

**STATE OF MICHIGAN  
SECRETARY OF STATE**

In re: AMENDED/RENEWED Michigan Campaign Finance Complaint against **Third Judicial Circuit Court of Michigan, Wayne County Circuit Court Chief Judge Timothy Kenny, Wayne County Circuit Court Judge Patricia Fresard, Wayne County Circuit Court Judge Kelly Ann Ramsey, and Richard Lynch**, in his official capacity as General Counsel for Third Circuit Court.

---

**NOW COMES, ROBERT DAVIS**, a natural person, being first duly sworn and deposed, and under the penalty of perjury, states the following:

1. Pursuant to MCL 169.215(5) and (6) of the Michigan Campaign Finance Act (MCFA), I, Robert Davis, hereby submit this complaint against **Third Judicial Circuit Court of Michigan, Wayne County Circuit Court Judge Patricia Fresard, and Wayne County Circuit Court Judge Kelly Ann Ramsey** for violating MCL §§ 169.254 and 169.257 of the MCFA.
2. My address and telephone number are as follows: Robert Davis, 180 Eason, Highland Park, MI 48203, (313) 523-7118.
3. The address for alleged violators **Wayne County Circuit Court Chief Judge Timothy Kenny** is: **2 Woodward Ave.,**

7<sup>th</sup> Floor-Courtroom 701, Detroit, MI 48226. Phone number is (313) 224-5430.

4. The address for alleged violator Judge Patricia Fresard is: 1751 Lochmoor, Grosse Pointe Woods, MI 48236. Phone number is 313-224-5173.

5. The address for alleged violator Judge Kelly Ann Ramsey is: 8656 Napier, Northville, MI 48168. Phone number is 313-224-0391.

6. The address for alleged violator Richard Lynch is: 2 Woodward Ave., 7<sup>th</sup> Floor, Detroit, MI 48226. Phone number is 313-224-5430.

7. Section 57 of the Campaign Finance Act, MCL 169.257(1), provides, in part, as follows:

*A public body or a person acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). (emphasis supplied).*

8. MCL 169.211(7)(d) defines a "public body" to include "[a]ny other body that is created by state or local authority or is primarily funded by or through state or local authority, if the body exercises governmental or proprietary authority or performs a governmental or proprietary function." (emphasis supplied). See MCL 169.211(7)(d).
9. "When a statute specifically defines a given term, that definition alone controls." *Haynes v Neshwot*, 477 Mich. 29, 35; 729 NW2d 488 (2007).
10. The Third Circuit Court was created by state authority, MCL 600.504 and 600.601.
11. In addition, the Third Circuit Court performs a governmental function authorized by Const 1963, Article VI, §§ 11, 13.
12. Accordingly, the Third Circuit Court is a "public body" within the meaning of the Michigan Campaign Finance Act. *In re Brennan*, 504 Mich. 80, \_\_\_; 929 NW2d 290, 312-313 (2019).
13. On July 26, 2022, Complainant Robert Davis ("Davis") filed a three-count complaint in the Wayne County Circuit Court

against the Wayne County Election Commission; Patricia Presard, in her *individual capacity as a candidate* for Judge of the Third Circuit Court Incumbent Position; Kelly Ann Ramsey, in her *individual capacity as a candidate* for Judge of the Third Circuit Court Incumbent Position; and Lakena Tennille Crespo, in her individual capacity as a candidate for Judge of the Third Circuit Court Non-Incumbent Position where it was given Case No. 22-008866-AW (referred to hereinafter as “Wayne County Election Lawsuit” or “Davis election matter”). (See Plaintiff’s Original Complaint attached).

14. Pursuant to the Wayne County Circuit Court’s local administrative order, Davis’ Wayne County Election Lawsuit was automatically assigned to Chief Judge Tim Kenny (“Chief Judge Kenny”) because it was an election-related matter.

15. On July 28, 2022, Julie Dale (P60221), in her **official capacity** as Associate General Counsel of the Third Judicial Circuit Court of Michigan (“Wayne County Circuit Court”), entered an appearance in Davis’ Wayne County Election

Lawsuit on behalf of Patricia Fresard and Kelly Ann Ramsey.

**(See Attorney Julie Dale's Notice of Appearance entered in the Wayne County Election Lawsuit attached).**

16. Upon receiving attorney Julie Dale's notice of appearance, Davis immediately began researching the legality of such representation considering the two incumbent judges: Patricia Fresard and Kelly Ann Ramsey, were being sued in their **individual capacities as candidates and NOT in their official capacities as judges.**

17. On July 29, 2022, Davis sent an email to Julie Dale, the State Court Administrator and to all of the parties and their counsel named in the Wayne County Election Lawsuit advising them that Davis objected to Julie Dale's representation of the two incumbent judges: Patricia Fresard and Kelly Ann Ramsey, who were being sued in their **"individual" capacities.** (See **Davis' July 29, 2022 Email attached).**

18. Sometime after Davis sent his July 29, 2022 email, Davis spoke by phone to Julie Dale and again expressed his objections to her representation of the two incumbent judges and Julie

Dale responded and rudely advised the Davis that she would not be withdrawing as counsel unless ordered to do so.

19. During this phone conversation, Julie Dale also advised Davis that Chief Judge Kenny, in his official capacity as Chief Judge, and Third Circuit Court's General Counsel, Richard Lynch, in his official capacity as General Counsel of Third Circuit Court, authorized her representation of the two incumbent judges.

20. Chief Judge Kenny and Richard Lynch, acting in their respective official capacities, were acting on behalf of Third Circuit Court when they authorized Julie Dale to represent the two incumbent judges—Judges Fresard and Ramsey—in the Davis election matter.

21. “[A] corporation can only act through its officers and agents.” *In re Morun*, 295 Mich.App. 312, \_\_; 814 NW2d 319, 330 (2012). See also *In re Kennison Sales & Engineering Co., Inc*, 363 Mich. 612, 617, 110 N.W.2d 579 (1961), quoting *Stowe v. Wolverine Metal Specialties Co.*, 242 Mich. 624, 628, 219 N.W. 714 (1928).

22. Realizing the severity of this matter, on Wednesday, August 3, 2022, pursuant to MCR 8.113, Davis filed a formal complaint with the State Court Administrative Office (SCAO) requesting an investigation into the Wayne County Circuit Court's and Chief Judge Kenny's unethical and possibly unlawful actions of allowing an employee of the Wayne County Circuit Court to represent two incumbent judges who were being sued civilly in their individual capacities in the Wayne County Election Lawsuit. (See Davis' August 3, 2022 Email to SCAO requesting an investigation attached).

23. On August 6, 2022, Davis filed a supplement to his original request for investigation filed with SCAO, which cited additional authority in support of Davis' position that it was unlawful and unethical for the Wayne County Circuit Court to authorize and allow Julie Dale to represent the two incumbent judges in the Wayne County Election Lawsuit. (See Davis' August 6, 2022 Email to SCAO supplementing Plaintiff's original complaint for investigation attached).

24. Since the filing of this case, Davis received numerous anonymous letters at his home address advising Davis that Judge Fresard, in her official capacity as Chief Judge Pro-Tem of the Third Circuit Court, directed Richard Lynch, General Counsel of Third Circuit Court, to allow Julie Dale to represent her and Judge Ramsey so that they would not have to incur attorneys' fees in which they would have to pay with their own personal funds.
25. Judge Fresard, acting in her official capacity as Chief Judge Pro-Tem of the Third Circuit Court, was acting on behalf of Third Circuit Court when she directed and authorized Richard Lynch to allow Julie Dale to represent her and Judge Ramsey in the Davis election matter.
26. Again, "a corporation can only act through its officers and agents." *In re Morun*, 295 Mich.App. 312, \_\_; 814 NW2d 319, 330 (2012). See also *In re Kennison Sales & Engineering Co., Inc.*, 363 Mich. 612, 617, 110 N.W.2d 579 (1961), quoting *Stowe v. Wolverine Metal Specialties Co.*, 242 Mich. 624, 628, 219 N.W. 714 (1928).



27. In fact, Davis has since learned that Judges Fresard and Ramsey held a fundraiser at the Athenaeum Hotel in Detroit on either Friday, October 28, 2022 or on some other day, for the purpose of raising funds to pay for their attorneys' fees that they have incurred in the various civil cases Davis has filed to get them removed from the November 8, 2022 general election ballot.

28. Julie Dale represented Judges Fresard and Ramsey in the Davis Wayne County Election Case through September 15, 2022. **See September 15, 2022 order of substitution of counsel attached).**

29. On September 15, 2022, Wayne County Circuit Court Judge Qiana Lillard signed an order authorizing the substitution of Julie Dale as counsel for Judges Fresard and Ramsey in Davis' Wayne County Election Case. **(See September 15, 2022 order of substitution of counsel attached).**

30. During the time in which Julie Dale represented Judges Fresard and Ramsey in the Davis election matter, Julie Dale filed various briefs and responses to motions. Additionally,

Julie Dale appeared and argued at the various hearings held in the Davis election matter.

31. Julie Dale used Third Circuit Court's office supplies, computers, research tools, and office space when she represented Judges Fresard and Ramsey in the Davis election matter.

32. Julie Dale received her full pay from Third Circuit Court when she represented Judges Fresard and Ramsey in the Davis election matter.

33. Julie Dale was paid with taxpayers' funds when she represented Judges Fresard and Ramsey in the Davis election matter.

34. Julie Dale did not take off work from Third Circuit Court when she represented Judges Fresard and Ramsey in the Davis election matter.

35. Julie Dale accumulated various fringe benefits, including retirement contributions to her 401k or other retirement account, vacation days, medical insurance, which were paid by

Third Circuit Court during the time in which she represented Judges Fresard and Ramsey in the Davis election matter.

36. MCR 8.110(C) provides the duties and powers of chief judges of circuit courts.

37. Pursuant to MCR 8.110(C)(3)(d) and (h), in his official capacity as Chief Judge of the Third Judicial Circuit Court of Michigan, Chief Judge Kenny, “[a]s director of the administration of the court... *shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to: (d) supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge’s secretary and law clerk, if any;... [and] (h) effect compliance by the court with all applicable court rules and provisions of the law[.]*” (emphasis supplied).

38. As further evidence that the individuals named herein actions were unlawful and in violation of the Michigan Campaign Finance Act, the Michigan Court of Appeals recently

addressed a similar issue in which they addressed the legal question whether a court could indemnify a judge who was civilly sued in their “**individual” capacity and NOT in their “official” capacity.**

39. In addressing this legal question, the Court of Appeals in *Pucci v Nineteenth Judicial District Court*, unpublished per curiam opinion of Court of Appeals, decided March 17, 2016 (Docket No. 325052), slip op at p 8, correctly held:

“While we agree that a Chief Judge can adopt an indemnification policy that covers the court’s court employees and judges **while acting in their official capacity, *we do not believe that this power extends to indemnifying judges for liability incurred in their personal capacity.***” (emphasis supplied).

40. The Court of Appeals’ holding in *Pucci, supra*, directly addresses the issues set forth herein. Although the *Pucci* decision is an unpublished decision, it is nonetheless instructive, persuasive, and directly on point.

41. The Third Circuit Court and Chief Judge Kenny, in his official capacity as Chief Judge, **CANNOT** indemnify nor authorize and direct employees of the Third Circuit Court’s

Office of General Counsel to represent and defend Judges Patricia Fresard and Kelly Ann Ramsey, who are being sued civilly in their individual capacities in the Wayne County Election Lawsuit. *Pucci, supra*.

42. Julie Dale was paid with taxpayers' dollars from the treasury of Wayne County for the work she performed in Davis' Wayne County Election Case on behalf of the two incumbent judges: Patricia Fresard and Kelly Ann Ramsey, who were sued in their "individual capacities" as candidates.

43. Julie Dale unlawfully used equipment and supplies owned by Third Circuit Court in her unlawful representation of Judges Fresard and Ramsey, who are candidates for re-election in the November 8<sup>th</sup>, 2022 general election.

44. If called and sworn as a witness, I am competent to testify as to the facts stated herein.

45. 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.

**FURTHER APPLICANT SAYETH NOT.**

  
**ROBERT DAVIS**

180 Eason

Highland Park, MI 48203

(313) 523-7118

Davisrobert854@gmail.com

Subscribed and sworn to before me

On this 2 day of November, 2022

  
Notary Public Signature

Sherry A Baum  
Printed Name of Notary Public

State of Michigan, County of Macqu

My Commission Expires 1-15-27

Acting in the County of Wayne

Cc: Hon. Cathy M. Garrett, Wayne County Clerk  
Greg Mahar, Director of Elections for Wayne County  
Judicial Tenure Commission  
Attorney Grievance Commission

**SHERYL A. BAUM, Notary Public**  
State of Michigan  
County of Macqu  
My Commission Expires 1/15/27  
Acting in the County of Wayne

**STATE OF MICHIGAN**

**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**ROBERT DAVIS,**

**Case No. 22-008866-AW**

**Plaintiff,**

**Hon. Chief Judge Tim Kenny**

**-v-**

**WAYNE COUNTY ELECTION COMMISSION,  
PATRICIA SUSAN FRESARD, in her individual capacity  
as a candidate for Judge of Third Circuit Court Incumbent Position,  
KELLY ANN RAMSEY, in her individual capacity as a  
candidate for Judge of Third Circuit Court Incumbent Position,  
and LAKENA TENNILLE CRESPO, in her individual capacity as a  
candidate for Judge of Third Circuit Court Non-Incumbent Position,**

**Defendants.**

---

ROBERT DAVIS, Pro se Plaintiff  
180 Eason  
Highland Park, MI 48203  
(313) 523-7118  
[Davisrobert854@gmail.com](mailto:Davisrobert854@gmail.com)

JAMES HEATH  
Wayne Co. Corp. Counsel  
REBECCA A. CAMARGO (P66013)  
Asst. Corp. Counsel  
Attorneys for Defendant Wayne Co.  
Election  
600 Griswold 215E Floor  
Detroit, MI 48226  
(818) 224-6788  
[rcamargo@waynecountv.com](mailto:rcamargo@waynecountv.com)

Julie M. Dale (P60221)  
Associate General Counsel  
Third Circuit Court of Michigan  
Attorney for Defendants Hon. Kelly Ann  
Ramsey and Hon. Patricia Susan Fresard  
2 Woodward Ave., Rm 742  
Detroit, MI 48226  
[Julie.Dale@3rdcc.org](mailto:Julie.Dale@3rdcc.org)

---

**APPEARANCE OF COUNSEL**

Please take notice that Julie M. Dale, Associate General Counsel-Civil Division, hereby enters her appearance on behalf of Defendants Hon. Kelly Ann Ramsey and Hon. Patricia Susan Fresard.

/s/ Julie M. Dale  
Julie M. Dale (P60221)

Dated: July 28, 2022

### **PROOF OF SERVICE**

The undersigned certifies that a copy of the above document was served upon the attorneys of record or parties appearing in propria persona in the above cause by electronically filing with the Clerk of the Court and using the Case Management/Electronic Case Filing system to the attorneys of record or parties appearing in propria persona on July 28, 2022.

/s/ Julie M. Dale  
Julie M. Dale (P60221)



22-008866-AW FILED IN MY OFFICE	Cathy M. Garrett	WAYNE COUNTY CLERK	7/26/2022 9:34 AM	Laverne Chapman
---------------------------------	------------------	--------------------	-------------------	-----------------

V

Page 1 of 59

NOW COMES, Plaintiff, ROBERT DAVIS (“Plaintiff” or “Plaintiff Davis”), in his own proper person, and for his Complaint, states the following:

## **I. PARTIES**

1. Plaintiff Robert Davis (“**Plaintiff**” or “**Plaintiff Davis**”) is a resident and registered voter of the City of Highland Park, County of Wayne, State of Michigan.
2. Defendant, Wayne County Election Commission (“**Defendant Election Commission**”), is the three-member board comprised of the Chief Judge of the Wayne County Probate, the Wayne County Clerk, and the Wayne County Treasurer, who has the statutory authority to authorize the printing of the ballots for county offices for the November 8, 2022 general election.
3. Defendant, Patricia Susan Fresard (“**Defendant Fresard**”), is a resident and registered voter of the City of Grosse Pointe Woods, County of Wayne, State of Michigan, who filed with the Michigan Secretary of State an affidavit of identity along with an affidavit of candidacy to qualify as a candidate for re-election to one of the 15 incumbent positions on the Third Circuit Court-Wayne County.

(See Fresard’s affidavit of identity attached as Exhibit A).

Defendant Fresard currently serves as the Chief Judge Pro-Tem of the Third Circuit Court and has been selected to serve as the Chief Judge of Third Circuit Court commencing January 1, 2023. Defendant Fresard’s current term of office expires December 31, 2022.

4. Defendant, Kelly Ann Ramsey (“**Defendant Ramsey**”), is a resident and registered voter of the city of Northville, County of Wayne, State of Michigan, who filed with the Michigan Secretary of State an affidavit of identity along with an affidavit of candidacy to qualify as a candidate for re-election to one of the 15 incumbent positions on the Third Circuit Court-Wayne County.

(See Ramsey’s affidavit of identity attached as Exhibit B).

Defendant Ramsey currently serves as a judge assigned to the criminal division of the Third Circuit Court. Defendant Ramsey’s current term of office expires December 31, 2022.

5. Defendant, Lakena Tennille Crespo (“**Defendant Crespo**”), is a resident and registered over of the city of Canton, County of Wayne, State of Michigan, who filed with the Michigan Secretary

of State an affidavit of identity along with nominating petitions to qualify as a candidate for one of the five (5) non-incumbent positions on the Third Circuit Court-Wayne County. (**See Crespo affidavit of identity attached as Exhibit C**).

6. That an actual controversy exists between the parties named herein.

## **II. JURISDICTION**

7. The Wayne County Circuit Court has jurisdiction over claims for declaratory relief against all of the named Defendants pursuant to MCR 2.605. See *Davis v Wayne County Election Commission*, unpublished per curiam opinion of the Court of Appeals, issued June 2, 2022 (Docket No.361546). (**Exhibit D**).
8. Pursuant to MCR 3.310, the Wayne County Circuit Court has jurisdiction over all claims for injunctive relief as requested against all of the named Defendants. See *Davis v Wayne County Election Commission*, unpublished per curiam opinion of the Court of Appeals, issued June 2, 2022 (Docket No.361546). (**Exhibit D**).
9. Venue is proper in the Wayne County Circuit Court because the Defendant Wayne County Election Commission is a governmental

entity whose members and officers exercise their statutory authority in Wayne County. See MCL §600.1615; see also *Davis v Wayne County Election Commission*, unpublished per curiam opinion of the Court of Appeals, issued June 2, 2022 (Docket No.361546). **(Exhibit D)**.

10. Venue is proper in the Wayne County Circuit Court because the individual Defendants Fresard, Ramsey, Haywood and Crespo are residents and registered voters of the County of Wayne. See *Davis v Wayne County Election Commission*, unpublished per curiam opinion of the Court of Appeals, issued June 2, 2022 (Docket No.361546). **(Exhibit D)**.

11. The Wayne County Circuit Court has jurisdiction over claims for mandamus and other relief under the Michigan Election Law. See MCL §168.590f(1), MCL §168.552(6), and MCR 3.305(A)(2); See *Davis v Wayne County Election Commission*, unpublished per curiam opinion of the Court of Appeals, issued June 2, 2022 (Docket No.361546). **(Exhibit D)**.

12. “[T]he circuit court is presumed to have subject-matter jurisdiction over a civil action ***unless Michigan’s Constitution***

*or a statute expressly prohibits it from exercising jurisdiction or gives to another court exclusive jurisdiction over the subject matter of the suit.” Teran v. Rittley, 313*

Mich.App. 197, 206, 882 N.W.2d 181 (2015). (emphasis supplied).

13. However, the Wayne County Circuit Court lacks subject-matter jurisdiction over the Michigan Secretary of State. See MCL 600.6419 of the Court of Claims Act, as amended by Public Act 164 of 2013.<sup>1</sup> See also *O’Connell v Director of Elections*, 316 Mich. App. 91; 891 N.W.2d 240 (2016)
14. “The Court of Claims is created by statute and the scope of its subject-matter jurisdiction is explicit.” *O’Connell v Director of Elections*, 316 Mich. App. 91, at 101; 891 N.W.2d 240 (2016) (quotation marks and citation omitted).

---

<sup>1</sup> The Court of Claims has exclusive jurisdiction:

(a) To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court. [MCL 600.6419(1)]

15. Thus, because the Wayne County Circuit Court lacks subject-matter jurisdiction over the Michigan Secretary of State and other state officials, agencies, and departments, the Michigan Secretary of State is not a named and/or necessary party to this action. See *Davis v Wayne County Election Commission*, unpublished per curiam opinion of the Court of Appeals, issued June 2, 2022 (Docket No.361546). (**Exhibit D**).
16. Similarly, the Court of Claims lacks subject-matter jurisdiction over all of the Defendants named herein. *Mays v Snyder*, 323 Mich App 1, 47; 916 NW2d 227 (2018) (“***The jurisdiction of the Court of Claims does not extend to local officials.***”). (emphasis supplied).

