*, 177 Mich App 714, 720; 442 NW2d 765 (1989) (internal quotation marks and citations omitted).

"To obtain a preliminary injunction, the moving party bears the burden of proving that the traditional four elements favor the issuance of a preliminary injunction." *Hammel v Speaker of the House of Representatives*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 309484, issued August 16, 2012) (slip op at 3), lv pending (internal quotation marks and citation omitted). This four-factor test requires the trial court to consider:

- (1) the likelihood that the party seeking the injunction will prevail on the merits,
- (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued,
- (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and
- (4) the harm to the public interest if the injunction is not issued. [*Id.* (internal quotation marks and citation omitted).]

"The irreparable-harm factor is considered an indispensable requirement for a preliminary injunction. It requires a particularized showing of irreparable harm." *Mich AFSCME Council 25*, 293 Mich App at 149 (citations omitted). "[A]n injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural." *Id.*

(internal quotation marks and citations omitted); see also *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8-9; 753 NW2d 595 (2008).

Initially, we note that a preliminary injunction is an inappropriate remedy here because plaintiff is not seeking to preserve the status quo, i.e., “the last actual, peaceable, noncontested status which preceded the pending controversy.” *Fancy*, 177 Mich App at 720 (internal quotation marks and citations omitted). Instead, plaintiff seeks to *change* the status quo by forcing the Township to place on the ballot the language stated in the landowners’ petitions. It is true that in its complaint, plaintiff sought a temporary injunctive order restraining the Township from reducing or changing its fire protection and emergency medical services until after the electors vote on the matter. However, as the litigation proceeded, the nature of injunctive relief plaintiff sought evolved to include a request that the Township be required to place on the ballot the question stated in the landowners’ petitions asking for a special assessment in the amount of one mill for a period of five years. Accordingly, because plaintiff is not seeking merely to preserve the status quo, a preliminary injunction is an inappropriate remedy in this case.

An additional reason why a preliminary injunction is not appropriate is that plaintiff is essentially asking for all of the relief requested in its complaint with respect to its request for a writ of mandamus. That is, plaintiff seeks an injunction to force the Township to place the question stated in the landowner petitions on the ballot, precisely what plaintiff sought unsuccessfully in seeking a writ of mandamus. Thus, given the nature of relief sought, it is unclear why plaintiff is not asking for a permanent injunction. In any event, given that plaintiff addresses this issue in the context of the requirements for establishing a preliminary injunction, including the likelihood of prevailing on the merits, we will address this issue as involving a request for a preliminary injunction.

Next, assuming that a preliminary injunction could be an appropriate remedy for the type of relief sought, we conclude that plaintiff has not met its burden of establishing that it is entitled to a preliminary injunction. First, plaintiff has not established that it is likely to prevail on the merits. For the reasons discussed above, plaintiff is not entitled to the issuance of a writ of mandamus forcing the Township to place the landowners’ petition language on the ballot.

Second, plaintiff has failed to make a particularized showing of irreparable harm. Plaintiff contends that without an injunction, the citizens of the Township will be irreparably harmed because their rights to petition and to instruct their representatives will be denied. As discussed previously, however, plaintiff has not established a denial of the rights to petition and to instruct representatives. The fact that the Township has not taken the actions advocated by plaintiff does not establish a denial of the rights to petition and to instruct representatives.

Plaintiff also contends that public safety will be threatened by the failure to properly fund fire protection and emergency medical services. However, plaintiff has not shown that the failure to place its proposed language on the ballot will adversely affect the safety of Township citizens. “[A]n injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural.” *Mich AFSCME Council 25*, 293 Mich App at 149 (internal quotation marks and citations omitted). It is speculative to conclude that the Township will fail to adequately fund fire protection and emergency medical services in the absence of a special assessment of one mill for five years. There has been no showing of real

and imminent harm.³ Cf. *Pontiac Fire Fighters Union Local 376*, 482 Mich at 11 (concluding that an argument regarding the effect of firefighter layoffs on the safety of the remaining firefighters “alleged nothing more than an apprehension of future injury or damage” and that the plaintiff had failed to show “how the remaining firefighters faced *real* and *imminent* danger from the layoffs rather than future, speculative harm.”) (emphasis in original).

Moreover, no basis exists to conclude that the voters would adopt the proposal even if it is placed on the ballot. Although plaintiff presented the results of an April 2011 poll of 200 likely voters indicating support for the proposal, it remains a matter of speculation how the proposal would fare following an election campaign in which supporters and opponents argue their respective positions to the voters. Thus, even if plaintiff could show particularized harm flowing from the failure to enact a special assessment of one mill for five years, plaintiff has not established that this harm would be avoided by forcing the Township to place the matter on the ballot. Accordingly, plaintiff has not made a particularized showing of irreparable harm if the injunction is not issued.

Further, plaintiff has not established that it would be harmed more by the absence of an injunction than the Township would be by granting the relief. As discussed, it is speculative to conclude that plaintiff or Township citizens will suffer harm from the failure to place on the ballot the proposal to impose a special assessment of one mill for five years. Finally, for the reasons discussed, no basis exists in the record to conclude that the public interest will be harmed if the injunction is not issued. We therefore conclude that the trial court did not abuse its discretion in denying plaintiff’s request for a preliminary injunction.

In light of resolution of the above issues, we need not address the issue raised on cross-appeal.

Affirmed. No taxable costs, a public question being involved.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Karen M. Fort Hood

³ Plaintiff submitted affidavits of Township residents who have benefited from and/or rely on the Township’s fire protection or emergency medical services, but the fact that Township residents have benefited from such services does not establish that the Township will fail to adequately fund fire protection and emergency medical services in the absence of an injunction forcing the Township to place plaintiff’s proposed language on the ballot. Likewise, the affidavit of a Township firefighter/paramedic that he has been told the fire department will be downsized and that such reductions will harm Township residents because of increased response times is based on speculation regarding the occurrence and effect of future events and does not establish a real and imminent danger to plaintiff or Township residents.