### III. CAUSES OF ACTION

**Count I- Declaratory Judgment Declaring That Pursuant To MCL 168.689 of Michigan Election Law, The Defendant Wayne County Election Commission Must Determine Whether Defendants Fresard and Ramsey Were “Properly” Certified By The Certifying Officer (Nonparty Secretary of State) To Appear As Candidates On The November 8, 2022 General Election Ballot And Further Declare That Pursuant To MCL 168.567 of Michigan Election Law, The Defendant Wayne County Election Commission Has A Statutory Legal Duty To Correct The Error On The November 8, 2022 General Election Ballot.**

17. Plaintiff incorporates, repeats and realleges the foregoing allegations as though they were fully set forth and stated herein.
18. For this count, pursuant to MCR 2.605, Plaintiff seeks the entry of a declaratory judgment against the Defendants Wayne County Election Commission and individual Defendants Fresard and Ramsey.
19. For this count, pursuant to MCR 3.310, Plaintiff also seeks injunctive relief against the Defendants Wayne County Election Commission and individual Defendants Fresard and Ramsey.
20. Pursuant to MCR 2.605, an actual controversy exists between the Plaintiff and the Defendants Wayne County Election Commission and individual Defendants Fresard and Ramsey.
21. According to records Plaintiff obtained from the Michigan Secretary of State's office, pursuant to MCL 168.413a and 168.558 of Michigan Election Law, on March 15, 2022, Defendant Fresard signed her affidavit of identity and affidavit of candidacy to qualify as a candidate for re-election to one of the 15 Incumbent positions on the Third Circuit Court-Wayne County. **(See Fresard's affidavit of identity attached as Exhibit A).**



22. According to Defendant Fresard's affidavit of identity (**Exhibit A**), Defendant Fresard mailed in her affidavit of identity and affidavit of candidacy to the Michigan Secretary of State, who received by the Michigan Secretary of State, via First Class U.S. Postal Mail, on or about March 17, 2022. (**See Defendant Fresard's affidavit of identity attached as Exhibit A**).
23. According to records Plaintiff obtained from the Michigan Secretary of State's office, pursuant to MCL 168.413a and 168.558 of Michigan Election Law, on March 8, 2022, Defendant Ramsey signed her affidavit of identity and affidavit of candidacy to qualify as a candidate for re-election to one of the 15 Incumbent positions on the Third Circuit Court-Wayne County. (**See Ramsey's affidavit of identity attached as Exhibit B**).
24. According to Defendant Ramsey's affidavit of identity (**Exhibit B**), it appears that on March 9, 2022, Defendant Ramsey personally appeared in Lansing at the Michigan Secretary of State's office to file her affidavit of identity and affidavit of candidacy in-person. (**See Defendant Ramsey's affidavit of identity attached as Exhibit B**).

25. Pursuant to MCL 168.413a(1) of Michigan Election Law, “[a]ny incumbent circuit court judge may become a candidate in the primary election for the office of which he or she is an incumbent by filing with the secretary of state an affidavit of candidacy not less than 134 days before the date of the primary election.”

26. Additionally, pursuant to MCL 168.558(1) of Michigan Election Law, “[*w*]hen **filing a** nominating petition, qualifying petition, filing fee, **or affidavit of candidacy for a** federal, **county**, state, city, township, village, metropolitan district, or school district **office in any election, a candidate shall file with the officer with whom the petitions, fee, or affidavit is filed 2 copies of an affidavit of identity.**”

27. The requirements set forth under MCL 168.558 of Michigan Election Law are applicable to ALL nonpartisan judicial candidates. See *Davis v Wayne County Election Commission*, unpublished per curiam opinion of the Court of Appeals, issued June 2, 2022 (Docket No.361546). (**Exhibit D**); see also *Reed-Pratt v Detroit City Clerk*, \_\_\_\_ Mich.App.\_\_\_\_; \_\_\_\_ NW2d\_\_\_\_ (2021)

(Docket No. 357150), slip op at p. 3; see also *Reed-Pratt v Benson*, unpublished opinion of the Court of Claims, Docket No. 20-000060-MZ (June 1, 2022) (Judge Thomas Cameron) (**Exhibit E**).

28. MCL 168.558(1) provides in relevant part:

(1) ***When filing a nominating petition***, qualifying petition, filing fee, or affidavit of candidacy ***for a federal, county, state, city, township, village, metropolitan district, or school district office in any election, a candidate shall file with the officer with whom the petitions***, fee, or affidavit is filed 2 copies of ***an affidavit of identity***. (emphasis supplied).

29. MCL 168.558(2), as amended by Public Act 158 of 2021, further provides in relevant part:

(2) ***An affidavit of identity must contain*** the candidate's name and residential address; a statement that the candidate is a citizen of the United States; the title of the office sought including the jurisdiction, district, circuit, or ward; ***the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation***; the term of office; the date of the election in which the candidate wishes to appear on the ballot; a statement that the candidate meets the constitutional and statutory qualifications for the office sought; other information that may be required to satisfy the officer as to the identity of the candidate; and the manner in which the candidate wishes to have his or her name appear on the ballot. (emphasis supplied).

30. In 2021, the Michigan Legislature enacted Public Act 158 of 2021, which amended MCL 168.558(2) and added the requirement that a candidate's affidavit of identity "must" include **"the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation"**. Public Act 158 of 2021 went into effect on December 27, 2021.
31. **"Candidates are required to strictly comply with MCL 168.558."** *Reed-Pratt*, \_\_\_\_ Mich.App. at\_\_\_\_, slip op at p. 4 (emphasis supplied), citing *Nykoriak v. Napoleon*, 334 Mich App 370, 377; 964 NW2d 895 (2020).
32. It is well settled that "[t]he failure to supply a facially proper affidavit of identity (AOI), i.e., an affidavit that conforms to the requirements of the Election Law, is a ground to disqualify a candidate from inclusion on the ballot." *Stumbo v Roe*, 332 Mich App 479, 480; 957 NW2d 830 (2020); see also *Moore v Genesee County*, \_\_\_\_Mich.App.\_\_\_\_; \_\_\_\_NW2d\_\_\_\_ (2021) (Docket No. 355291), slip op pp 3-4.

33. Pursuant to MCL 168.558(2), as amended, a candidate's ***"affidavit of identity must contain... the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation."*** (emphasis supplied).
34. "The term 'must' indicates that something is mandatory." *Vyletel-Rivard v Rivard*, 286 Mich.App. 13, 25; 777 NW2d 722 (2009); see also *3 Is Enough v City of Mount Pleasant Clerk*, unpublished per curiam opinion of the Court of Appeals, issued September 13, 2021 (Docket No. 358405).
35. Therefore, pursuant to MCL 168.558(2) of Michigan Election Law, it was "mandatory" for individual Defendants Fresard's and Ramsey's affidavits of identity to contain ***"the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation."*** See *Davis v Highland Park City Clerk*, unpublished per curiam opinion of Court of Appeals, decided June 2, 2022 (Docket No. 361544), *lv denied* \_\_\_Mich.\_\_\_ (June 7, 2022) (S.Ct. Docket No. 164490) (**Exhibit F**); see also *Reed-Pratt v*

*Benson*, unpublished opinion of the Court of Claims, Docket No. 20-000060-MZ (June 1, 2022) (Judge Thomas Cameron) (**Exhibit E**).

36. However, after conducting a “facial” review of Defendants Fresard’s and Ramsey’s affidavits of identity filed with nonparty Secretary of State, it is visibly evident and apparent that their affidavits of identity failed to contain “**the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation,**” which is required under MCL 168.558(2). (See **Fresard’s and Ramsey’s affidavits of identity attached as Exhibits A and B respectively**). See *Davis v Highland Park City Clerk*, unpublished per curiam opinion of Court of Appeals, decided June 2, 2022 (Docket No. 361544), *lv denied* \_\_\_Mich.\_\_\_ (June 7, 2022) (S.Ct. Docket No. 164490) (**Exhibit F**); see also *Reed-Pratt v Benson*, unpublished opinion of the Court of Claims, Docket No. 20-000060-MZ (June 1, 2022) (Judge Thomas Cameron) (**Exhibit E**).

37. Pursuant to MCL 168.412 of Michigan Election Law, judicial races for circuit court judgeships are **nonpartisan**.

38. Therefore, because the judicial race for Third Circuit Court-Wayne County is **nonpartisan**, pursuant to MCL 168.558(2) of Michigan Election Law, Defendants Fresard's and Ramsey's affidavits of identity were required to contain the mandatory statement: "**No party affiliation**". See *Davis v Highland Park City Clerk*, unpublished per curiam opinion of Court of Appeals, decided June 2, 2022 (Docket No. 361544), *lv denied* \_\_\_Mich.\_\_\_ (June 7, 2022) (S.Ct. Docket No. 164490) (**Exhibit F**); see also *Reed-Pratt v Benson*, unpublished opinion of the Court of Claims, Docket No. 20-000060-MZ (June 1, 2022) (Judge Thomas Cameron) (**Exhibit E**).

39. A "facial" review of Defendants Fresard's and Ramsey's affidavits of identity clearly reveal that neither of their affidavits of identity contained the required statement: "No Party Affiliation." (**See Defendants Fresard's and Ramsey's affidavits of identity attached as Exhibits A and B**).

40. In fact, a “facial” review of Defendants Fresard’s and Ramsey’s affidavits of identity clearly reveal that the space designated on their affidavits of identity to provide this required statement **was left blank**. (See **Defendants Fresard’s and Ramsey’s affidavits of identity attached as Exhibits A and B**).
41. A “facial” review of the affidavits of identity filed with nonparty Secretary of State by the other candidates who are seeking re-election to Incumbent positions on the Third Circuit Court clearly reveal the fatal defect in Defendants Fresard’s and Ramsey’s affidavits of identity. The other Incumbent candidates’ affidavits of identity properly included the statement: No party affiliation.
42. The failure of Defendants Fresard’s and Ramsey’s affidavits of identity to contain the “mandatory” statement that they were running as candidates with “No Party Affiliation,” required nonparty Secretary of State **NOT** to certify to the Defendant Wayne County Election Commission the names of Defendants Fresard and Ramsey to appear on the November 8, 2022 general



election ballot as candidates for the 15 Incumbent positions for Third Circuit Court. See *Berry v Garrett*, 316 Mich App 37, 42; 890 NW2d 882 (2016).

43. MCL 168.558(4) of Michigan Election Law, provides in pertinent part:

*An officer shall not certify to the board of election commissioners the name of a candidate who fails to comply with this section*, or the name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section. (emphasis supplied).

44. Defendants Fresard’s and Ramsey’s affidavits of identity are facially defective because they do not contain the required statement: “No Party Affiliation”, as MCL 168.558(2) expressly requires.

45. Consequently, as a result of Defendants Fresard’s and Ramsey’s affidavits of identity failing to contain the “mandatory” and “required” information, pursuant to MCL 168.558(4), nonparty Secretary of State had a legal duty **NOT** to certify their names to the Defendant Wayne County Election Commission to appear on the November 8, 2022 general election ballot as

candidates for the 15 Incumbent positions for the Third Circuit Court.

46. Plaintiff is not supporting and is not voting neither of the Defendants Fresard or Ramsey.

47. Plaintiff is supporting other candidates for the Incumbent positions for Third Circuit Court in the November 8, 2022 general election.

48. Pursuant to MCL 168.415(2), if this Court grants Plaintiff the relief requested herein **more than 65 days before the November 8, 2022 general election**, other interested candidates and individuals, including the Defendants Ramsey and Fresard, can file nominating petitions with nonparty Secretary of State to have their names appear on the November 8, 2022 general election ballot as a candidate/nominee for one of the 15 Incumbent positions. See MCL 168.415(2).

49. Plaintiff will suffer irreparable harm if Defendants Fresard and Ramsey are allowed to remain on the November 8, 2022 general election ballot because Plaintiff's candidates of choice

would lose votes if otherwise ineligible candidates are allowed to remain on the November 8, 2022 general election ballot.

**Certifying Officer (Nonparty Secretary of State) Improperly Certified To Defendant Wayne County Election Commission The Names of Defendants Fresard and Ramsey To Appear on The November 8, 2022 General Election Ballot As Candidates for The 15 Incumbent Positions for Third Circuit Court-Wayne County.**

50. Although Plaintiff is **NOT** seeking this Court to grant any relief against the nonparty Secretary of State, who was the certifying officer, in order for the record to be full and complete, it is necessary for the Plaintiff to explain to the Court how nonparty Secretary of State “improperly” certified to the Defendant Wayne County Election Commission the names of the Defendants Fresard and Ramsey to appear on the November 8, 2022 general election ballot as candidates for the 15 Incumbent positions for the Third Circuit Court-Wayne County.

51. On June 3, 2022, despite the glaring and fatal omissions on their affidavits of identity, pursuant to MCL 168.552(14), nonparty Secretary of State, as the certifying officer, timely certified to the Defendant Wayne County Election Commission the names of the Defendants Fresard and Ramsey **to appear on the**

**November 8, 2022 general election ballot** as candidates for the 15 Incumbent positions for the Third Circuit Court-Wayne County.

52. MCL 168.552(14) of Michigan Election Law provides:

(14) Not less than 60 days before the primary election at which candidates are to be nominated, ***the secretary of state shall certify to the proper boards of election commissioners in the various counties in the state, the name and post office address of each partisan or nonpartisan candidate whose petitions have been filed with the secretary of state and meet the requirements of this act***, together with the name of the political party, if any, and the office for which he or she is a candidate.

53. As noted, MCL 168.412 governs the nomination and election of circuit judges. MCL 168.412 further provides:

A general nonpartisan primary election shall be held in every county of this state on the Tuesday succeeding the first Monday in August ***prior to the general election at which judges of the circuit court are elected***, at which time the qualified and registered electors may vote for nonpartisan candidates for the office of judge of the circuit court. ***If, upon the expiration of the time for filing petitions or incumbency affidavits of candidacy for the primary election of said judge of the circuit court in any judicial circuit, it shall appear that there are not to exceed twice the number of candidates as there are persons to be elected, then the secretary of state shall certify to the county board of election commissioners***

*the name of such candidate for circuit court judge whose petitions or affidavits have been properly filed, and such candidate shall be the nominee for the judge of the circuit court and shall be so certified. As to such office, there shall be no primary election and this office shall be omitted from the judicial primary ballot.*

54. The filing deadline for a candidate to file to qualify to be a candidate for one of the 15 Incumbent positions for the Third Circuit Court-Wayne County was **April 19, 2022 by 4p.m.**

55. Only the 15 incumbent judges, including Defendants Fresard and Ramsey, filed to qualify as candidates for the 15 Incumbent positions for the Third Circuit Court. No other candidates filed the necessary signatures and/or petitions to qualify as a candidate for the 15 Incumbent positions by the April 19, 2022 filing deadline.

56. Accordingly, pursuant to MCL 168.412 of Michigan Election Law, because “upon the expiration of the time for filing petitions or incumbency affidavits of candidacy for the primary election” for the 15 Incumbent positions for Third Circuit Court, there were **NOT** more than “twice the number of candidates as there are persons to be elected”, it was “mandatory” for nonparty Secretary of State to certify to the Defendant Wayne County Election

Commission “*the name of such candidate for circuit court judge whose* petitions or *affidavits have been properly filed,* and such candidate shall be the nominee for the judge of the circuit court and shall be so certified.” See MCL 168.412. (emphasis supplied).

57. More importantly, because there were **NOT** more than “twice the number of candidates as there are persons to be elected” to the 15 Incumbent positions, MCL 168.412 “mandates” that “*there shall be no primary election and this office shall be omitted from the judicial primary ballot.*” MCL 168.412. (emphasis supplied).

58. Accordingly, because there were **NOT** more than “twice the number of candidates as there are persons to be elected” to the 15 Incumbent positions, pursuant to MCL 168.412, there was **NO** primary election for the 15 Incumbent positions Defendants Fresard and Ramsey filed to qualify for and thus, the Defendant Wayne County Election Commission properly omitted from the judicial primary ballot the 15 Incumbent positions for the Third Circuit Court.

59. Accordingly, pursuant to MCL 168.412 of Michigan Election Law, Defendant Wayne County Election Commission did **NOT** print the names of the Defendants Fresard and Ramsey or the names of the other incumbent judges of the Third Circuit Court on the August 2, 2022 primary election.

60. In fact, the agenda from the Defendant Wayne County Election Commission's June 10, 2022 meeting further illustrates that the Defendant Wayne County Election Commission only voted to authorize the printing of the ballots containing the names of candidates who were "properly" certified to appear on the August 2, 2022 primary election ballot. **(See Agenda from Defendant Wayne County Election Commission's June 10, 2022 Meeting attached as Exhibit G).**

61. To date, the Defendant Wayne County Election Commission has **NOT** convened as a public body to vote to authorize the printing of the ballots for the November 8, 2022 general election.

62. However, Defendants Fresard's and Ramsey's affidavits of identity were **NOT** "*properly*" filed with nonparty Secretary of State because Defendants Fresard's and Ramsey's affidavits of

identity failed to contain the “mandatory” statement: “No Party Affiliation”,

63. Thus, the certifying officer, in this case nonparty Secretary of State, had a clear legal duty **NOT** to certify the Defendants Fresard and Ramsey to the Defendant Wayne County Election Commission. *Moore v Genesee County*, \_\_\_Mich.App.\_\_\_; \_\_\_NW2d\_\_\_ (2021) (Docket No. 355291), slip op pp 3-4; See *Davis v Highland Park City Clerk*, unpublished per curiam opinion of Court of Appeals, decided June 2, 2022 (Docket No. 361544), *lv denied* \_\_\_Mich.\_\_\_ (June 7, 2022) (S.Ct. Docket No. 164490) (**Exhibit F**); see also *Reed-Pratt v Benson*, unpublished opinion of the Court of Claims, Docket No. 20-000060-MZ (June 1, 2022) (Judge Thomas Cameron) (**Exhibit E**).
64. As the Court of Appeals correctly held in *Moore v Genesee County*: “if a candidacy applicant has failed to comply with the statutory requirements, defendants were immediately under a clear legal duty not to certify the applicant.” *Moore*, \_\_\_Mich.App. at\_\_\_; slip op at p 4.



65. Although the certifying officer—nonparty Secretary of State—should **NOT** have certified Defendants Fresard and Ramsey to the Defendant Wayne County Election Commission, pursuant to MCL 168.689 of Michigan Election Law, the Defendant Wayne County Election Commission also has a statutory legal duty to determine whether the candidates have been “properly” certified by the certifying officer to appear on the November 8, 2022 general election ballot. See *Southeastern Mich Fair Budget Coalition v Killeen*, 153 Mich App 370, 377-378; 395 NW2d 325 (1986).

**Pursuant to MCL 168.689, The Defendant Wayne County Election Commission Has A Statutory Legal Duty To Determine Whether Defendants Fresard and Ramsey Were Properly “Certified” By The Secretary of State Prior To Authorizing The Printing of The Ballots For The November 8, 2022 General Election and Pursuant to MCL 168.689, The Defendant Wayne County Election Commission Now Has A Duty To Correct The Error On The November 8, 2022 General Election Ballot By Removing The Names of Defendants Fresard and Ramsey As Candidates.**

66. MCL 168.689 provides:

**The board of election commissioners of each county shall prepare the official ballots for use at any state, district or county election held therein, *and shall have printed a sufficient number of ballots containing***

**the names of all candidates properly certified to said board of election commissioners**, and ballots for all proposed constitutional amendments or other questions to be submitted at such election to supply each election precinct in such county with a sufficient number for such precinct, and not less than 25% more than the total number of votes cast therein at the corresponding election held 4 years previous for the office which received the greatest number of votes. (emphasis supplied).

67. The Michigan Court of Appeals in *Southeastern Mich Fair Budget Coalition v Killeen*, 153 Mich App 370; 395 NW2d 325 (1986), interpreted the language contained in MCL 168.689 and provided guidance as to the duty of the Defendant Wayne County Election Commission to determine whether a candidate has been “properly certified” by the certifying officer prior to placement on the ballot.

68. The Court of Appeals in *Southeastern Mich Fair Budget Coalition* correctly held:

While the language of the statute is not entirely clear, we see no reason for the Legislature to distinguish between *candidates* who are to be "properly certified" and *constitutional amendments* or *other questions* which have to be so certified. **We therefore construe the statute to require *candidates*, *constitutional amendments*, and *questions* for use**

**at any state, district or county election to be "properly" certified before they are entitled to placement on the ballot.** Since this statute is directed to the board of election commissioners, the use of the word "properly" evidences an intent of the Legislature that the board of county election commissioners not only determine that a proposed question *is* certified, but that it is indeed "properly" certified. Accordingly, where it is apparent to the board of county election commissioners that the question is not entitled to placement on the ballot, it may refuse to place it thereon and leave the certifying body to its legal recourse. **We interpret "properly" in this context to mean that the election commissioners are required to determine that, on its face, the question is entitled to placement on the ballot.** [*Southeastern Mich Fair Budget Coalition*, 153 Mich App at 377-378.]

69. Therefore, based on the holding in *Southeastern Mich Fair Budget Coalition*, 153 Mich App at 377-378, the Defendant Wayne County Election Commission has a statutory legal duty under MCL 168.689 of Michigan Election Law to "***independently***" determine whether the Defendants Fresard and Ramsey were "***properly***" certified by nonparty Secretary of State to appear on the November 8, 2022 general election as candidates for 15 Incumbent positions for the Third Circuit Court.

70. As noted, to date, the Defendant Wayne County Election Commission has **NOT** convened as a public body to vote to authorize the printing of the ballots for the November 8, 2022 general election.
71. Additionally, to date, the Defendant Wayne County Election Commission has **NOT** convened as a public body to determine whether any candidate for any office has been “properly” certified to appear on the November 8, 2022 general election ballot.
72. As noted, because Defendants Fresard’s and Ramsey’s affidavits of identity do NOT contain the “mandatory” statement: “No Party Affiliation”, as required under MCL 168.558(2), the Defendant Wayne County Election Commission, in accordance with MCL 168.689 and 168.558(4), also has a statutory duty NOT to proceed to certify their names to appear on the November 8, 2022 general election ballot.
73. As the Court of Appeals correctly held in *Moore v Genesee County*: “if a candidacy applicant has failed to comply with the statutory requirements, defendants were immediately under a

clear legal duty not to certify the applicant.” *Moore*, \_\_\_Mich.App. at\_\_\_; slip op at p 4.

74. Additionally, pursuant to MCL 168.567, the Defendant Wayne County Election Commission also has a statutory legal duty to correct the error committed by the certifying officer, nonparty Secretary of State, so that the Defendants Fresard’s and Ramsey’s names will not appear on the November 8, 2022 general election ballot as candidates for the 15 Incumbent positions. See *Berry v Garrett*, 316 Mich App 37; 890 NW2d 882 (2016).

75. Since the certifying officer—nonparty Secretary of State—failed to properly perform her clear legal duty under MCL 168.558(4), MCL 168.567 demonstrates that the Defendant Wayne County Election Commission now has a clear legal duty to “correct” such errors as may be found in the resulting, improper ballots for the November 8, 2022 general election.

**WHEREFORE**, Plaintiff requests this Honorable Court enters judgment and grants the following relief against the Defendants Wayne County Election Commission, Fresard and Ramsey as follows:

- a. Enter a declaratory judgment declaring that pursuant to MCL 168.689, the Defendant Wayne County Election Commission has a clear statutory legal duty to determine whether the Defendants Fresard and Ramsey were “properly” certified by the certifying officer—nonparty Secretary of State—to appear on the November 8, 2022 general election ballot as candidates/nominees for the 15 Incumbent positions on the Third Circuit Court.
- b. Enter a declaratory judgment declaring that the affidavits of identity the Defendants Fresard and Ramsey filed with nonparty Secretary of State do not facially comply with the requirements set forth under MCL 168.558(2) of Michigan Election Law.
- c. Enter a declaratory judgment declaring that pursuant to MCL 168.689, the Defendant Wayne County Election Commission has a clear legal duty not to certify the names of Defendants Fresard and Ramsey to appear on the November 8, 2022 general election ballot as candidates/nominees for the 15 Incumbent positions for the Third Circuit Court because their affidavits of identity do not facially comply with the requirements set forth under MCL 168.558(2) of Michigan Election Law.
- d. Enter a declaratory judgment declaring that pursuant to MCL 168.567, the Defendant Wayne County Election Commission has a statutory legal duty to correct the errors on the November 8, 2022 general election ballot by removing the names of Defendants Fresard and Ramsey from appearing as candidates/nominees for the 15 Incumbent positions for Third Circuit Court because their affidavits of identity do not facially

comply with the requirements set forth under MCL 168.558(2) of Michigan Election Law.

- e. Enter a declaratory judgment declaring that pursuant to MCL 168.558(4), the Defendant Wayne County Election Commission has a legal duty not to certify, print and/or include Defendants Fresard and Ramsey's names on the November 8, 2022 general election ballot as candidates/nominees for the 15 Incumbent positions for the Third Circuit Court.
- f. Enter an order enjoining the Defendants Fresard and Ramsey from holding themselves out as legitimate candidates/nominees for the 15 Incumbent positions for the Third Circuit Court unless and until after this Court disqualifies them from the November 8, 2022 general election ballot, they are certified as candidates/nominees in accordance with MCL 168.415(2).
- g. Enter an order enjoining the Defendant Wayne County Election Commission from printing and/or including Defendants Fresard and Ramsey's names on November 8, 2022 general election ballot as candidates/nominees for the 15 Incumbent positions for the Third Circuit Court.
- h. Award Plaintiff his court costs.
- i. Enter an order awarding whatever other equitable relief the Court deems appropriate at the time of final judgment.

**Count II- Declaratory Judgment Declaring That Pursuant To MCL 168.689 of Michigan Election Law, The Defendant Wayne County Election Commission Must Determine Whether Defendant Crespo Was “Properly” Certified By The Certifying Officer (Nonparty Secretary of State) To Appear As A Candidate On The November 8, 2022 General Election Ballot And Further Declare That Pursuant To MCL 168.567 of Michigan Election Law, The Defendant Wayne County Election Commission Has A Statutory Legal Duty To Correct The Error On The November 8, 2022 General Election Ballot.**

76. Plaintiff incorporates, repeats and realleges the foregoing allegations as though they were fully set forth and stated herein.

77. For this count, pursuant to MCR 2.605, Plaintiff seeks the entry of a declaratory judgment against the Defendants Wayne County Election Commission and individual Defendant Crespo.

78. For this count, pursuant to MCR 3.310, Plaintiff also seeks injunctive relief against the Defendants Wayne County Election Commission and individual Defendant Crespo.

79. Pursuant to MCR 2.605, an actual controversy exists between the Plaintiff and the Defendants Wayne County Election Commission and individual Defendant Crespo.

80. According to records Plaintiff obtained from the Michigan Secretary of State’s office, pursuant to MCL 168.413 and 168.558



of Michigan Election Law, on April 19, 2022, Defendant Crespo appeared in person at nonparty Secretary of State's Lansing office and signed and filed her affidavit of identity and submitted approximately 6,105 signatures to qualify as a candidate for one of the five (5) Non-Incumbent positions for the Third Circuit Court. affidavit of candidacy to qualify as a candidate for re-election to one of the 15 Incumbent positions on the Third Circuit Court. (**See Crespo's affidavit of identity attached as Exhibit H**).

81. Pursuant to MCL 168.413(1) of Michigan Election Law, “[t]o obtain the printing of the name of a person as a candidate for nomination for the office of judge of the circuit court upon the official nonpartisan primary ballots, there must be filed with the secretary of state nominating petitions containing the signatures, addresses, and dates of signing of a number of qualified and registered electors residing in the judicial circuit as determined under section 544f or by the filing of an affidavit according to section 413a. The secretary of state shall receive the nominating petitions up to 4 p.m. of the fifteenth Tuesday before the primary.”

82. Additionally, pursuant to MCL 168.558(1) of Michigan Election Law, “[*w*]hen **filing a** nominating petition, qualifying petition, filing fee, **or affidavit of candidacy for a** federal, **county**, state, city, township, village, metropolitan district, or school district **office in any election, a candidate shall file with the officer with whom the petitions, fee, or affidavit is filed 2 copies of an affidavit of identity.**”
83. The requirements set forth under MCL 168.558 of Michigan Election Law are applicable to ALL nonpartisan judicial candidates. See *Davis v Wayne County Election Commission*, unpublished per curiam opinion of the Court of Appeals, issued June 2, 2022 (Docket No.361546). (**Exhibit D**); see also *Reed-Pratt v Detroit City Clerk*, \_\_\_\_ Mich.App.\_\_\_\_; \_\_\_\_ NW2d\_\_\_\_ (2021) (Docket No. 357150), slip op at p. 3; see also *Reed-Pratt v Benson*, unpublished opinion of the Court of Claims, Docket No. 20-000060-MZ (June 1, 2022) (Judge Thomas Cameron) (**Exhibit E**).
84. MCL 168.558(1) provides in relevant part:
- (1) **When filing a nominating petition**, qualifying petition, filing fee, or affidavit of candidacy **for a federal, county, state, city, township, village, metropolitan**

*district, or school district office in any election, a candidate shall file with the officer with whom the petitions, fee, or affidavit is filed 2 copies of an affidavit of identity.* (emphasis supplied).

85. MCL 168.558(2), as amended by Public Act 158 of 2021, further provides in relevant part:

(2) *An affidavit of identity must contain* the candidate's name and residential address; a statement that the candidate is a citizen of the United States; the title of the office sought including the jurisdiction, district, circuit, or ward; *the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation;* the term of office; the date of the election in which the candidate wishes to appear on the ballot; a statement that the candidate meets the constitutional and statutory qualifications for the office sought; other information that may be required to satisfy the officer as to the identity of the candidate; and the manner in which the candidate wishes to have his or her name appear on the ballot. (emphasis supplied).

86. In 2021, the Michigan Legislature enacted Public Act 158 of 2021, which amended MCL 168.558(2) and added the requirement that a candidate's affidavit of identity "must" include "**the candidate's political party or a statement indicating no party affiliation if the candidate is running without**

**political party affiliation**". Public Act 158 of 2021 went into effect on December 27, 2021.

87. **"Candidates are required to strictly comply with MCL 168.558."** *Reed-Pratt*, \_\_\_\_ Mich.App. at\_\_\_\_, slip op at p. 4 (emphasis supplied), citing *Nykoriak v. Napoleon*, 334 Mich App 370, 377; 964 NW2d 895 (2020).
88. It is well settled that "[t]he failure to supply a facially proper affidavit of identity (AOI), i.e., an affidavit that conforms to the requirements of the Election Law, is a ground to disqualify a candidate from inclusion on the ballot." *Stumbo v Roe*, 332 Mich App 479, 480; 957 NW2d 830 (2020); see also *Moore v Genesee County*, \_\_\_\_Mich.App.\_\_\_\_; \_\_\_\_NW2d\_\_\_\_ (2021) (Docket No. 355291), slip op pp 3-4.
89. Pursuant to MCL 168.558(2), as amended, a candidate's ***"affidavit of identity must contain... the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation."*** (emphasis supplied).

90. “The term ‘must’ indicates that something is mandatory.”  
*Vyletel-Rivard v Rivard*, 286 Mich.App. 13, 25; 777 NW2d 722 (2009); see also *3 Is Enough v City of Mount Pleasant Clerk*, unpublished per curiam opinion of the Court of Appeals, issued September 13, 2021 (Docket No. 358405).
91. Therefore, pursuant to MCL 168.558(2) of Michigan Election Law, it was “mandatory” for individual Defendant Crespo’s affidavit of identity to contain **“the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation.”** See *Davis v Highland Park City Clerk*, unpublished per curiam opinion of Court of Appeals, decided June 2, 2022 (Docket No. 361544), *lv denied* \_\_\_Mich.\_\_\_\_ (June 7, 2022) (S.Ct. Docket No. 164490) (**Exhibit F**); see also *Reed-Pratt v Benson*, unpublished opinion of the Court of Claims, Docket No. 20-000060-MZ (June 1, 2022) (Judge Thomas Cameron) (**Exhibit E**).
92. However, after conducting a “facial” review of Defendant Crespo’s affidavit of identity filed with nonparty Secretary of State, it is visibly evident and apparent that her affidavit of

identity failed to contain “**the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation,**” which is required under MCL 168.558(2). (See **Crespo’s affidavit of identity attached as Exhibit I**). See *Davis v Highland Park City Clerk*, unpublished per curiam opinion of Court of Appeals, decided June 2, 2022 (Docket No. 361544), *lv denied* \_\_\_Mich.\_\_\_ (June 7, 2022) (S.Ct. Docket No. 164490) (**Exhibit F**); see also *Reed-Pratt v Benson*, unpublished opinion of the Court of Claims, Docket No. 20-000060-MZ (June 1, 2022) (Judge Thomas Cameron) (**Exhibit E**).

93. Pursuant to MCL 168.412 of Michigan Election Law, judicial races for circuit court judgeships are **nonpartisan**.
94. Therefore, because the judicial race for Third Circuit Court-Wayne County is **nonpartisan**, pursuant to MCL 168.558(2) of Michigan Election Law, Defendant Crespo’s affidavit of identity was required to contain the mandatory statement: “**No party affiliation**”. See *Davis v Highland Park City Clerk*, unpublished per curiam opinion of Court of Appeals, decided June 2, 2022

(Docket No. 361544), *lv denied* \_\_\_Mich.\_\_\_ (June 7, 2022) (S.Ct. Docket No. 164490) (**Exhibit F**); see also *Reed-Pratt v Benson*, unpublished opinion of the Court of Claims, Docket No. 20-000060-MZ (June 1, 2022) (Judge Thomas Cameron) (**Exhibit E**).

95. A “facial” review of Defendant Crespop’s affidavit of identity clearly reveals that her affidavit of identity did NOT contain the required statement: “No Party Affiliation.” (**See Defendant Crespo’s affidavit of identity attached as Exhibit H**).
96. Rather, a “facial” review of Defendant Crespo’s affidavit of identity clearly reveals that Defendant Crespo put “N/A” in the space designated for the required statement.
97. The acronym “N/A” is commonly referred to mean “Not Applicable”. (**See Defendant Crespo’s affidavit of identity attached as Exhibit H**).
98. A “facial” review of the affidavits of identity filed with the Secretary of State by the other candidates who are seeking re-election to Non-Incumbent positions on the Third Circuit Court clearly reveal the fatal defect in Defendant Crespo’s affidavit of

identity. The other Non-Incumbent candidates' affidavits of identity properly put the statement: "No party affiliation".

99. The failure of Defendant Crespo's affidavit of identity to contain the "mandatory" statement that she was running as a candidate with "No Party Affiliation," required nonparty Secretary of State **NOT** to certify to the Defendant Wayne County Election Commission the name of Defendant Crespo to appear on the November 8, 2022 general election ballot as a candidate for one of the five (5) Non-Incumbent positions for Third Circuit Court. See *Berry v Garrett*, 316 Mich App 37, 42; 890 NW2d 882 (2016)
100. MCL 168.558(4) of Michigan Election Law, provides in pertinent part:

***An officer shall not certify to the board of election commissioners the name of a candidate who fails to comply with this section***, or the name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section. (emphasis supplied).

101. Defendants Crespo's affidavit of identity is facially defective because it does NOT contain the required statement "No Party Affiliation" as MCL 168.558(2) expressly requires.



102. Consequently, as a result of Defendant Crespo's affidavit of identity failing to contain the "mandatory" and "required" information, pursuant to MCL 168.558(4), nonparty Secretary of State had a legal duty **NOT** to certify her name to the Defendant Wayne County Election Commission to appear on the November 8, 2022 general election ballot as a candidate for one of the five (5) Non-Incumbent positions for the Third Circuit Court.
103. Plaintiff is not supporting and is not voting Defendant Crespo for one of the five (5) Non-Incumbent positions.
104. Plaintiff is supporting other candidates for the Non-Incumbent positions for Third Circuit Court in the November 8, 2022 general election.
105. Plaintiff will suffer irreparable harm if Defendant Crespo is allowed to remain on the November 8, 2022 general election ballot because Plaintiff's candidate(s) of choice would lose votes if an otherwise ineligible candidate is allowed to remain on the November 8, 2022 general election ballot.

**Certifying Officer (Nonparty Secretary of State) Improperly  
Certified To Defendant Wayne County Election Commission The  
Name of Defendant Crespo To Appear on The November 8, 2022  
General Election Ballot As A Candidate for One of the Five (5)  
Non-Incumbent Positions for Third Circuit Court-Wayne  
County.**

106. Although Plaintiff is **NOT** seeking this Court to grant any relief against the nonparty Secretary of State, who was the certifying officer, in order for the record to be full and complete, it is necessary for the Plaintiff to explain to the Court how the nonparty Secretary of State “improperly” certified to the Defendant Wayne County Election Commission the name of the Defendant Crespo to appear on the November 8, 2022 general election ballot as a candidate for one of the five (5) Non-Incumbent positions for the Third Circuit Court-Wayne County.

107. On June 3, 2022, despite the glaring and fatal omission on Defendant Crespo affidavit of identity, pursuant to MCL 168.552(14), nonparty Secretary of State, as the certifying officer, timely certified to the Defendant Wayne County Election Commission the name of the Defendant Crespo **to appear on the November 8, 2022 general election ballot** as a candidate for

one of the five Non-Incumbent positions for the Third Circuit Court-Wayne County.

108. MCL 168.552(14) of Michigan Election Law provides:

(14) Not less than 60 days before the primary election at which candidates are to be nominated, ***the secretary of state shall certify to the proper boards of election commissioners in the various counties in the state, the name and post office address of each partisan or nonpartisan candidate whose petitions have been filed with the secretary of state and meet the requirements of this act,*** together with the name of the political party, if any, and the office for which he or she is a candidate.

109. However, as noted, MCL 168.412 governs the nomination and election of circuit judges. MCL 168.412 further provides:

A general nonpartisan primary election shall be held in every county of this state on the Tuesday succeeding the first Monday in August ***prior to the general election at which judges of the circuit court are elected,*** at which time the qualified and registered electors may vote for nonpartisan candidates for the office of judge of the circuit court. ***If, upon the expiration of the time for filing petitions or incumbency affidavits of candidacy for the primary election of said judge of the circuit court in any judicial circuit, it shall appear that there are not to exceed twice the number of candidates as there are persons to be elected, then the secretary of state shall certify to the county board of election commissioners the name of such candidate for circuit court judge***

*whose petitions or affidavits have been properly filed, and such candidate shall be the nominee for the judge of the circuit court and shall be so certified. As to such office, there shall be no primary election and this office shall be omitted from the judicial primary ballot.*

110. The filing deadline for a candidate to file to qualify to be a candidate for one of the five (5) Non-Incumbent positions for the Third Circuit Court-Wayne County was **April 19, 2022 by 4p.m.**
111. Only seven (7) candidates, including the Defendant Crespo, purportedly filed the minimum required signatures to qualify to have their names to appear on the ballot as candidates for one of the five (5) Non-Incumbent positions. No other candidates filed the necessary signatures and/or petitions to qualify as a candidate for one of the five (5) Non-Incumbent positions by the April 19, 2022 filing deadline.
112. Accordingly, pursuant to MCL 168.412 of Michigan Election Law, because “upon the expiration of the time for filing petitions or incumbency affidavits of candidacy for the primary election” for the five (5) Non-Incumbent positions for Third Circuit Court, there were **NOT** more than “twice the number of candidates as there are persons to be elected”, it was “mandatory” for nonparty

Secretary of State to certify to the Defendant Wayne County Election Commission “*the name of such candidate for circuit court judge whose petitions or affidavits have been properly filed, and such candidate shall be the nominee for the judge of the circuit court and shall be so certified.*” See MCL 168.412. (emphasis supplied).

113. More importantly, because there were **NOT** more than “twice the number of candidates as there are persons to be elected” to the five (5) Non-Incumbent positions, MCL 168.412 “mandates” that “*there shall be no primary election and this office shall be omitted from the judicial primary ballot.*” MCL 168.412. (emphasis supplied).

114. Accordingly, because there were **NOT** more than “twice the number of candidates as there are persons to be elected” to the five (5) Non-Incumbent positions, pursuant to MCL 168.412, there was **NO** primary election for the five (5) Non-Incumbent positions Defendant Crespo filed to qualify for and thus, the Defendant Wayne County Election Commission properly omitted from the

judicial primary ballot the five (5) Non-Incumbent positions for the Third Circuit Court.

115. Accordingly, pursuant to MCL 168.412 of Michigan Election Law, Defendant Wayne County Election Commission did **NOT** print the names of the Defendant Crespo or the other Non-Incumbent judges of the Third Circuit Court on the August 2, 2022 primary election.

116. In fact, the agenda from the Defendant Wayne County Election Commission's June 10, 2022 meeting further illustrates that the Defendant Wayne County Election Commission only voted to authorize the printing of the ballots containing the names of candidates who were "properly" certified to appear on the August 2, 2022 primary election ballot. (**See Agenda from Defendant Wayne County Election Commission's June 10, 2022 Meeting attached as Exhibit G**).

117. To date, the Defendant Wayne County Election Commission has **NOT** convened as a public body to vote to authorize the printing of the ballots for the November 8, 2022 general election.

118. However, Defendant Crespo’s affidavit of identity was **NOT** “*properly*” filed because Defendant Crespo’s affidavit of identity failed to contain the “mandatory” statement: “No Party Affiliation”, the certifying officer, in this case nonparty Secretary of State, had a clear legal duty **NOT** to certify the Defendant Crespo to the Defendant Wayne County Election Commission. *Moore v Genesee County*, \_\_\_Mich.App.\_\_\_; \_\_\_NW2d\_\_\_ (2021) (Docket No. 355291), slip op pp 3-4; See *Davis v Highland Park City Clerk*, unpublished per curiam opinion of Court of Appeals, decided June 2, 2022 (Docket No. 361544), *lv denied* \_\_\_Mich.\_\_\_\_ (June 7, 2022) (S.Ct. Docket No. 164490) (**Exhibit F**); see also *Reed-Pratt v Benson*, unpublished opinion of the Court of Claims, Docket No. 20-000060-MZ (June 1, 2022) (Judge Thomas Cameron) (**Exhibit E**).

119. As the Court of Appeals correctly held in *Moore v Genesee County*: “if a candidacy applicant has failed to comply with the statutory requirements, defendants were immediately under a clear legal duty not to certify the applicant.” *Moore*, \_\_\_Mich.App. at\_\_\_; slip op at p 4.

120. Although the certifying officer—nonparty Secretary of State—should **NOT** certify Defendant Crespo to the Defendant Wayne County Election Commission, pursuant to MCL 168.689 of Michigan Election Law, the Defendant Wayne County Election Commission also has a statutory legal duty to determine whether the candidates have been “properly” certified by the certifying officer to appear on the November 8, 2022 general election ballot. See *Southeastern Mich Fair Budget Coalition v Killeen*, 153 Mich App 370, 377-378; 395 NW2d 325 (1986).

**Pursuant to MCL 168.689, The Defendant Wayne County Election Commission Has A Statutory Legal Duty To Determine Whether Defendant Crespo Was Properly “Certified” By The Secretary of State Prior To Authorizing The Printing of The Ballots For The November 8, 2022 General Election and Pursuant to MCL 168.689, The Defendant Wayne County Election Commission Now Has A Duty To Correct The Error On The November 8, 2022 General Election Ballot By Removing The Name of Defendant Crespo As A Candidate.**

121. MCL 168.689 provides:

**The board of election commissioners of each county shall prepare the official ballots for use at any state, district or county election held therein, *and shall have printed a sufficient number of ballots containing the names of all candidates properly certified to said board of election commissioners*, and ballots for all**



proposed constitutional amendments or other questions to be submitted at such election to supply each election precinct in such county with a sufficient number for such precinct, and not less than 25% more than the total number of votes cast therein at the corresponding election held 4 years previous for the office which received the greatest number of votes. (emphasis supplied).

122. The Michigan Court of Appeals in *Southeastern Mich Fair Budget Coalition v Killeen*, 153 Mich App 370; 395 NW2d 325 (1986), interpreted the language contained in MCL 168.689 and provided guidance as to the duty of the Defendant Wayne County Election Commission to determine whether a candidate has been “properly certified” by the certifying officer prior to placement on the ballot.

123. The Court of Appeals in *Southeastern Mich Fair Budget Coalition* correctly held:

While the language of the statute is not entirely clear, we see no reason for the Legislature to distinguish between *candidates* who are to be "properly certified" and *constitutional amendments* or *other questions* which have to be so certified. **We therefore construe the statute to require *candidates*, *constitutional amendments*, and *questions* for use at any state, district or county election to be "properly" certified before they are entitled to**

**placement on the ballot.** Since this statute is directed to the board of election commissioners, the use of the word “properly” evidences an intent of the Legislature that the board of county election commissioners not only determine that a proposed question *is* certified, but that it is indeed “properly” certified. Accordingly, where it is apparent to the board of county election commissioners that the question is not entitled to placement on the ballot, it may refuse to place it thereon and leave the certifying body to its legal recourse. **We interpret “properly” in this context to mean that the election commissioners are required to determine that, on its face, the question is entitled to placement on the ballot.** [*Southeastern Mich Fair Budget Coalition*, 153 Mich App at 377-378.]

124. Therefore, based on the holding in *Southeastern Mich Fair Budget Coalition*, 153 Mich App at 377-378, the Defendant Wayne County Election Commission has a statutory legal duty under MCL 168.689 of Michigan Election Law to “*independently*” determine whether the Defendant Crespo was “*properly*” certified by nonparty Secretary of State to appear on the November 8, 2022 general election as a candidate for one of the five (5) Non-Incumbent positions for the Third Circuit Court.

125. As noted, to date, the Defendant Wayne County Election Commission has **NOT** convened as a public body to vote to authorize the printing of the ballots for the November 8, 2022 general election.
126. Additionally, to date, the Defendant Wayne County Election Commission has **NOT** convened as a public body to determine whether any candidate for any office has been “properly” certified to appear on the November 8, 2022 general election ballot.
127. As noted, because Defendant Crespo’s affidavit of identity does NOT contain the “mandatory” statement: “No Party Affiliation”, as required under MCL 168.558(2), the Defendant Wayne County Election Commission, in accordance with MCL 168.689, also has a statutory duty NOT to proceed to certify Defendant Crespo’s name to appear on the November 8, 2022 general election ballot.
128. As the Court of Appeals correctly held in *Moore v Genesee County*: “if a candidacy applicant has failed to comply with the statutory requirements, defendants were immediately under a

clear legal duty not to certify the applicant.” *Moore*, \_\_\_Mich.App. at\_\_\_; slip op at p 4.

129. Additionally, pursuant to MCL 168.567, the Defendant Wayne County Election Commission also has a statutory legal duty to correct the error committed by the certifying officer, nonparty Secretary of State, so that the Defendant Crespo’s name will not appear on the November 8, 2022 general election ballot as a candidate for one of the five (5) Non-Incumbent positions. See *Berry v Garrett*, 316 Mich App 37; 890 NW2d 882 (2016).

130. Since the certifying officer—nonparty Secretary of State—failed to properly perform her clear legal duty under MCL 168.558(4), MCL 168.567 demonstrates that the Defendant Wayne County Election Commission now has a clear legal duty to “correct” such errors as may be found in the resulting, improper ballots for the November 8, 2022 general election.

**WHEREFORE**, Plaintiff requests this Honorable Court enters judgment and grants the following relief against the Defendants Wayne County Election Commission and Crespo as follows:

- a. Enter a declaratory judgment declaring that pursuant to MCL 168.689, the Defendant Wayne County Election Commission has a clear statutory legal duty to determine whether the Defendant Crespo was “properly” certified by the certifying officer—nonparty Secretary of State—to appear on the November 8, 2022 general election ballot as a candidate/nominee for one of the five (5) Non-Incumbent positions on the Third Circuit Court.
- b. Enter a declaratory judgment declaring that the affidavit of identity the Defendant Crespo filed with nonparty Secretary of State do not facially comply with the requirements set forth under MCL 168.558(2) of Michigan Election Law.
- c. Enter a declaratory judgment declaring that pursuant to MCL 168.689, the Defendant Wayne County Election Commission has a clear legal duty not to certify the name of Defendant Crespo to appear on the November 8, 2022 general election ballot as a candidate/nominee for one of the five (5) Non-Incumbent positions for the Third Circuit Court because her affidavit of identity does not facially comply with the requirements set forth under MCL 168.558(2) of Michigan Election Law.
- d. Enter a declaratory judgment declaring that pursuant to MCL 168.567, the Defendant Wayne County Election Commission has a statutory legal duty to correct the errors on the November 8, 2022 general election ballot by removing the name of Defendant Crespo from appearing as a candidate/nominee for one of the five (5) Non-Incumbent positions for Third Circuit Court because Defendant Crespo’s affidavit of identity does not facially comply with the

requirements set forth under MCL 168.558(2) of Michigan Election Law.

- e. Enter a declaratory judgment declaring that pursuant to MCL 168.558(4) and MCL 168.689, the Defendant Wayne County Election Commission has a legal duty not to print and/or include Defendant Crespo's name on the November 8, 2022 general election ballot as a candidate/nominee for one of the five (5) Non-Incumbent positions for the Third Circuit Court.
- f. Enter an order enjoining the Defendant Crespo from holding herself out as a legitimate candidate/nominee for one of the five (5) Non-Incumbent positions for the Third Circuit Court.
- g. Enter an order enjoining the Defendant Wayne County Election Commission from printing and/or including Defendant Crespo's name on November 8, 2022 general election ballot as a candidate/nominee for one of the five (5) Non-Incumbent positions for the Third Circuit Court.
- h. Award Plaintiff his court costs.
- i. Enter an order awarding whatever other equitable relief the Court deems appropriate at the time of final judgment.

**Count III- Writ of Mandamus Compelling Defendant Wayne  
County Election Commission To Remove The Names of  
Defendants Fresard, Ramsey, and Crespo From The November  
8, 2022 General Election Ballot And Not To Print The Names of  
Defendants Fresard, Ramsey, and Crespo On The November 8,  
2022 General Election Ballots As Judicial Candidates for Third  
Circuit Court-Wayne County**

131. Plaintiff incorporates, repeats and realleges the foregoing allegations as though they were fully set forth and stated herein.

132. For this count, pursuant to MCR 3.305, Plaintiff seeks the entry of a writ of mandamus against the Defendant Wayne County Election Commission ONLY.

133. Pursuant to MCL 168.689 of Michigan Election Law, the Defendant Wayne County Election Commission “***shall prepare the official ballots for use at any state, district or county election held therein, and shall have printed a sufficient number of ballots containing the names of all candidates properly certified to said board of election commissioners....***” MCL 168.689.

134. Additionally, pursuant to MCL 168.567, the Defendant Wayne County Election Commission “***shall correct such errors as may be found in said ballots***, and a copy of such corrected

ballots shall be sent to the secretary of state by the county clerk.”  
(emphasis supplied).

135. As noted, in June 2022, nonparty Secretary of State improperly certified the names of Defendants Fresard, Ramsey and Crespo to the Defendant Wayne County Election Commission to appear on November 8, 2022 general election ballot as candidates for their respective judicial offices.

136. Pursuant to MCL 168.689 and MCL 168.558(4), the Defendant Wayne County Election Commission has a clear legal duty NOT to certify Defendants Fresard, Ramsey, and Crespo’s names to appear on the November 8, 2022 general election ballot and thus, the Defendant Wayne County Election Commission shall be ordered to remove their names from the November 8, 2022 general election and be further ordered not to print and/or include the names of Defendants Fresard, Ramsey, and Crespo on the November 8, 2022 general election ballot as judicial candidates for the Third Circuit Court-Wayne County.

137. If the Court determines and declares that Defendants Fresard, Ramsey, and Crespo’s affidavits of identity failed to



contain the information required under MCL 168.558(2), the Defendant Wayne County Election Commission has a clear legal duty to correct the November 8, 2022 general election ballots by removing their names as candidates for the respective judicial offices Defendants Fresard, Ramsey, and Crespo are seeking. See *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016).

138. As noted in *Berry*, “because the Wayne County defendants failed to perform their clear legal duty under § 558(4), they now have a clear legal duty to ‘correct’ such errors as may be found in the resulting, improper ballots.” *Berry*, 316 Mich.App. at \_\_\_\_.

139. Here, in the case at bar, the Defendant Wayne County Election Commission would be correcting the certification error committed by nonparty Secretary of State, who is the filing official for judicial offices.

140. As a registered voter of the County of Wayne who is supporting other judicial candidates, Plaintiff has a clear legal right to the performance of the duty. See *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016).

141. It is well-settled in Michigan jurisprudence that the removal of candidates' names from the ballot is a ministerial duty. *Id.*

142. Additionally, it is also well-settled in Michigan jurisprudence that it is a ministerial duty for the Defendant Wayne County Election Commission to correct errors on primary and general election ballots in accordance with MCL 168.567. See *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016)

143. Other than filing the instant action, Plaintiff has no adequate remedy at law to compel Defendant Wayne County Election Commission not to print and/or include the names of Defendants Fresard, Ramsey, and Crespo on the November 8, 2022 general election ballot. See *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016).

**WHEREFORE**, Plaintiff requests this Honorable Court enters judgment and grants the following relief against the Defendant Wayne County Election Commission as follows:

- a. Enter a writ of mandamus compelling the Defendant Wayne County Election Commission to correct the errors on the November 8, 2022 general election ballot by removing the

names of Defendants Fresard, Ramsey, and Crespo as judicial candidates/nominees for Third Circuit Court-Wayne County pursuant to MCL 168.558(4), 168.567, and 168.689.

- b. Enter a writ of mandamus compelling the Defendant Wayne County Election Commission not to print and/or include the names of Defendants Fresard, Ramsey, and Crespo on the November 8, 2022 general election ballots as judicial candidates/nominees for Third Circuit Court-Wayne County pursuant to MCL 168.558(4), 168.567, and 168.689.
- c. Enter a writ of mandamus compelling the Defendant Wayne County Election Commission not to certify the names of Defendants Fresard, Ramsey, and Crespo to appear on the November 8, 2022 general election ballot as candidates/nominees for their respective judicial offices for Third Circuit Court-Wayne County.
- d. Award Plaintiff his court costs.
- e. Enter an order awarding whatever other equitable relief the Court deems appropriate at the time of final judgment.

Dated: July 26, 2022

Respectfully submitted,

/s/ROBERT DAVIS

**ROBERT DAVIS, *Pro Se***

Plaintiff

180 Eason

Highland Park, MI 48203

(313) 523-7118

[davisrobert854@gmail.com](mailto:davisrobert854@gmail.com)

Kimberly Davis  
9/15/2022 1:45 PM  
WAYNE COUNTY CLERK  
Cathy M. Garrett  
IN MY OFFICE  
22-008866-AW FILED

Qiana Denise Lillard  
9/15/2022

STATE OF MICHIGAN  
IN THE WAYNE COUNTY CIRCUIT COURT

**ROBERT DAVIS,**

**Plaintiff,**

v

**WAYNE COUNTY ELECTION COMMISSION,**  
**PATRICIA SUSAN FRESARD,** in her individual capacity as a  
candidate for Judge of Third Circuit Court Incumbent Position,  
**KELLY ANN RAMSEY,** in her individual capacity as a  
candidate for Judge of Third Circuit Court Incumbent Position,  
and  
**LAKENA TENNILLE CRESPO,** in her individual capacity as a  
candidate for Judge of Third Circuit Court Non-Incumbent  
Position,

**Defendants.**

**Case No. 22-008866-AW**

**Hon. Qiana Lillard**

---

**STIPULATION AND ORDER FOR SUBSTITUTION OF**  
**ATTORNEYS**

At a session of said Court, held in the City of Detroit, County of  
Wayne, State of Michigan, on: 9/15/2022

PRESENT: HON. QIANA DENISE LILLARD  
CIRCUIT COURT JUDGE

Pursuant to the stipulation of the parties appearing below:

IT IS HEREBY ORDERED that JUAN A. MATEO and GERALD K. EVELYN are  
hereby substituted in the place and instead of JULIE DALE, as counsel for Defendants, Patricia  
Susan Fresard and Kelly Ann Ramsey, in the above-captioned cause.

/s/ Qiana Denise Lillard 9/15/2022

---

Judge Qiana Lillard

STIPULATED:

/s/ JULIE DALE (w/consent)

**JULIE DALE (P60221)**

Third Judicial Circuit Court

2 Woodward Ave Rm 742

Detroit, MI 48226-5432

(313) 224-6056 Office

(313) 224-8792 Fax

julie.dale@3rdcc.org

/s/ JUAN A. MATEO

**JUAN A. MATEO (P33156)**

300 River Place, Suite 3000

Detroit, MI 48207

(313) 962-3500 Office

(313) 962-9190 Fax

mateoja@aol.com

Counsel for Defendants Fresard and

Ramsey

s/ GERALD K. EVELYN

**GERALD K. EVELYN (P29182)**

300 River Place, Suite 3000

Detroit, MI 48207

(313) 962-3500 Office

(313) 962-9190 Fax

geraldevelyn@yahoo.com

Counsel for Defendants Fresard and

Ramsey

STATE OF MICHIGAN  
COURT OF APPEALS

---

JULIE A. PUCCI,

Plaintiff-Appellee,

v

NINETEENTH JUDICIAL DISTRICT COURT,

Garnishee Defendant-Appellant,

and

CHIEF JUDGE MARK W. SOMERS and  
COMERICA BANK,

Defendants.

---

UNPUBLISHED

March 17, 2016

No. 325052

Wayne Circuit Court

LC No. 13-014644-CZ

Before: SAAD, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Garnishee defendant, Nineteenth Judicial District Court, appeals as of right from the final judgment in which the trial court granted summary disposition in favor of plaintiff, Julie A. Pucci, and ordered defendant Court to pay \$1,183,330.96 in damages. Defendant Court contends that it has no obligation to pay damages because the judgment in the underlying federal case was entered against defendant Judge Mark W. Somers individually and the federal court dismissed defendant Court as a party to the underlying action. We agree and reverse and remand.

I. THE FEDERAL COURT PROCEEDINGS

The instant case arises from plaintiff's unlawful termination as Deputy Court Administrator of the Nineteenth District Court by then Chief Judge Mark W. Somers as part of a court-wide reorganization. In *Pucci v Nineteenth Dist Court (Pucci I)*, 565 F Supp 2d 792, 796-802 (ED Mich, 2008), the federal district court provides a lengthy narrative of plaintiff's employment history with defendant Court and the events surrounding her termination. In the following, we summarize the facts after her termination.

On February 12, 2007, plaintiff filed a lawsuit pursuant to 42 USC 1983 in the United States District Court for the Eastern District of Michigan against defendants Judge Somers, the

City of Dearborn, and the Nineteenth District Court. Plaintiff alleged that defendant Somers violated her First Amendment right to free speech and Fourteenth Amendment right to due process. Plaintiff claimed that Judge Somers wrongfully terminated her position with the court because her domestic relationship with one of the others judges on the court, outside the bonds of marriage, was contrary to Somers's religious beliefs. She further asserted that Judge Somers terminated her employment because she complained of his practice of interjecting his personal religious beliefs into court proceedings and administrative matters. Plaintiff sued defendant Somers in both his individual capacity and official capacity.

Subsequently, the City of Dearborn was dismissed from the case by stipulation of the parties and an order of the court. The remaining defendants sought summary disposition on all counts of the plaintiff's complaint, and sought appeal to the United States Court of Appeals for the Sixth Circuit when the district court denied their motion in part. On appeal, plaintiff's claims against defendant Court and defendant Somers in his official capacity were dismissed under Eleventh Amendment sovereign immunity. *Pucci v Nineteenth Dist Court (Pucci II)*, 628 F3d 752, 769 (CA 6, 2010). The damage claims against defendant Somers in his personal capacity remained and proceeded to trial. *Id.* On June 30, 2011, the jury returned a verdict against him, concluding that he violated plaintiff's right to procedural due process and retaliated against her for the exercise of her First Amendment rights by terminating her employment. It found in defendant Somers's favor on the sex-discrimination claim. Thereafter, the federal district court entered a judgment in the amount of \$1,173,125.30 against defendant Somers in accordance with the jury's verdict. The jury's verdict and award were affirmed on appeal in *Pucci v Nineteenth Dist Court (Pucci III)*, 596 Fed Appx 460, 462 (CA 6, 2015).

After entry of the judgment, plaintiff sought to collect from Judge Somers's personal assets and began garnishing his salary on a periodic basis. Plaintiff also attempted to collect from the City of Dearborn by filing non-periodic writs of garnishment against it in federal court seeking payment of the judgment. The federal district court quashed the writs of garnishment, finding that it lacked jurisdiction to adjudicate the matter. *Pucci v Somers (Somers)*, 962 F Supp 2d 931, 933, 939 (ED Mich, 2013). In the court's opinion dismissing the matter, it noted "other developments" in the case, specifically the indemnification theory. *Id.* at 933-934. Plaintiff sought garnishment against the City on the basis of an indemnification policy that defendant Somers issued only nine days before the federal trial began. The policy provided that the Nineteenth District Court would indemnify any judgment entered against judges of the Court for discretionary administrative decisions within the scope of their authority, including employment and reorganization decisions. The district court acknowledged that new legal questions must be addressed before it could be determined that defendant City must indemnify defendant Somers. *Id.* at 938. The district court ruled that because the indemnification matter was "factually and legally different than the matters raised in the main case," plaintiff must seek remedies against the Court and the City under the federal judgment in state court. *Id.* at 933, 936.

## II. THE CIRCUIT COURT PROCEEDINGS

Accordingly, on November 11, 2013, plaintiff domesticated the federal judgment in Wayne Circuit Court. The trial court issued a writ on defendant Court as garnishee to enforce its obligation to indemnify defendant Somers. Plaintiff and defendant Court filed cross motions for summary disposition pursuant to MCR 2.116(C)(10) seeking a ruling on the issue of liability.

Plaintiff contended that the writ of garnishment issued on defendant Court was proper on the basis of the indemnification policy, which covered its chief judge for personal obligations where he was discharging his administrative functions or dispensing the business of the district court. Plaintiff argued that she was entitled to summary disposition against defendant Court as the garnishee defendant for the damages owed under the indemnification policy for the benefit of defendant Somers. Defendant Court asserted that it could not be held responsible for an individual capacity judgment in a case in which it had been granted sovereign immunity from suit. Additionally, it argued that the indemnification policy on which plaintiff was attempting to collect was unenforceable, and defendant Somers's actions regarding the termination of plaintiff's employment were not within the scope of the policy.

The trial court issued its decision, holding that defendant Court was responsible for the unpaid judgment under the indemnification policy that defendant Somers issued. The trial court found that defendant Somers's action of eliminating plaintiff's position at the court, while an infringement on her constitutional rights, was done in his administrative capacity as a judge of the district court. The trial court explained that he had the power as chief judge to manage the performance of the court's personnel, and therefore was "exercising the authority that was vested in him . . . when he discharged the plaintiff." Further, the trial court found that the indemnification policy was enforceable for the judgment entered against defendant Somers in his individual capacity. The trial court acknowledged that the case presented a "challeng[ing]" argument regarding separation of powers, in particular where the chief judge was "personally motivated" to initiate the agreement binding the funding unit. Nevertheless, the trial court determined that defendant Somers was operating within the function of the court when he adopted the indemnification policy.

On December 11, 2014, the trial court entered an order in accordance with its ruling from the bench, granting plaintiff's motion for summary disposition and denying defendant Court's motion for summary disposition. The trial court entered judgment in favor of plaintiff and against defendant Court in the amount of \$1,183,330.96. This appeal followed.

### III. STANDARD OF REVIEW

On appeal, a trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(10) is reviewed de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party, *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012), and all reasonable inferences are to be drawn in favor of the nonmoving party, *Dextrom v Wexford Co*, 287 Mich App 406, 415; 789 NW2d 211 (2010). Summary disposition is proper if the evidence fails to establish a genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Id.* A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds could differ. *Debano-Griffin v Lake Co Bd of Comm'rs*, 493 Mich 167, 175; 828 NW2d 634 (2013).



#### IV. SOVEREIGN IMMUNITY

Defendant Court asserts that the trial court erred in granting summary disposition in favor of plaintiff because it cannot be held liable as a garnishee defendant for a judgment entered against defendant Somers in his individual capacity, and it was granted sovereign immunity in the underlying federal lawsuit. We first address defendant Court's sovereign immunity argument because, if immunity attaches, it bars any further action against the court regarding this matter.

Before trial, the Sixth Circuit Court held that defendant Court had Eleventh Amendment immunity from plaintiff's § 1983 civil rights action. *Pucci II*, 628 F3d at 761-764. The Eleventh Amendment to the United States Constitution provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

"Although by its terms the Amendment applies only to suits against a State by citizens of another State, [United States Supreme Court] cases have extended the Amendment's applicability to suits by citizens against their own States." *Bd of Trustees of the Univ of Alabama v Garrett*, 531 US 356, 363; 121 S Ct 955; 148 L Ed 2d 866 (2001). Moreover, the Amendment precludes suits in both federal and state courts. *Alden v Maine*, 527 US 706, 712; 119 S Ct 2240; 144 L Ed 2d 636 (1999); *Ernst v Rising*, 427 F3d 351, 358 (CA 6, 2005).

Defendant Court contends that its sovereign immunity from plaintiff's claims in the underlying federal action includes protection from garnishment proceedings in this lawsuit. We disagree and hold that Eleventh Amendment immunity is inapplicable to the present collection proceeding, which is based on a contractual obligation. The matter before the court in the underlying *Pucci* case was a federal civil rights violation. *Pucci II*, 628 F3d at 755. Here, plaintiff brought a separate action for garnishment based on an indemnification agreement potentially binding defendant Court. The federal district court ruled that the federal court did not have subject matter jurisdiction to determine the indemnification matter and the City of Dearborn's potential responsibility for funding the judgment because the indemnification issue was "a new theory" not part of the previous proceedings. *Somers*, 962 F Supp 2d at 937-939. The district court concluded that "[Plaintiff] must seek her remedies against the state district court and the City of Dearborn under the federal judgment in state court." *Id.* at 933. Therefore, the federal court effectively acknowledged that sovereign immunity did not bar plaintiff's collections suit based on the indemnity agreement.

Moreover, defendant claims that collecting through garnishment is contrary to the purpose of sovereign immunity. Defendant cites *Wilson v Beebe*, 770 F2d 578, 587-588 (CA 6, 1985) for the proposition that sovereign immunity provides protection for governmental units from direct or indirect lawsuits that would impose a liability requiring payment from public funds. However, the *Wilson* Court distinguished between an obligation imposed on the state and an obligation voluntarily assumed by the state. *Id.* at 588. It found that the state, not the individual, was entitled to immunity from liability, and a commitment to indemnify the individual did not "clothe him with this immunity." *Id.* Nevertheless, this did not preclude the state from electing to indemnify the individual. *Id.* at 587.

Here, defendant Court voluntarily adopted an agreement to indemnify defendant Somers for the judgment against him. This obligation is distinct from any constitutional matter protected under sovereign immunity. As in *Wilson*, there is a difference between legal liability for an action and a voluntarily assumed obligation to indemnify. For the above-stated reasons, we conclude that defendant Court cannot rely on sovereign immunity to avoid its assumed obligation to indemnify defendant Somers for the judgment against him.

## V. INDEMNIFICATION AGREEMENT

Next, we address defendant Court's claim that it cannot be held liable as a garnishee defendant for a judgment entered against defendant Somers in his individual capacity. "The purpose of a garnishment proceeding is to allow a judgment creditor to satisfy her judgment from money, credits, or other property belonging to the judgment debtor that is in the hands of someone else." *Somers*, 962 F Supp 2d at 935. Michigan law recognizes such garnishment proceedings. *Id.* Plaintiff brought the instant action against defendant Court based on the judgment she obtained in federal court against defendant Somers individually under the theory that defendant Court voluntarily assumed the obligation to indemnify defendant Somers for liability arising from the discharge of his duties for the district court.

There is case law to suggest that if the judgment were against a state district court or a judge in an official capacity, a local funding unit, such as the City, would likely be obliged to satisfy the judgment. See *Cameron v Monroe Co Probate Court*, 457 Mich 423, 425; 579 NW2d 859 (1998) (acknowledging that the plaintiffs "received \$25,000 from the state of Michigan" in satisfaction of a judgment in their favor against a state probate court); *Anspach v Livonia*, 140 Mich App 403, 410; 364 NW2d 336 (1985) (observing that the local governmental entity "has a statutory duty to pay the cost of financing the [defendant district court], which would include any judgment plaintiff might recover against" the court); *Dolan v Ann Arbor*, 666 F Supp 2d 754, 760-763 (ED Mich, 2009) (concluding it was unclear whether the city would be liable for any judgment the plaintiff might obtain against the Fifteenth District Court). However, as defendant Court contends, the judgment is against defendant Somers in his individual capacity, not his official capacity.

The *Somers* court observed this distinction, explaining that a lawsuit against a public official in his official capacity is merely "another way of pleading an action against an entity of which an officer is an agent." *Somers*, 962 F Supp 2d at 938, quoting *Monell v Dep't of Soc Servs of City of New York*, 436 US 658, 690 n 55; 98 S Ct 2018; 56 L Ed 2d 611 (1978). On the other hand, "[p]ersonal capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law." *Somers*, 962 F Supp 2d at 938, quoting *Kentucky v Graham*, 473 US 159, 165; 105 S Ct 3099; 87 L Ed 2d 114 (1985). Accordingly, "an award of damages against an official in his personal capacity can be executed only against the official's personal assets." *Somers*, 962 F Supp 2d at 938, quoting *Kentucky*, 473 US at 166. "The distinction between those two forms of suit suggests that the effects of a judgment against a district court cannot be uncritically mapped onto a judgment against a judge in his personal capacity." *Somers*, 962 F Supp 2d at 938.

Regardless of this variation in the nature of suits against governmental personnel, plaintiff argues that an indemnification policy attaches liability to defendant Court in this case.

As an initial matter, we must look to the language of the policy to determine if defendant Court agreed to be obliged to a judgment entered against a judge in his individual capacity. That policy provides, in relevant part:

[I]t is the official policy of the 19th District Court that the supervisory personnel identified herein [later defined to include all judges of the Court] shall be indemnified and held harmless for the costs of defending and for any judgment entered against them resulting from any civil action for discretionary administrative decisions made within the scope of his or her authority including decisions regarding the hiring, firing and/or discipline of its employees and the creation, reorganization and/or elimination of personnel positions as they shall deem appropriate to the efficient, economical and necessary functioning of the court.

The policy further provides that if the district court does not have the funds to pay such a judgment, the court would submit the judgment to the City of Dearborn for appropriation of the required funds.

The plain language of the indemnification policy does not distinguish between official and personal capacity judgments. Rather, it establishes an obligation to pay where a judge was discharging administrative duties of the court, including making employment and reorganization decisions. This language coincides with MCR 8.110(C)(3), which provides that the hiring and firing of court personnel is the responsibility of the chief judge of the district court. See also *Pucci II*, 628 F3d at 752. The trial court found this obligation to be present in the instant case, acknowledging the current chief judge's opinion that the court would be responsible where a judge violates an employee's constitutional right within the discharge of the judge's professional duties. Therefore, defendant Court assumed the obligation of paying the judgment against defendant Somers because it was based on an employment decision.

However, as the federal court concluded, there remains a legal question regarding the validity of the policy. *Somers*, 962 F Supp 2d at 938. Defendant Court questions the authority of defendant Somers and his successor chief judge to implement the indemnification policy issued only days before the trial began. According to defendant Court, the legislature, not the judiciary, must initiate all funding policies. Defendant Court cites *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 141; 719 NW2d 553 (2006), for its holding that "the most fundamental aspect of the 'legislative power' . . . is the power to tax and to appropriate for specified purposes." In *Crawford*, the chief judge of the circuit court sued the court's funding unit to compel funding for an enhanced pension plan that he wanted to adopt for court employees for the purpose of boosting morale. *Id.* at 136-138. According to the Michigan Supreme Court, the judiciary is able to compel appropriations not legislatively allocated in "rare instances" to meet critical needs of the judiciary and circumstances where "the overall operation of the court, or a constitutional function is in jeopardy." *Id.* at 142-143, 147-148, quoting *Employees & Judge of the Second Judicial Dist Court v Hillsdale Co*, 423 Mich 705, 717-719; 378 NW2d 744 (1985). To institute such authority, the court must prove by clear and convincing evidence that the funding is reasonable and necessary. *Crawford*, 476 Mich at 149. The *Crawford* Court refused to find a right to compel funding from the defendants, concluding that the appropriation was not necessary for the court to "function serviceably." *Id.* at 155. A similar conclusion can

be found in *Hillsdale*, 423 Mich at 723, where the Michigan Supreme Court ruled that the chief judge lacked the authority to compel additional funding through administrative order.

Defendant Court asserts that a judge's inherent authority over personnel matters does not grant him the unfettered ability to implement any appropriation he desires for any issue that touches on a personnel decision. In that regard, the Michigan Supreme Court has held, it is "well established" that "in the exercise of its employment responsibilities the judiciary must take into account the limited dollars appropriated to it by the legislative branch in the exercise of the Legislature's own constitutional responsibility." *Judicial Attorneys Ass'n v Michigan*, 459 Mich 291, 302; 586 NW2d 894 (1998).

Plaintiff counters that it was within defendant Somers's authority to issue the indemnification policy because it was an administrative decision. Plaintiff cites MCR 8.110(C) and the State Court Administrative Office's guidelines as permitting defendant Somers's actions in this case. MCR 8.110(C) provides:

(2) As the presiding officer of the court, a chief judge shall:

\* \* \*

(c) initiate policies concerning the court's internal operations and its position on external matters affecting the court;

\* \* \*

(3) As director of the administration of the court, a chief judge shall have administrative superintending power and control over judges of the court and all court personnel with the authority and responsibility to:

\* \* \*

(d) supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any;

\* \* \*

(f) supervise court finances, including financial planning, the preparation and presentation of budgets, and financial reporting;

\* \* \*

(i) perform any act or duty or enter any order necessarily incidental to carrying out the purposes of this rule.

Plaintiff notes that the SCAO guidelines on "Risk Management" provide for liability protection of judges and court employees through attorney representation and liability coverage through insurance or indemnification. Furthermore, although it does not specify who has the authority to

make an indemnification decision, MCL 691.1408 permits a governmental agency to indemnify one of its employees for a judgment entered against that employee “while in the course of employment and while acting within the scope of his or her authority.”

In addition, plaintiff cites *Judicial Attorneys Ass’n*, 459 Mich at 299, for the proposition that “the fundamental and ultimate responsibility for all aspects of court administration, including operations and personnel matters within the trial courts, resides within the inherent authority of the judicial branch.” This discretion is broad and has been interpreted as granting chief judges the authority “to take measures not prohibited by the letter or spirit of the court rules.” *Schell v Baker Furniture Co*, 461 Mich 502, 513; 607 NW2d 358 (2000).

Moreover, in *Cameron*, 457 Mich at 425, employees of the court alleged that the probate court judge discriminated against them and violated their civil rights. A judgment of \$25,000 was entered against the probate court. *Id.* The Michigan Supreme Court ruled that a county is obligated to pay such judgments. *Id.* at 428. It held that while “employment discrimination is not an ‘expense of justice,’” the “supervision and administration of court personnel is a necessary expense of justice for which the county is expected to pay.” *Id.* at 427-428. It is noteworthy that the judgment in *Cameron* was entered against the court, *id.* at 425, while the judgment was entered against the judge personally in the instant case. It is upon this distinction that we believe that this case ultimately turns. While we agree that a Chief Judge can adopt an indemnification policy that covers the court’s court employees and judges while acting in their official capacity, we do not believe that this power extends to indemnifying judges for liability incurred in their personal capacity. Therefore, because the judgment in this case is against the judge in his personal capacity, the indemnification policy does not apply and defendant Court is not liable.

Reversed and remanded with instructions to enter summary disposition in favor of defendant Court. We do not retain jurisdiction. Defendant Court may tax costs.

/s/ Henry William Saad  
/s/ David H. Sawyer  
/s/ Joel P. Hoekstra



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

November 30, 2022

Richard Lynch  
Third Circuit Court  
2 Woodward Ave., 7<sup>th</sup> Floor  
Detroit, MI 48226

Re: *Davis v. Lynch, et al*  
Campaign Finance Complaint No. 2022-11-197-257

Dear Richard Lynch:

The Department of State (Department) has received a formal complaint filed against you by Robert Davis alleging that you violated the Michigan Campaign Finance Act (MCFA or Act). Specifically, the complaint alleges that you have violated section 57 of the Act by authorizing representation of Judges Fresard and Ramsey in their reelection matters. A copy of the complaint is included with this notice.

In Michigan, it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words "contribution" and "expenditure" are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of a candidate. MCL 169.204(1), 169.206(1). A knowing violation of this provision is a misdemeanor offense. MCL 169.257(4).

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](mailto:BOERegulatory@michigan.gov) or mailed to the Department of State, Bureau of Elections, Richard H. Austin Building, 1<sup>st</sup> 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. Davis, 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](mailto:BOERegulatory@michigan.gov).

Sincerely,

Adam Fracassi, *Regulatory Manager*  
Bureau of Elections  
Michigan Department of State

c: Robert Davis



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

November 30, 2022

Robert Davis  
180 Eason  
Highland Park, MI 48203

Re: *Davis v. Fresard et al.*  
Campaign Finance Complaint No. 2022 – 11 – 197 – 257

Dear Mr. Davis:

The Department of State (Department) acknowledges receipt of your November 2, 2022, complaint alleging a violation of the Michigan Campaign Finance Act (MCFA or Act).

The instant complaint is a subsequent complaint submitted against Judge Kenny, Judge Fresard and Judge Ramsey essentially asks the Department to reverse its conclusion previously dismissing the allegations brought under section 57. The Department reiterates its prior determination and dismisses these allegations.

In Michigan, it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words “contribution” and “expenditure” are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of [candidate, ballot question, etc.]. MCL 169.204(1), 169.206(1). A knowing violation of this provision is a misdemeanor offense. MCL 169.257(4).

There is nothing in the complaint demonstrating that the incumbent judges violated section 57 of the Act as they are not the public body, nor are they authorized to expend the alleged public resource. Judge Fresard and Judge Ramsey did not use public resources to make an expenditure or contribution to their campaign by receiving representation from the Third Circuit Court. Further, Judge Kenny did not make a contribution or expenditure to the campaigns of Judge Fresard or Judge Ramsey by ruling against you in your motion to disqualify Julie Dale. As previously stated, the fact that the court ruled against you does not amount to a MCFA violation.

For the above reason, your complaint against Judge Kenny, Judge Fresard, and Judge Ramsey is dismissed. In a separate letter, the Department has sent a notice of intent to investigate the other portion of your allegations submitted against the Third Circuit Court and Richard Lynch.



Robert Davis

Page 2

If you have any questions concerning this matter, you may contact the Regulatory Section of the Bureau of Elections at [BOERegulatory@michigan.gov](mailto:BOERegulatory@michigan.gov).

Sincerely,

Adam Fracassi, *Regulatory Manager*  
Bureau of Elections  
Michigan Department of State



**COLLINS EINHORN**

Donald D. Campbell

Collins Einhorn Farrell PC

Email: donald.campbell@ceflawyers.com  
Direct Dial: 248-351-5426

January 18, 2023

Via U.S. Mail & email

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

Regulatory Section  
Bureau of Elections  
Michigan Department of State  
[BOERegulatory@michigan.gov](mailto:BOERegulatory@michigan.gov)

Re:    Davis v Lynch  
      Campaign Finance Complaint No. 2022-11-197-257

Dear Mr. Fracassi,

Respondent Richard Lynch, by and through his attorneys Collins Einhorn Farrell PC, and for his response to the above-captioned Michigan Campaign Finance Act complaint, provides this response.

At the outset, Mr. Lynch vehemently denies violating the MCFA as alleged by Robert Davis. Davis is a serial litigator who has engaged in a campaign of vexatious and frivolous litigation against the Wayne County Circuit Court and its judges, pursuing his own agenda. For context, he has recently instituted a series of quo warranto proceedings

(in conjunction with a failed write-in-candidate, Philip Cavanaugh) to remove several sitting judges.<sup>1</sup> He pursued this action despite multiple judges – including in the Court of Claims – ruling that his claims are baseless.

Mr. Lynch does not have a personal agenda. He is concerned with and focused on preserving court resources, administration of the court, and maintaining operations to provide access to justice to Wayne County citizens. This has proven a difficult task given the backlog of cases due to the COVID-19 pandemic. Instead, he and other court personnel have been forced to focus on Davis's baseless claims.

Davis has now filed this complaint alleging violations of the Michigan Campaign Finance Act, which Mr. Lynch denies. In response, Mr. Lynch provides the following numbered answer, along with a brief response to the legal issues presented by Davis's complaint.

**RESPONDENT RICHARD LYNCH'S RESPONSE TO ROBERT DAVIS'S  
MICHIGAN CAMPAIGN FINANCE ACT (MCFA) COMPLAINT**

Respondent, Richard Lynch, through his attorneys, Collins Einhorn Farrell PC, and for his response to the above-captioned complaint states as follows:

1. Admitted only that Davis submitted the complaint. Respondent denies anything in this allegation suggesting he violated any Michigan statute.

---

<sup>1</sup> It should be noted that the Secretary of State filed a Motion to File Amicus Curiae Brief in Support of the Respondent judges, and against Davis, in the quo warranto proceeding (Court of Appeals No. 364222).

2. Respondent neither admits nor denies the allegations in paragraph 2 for lack of sufficient knowledge or information.
3. Respondent neither admits nor denies the allegations in this paragraph for the reason that the same do not pertain to this respondent.
4. Respondent neither admits nor denies the allegations in this paragraph for the reason that the same do not pertain to this respondent.
5. Respondent neither admits nor denies the allegations in this paragraph for the reason that the same do not pertain to this respondent.
6. Deny. Respondent's telephone number is (313) 224-8802.
7. Admitted only that the statute, MCL 169.257(1), speaks for itself.
8. Admitted only that the statute, MCL 169.211(7)(d), speaks for itself.
9. Neither admit nor deny as this paragraph calls for a legal conclusion.
10. Neither admit nor deny, as this paragraph calls for a legal conclusion.
11. Neither admit nor deny, as this paragraph calls for a legal conclusion.
12. Neither admit nor deny, as this paragraph calls for a legal conclusion.
13. Admitted only that a complaint was filed. Respondent neither admits nor denies the balance of the allegation in paragraph 13 as it calls for a legal conclusion as to the categorization of the various defendants, including sitting judges.
14. Admitted that paragraph 14 accurately explains the assignment of election-related matters per the applicable local administrative order.

15. Admitted only that Julie Dale is an Associate General Counsel of the Third Judicial Circuit Court and filed an appearance in the underlying matter. By way of further answer and explanation, Davis's complaint as to Judge Fresard and Judge Ramsey challenged unopposed incumbent judicial candidates. Davis's lawsuit therefore presented a challenge to the operations of the Third Judicial Circuit and sought to create vacancies in the already understaffed and overburdened Court, hamstringing judicial efficiency.

16. Respondent neither admits nor denies the allegation, for lack of sufficient knowledge or information.

17. Admit that Davis sent an email to Associate General Counsel Julie Dale objecting to her appearance in the "Wayne County Election Lawsuit." By way of further response, Respondent notes that Davis's suit belatedly challenging the election of unopposed incumbent judges threatened the operations of the Third Circuit by seeking to deprive the court of two judges.

18. Admit that Davis called Dale, but deny the remainder of his allegation.

19. Admitted only that Respondent, as Dale's superior, instructed Dale to appear in the case, as he viewed the challenge as one against the institution due to the threat of seeking to deprive the Third Circuit Judicial Court of two judges.

20. Admitted only that Respondent was acting in his capacity as General Counsel for the Third Judicial Circuit Court in assigning Dale to the matter.

21. Deny the allegation as Davis asserts a legal conclusion

22. Admitted only that Davis filed a complaint with the State Court Administrative Office (SCAO). Respondent denies the balance of paragraph 22, including Davis's characterization of actions by the court and its personnel as unlawful and unethical as untrue and defamatory.

23. Admitted only that Davis filed a supplement to his SCAO complaint. Respondent denies the balance of paragraph 23, including Davis's characterization of actions by the court and its personnel as unlawful and unethical as untrue and defamatory.

24. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24, and therefore the allegations are denied. By way of further answer, the purported anonymous letters are not attached to Davis's complaint and the Bureau of Elections should therefore ignore this paragraph. Respondent specifically denies that Judge Fresard directed him to allow Dale to represent them, as alleged by Davis, for the reason that the allegation is untrue.

25. Respondent denies the allegations in paragraph 25, for the reason that same are untrue. By way of further answer, see answer to paragraph 24.

26. Respondent neither admits nor denies the allegation as Davis asserts a legal conclusion.

27. Respondent neither admits nor denies the allegations in paragraph 27 for lack of sufficient knowledge or information.

28. Admit. By way of further response, Respondent notes that Davis stated he would consider objecting to an early effort by Dale to withdraw from the action when Judges Fresard and Ramsey retained private counsel.

29. Admitted as true.

30. Admitted that Attorney Dale appeared in the underlying action (Wayne County Circuit Court Docket No. 22-008866-AW). Dale filed the following in relation to that case and Davis's attempts to disqualify her: an appearance, which she filed on July 28, 2022; a response to Davis's emergency motion for declaratory judgment, writ of mandamus, and order to show cause, which she filed on August 9, 2022; and a motion for an expedited hearing and contesting Davis's supplemental complaint to the SCAO, which she filed on August 24, 2022.

31. Respondent neither admits nor denies the allegations in paragraph 31 for lack of sufficient knowledge or information. By way of further answer, it is admitted that Attorney Dale was assigned the representation as a part of her role as associate general counsel.

32. Admitted, on information and belief.

33. Admitted, on information and belief.

34. Admitted, on information and belief.

35. Admitted only that Dale receives benefits as part of her employment. The balance of this paragraph is denied, in the form and manner stated therein.

36. Admitted that MCR 8.110(C) outlines the duties of trial court chief judges, not merely those of the Circuit Court.

37. Admitted only that paragraph 37 contains selective quotes from MCR 8.110(C)(3).

38. Respondent denies the allegations in paragraph 38 for the reason that the same are untrue.

39. Respondent denies the allegations in paragraph 39 for the reason that the same are untrue. By way of further answer, *Pucci v Nineteenth Judicial District Court*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2016 (Docket No 325052) does not address the issue before the Secretary of State, and Davis seeks to extend the non-precedential opinion beyond the scope of its ruling.

40. Respondent denies the allegations in paragraph 40 for the reason that the same are untrue. By way of further answer, see answer to paragraph 39.

41. Respondent denies the allegations in paragraph 41 for the reason that the same are untrue. By way of further answer, see answer to paragraph 39.

42. Admitted only that Dale received payment during the term of her representation. By way of further response, Respondent notes that Davis objected to Dale's efforts to withdraw. The balance of the allegations in paragraph 42 are denied as they state a legal conclusion.

43. Respondent denies the allegations in paragraph 43 for the reason that the same are untrue.



44. Respondent denies that Davis is competent to testify as to the facts stated in this complaint, as he has presented false assertions about events involving Respondent and has engaged in a campaign against the Third Judicial Circuit Court in various lawsuits, including the cases before the Court of Claims (Docket Nos. 22-000163-MM and 22-000121-MM), the case before the Wayne County Circuit Court (22-008866-AW), and the cases before the Court of Appeals (Docket Nos. 364222, 363828, and 362987). All of which include frivolous claims and vexatious tactics.

45. Neither admit nor deny as this allegation doesn't require a response.

#### **RESPONDENT'S BRIEF IN OPPOSITION TO DAVIS'S MCFA COMPLAINT**

##### **I. Issue presented.**

The issue presented here is whether Davis presented evidence sufficient to establish that the Third Judicial Circuit Court's General Counsel Richard Lynch violated the Michigan Campaign Finance Act (MCFA) by instructing Associate General Counsel Julie Dale to represent Judge Fresard and Judge Ramsey. Dale's representation of Judges Fresard and Ramsey had no connection to any campaign. Similarly, Lynch's instruction that Dale represent the Judges had no connection to any campaign—Lynch merely performed his job duties as General Counsel, given the perceived impact on the court, rather than specific judges. Davis therefore cannot establish that a violation of the MCFA occurred.

## II. Statement of facts.

Davis filed his complaint in the “Wayne County Election Lawsuit” on July 26, 2022, and General Counsel Richard Lynch received a copy of that complaint that same day. Lynch then assigned the matter to Assistant General Counsel Julie Dale, who filed her appearance as counsel for Judge Fresard and Judge Ramsey on July 28, 2022.

On July 29, 2022, Davis emailed Dale, demanding that she withdraw as counsel. (**Attachment A**, Email from Davis to Dale dated July 29, 2022). Davis then filed an emergency motion for declaratory judgment, writ of mandamus, and order to show cause. Dale filed a response opposing that motion. (**Attachment B**, Dale Response to Davis’s Emergency Motion).

Meanwhile, Davis was also attempting to disqualify Chief Judge Kenny from the “Wayne County Election Lawsuit.” He filed a motion to disqualify Chief Judge Kenny from the case on July 29, 2022. Oral argument on the motion was heard on August 5, 2022. At this time, the motion was denied. Davis then requested *de novo* review of the disqualification. And on August 8, 2022, Chief Judge Kenny entered the order denying Davis’s motion to disqualify him.

Judge Burton initially was assigned the *de novo* review of the disqualification of Chief Judge Kenny, but Judge Burton disqualified himself from the case. Next, SCAO assigned Judge Biernat to review the motion *de novo*. Judge Biernat entered an order disqualifying Chief Judge Kenny from the Wayne County Election Lawsuit on August 30, 2022.

Davis also filed a complaint with SCAO, arguing that Dale's representation of the judges was improper on August 3, 2022. (**Attachment C**, Davis Email to SCAO dated August 3, 2022). Davis later supplemented this complaint on August 6, 2022. (**Attachment D**, Davis Email to SCAO dated August 6, 2022). Dale also filed an emergency motion for an expedited hearing and response in opposition to Davis's supplemental brief and attachments regarding her representation of the Judges on August 24, 2022.

On August 24, 2022, attorneys Juan A. Mateo and Gerald K. Evelyn started preparing to substitute as private counsel for Judge Fresard and Judge Ramsey. Judge Fresard confirmed on August 29, 2022 that Evelyn and Mateo would be substituting as counsel. Dale filed the proposed order to substitute Evelyn and Mateo in her place as counsel, but Davis emailed Dale on August 30, 2022 stated his intent to object to the proposed order, stating Chief Judge Kenny "is NO longer authorized to sign and/or enter any orders in this case. Consequently, you will remain the ONLY counsel of record until such time as a new judge is assigned this case and decides to sign your proposed order of substitution provided that no other parties object to the substitution, which I may object to:"

January 18, 2023

Page 11

From: Robert Davis <[davisrobert854@gmail.com](mailto:davisrobert854@gmail.com)>

Date: 8/30/22 5:33 PM (GMT-05:00)

To: "Dale, Julie" <[Julie.Dale@3rdcc.org](mailto:Julie.Dale@3rdcc.org)>

Cc: "Lynch, Richard" <[Richard.Lynch@3rdcc.org](mailto:Richard.Lynch@3rdcc.org)>, "Sallan, Vincent C." <[vsallan@clarkhill.com](mailto:vsallan@clarkhill.com)>, Rebecca Camargo <[rcamargo@waynecounty.com](mailto:rcamargo@waynecounty.com)>, Nkrumah Johnson-Wynn <[Njohnson3@waynecounty.com](mailto:Njohnson3@waynecounty.com)>, [geraldevelyn@yahoo.com](mailto:geraldevelyn@yahoo.com), [mateoja@aol.com](mailto:mateoja@aol.com), "James J. Hunter" <[James.Hunter@ceflawyers.com](mailto:James.Hunter@ceflawyers.com)>, "Trebilcock, Christopher M." <[ctrebilcock@clarkhill.com](mailto:ctrebilcock@clarkhill.com)>, [crespol@detroitmi.gov](mailto:crespol@detroitmi.gov)

Subject: Chief Judge Kenny is Not Authorized To Sign Your Proposed Order Authorizing Substitution of Counsel for Defendants Fresard and Ramsey in the matter of Davis v Wayne County Election Commission, et.al., Wayne County Case No. 22-008866-AW

Ms. Dale:

Just moments after Macomb County Circuit Court Chief Judge James Biernat, Jr. issued his order granting my motion and ordering the recusal and disqualification of Chief Judge Tim Kenny from presiding over this case, you suspiciously submitted a proposed order authorizing the substitution of counsel.

Please be advised that Chief Judge Kenny is NO longer authorized to sign and/or enter any orders in this case. Consequently, you will remain the ONLY counsel of record until such time as a new judge is assigned this case and decides to sign your proposed order of substitution provided that no other parties object to the substitution, which I may object to.

Also, please advise ASAP if you will be filing an Interlocutory Appeal in the Michigan Court of Appeals on behalf of your clients defendants Judge Fresard and Ramsey.

Respectfully submitted,  
Robert Davis

Thus, Davis simultaneously contested Dale's representation but also sought to prevent her from withdrawing as counsel. This reflects Davis's desire to obfuscate and obstruct the legal process, rather than any real concern about the brief representation by Dale. On September 15, 2022, Judge Lillard signed the order allowing Dale to withdraw as counsel. (**Attachment E**, Signed Substitution Order).

Ultimately, Dale only filed a motion, a response, and the stipulation to withdraw as counsel. And none of these filings related to any specific campaign.

### **III. Davis hasn't produced evidence sufficient to establish an MCFA violation.**

Lynch did not violate the MCFA. And the lack of evidence Davis provided to support his complaint shows just that. Davis produced the following in support of his complaint: (1) Julie Dale's appearance in the "Wayne County Election Lawsuit;" (2) the Complaint he filed in the Third Judicial Circuit Court in the "Wayne County Election Lawsuit;" (3) the stipulation and order substituting Juan A. Mateo and Gerald K. Evelyn

in place of Julie Dale as counsel for Judge Fresard and Judge Ramsey; and (4) *Pucci v Nineteenth Judicial District Court*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2016 (Docket No 325052). Nothing establishes that Lynch violated the MCFA. And nothing establishes that he did so knowingly.

Under MCL 169.257(4), violations of the MCFA must be done knowingly. Davis provided no evidence that any alleged violation was done knowingly. Lynch instructed Dale to represent Judge Fresard and Judge Ramsey under the belief that there was no issue with such representation under the MCFA, as the suit sought to disrupt the re-election of two unopposed judicial candidates to their existing offices. The removal of the judicial candidates presented the risk of disrupting court operations and further impede efforts to fully restore court operations following the COVID-19 pandemic. This concern is not illusory. In fact, the Third Judicial Circuit filed a Motion to Intervene in one of Davis's lawsuits against the Secretary of State due to these very real concerns. (**Attachment F**, Motion to Intervene (without exhibits)).

The MCFA bars certain contributions and expenditures on behalf of campaigns. Davis proffered no evidence that Lynch made or authorized any contributions or expenditures on behalf of a campaign. Under the MCFA, "'Contribution' means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, for the

qualification, passage, or defeat of a ballot question, or for the qualification of a new political party.” MCL 169.204(1) (emphasis added). And an “‘Expenditure’ means a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party.” MCL 169.206(1) (emphasis added). The plain language of these statutory sections makes clear that the intent behind the action is relevant to determining whether a violation occurred.

Davis provided no evidence that Lynch acted with “the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party.” MCL 169.204(1). Lynch’s purpose in assigning Dale to represent Judge Fresard and Judge Ramsey was to perform his job duties as General Counsel—to provide representation to the judges of the Third Judicial Circuit Court.

Davis also provided no evidence that Lynch acted “in assistance of, or in opposition to, the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party.” MCL 169.206(1). Lynch’s involvement in the Wayne County Election Lawsuit was limited to his role as General Counsel. He did not seek to assist or oppose a nomination or election. He merely sought to perform his job and ensure the Judges of the Third Judicial Circuit Court had

representation in a lawsuit filed against them. Davis's proffered evidence does not prove that Lynch knowingly violated the MCFA.

Lynch never personally appeared as counsel. And Dale has long since withdrawn as counsel. Judge Lillard entered the order substituting Mateo and Evelyn in the place of Dale on September 15. Dale's involvement in the "Wayne County Election Lawsuit" was brief and limited in scope. There is no risk of further violation of the MCFA because there was no violation to begin with. Even assuming that there could have been a violation (and there's no evidence of that), there is no risk of continued or future violation because Dale already withdrew as counsel, despite Davis's attempt to delay the withdrawal. And neither Lynch nor Dale has had any further involvement in the case.

Further, *Pucci v Nineteenth Judicial District Court*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2016 (Docket No 325052) does not address the issue before the Secretary of State. Davis seeks to extend the opinion beyond the scope of its ruling. *Pucci* concerns sovereign immunity and indemnification agreements – it has no relation to the MCFA and no application to this case. Significantly, Davis attempts to require the Bureau of Elections to follow an unpublished and, therefore, non-binding opinion that does not address the issue before this body. *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017).

Finally, the Secretary of State "shall endeavor to correct the violation or prevent further violation by using informal methods." MCL 169.215(10). "The use of the word 'shall' denotes mandatory action." *Wolfenbarger v Wright*, 336 Mich App 1, 31; 969 NW2d

518 (2021). As stated above, there is no MCFA violation here, but, even if there was, the Bureau of Elections is obligated to resolve this matter through informal methods.

Davis engaged in gamesmanship—he objected to Lynch’s assignment of the case to Dale and Dale’s representation of the judges, yet he simultaneously sought to create barriers to Dale withdrawing as counsel. The Bureau of Elections should dismiss Davis’s Complaint because he failed to provide any evidence showing that Lynch violated the MCFA.

Respectfully submitted,

COLLINS EINHORN FARRELL PC

*Donald D. Campbell*

Donald D. Campbell



# Attachment A

*Email from Davis to Dale dated July 29, 2022*

# Request for Disqualification Julie Dale As Counsel for Defendants Fresard and Ramsey

R

Robert Davis <davisrobert854@gmail.com>

Fri, Jul 29, 10:49 AM (12 days ago)

to julie.dale, crespol, Nkrumah, Rebecca, patricia.fresard, donn.fresard, kelly.ramsey, brant.bowman, frances.yturri, boydt@courts.mi.gov

Counsel and Parties:

I have just been made aware of something very concerning that will require the disqualification of Attorney Julie Dale as counsel for Defendants Patricia Fresard and Kelly Ramsey. A copy of Ms. Dale's notice of appearance is attached.

Defendants Patricia Fresard and Kelly Ramsey are **NOT** being sued in their official capacities as duly elected judges of Third Circuit Court. Rather, Defendants Fredard and Ramsey are being sued in their **INDIVIDUAL** capacities as Candidates. Accordingly, judicial resources, in this case, staff attorneys employed by the Third Circuit Court, **CANNOT** be used or employed to represent duly elected judges who are being sued in their **INDIVIDUAL** capacities. Defendants Fresard and Ramsey are **NOT** being sued in their official capacities. Filing to qualify as a candidate for reelection is **NOT** a judicial duty or part of their official judicial duties as judges.

Therefore, Corporation Counsel for Third Circuit Court **CANNOT** be used to defend them in this civil action. This is a violation of the Michigan law, Michigan Rules of Professional Conduct, and the Judicial Cannons.

Accordingly, if Attorney Dale does **NOT** voluntarily withdraw from this civil action by 2 pmn Today, I will be filing a formal motion with the Court seeking her disqualification and I will also be filing a formal complaint with the State Court Administrative Office (SCAO) in accordance with the Michigan Court Rules. I have included the State Court Administrator Judge Thomas P. Boyd on this email communication as well.

Respectfully submitted,  
Robert Davis

# Attachment B

*Dale Response to Davis's Emergency Motion*

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**ROBERT DAVIS,**

**Plaintiff,**

**Case No. 22-008866-AW**

**-v-**

**Hon. Timothy M. Kenny**  
**Chief Judge**

**WAYNE COUNTY ELECTION COMMISSION,  
PATRICIA SUSAN FRESARD, in her individual capacity  
as a candidate for Judge of Third Circuit Court Incumbent Position,  
KELLY ANN RAMSEY, in her individual capacity as a  
candidate for Judge of Third Circuit Court Incumbent Position,  
and LAKENA TENNILLE CRESPO, in her individual capacity as a  
candidate for Judge of Third Circuit Court Non-Incumbent Position,**

**Defendants.**

---

ROBERT DAVIS, Pro se Plaintiff  
180 Eason  
Highland Park, MI 48203  
(313) 523-7118  
[Davisrobert854@gmail.com](mailto:Davisrobert854@gmail.com)

JAMES HEATH  
Wayne County Corp. Counsel  
REBECCA A. CAMARGO (P66013)  
Asst. Corp. Counsel  
Attorneys for Defendant Wayne Co.  
Election  
600 Griswold 215E Floor  
Detroit, MI 48226  
(818) 224-6788  
[rcamargo@waynecountv.com](mailto:rcamargo@waynecountv.com)

CLARK HILL PLC  
Christopher M. Trebilcock (P62101)  
Vincent C. Sallan (P79888)  
Attorneys for Defendant LaKena Tenille  
Crespo  
500 Woodward Avenue, Suite 3500  
Detroit, Michigan 48226  
(313) 965-8300  
[ctrebilcock@clarkhill.com](mailto:ctrebilcock@clarkhill.com)  
[vsallan@clarkhillfiorn](mailto:vsallan@clarkhillfiorn)

Julie M. Dale (P60221)  
Associate General Counsel  
Third Circuit Court of Michigan  
Attorney for Defendants Hon. Kelly Ann  
Ramsey and Hon. Patricia Susan Fresard  
2 Woodward Ave., Rm 742  
Detroit, MI 48226  
(313) 224-6056  
[Julie.Dale@3rdcc.org](mailto:Julie.Dale@3rdcc.org)

**DEFENDANTS KELLY ANN RAMSEY AND PATRICIA SUSAN FRESARD'S  
RESPONSE IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION  
FOR DECLARATORY JUDGMENT,  
WRIT OF MANDAMUS, AND ORDER TO SHOW CAUSE**

Plaintiff Robert Davis' lawsuit seeking to prevent Kelly Ann Ramsey and Patricia Susan Fresard from appearing on the ballot as incumbent candidates for unopposed judicial seats in the 3rd Circuit Court should be dismissed.

As a threshold matter, Davis has failed to post the \$1,000 cash bond that is required before he can file any new lawsuit in the Wayne County Circuit Court (EX. 1, Standing Order.) Even if the Court considers Davis' claims, they fail for several reasons enumerated and discussed below.

**I. The Michigan Constitution and Relevant Statutes do not Require a Non-Partisan  
Candidate to Indicate a Party Affiliation or Indicate "No Party Affiliation"  
on the Affidavit of Identity**

Elections in Michigan are governed and controlled by the Michigan Election Law, MCL 168.1 *et seq.* The statute directs the secretary of state to perform certain duties in the administration of elections. Among those duties is the responsibility to prescribe and require uniform forms that the Secretary of State recommends for use in the conduct of elections. MCL 168.31(e). Under that directive, the Secretary of State has promulgated the Affidavit of Identity and Receipt of Filing form with instructions. The form was devised to ensure compliance with MCL 168.558.

Although the Michigan Secretary of State has accepted and verified Defendants' Ramsey and Fresards' timely filed Affidavits of Identity ("the Affidavits"), Plaintiff contends that their Affidavits are invalid because they left blank the Affidavit form's section addressing party affiliation. Notably, both Judges Ramsey and Fresard are incumbents running for re-election

unopposed. He claims their Affidavits are defective and the defect is sufficient to disqualify Judge Ramsey and Judge Fresard from appearing on the November general election ballot.

Section 3 entitled “office sought/ ballot information” of the Affidavit form provides in relevant part:

---

political party, if a partisan office. If running without party affiliation list “No Party Affiliation.”

As is evident, this part of the form applies to candidates running for partisan offices. Pursuant to the Michigan Constitution, MI CONST Art. 6, § 12 candidates for circuit judges are non-partisan. Article 6, section 12 provides:

Circuit judges shall be nominated and elected at non-partisan elections .... (emphasis added).

Thus, under the Constitution, circuit judge candidates are presumptively “non-partisan.”

In support of his complaint and motion, Plaintiff relies on MCL 168.558, which provides in pertinent part:

(2) An affidavit of identity must contain the candidate's name and residential address; a statement that the candidate is a citizen of the United States; the title of the office sought including the jurisdiction, district, circuit, or ward; the candidate's political party or a statement indicating no party affiliation if the candidate is running without political party affiliation; ... If the affidavit of identity is for a judicial candidate, the candidate shall include on the affidavit of identity whether the office sought is an incumbent position, a nonincumbent position, or a new judgeship.

Hence, Plaintiff contends that this statute requires a circuit judge candidate to indicate that he or she has “no party affiliation.” Plaintiff has failed to recognize the fact that judges run as non-partisans. His claim implicates a matter of statutory construction. “The goal of statutory interpretation is to discern and give effect to the intent of the Legislature from the statute’s plain language.” *Houdek v Centerville Twp*, 276 Mich App 568, 581; 741 NW2d 587 (2007). If the

meaning of a statute is clear and unambiguous, then judicial construction to vary the statute's plain meaning is not permitted." *Id.* "The Legislature is presumed to have intended the meaning it plainly expressed." *Watson v Mich Bureau of State Lottery*, 224 Mich App 639, 645; 569 NW2d 878 (1997). Also, "unless explicitly defined in a statute, 'every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used.'" *Yudashkin v Linzmeyer*, 247 Mich App 642, 650; 637 NW2d 257 (2001), quoting *Michigan State Bldg v Perry*, 241 Mich App 406, 411; 616 NW2d 697 (2000). "It is a fundamental principle of statutory construction that the words used by the Legislature shall be given their common and ordinary meaning, and only where the statutory language is ambiguous may we look outside the statute to ascertain the Legislature's intent." *Nawrocki v Macomb Co Rd Com'n*, 463 Mich 143, 159; 615 NW2d 702 (2000), citing *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995). Finally, and more importantly, "statutes that address similar subject matter should be read together as one law..." *Belcher v Ford Motor Co*, 333 Mich App 717, 723; 963 NW2d 423 (2020). "The object of the *in pari materia* rule is to give effect to the legislative intent expressed in harmonious statutes." *Id.*, quoting *In re AGD*, 327 Mich App 332, 344; 933 NW2d 751 (2019). When two statutes are *in pari materia* but conflict with one another on a particular issue, the more specific statute must control over the more general statute. *Id.*

In interpreting a statute, courts may not pick and choose what parts of a statute to enforce but must give effect to every word of a statute if at all possible so as not to render any part of the statute surplusage or nugatory. *City of Grand Rapids v Brookstone Capital, LLC*, 334 Mich App 452, 458; 965 NW2d 232 (2020).

Plaintiff's interpretation of MCL 168.558 would render both Article 6, § 12 of the Michigan Constitution and other statutes pertaining to elections for circuit judges nugatory. For

example, as indicated in MCL 168.412, judges of the circuit court are elected in a “general nonpartisan primary.” MCL 168.412 provides in pertinent part:

A general nonpartisan primary election shall be held in every county of this state on the Tuesday succeeding the first Monday in August prior to the general election at which judges of the circuit court are elected, at which time the qualified and registered electors may vote for nonpartisan candidates for the office of judge of the circuit court. ...

As can be seen here, the word “nonpartisan” is used twice in reference for circuit judge candidates. By the plain and unambiguous words of the statute, circuit judges are nonpartisan. To indicate “no party affiliation” on a form is a meaningless act.

The term “nonpartisan” is not synonymous with “without political party affiliation.” Nowhere within the Election Law is the term “without political party affiliation” defined as involving nonpartisan circuit court judicial elections. Rather, the phrase “without political party affiliation” is a term of art recognized in other provisions of the Election Law. The use of this phrase denotes someone who is running for a partisan office without affiliation with a political party.

It is also clear that the statutory provisions within Chapter XXIVA of the Michigan Election Law, being MCL 168.590 through 168.590h, which give a special meaning to the term, “without political party affiliation” and does not include nonpartisan candidates for circuit court judge. Hence, the term “without political party affiliation” is a term of art applied to candidates for partisan political offices.

In all respects, Defendants Ramsey and Fresard have strictly complied with the requirements for filing their Affidavits. They filed the Affidavits in a timely manner, at least 134 days before the primary. MCL 168.413a. They also provided their legal names, they indicated that



they were running as incumbents, they were running for circuit judges in the Third Circuit Court, and they attested that they met statutory and constitutional requirements for candidacy.

Therefore, because judicial candidates for circuit judge are presumed to be nonpartisan, as stated in the Michigan Constitution and relevant statutes, Defendants Ramsey and Fresard are not required to state that they have “no party affiliation” on their Affidavits. Moreover, their Affidavits have been properly accepted and certified by the Secretary of State.

## **II. Plaintiff's Complaint is Barred by Laches**

Plaintiff's complaint and motion are barred by laches. “Laches” is the negligent and unintentional failure to protect one's rights. It is the failure of a party to assert a known right or claim for an unexplained period of time resulting in prejudice to the adverse party.” 27A Am Jur 2d, Equity § 107, p 645-647 (footnotes omitted). Laches is not primarily concerned with the fact of delay in bringing suit, but with the effect of delay. *Lothian v Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982). To prevail on a defense of laches, a defendant must show an inexcusable delay combined with prejudice as a result of such delay. *Id.*

Laches is a judicially imposed principle which may be applied when the passage of time combined with a change in condition would make it inequitable to enforce a claim against a defendant. *Kuhn v Secretary of State*, 228 Mich App 319, 334; 579 NW2d 101 (1998). A court may exercise the power of equity to withhold relief, which might be otherwise warranted, if it would be unfair and unjust to grant that relief. *Id.* If neither party's situation has materially changed and a party's delay has not put the other in a worse position, laches is not available. *Id.* The doctrine of laches “is applicable in cases in which there is an unexcused or unexplained delay in commencing an action and a corresponding change of material condition that results in

prejudice to a party.” *Public Health Dept v Rivergate Manor*, 452 Mich 495, 507; 550 NW2d 515 (1996).

Here, Defendant Ramsey filed her Affidavit on March 9, 2022 (exhibit A) and Defendant Fresard filed her Affidavit on March 15, 2022 (exhibit B). Plaintiff did not file his complaint until July 26, 2022, over four months after their Affidavits were filed and accepted. Plaintiff’s delay in filing his complaint has caused extreme prejudice to Defendants because they would be unable to timely file Affidavits. Furthermore, Plaintiff’s delay is unexcused and Defendants’ positions have materially changed due to Plaintiff’s delay.

In *Burton-Harris v Wayne Cnty Clerk*, 337 Mich App 215; 976 NW2d 30, judgment vacated in part, app den in part 508 Mich 985; 966 NW2d 349 (2021), a Burton-Harris, a candidate for county prosecutor brought an action against the county clerk and the county election commission seeking declaratory judgment that candidate's opponent made false statement in her affidavit of identity, a writ of mandamus requiring opponent's name to be removed from ballot, and an emergency motion for temporary restraining order to preclude the opponent's name from appearing on the ballots.

A registered voter, Plaintiff Davis herein, filed an emergency motion to intervene in *Burton-Harris*, seeking substantially similar mandamus and declaratory relief. The circuit court denied Davis’ motion to intervene and the candidate's motions. Burton-Harris did not appeal, but Davis appealed the denial of his motion to intervene and Burton-Harris’ emergency motion for a temporary restraining order, mandamus relief, and declaratory relief. The Michigan Court of Appeals affirmed the lower court's order and held that the motions to intervene, for writ of mandamus, and for declaratory judgment were barred by laches given the times of filing and narrow deadlines at issue in election matters.

On March 18, 2020, intervenor-defendant, Kym Worthy, filed an affidavit of identity regarding her candidacy for the office of Wayne County Prosecutor in the 2020 election. Davis filed an emergency motion to intervene on June 11, 2020, which the trial court addressed at the beginning of the June 15, 2020 hearing. The trial court found that Davis' motion to intervene was barred by laches and the Court of Appeals affirmed. It explained:

The court reasoned that plaintiff's interest in the matter was even more compelling than Davis's interest because plaintiff was not merely a qualified elector, but also a candidate for the same office pursued by Worthy. And although the court agreed that the claims presented by plaintiff and Davis involved common questions of law and fact, it opined that laches precluded Davis's intervention because "any delay in rendering and resolving this particular matter would, in fact, work a hardship upon, not only the clerks, but also upon the voters of Wayne County."

*Id* at 223-224.

Considering the tight schedule mandated by the issues before the court, the court's denial of Davis's motion to intervene as untimely was not outside the range of principled outcomes.

*Id* at 227.

Here, Plaintiff waited over four months to file his complaint. There is insufficient time to proceed through the court system and appellate process to resolve this case. Thus, Plaintiff's delay has caused extreme prejudice to both defendants. Indeed, this sufficiently demonstrates that the action must be barred by laches.

### **III. Standing**

Although Plaintiff claims that, as an ordinary citizen elector, he has standing to pursue this action, his analysis is an oversimplification of standing in the context of election disputes. "[A] litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory

judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.” *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010).

As the court in *League of Women Voters of Michigan v Secy of State*, 506 Mich 561, 587; 957 NW2d 731 (2020) stated, not all cases should be “interpreted as allowing any citizen to bring an action for declaratory judgment regarding the constitutionality of any election law that might affect his or her interests in the future.” “And nothing in the relevant caselaw gives any voter standing to challenge any election-related laws at any time.” *Id* at 588. In this case, Plaintiff has not alleged any ascertainable injury. He has no candidate he supports in lieu of either Defendant Ramsey or Fresard who are unopposed in the election. He merely complains that they did not comply with the requirements of MCL 168.558, which, as explained above, is without merit.

#### **IV. Failure to Join a Necessary Party**

Plaintiff’s complaint should also be dismissed due to his failure to join a necessary party as a defendant, namely the Secretary of State. Plaintiff’s real dispute is with the Secretary of State, which approved and accepted the Affidavits. In fact, Defendant Fresard originally filed an Affidavit, which she was required to correct, and did so within the time required.

Under MCR 2.205(A), “persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be

made parties and aligned as plaintiffs or defendants...” In making a determination of whether a party is necessary, the Court must consider:

(1) whether a valid judgment may be rendered in favor of the plaintiff in the absence of the person not joined;

...

(3) the prejudice to the defendant or to the person not joined that may result from the nonjoinder; and

...

MCR 2.205(B).

Here, a valid judgment cannot be rendered without the presence of the Secretary of State and there is extreme prejudice to Defendants Ramsey and Fresard without the presence of the Secretary of State. In addition, under MCR 2.205(C), “the pleader must state the names, if known, of persons who are not joined, but who ought to be parties if complete relief is to be accorded to those already parties, and must state why they are not joined.” Plaintiff has not explained why he did not join the Secretary of State in this action. Instead, Plaintiff has merely has stated that he has chosen not to name the Secretary of State as a defendant. However, in order to properly adjudicate this matter, the Secretary of State must be joined to avoid extreme prejudice to Defendants Ramsey and Fresard. Failure to do so requires dismissal because the Secretary of State has approved and accepted the disputed Affidavits.

#### **V. Mandamus Relief is Inappropriate**

Plaintiff is not entitled to mandamus relief requiring the Wayne County Election Commission to remove Defendants Ramsey and Fresard from the ballot.

Mandamus is a writ issued to compel a public officer to perform a clear legal duty. *Jones v Dep’t of Corrections*, 468 Mich 646, 658; 664 NW2d 717 (2003). To obtain a writ of mandamus, a plaintiff must establish that (1) he has a clear legal right - not possessed by citizens

generally - to the performance of the specific duty sought to be compelled, (2) the defendant has a clear legal duty to perform it, (3) the act is ministerial in nature, and (4) the plaintiff has no other adequate legal or equitable remedy. *Inglis v Public School Employees Retirement Bd*, 374 Mich 10, 13; 131 NW2d 54 (1964). A plaintiff has the burden of demonstrating entitlement to this extraordinary remedy. *Citizens for Protection of Marriage v Board of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004).

Plaintiff has requested that the Court issue a writ of mandamus requiring the Wayne County Election Commission not to certify Defendants Ramsey and Fresard and remove them from the ballot. The act of placing a candidate on the ballot is not discretionary. Rather, it is ministerial. “A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Berry v Garrett*, 316 Mich App 37, 42; 890 NW2d 882 (2016)[Citation omitted]. Here, Plaintiff has failed to demonstrate that Defendants Ramsey and Fresard failed to comply with MCL 168.558. Instead, they have strictly complied when completing their Affidavits and to hold that they were required to include the term “no political party affiliation” on their Affidavits would conflict with Michigan Election Law as a whole and would constitute a meaningless act.

### **CONCLUSION AND RELIEF REQUESTED**

The Court should deny Plaintiff Davis’ motion, dismiss his Complaint, and enter an order declaring that Defendant Ramsey’s and Defendant Fresard’s Affidavits of Identity complies with all aspects of Michigan Election Law and directing the Wayne County Election Commission to include Defendants Ramsey and Fresard on the ballot for the November 8, 2022 Election. The Court should also sanction Davis for filing this frivolous lawsuit.

Respectfully submitted,

/s/ Julie M. Dale

Julie M. Dale (P60221)

Associate General Counsel

Third Circuit Court of Michigan

Attorney for Defendants Hon. Kelly Ann

Ramsey and Hon. Patricia Susan Fresard

2 Woodward Ave., Rm 742

Detroit, MI 48226

Julie.Dale@3rdcc.org

#### **PROOF OF SERVICE**

The undersigned certifies that a copy of the above document was served upon the attorneys of record or parties appearing in propria persona in the above cause by electronically filing with the Clerk of the Court and using the Case Management/Electronic Case Filing system to the attorneys of record or parties appearing in propria persona on August 9, 2022.

/s/ Julie M. Dale

Julie M. Dale (P60221)

# Attachment C

*Davis Email to SCAO dated August 3, 2022*



# Pursuant to MCR 8.113 Request for Investigation of Wayne County Circuit Court (Third Circuit) Improper Use of Staff Personnel for Political Civil Matter

Inbox

R

**Robert Davis** <davisrobert854@gmail.com>

Wed, Aug 3, 12:12 PM (7 days ago)

to boydt, msc-

info, timothy.kenny, Deborah, julie.dale, kelly.ramsey, patricia.fresard, Heather, Jonathan , Cathy, Rebecca, Nkrumah, Gregory, Jennifer, Adam, bcc: Robert, bcc: patersonlawoffice, bcc: Dennis

Hon. Judge Boyd and SCAO Personnel:

Pursuant to MCR 8.113, I am respectfully submitting this request for the State Court Administrative Office (SCAO) to investigate the improper use of court personnel employed by Wayne County Circuit Court to defend a civil matter brought against two (2) incumbent judges of the Wayne County Circuit Court in their "**INDIVIDUAL capacities as candidates for re-election**."

On July 26, 2022, I filed a meritorious three-count complaint in the Wayne County Circuit Court against the Wayne County Election Commission, Patricia Fresard, in her **individual capacity as a candidate** for Judge of Third Circuit Court incumbent positions; Kelly Ann Ramsey, in her **individual capacity as a candidate** for Judge of Third Circuit Court incumbent positions; and Lakena Tennille Crespo, in her individual capacity as a candidate for Judge of Third Circuit Court non-incumbent position. (**See Complaint attached**).

As you are aware, Ms. Fresard and Ms. Ramsey are both incumbent judges on the Third Circuit Court. On July 28, 2022, attorney Julie Dale, who serves as Associate General Counsel for Third Circuit Court, filed an appearance on behalf of Ms. Fresard and Ms. Ramsey in the matter of *Robert Davis v Wayne County Election Commission*, [et.al.](#), Case No. 22-008866-AW. **A copy of Ms. Dale's Notice of Appearance filed in the matter is attached hereto for your review and consideration.**

However, after reviewing applicable statutes governing the duties of an elected judge of the circuit court, including the judicial Canons, the Wayne County Charter and properly adopted ordinances, and the Michigan Campaign Finance Act (MCFA), it is abundantly clear that the Court personnel **CANNOT** be used for political purposes for incumbent judges. More importantly, the Court's staff attorney CANNOT be used to defend against civil litigation brought against incumbent judges in their "individual" capacities as candidates for elected office!

The Michigan Campaign Finance Act (MCFA) explicitly prohibits a "public body", which includes the Third Circuit Court, from using court personnel for political purposes. Defending two incumbent judges in their **"individual" capacities as "candidates"** in a civil action that seeks to have them **disqualified and removed from the November 8, 2022 general election ballot as "candidates"**, certainly constitutes a political purpose under the MCFA.

MCL 169.257(1) of the MCFA provides in relevant part:

**"A public body or a person acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure** or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a)."  
(emphasis supplied).

MCL 169.211(7) of the MCFA defines a "public body" to mean any of the following:

"(a) A state agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.

(b) The legislature or an agency, board, commission, or council in the legislative branch of state government.

(c) A county, city, township, village, intercounty, intercity, or regional governing body; a council, school district, special district, or municipal corporation; or a board, department, commission, or council or an agency of a board, department, commission, or council.

(d) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, if the body exercises governmental or proprietary authority or performs a governmental or proprietary function."

The Third Circuit Court (Wayne County) is clearly a "public body" as that term is defined under the MCFA . It is now necessary to examine what constitutes a "contribution" and "expenditure" under the MCFA.

MCL 169.204(1) of the MCFA defines the term "contribution" to mean:

**"a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate,** for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party." (emphasis supplied).

MCL 169.206(1) of the MCFA defines the term "expenditure" to mean:

**"a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate,** the qualification, passage, or defeat of a ballot question, or the qualification of a new political party."  
(emphasis supplied).

The civil action pending in the Wayne County Circuit Court against Ms. Fresard and Ms. Ramsey seeks their removal and disqualification from the ballot as **"candidates"** for the 15 incumbent positions that will appear on the November 8, 2022 general election ballot. And more importantly, the civil action is brought against them in their **"individual" capacities as "candidates"** and **NOT** in their **"official" capacities** as duly elected judges of Third Circuit Court.

Qualifying as a "candidate" for elective office is not within the official duties of a circuit court judge. Therefore, court personnel **CANNOT** be used to defend them in a civil action brought to have them disqualified and removed from the November 8, 2022 general election ballot as **candidates** for judicial office.

The Third Circuit Court's use of general counsel to represent incumbent judges in a civil action brought against them in their **individual capacities as candidates** is a direct violation of MCL 169. of the MCFA, the Wayne County Charter and Judicial Canons.

This "unethical" conduct cannot be tolerated. **Accordingly, because time is of the essence, I am respectfully requesting your office to issue a decision with respect to this by the close of business tomorrow, August 4, 2022. Otherwise, pursuant to MCR 8.113(D), I will proceed with filing an original action in the Court of Appeals for Superintending Control.**

In addition to including the Chief Judge of the Third Circuit Court, and the relevant parties involved, I have also included on this email communication representatives from the Wayne County Clerk's office and Michigan Secretary of State because I will also be filing a formal complaint with the Michigan Secretary of State under the MCFA for this blatant violation of the MCFA by the Third Circuit Court.

If you have any questions or need any additional information, please feel free to contact me at (313) 523-7118. **Lastly, please confirm receipt of this request for investigation and its attachments with a reply email.**

Respectfully submitted,  
Robert Davis  
180 Eason  
Highland Park, MI 48203  
(313) 523-7118

# Attachment D

*Davis Email to SCAO dated August 6, 2022*

# Supplement to Robert Davis' Complaint Submitted in Accordance with MCR 8.113 against Third Circuit Court

Inbox

R

**Robert Davis** <davisrobert854@gmail.com>

Sat, Aug 6, 1:30 PM (4 days ago)

to boydt, riose, msc\_clerk, parukp, Clerk, RewertsT, timothy.kenny, Deborah, julie.dale, patricia.fresard, donn.fresard, Kelly, Rebecca, Nkrumah, Heather, Cathy, Gregory, Jennifer, Jonathan, bcc: Robert, bcc: patersonlawoffice, bcc: Dennis

Dear Hon. Judge Boyd and State Court Administrative Office (SCAO) Personnel:

This email, its contents, and attachments shall serve as a supplement to my original complaint filed against the Third Circuit Court in accordance with MCR 8.113. As you are aware, the substance of my complaint is that the Third Circuit Court is unlawfully and illegally authorizing the attorneys' employed by the Third Circuit Court's Office of General Counsel to represent two (2) incumbent judges, who are currently being sued civilly in the Wayne County Circuit Court in their "**individual capacities as candidates**" and **NOT in their official capacities as judges of the Third Circuit Court.**

The Court of Appeals recently addressed a similar issue in which they addressed the legal question whether a court can indemnify a judge who was civilly sued in their "**individual**" **capacity** and **NOT in their "official" capacity**. In addressing this legal question, the Court of Appeals in *Pucci v Nineteenth Judicial District Court*, unpublished per curiam opinion of Court of Appeals, decided March 17, 2016 (Docket No. 325052), slip op at p 8, correctly held:

"While we agree that a Chief Judge can adopt an indemnification policy that covers the court's court employees and **judges while acting in their official capacity**, **we do not believe that this power extends to indemnifying judges for liability incurred in their personal capacity.**" (emphasis supplied).

The Court of Appeals' holding in *Pucci, supra*, directly addresses the issues set forth in my complaint. Although the *Pucci* decision is an unpublished decision, it is nonetheless instructive, persuasive, and directly on point. The Third Circuit Court **CANNOT** indemnify and use court lawyers and resources to defend judges who are being sued civilly in **their individual capacities**. *Pucci, supra*. **A copy of the *Pucci* decision is attached hereto for your review.**

Additionally, state law expressly prohibits this unlawful conduct as well. MCL 691.1408, as amended by Public Act 357 of 2020, governs the indemnification and the proper action of providing and engaging legal counsel for governmental officers and/or employees, such as the two (2) judges of the Third Circuit Court.

MCL 169.1408(3)(a), as amended by Public Act 357 of 2020, provides:

**(3) A governmental agency may pay for, engage, or furnish the services of an attorney to advise an officer, employee, or volunteer of the governmental agency, and to appear for and represent the officer, employee, or volunteer, in connection with civil or criminal litigation or an investigation or proceeding *if* the litigation, investigation, or proceeding involves the officer, employee, or volunteer as a result of his or her conduct in the course of employment with or actions taken on behalf of the governmental agency, subject to the following limitations:**

**(a) If a claim is made or a civil action is commenced against the officer, employee, or volunteer, subsection (1) of this section governs the governmental agency's authority to pay for, engage, or furnish the services of an attorney to advise the officer, employee, or volunteer as to the claim and to appear for and represent the officer, employee, or volunteer in the action.** (emphasis supplied).

MCL 691.1408(1), as amended by Public Act 357 of 2020, further provides:

**(1) If a claim is made or a civil action is commenced against an officer, employee, or volunteer of a governmental agency for injuries to persons or property caused by negligence of the officer, employee, or volunteer *while in the course of employment with or acting on behalf of the governmental agency and while acting within the scope of his or her authority, the governmental agency may pay for, engage, or furnish the services of an attorney to advise the officer, employee, or volunteer as to the claim and to appear for and represent the officer, employee, or volunteer in the action.*** The governmental agency may compromise, settle, and pay the claim before or after the commencement of a civil action. If a judgment for damages is awarded against an officer, employee, or volunteer of a governmental agency as a result of a civil action for personal injuries or property damage caused by the officer, employee, or volunteer while in the course of employment and while acting within the scope of his or her authority, the governmental agency may indemnify the officer, employee, or volunteer or pay, settle, or compromise the judgment. (emphasis supplied).

MCL 691.1401(a) defines "governmental" agency to mean "**this state or a political subdivision.**" (emphasis supplied).

MCL 691.1401(e) defines "political subdivision" to mean "a municipal corporation, county, country road commission,... **or** an agency

department, **court**, board or council of a political subdivision." (emphasis supplied).

MCL 691.1401(g) defines the "state" to mean "this state **and its** agencies, departments, commissions, **courts**, boards, councils, and statutorily created task forces..." (emphasis supplied).

Therefore, the Third Circuit Court constitutes a "governmental agency" for purposes of the application of MCL 691.1408.

It is clear that in accordance with the clear and unambiguous language of MCL 691.1408(1),(3) of the Governmental Liability for Negligence Act, it is **unlawful and illegal** for the Third Circuit Court to authorize and allow its Associate General Counsel, Julie Dale, to appear and defend two (2) incumbent judges in the pending civil matter in which the two (2) incumbent judges are being sued civilly in their "**individual capacities as candidates**" and **NOT** in their "**official capacities as judges of the Third Circuit Court.**"

The foregoing authority clearly establishes that Julie Dale's appearance and representation, in her official capacity as Associate General Counsel of Third Circuit Court, on behalf of these two (2) judges, is unlawful and unethical and violates the Court of Appeals holding in Pucci, supra, and MCL 691.1408(1) and (3), as amended.

Accordingly, because the authority on this matter is clear and convincing, **if a decision is not issued by SCAO by 8 a.m. on Monday, August 8, 2022 ordering the removal of Julie Dale from the Wayne County Circuit Court case involving incumbent judges Judge Patricia Fresard and Judge Kelly Ramsey, I will be filing an action in the appropriate court against SCAO and the Third Circuit Court.**

**Please confirm receipt of this email and its attachments with a reply email.**

Respectfully submitted,  
Robert Davis  
180 Eason  
Highland Park, MI 48203  
(313) 523-7118



# Attachment E

*Signed Substitution Order*

Kimberly Davis  
9/15/2022 1:45 PM  
WAYNE COUNTY CLERK  
Cathy M. Garrett  
IN MY OFFICE  
22-008866-AW FILED

Qiana Denise Lillard  
9/15/2022

STATE OF MICHIGAN  
IN THE WAYNE COUNTY CIRCUIT COURT

**ROBERT DAVIS,**

**Plaintiff,**

v

**WAYNE COUNTY ELECTION COMMISSION,**  
**PATRICIA SUSAN FRESARD,** in her individual capacity as a  
candidate for Judge of Third Circuit Court Incumbent Position,  
**KELLY ANN RAMSEY,** in her individual capacity as a  
candidate for Judge of Third Circuit Court Incumbent Position,  
and  
**LAKENA TENNILLE CRESPO,** in her individual capacity as a  
candidate for Judge of Third Circuit Court Non-Incumbent  
Position,

**Defendants.**

**Case No. 22-008866-AW**

**Hon. Qiana Lillard**

---

**STIPULATION AND ORDER FOR SUBSTITUTION OF**  
**ATTORNEYS**

At a session of said Court, held in the City of Detroit, County of  
Wayne, State of Michigan, on: 9/15/2022

PRESENT: HON. QIANA DENISE LILLARD  
CIRCUIT COURT JUDGE

Pursuant to the stipulation of the parties appearing below:

IT IS HEREBY ORDERED that JUAN A. MATEO and GERALD K. EVELYN are  
hereby substituted in the place and instead of JULIE DALE, as counsel for Defendants, Patricia  
Susan Fresard and Kelly Ann Ramsey, in the above-captioned cause.

/s/ Qiana Denise Lillard 9/15/2022

---

Judge Qiana Lillard

STIPULATED:

/s/ JULIE DALE (w/consent)

**JULIE DALE (P60221)**

Third Judicial Circuit Court

2 Woodward Ave Rm 742

Detroit, MI 48226-5432

(313) 224-6056 Office

(313) 224-8792 Fax

julie.dale@3rdcc.org

/s/ JUAN A. MATEO

**JUAN A. MATEO (P33156)**

300 River Place, Suite 3000

Detroit, MI 48207

(313) 962-3500 Office

(313) 962-9190 Fax

mateoja@aol.com

Counsel for Defendants Fresard and

Ramsey

s/ GERALD K. EVELYN

**GERALD K. EVELYN (P29182)**

300 River Place, Suite 3000

Detroit, MI 48207

(313) 962-3500 Office

(313) 962-9190 Fax

geraldevelyn@yahoo.com

Counsel for Defendants Fresard and

Ramsey

# Attachment F

*Motion to Intervene*

STATE OF MICHIGAN  
IN THE COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

Case No: 22-000125-MM  
Hon. Brock A. Swartzle

vs.

JOCELYN BENSON, in her official capacity  
as the duly elected Secretary of State.

Defendant.

---

ROBERT DAVIS, PRO SE  
PLAINTIFF  
Highland Park, MI 48203  
(313) 523-7118  
[Davisrobert854@gmail.com](mailto:Davisrobert854@gmail.com)

ASSISTANT ATTORNEY GENERAL  
HEATHER S. MEINGAST (P55439)  
ERIK A. GRILL (P64713)  
Attorneys for Defendant  
PO BOX 30217  
Lansing, MI 48909  
(517) 335-7659/ FAX: (517) 335-7640  
[meingasth@michigan.gov](mailto:meingasth@michigan.gov)  
[grille@michigan.gov](mailto:grille@michigan.gov)

COLLINS EINHORN FARRELL PC  
DONALD D. CAMPBELL (P43088)  
JAMES J. HUNTER (P74829)  
Attorneys for The Third Circuit Court  
4000 Town Center, 9<sup>th</sup> Floor  
Southfield, MI 48075  
(248) 355-4141  
[Donald.Campbell@ceflawyers.com](mailto:Donald.Campbell@ceflawyers.com)  
[James.Hunter@ceflawyers.com](mailto:James.Hunter@ceflawyers.com)

---

**8/31/22 Non-party Third Judicial Circuit Court of Michigan's  
Motion to Intervene**

RECEIVED by MCOC 8/31/2022 10:57:37 AM

The Third Judicial Circuit Court of Michigan moves for an order permitting it to intervene under MCR 2.209.

Robert Davis filed this action against Jocelyn Benson in her capacity as the Secretary of State on August 16, 2022.<sup>1</sup> He alleged that judicial candidates for the Third Circuit failed to comply with the form requirements of MCL 168.558(2) because they did not affirmatively write “no party affiliation” on their affidavits of identity.<sup>2</sup> As a result, Davis requested a writ of mandamus to remove the candidates from the list that the Secretary of State certified to the Wayne County Election Commission.<sup>3</sup>

MCR 2.209(A) allows a person to intervene as of right “when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” Alternatively, MCR 2.209(B) permits a person to intervene “when an applicant’s claim or defense and the main action have a question of law or fact in common.”

As the court with jurisdiction over Wayne County, and the court that Davis hopes to deprive of four elected judicial seats, Third Circuit has a clear interest that must be protected in this case. The existing parties do not adequately represent this interest. This Court should allow Third Circuit to intervene. A proposed answer is attached.<sup>4</sup> The Third Circuit sought concurrence on August 31, 2022, and Davis has not acquiesced to the relief sought in this motion.

---

<sup>1</sup> **Attachment A**, Complaint.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> **Attachment B**, Proposed Answer.

Respectfully submitted,

COLLINS EINHORN FARRELL PC

/s/ Donald D. Campbell

---

DONALD D. CAMPBELL (P43088)

JAMES J. HUNTER (P74829)

Counsel for Intervening Defendants

4000 Town Center, 9<sup>th</sup> Floor

Southfield, MI 48075

(248) 355-4141

Dated: August 31, 2022

## **Brief in Support of the Motion to Intervene**

### **A. This Court should allow the Third Circuit to participate in this action through intervention.**

#### **a. The Third Circuit has a right to intervene because its interests are not adequately represented.**

MCR 2.209(A) allows a person to intervene as of right “when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” “The rule for intervention should be liberally construed to allow intervention where the applicant's interest may be inadequately represented.” *State Treasurer v Bences*, 318 Mich App 146; 896 NW2d 93 (2016), citing *Hill v LF Transp, Inc*, 277 Mich App 500, 508; 746 NW2d 118 (2008). The determination whether to allow a party to intervene in an action as of right rests in the sound discretion of the trial court and is governed by the court rule. *Sumpter v Kosinski*, 165 Mich App 784; 419 NW2d 463 (1988).

Because the rule is almost verbatim to the federal rule, Michigan courts have adopted federal decisions, interpreting the federal rule as controlling. See Fed R Civ P. 24. *Mullinix v City of Pontiac*, 16 Mich App 110; 167 NW2d 856 (1969); *Advance Dry Wall Co v Wolfe-Gilchrist, Inc*, 3 Mich App 645; 143 NW2d 186 (1966).

To intervene, the applicant must first show that it has an interest relating to the subject matter of the litigation. *Advance Dry Wall Co v Wolfe-Gilchrist, Inc*, 3 Mich App 645; 143 NW2d 186 (1966). The Third Circuit clearly has an interest in the subject matter of this action. As the court with jurisdiction over Wayne County, and the court that Davis hopes to deprive of at least four elected judicial seats, the Third Circuit has a clear interest



that must be protected in this case. While these vacancies could be filled by gubernatorial appointment, Davis seeks to strip Wayne County residents of their vote by placing the decision in the Governor's hands. MI CONST Art 6, § 23. Davis argues that he intends to protect voter rights, while depriving voters of those very rights over a minor form dispute. More, while the judicial vacancies would be temporary, any delay in filling those seats adds onto the already overburdened Wayne County docket.

Granting a writ of mandamus would obstruct the Third Circuit's ability to provide Wayne County residents with access to justice, efficient case disposition, and a judiciary that represents the will of the public. The Third Circuit, being comprised of elected officials, has a duty to its constituents to participate in this action to help protect not only its own interests but its constituents' interests as well. The Third Circuit must intervene in this action to ensure these interests are adequately protected.

The applicant must also show they may be bound by the judgment as "bound is read in the broader sense that, as a practical matter, the petitioner's ability to protect his interest would be substantially affected." *Karrip v Cannon Tp*, 115 Mich App 726; 321 NW2d 690 (1982), citing *D'Agostini v City of Roseville*, 396 Mich 185, 190; 240 NW2d 252, 254 (1976). So, "a mere possibility that the judgment would be binding is sufficient to meet this requirement." *Id.*

"[S]omething less than *res judicata* should be required before it can be said that the applicant may be 'bound.'" *Mullinix*, 16 Mich App at 118. In *Mullinix*, the applicant for intervention showed he would be sufficiently bound because granting an injunction would impact his exercise of the right to petition. *Id.*

The Third Circuit would be bound by the judgment in this case because these judicial candidates would preside in the Third Circuit. So a judgment removing these

candidates from the ballot directly impacts the Third Circuit and its ability to protect its own interests and its constituents' interests. More, while only temporary, a judgment for Davis here deprives the Third Circuit of four judicial seats, further encumbering an already overburdened docket. This would limit the Third Circuit's ability to provide Wayne County residents with access to justice and judicial efficiency, especially in light of pandemic related docket delays.

Because no existing party adequately represents these interests, the Third Circuit must intervene as of right. And "[t]he burden is on those opposing intervention to show the adequacy of existing representation." *Mullinix v City of Pontiac*, 16 Mich App 110, 114-15; 167 NW2d 856 (1969).

The Third Circuit would be prejudiced and bound by a decision in favor of Davis. This Court should allow the Third Circuit to intervene as of right.

**b. Alternatively, the Third Circuit should be allowed to permissively intervene.**

MCR 2.209(B) permits a person to intervene "when an applicant's claim or defense and the main action have a question of law or fact in common." Here, there are questions of law in common—the meaning of MCL 168.558 and whether a writ of mandamus is appropriate. There is also the question of whether Davis's claim is barred by laches and whether a ruling in favor of Davis would prejudice the Third Circuit as a result of Davis's delay.

"[T]he court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." MCR 2.209(B). The Third Circuit's participation would not unduly delay or prejudice the original parties. The Third Circuit's intervention would promote efficient disposition of this case because the Third Circuit

presents another perspective that can aid the Court’s decision-making process. Further, the Court directly requested relevant briefing to aid its deliberation, and the Third Circuit’s intervention does precisely that.

This Court should allow the Third Circuit to intervene.

**B. Davis lacks standing to bring suit seeking a writ of mandamus.**

The Third Circuit has a number of substantive arguments to contribute in this case. One of those arguments concerns Davis’s standing. While private persons may seek writs of mandamus in election cases, to have standing, private persons still must prove risk of serious injury to the general public. Davis can’t establish risk of serious injury, so he lacks standing to seek enforcement of MCL 168.558 through a writ of mandamus. (Moreover, Davis is seeking mandamus for a non-ministerial act—certifying candidates for office. Mandamus is appropriate only for ministerial acts. *Hanlin v Saugatuck Tp*, 299 Mich App 233 (2013)).

Michigan courts have determined that standing requires two main inquiries: (1) is there a legally recognized interest to invade, and (2) will that interest be imminently invaded in a concrete and particularized way—is there an injury in fact. *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, 505 - 6; 688 NW2d 847 (2004).

Because the improper implementation of election laws affects the process by which citizens normally exercise their collective voice to uphold the status quo or effectuate change, “ordinary citizens have standing to enforce the law in election cases.” *Id.* at 506; see also *Helmkamp v Livonia City Counsel*, 160 Mich App 442, 445; 408 NW2d 470 (1987) (holding that the plaintiffs in an election case “were not required to show a substantial injury distinct from that suffered by the public in general”). Thus, voters, as a general matter, have a legally recognized interest in seeking to enforce election laws.

But “there are serious objections against allowing mere interlopers to meddle with the affairs of the State, and it is not usually allowed, unless under circumstances where the public injury by its refusal will be *serious*.” *People ex rel Drake v Regents of the University*, 4 Mich 98 (1856); *People ex rel Russell v Inspectors of the State Prison*, 4 Mich 187 (1856) (emphasis added).

Here, Davis can’t show injury in fact. Declining to enforce MCL 168.558 in this case does not cause serious harm to the general public. First, Circuit Court judges are statutorily and constitutionally required to be selected through non-partisan elections. MI CONST Art 6, § 12; MCL 168.412. Second, an affirmative statement asserting that a judicial candidate is non-partisan does not provide voters with information necessary to cast their votes because it is already-known information. Third, all four of the incumbent judicial candidates that Davis seeks to remove from the ballot are running uncontested—there are no candidates opposing them for these judicial seats.

Circuit Court judges are required to be selected through non-partisan elections. So there is no harmful practical effect resulting from the candidates’ failure to affirmatively reiterate that they are not affiliated with a political party on their affidavits of identity. That fact goes without saying. And whether the candidates restate that known fact does not change that, under Michigan law, Circuit Court judgeships are non-partisan offices and the candidates are non-partisan.

The purpose of MCL 168.558(2) is clear:

It has been the legislature's constant purpose to insist upon full and complete identification of candidates for public office *in order to provide the electorate with the information necessary to cast their ballots effectively for the candidates of their choice*. That purpose is evident not alone from section 561 of the election law with which we are directly concerned but, also, from section 558 . . . requiring candidates for

nomination for any county, state or national office to file affidavits of identity . . . the legislature has manifested its purpose to provide the electorate as adequate means of candidate identification as is practically possible.” *Evans v City of Detroit Election Commission*, 15 Mich App 260, 263; 166 NW2d 467(1968), *aff’d*, 381 Mich 382; 162 N.W.2d 141, citing *Sullivan v Secretary of State*, 373 Mich 627, 631; 130 NW2d (1964) (internal citation omitted) (emphasis added).

Leaving a blank space on the party affiliation portion of the affidavit of identity does not deprive voters of the information they need to cast their votes for the judicial candidates in the Third Circuit. Michigan law is clear that judicial candidates are non-partisan. A blank space on a form does not change that fact.

Additionally, because all of the incumbent candidates are running uncontested, there is no risk that a candidate who allegedly failed to strictly comply with MCL 168.558(2) will be elected over a candidate who did strictly comply with the statute. There are no opposing candidates. There is no risk of injury stemming from the unfair election of one candidate over another.

Most importantly, in asking for a writ of mandamus to remove these candidates from the ballot, Davis seeks to inflict far greater injury on the general public than if the candidates remain on the ballot. Davis seeks to deprive the public of their right to vote for four judicial seats in Wayne County. Instead, Davis would require the only available alternative—gubernatorial appointment. That is the practical effect of granting Davis a writ of mandamus: depriving Wayne County residents of their right to vote.

Granting a writ of mandamus also restricts Wayne County residents’ access to justice and judicial efficiency. While the vacancies of four Third Circuit seats would be temporary, any delay in getting judges on the bench in Wayne County further encumbers

an already overburdened docket by intentionally creating vacancies in the Third Circuit's civil and criminal divisions.

Davis does not have standing to seek a writ of mandamus in this case. There is no risk of serious harm to the public here *unless* the writ of mandamus is granted. This Court should deny his request for a writ of mandamus to remove the judicial candidates from the ballot.

**C. Circuit Court judges are constitutionally required to be elected in non-partisan elections.**

Davis rests his argument on the form requirements of MCL 168.558(2), which states that a party seeking office must file an affidavit that includes a statement of “the candidate’s political party or a statement indicating no political affiliation if the candidate is running without political affiliation.” In contrast, the Michigan Constitution mandates that Circuit Court judges are non-partisan. “Circuit judges shall be nominated and elected at non-partisan elections.” MI CONST Art. 6, § 12.

Enforcing MCL 168.558(2) clearly violates the Michigan Constitution because it forces a candidate for a non-partisan office to take a partisan position. And a legislative enactment that violates the constitution cannot be enforced. “[C]ourts have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent.” *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 307; 806 NW2d 683 (2011), quoting *Taylor v Gate Pharm*, 468 Mich 1, 6; 658 NW2d 127 (2003). Portions of a statute that are found to be unconstitutional are not to be given effect if the remaining portions of the statute remain operable. *League of Women Voters of Michigan v Secy of State*, \_\_\_ NW2d \_\_\_; No. 357984, 2021 WL 5048187, at \*17 (Mich Ct App, October 29, 2021), citing *Request for Advisory Opinion*, 490 Mich at 345.

It is unconstitutional to force judicial candidates who are constitutionally required to be non-partisan to take a partisan position by making an affirmative statement regarding party affiliation. Such a requirement inherently implies that the candidate could have a partisan affiliation, contravening the Michigan Constitution. Statutory form requirements do not supersede constitutional mandates.

It is unconstitutional to require constitutionally non-partisan judicial candidates to make a partisan statement like that allegedly required by MCL 168.558. So the MCL 168.558 affirmative party statement requirement should not be given effect as to judicial candidates.

**D. Strict enforcement of MCL 168.558 yields absurd results in this case, especially when the Michigan Election Law is read as a whole.**

Under the absurd-results rule, “a statute should be construed to avoid absurd results that are manifestly inconsistent with legislative intent....” *Detroit Int’l Bridge Co v Commodities Export Co*, 279 Mich App 662, 674; 760 NW2d 565 (2008) (quotation marks and citation omitted). “[A] statute need not be applied literally if no reasonable lawmaker could have conceived of the ensuing result.” *Cameron v Auto Club Ins Ass’n*, 476 Mich 55, 80; 718 NW2d 784 (2006). “The role of the Court was not to rewrite the law to obtain a more ‘logical’ or ‘palatable’ result, but instead was to give effect to the Legislature’s intent.” *Barrow v City of Detroit Election Com’n*, 301 Mich App 404, 416; 836 NW2d 498 (2013), citing *Casco Twp v Secretary of State*, 472 Mich 566, 603; 701 NW2d 102 (2005) (Young, J., concurring in part and dissenting in part).

Here, the intent behind MCL 168.558 is clear: “*to provide the electorate with the information necessary to cast their ballots effectively for the candidates of their choice.*” *Evans*, 15 Mich App at 263 (emphasis added). The affidavit of identity’s purpose is to

provide voters with the information necessary to cast their votes. *Id.* It also ensures that the candidate appears accurately on the ballot.<sup>5</sup>

Reading the Michigan Election Law as a whole prohibits Davis’s interpretation of MCL 168.558. Sections of statutes are read in the context of the entire statute—MCL 168.412 and MCL 168.558 should be read together to determine the meaning and requirements under the Michigan Election Laws. “In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.” *US v Boisdoré’s Heirs*, 49 US 113, 122 (1850).

Circuit Court judges are statutorily required by the Michigan Election Law to be non-partisan. MCL 168.412 (“A general non-partisan primary election shall be held in every county of this state . . . at which judges of the Circuit Court are elected.”). Yet MCL 168.558(2) demands judicial candidates make a statement that implies that the candidate could have a party affiliation. Read in the context of the whole act, the requirement to affirmatively state that there is “no party affiliation” can’t be reconciled for non-partisan offices. MCL 165.558(2) can’t be read to require judicial candidates to make a statement that is prohibited by another section of the same statute.

More, the purpose of the affidavits of identity under MCL 168.558 is to provide voters with the information necessary to cast votes for the candidates. *Evans*, 15 Mich App at 263. But a candidate with a party affiliation could not run for Circuit Court judge under either the Michigan Constitution or the Michigan Election Laws. MI CONST Art 6, § 23; MCL 1558.412. Second, a non-partisan judicial candidate who states “no party affiliation” is forced to make a statement that implies they could be associated with a

---

<sup>5</sup> **Attachment C**, Chapter 3 Candidate Filings and Financial Disclosure Requirements, p2-3. “The Affidavit of Identity form is useful because it verifies a candidate’s intent to seek office, provides pertinent information about the candidate and reduces the chance for name misspellings on the ballot.”



political party in violation of the Michigan Constitution and Michigan Election Law's mandates.

Requiring such statements does not effectuate the purpose of the statute because it does not provide information that is critical for voters to know as they prepare to cast their ballots. First, a candidate that has a party affiliation could not be a candidate. Second, a candidate without a party affiliation is a given. Because judicial seats are constitutionally non-partisan, applying the broad terms of MCL 168.558 to judicial races fails to advance the educational or clarifying purposes of the partisan declaration required by subsection 2.

While candidates must strictly comply with pre-election form and content requirements identified in the Michigan Election Law, which includes supplying a facially proper affidavit of identity, “*strict compliance with the content requirements may be achieved even if the applicant fills out the form in an irregular or improper manner.*” *Moore v Genesee Cnty*, 337 Mich App 723, 730; 976 NW2d 921 (2021) (emphasis added); see *Stumbo v Roe*, 332 Mich App 479; 957 NW2d 830 (2020). A facially improper affidavit of identity can still strictly comply with the requirements under MCL 168.558. *Stumbo*, 332 Mich App at 481, 488.

In *Stumbo*, the candidate's signature date and the notarization date on the affidavit were not the same—indicating that the signature and notarization did not occur on the same day. *Id.* at 486. But the court still determined that there was no question that the defendant signed her affidavit and got it notarized as required by MCL 168.558. *Id.* at 488. Despite the discrepancy between the notarization and signature dates, the court found it sufficient that the notary attested that the defendant signed her affidavit in his presence. *Id.*

Here, failure to reiterate that a judicial candidate running for a non-partisan office is akin to a “mere failure to fill in a blank provided by the Secretary of State with helpful but nonessential information,” where an allegedly facially improper affidavit of identity still strictly complies with MCL 168.558. *Id.* This is especially true when one considers the attestation of the judicial candidates that they complied with the specific judicial candidate requirements identified in the fourth section of the Affidavit of Identity.<sup>6</sup> It goes without saying that a judicial candidate has no party affiliation, so reiterating that statement is nonessential. Particularly, when the purpose of section 558 of the Michigan Election Law is to provide voters with the information essential to cast their votes.

More, the language of the party affiliation section of the affidavit of identity is misleading to candidates seeking non-partisan office: “political party, if a partisan office. if running without party affiliation list ‘No Party Affiliation.’”<sup>7</sup> This wording implies that the requirement *only* applies to candidates *running for partisan office*. And Secretary of State guidance on completing an affidavit of identity does not clarify whether this portion of the form was designed to apply only to partisan offices as it appears upon facial review.<sup>8</sup>

Candidates that seek a partisan office can run without a party affiliation, and party affiliation is critical to identifying and accurately listing candidates for partisan office on the ballot.<sup>9</sup> Unlike judicial candidates, who are mandated to be non-partisan, whether candidates for partisan office have a party affiliation provides crucial information for voters to cast their vote and for the candidate to be listed accurately on the ballot. In

---

<sup>6</sup> **Attachment D**, Affidavits of Identity.

<sup>7</sup> **Attachment E**, Affidavit of Identity and Receipt of Filing: how to file for elective office.

<sup>8</sup> *Id.*

<sup>9</sup> **Attachment C**, Chapter 3 Candidates Filings and Financial Disclosure Requirements, p2-3. “The Affidavit of Identity form is useful because it verifies a candidate’s intent to seek office, provides pertinent information about the candidate and reduces the chance for name misspellings on the ballot.”

context, the language of the affidavit gives the impression that the line is not applicable to constitutionally non-partisan judicial candidates because they are not running for partisan office.

There is no question whether judicial candidates are non-partisan. Leaving the party affiliation portion of the form blank as a judicial candidate serves as strict compliance in an “irregular manner” akin to leaving off a zip code despite the statutory requirement to provide one’s address. See *Moore*, 337 Mich App at 730. Judicial candidates should not be punished for attempting to comply with unclear guidance. And, more importantly, judicial candidates should not be punished for withholding a statement that implies a party affiliation or that they intend to run for partisan office.

No lawmaker could have conceived the outcome at risk here—that MCL 168.558 might be used to deprive constituents of their right to vote and be used as a method to force gubernatorial appointment of judicial candidates. This section of the statute was intended to provide voters with necessary information to cast votes not to strip them of their opportunity and right to vote.

Reading MCL 168.558(2) in the context of the entire act and the purpose of the act prohibits the interpretation that judicial candidates must affirmatively state they have no party affiliation. Any other reading yields absurd results that violate the Michigan Constitution and MCL 168.412.

**E. Davis’s claim is barred by the doctrine of laches.**

“This doctrine applies to cases in which there is an unexcused or unexplained delay in commencing an action and a corresponding change of material condition that results in prejudice to a party.” *Wayne Co v Wayne Co Retirement Comm*, 267 Mich App 230, 252; 704 NW2d 117 (2005) (quotation marks and citation omitted).

In *Nykoriak v Napoleon*, Napoleon filed an affidavit of identity on April 15, 2020. 334 Mich App 370; 964 NW2d 895 (2020), *app den*, 507 Mich 883; 954 NW2d 824 (2021). Plaintiff then filed objections to the affidavit with the Clerk on April 24, 2020, and with the Board on June 5, 2020. Plaintiff then *waited twenty-four more days* before bringing suit in the Circuit Court. By this time, the ballots were printed and delivered to the local clerks.

The Court of Appeals determined that the Circuit Court did not err by finding unexcused or unexplained delay, particularly in light of plaintiff's prior experience with elections. *Id.* The Circuit Court had “questioned the assertion made by plaintiff’s attorney that it took time to research the issue, asking ‘what amount o[f] research needed to be done in this particular matter other than what the notary statute requires?’” *Id.* at 384. Plaintiff alleged that, during this time, he considered his options and hired counsel, who investigated his claim, conducted research, and drafted and filed his pleadings. The Circuit Court and the Court of Appeals both found this was not particularly compelling given the single issue in dispute and its nature as an election matter. *Id.*

The defendants sufficiently established a corresponding change in position that resulted in prejudice because the local clerks already received the ballots. So, the Circuit Court did not err by ruling that the doctrine of laches applied to bar plaintiff’s “11th hour” challenge. *Id.*

Here, the challenge also comes with unexplained and inexcusable delay. The candidates filed their affidavits by April 19, 2022 or earlier. Davis is well-versed when it comes to elections, MCL 168.558, writs of mandamus, and affidavits of identity as evidenced by his participation in multiple lawsuits regarding these same issues over the years. See *Burton-Harris v Wayne Cnty Clerk*, 337 Mich App 215, 218; 976 NW2d 30, 34,

*judgment vacated in part, app den in part*, 508 Mich 985; 966 NW2d 349 (2021); *Davis v Highland Park City Clerk*, 2022 WL 1814599; *Davis v Garrett*, 2016 WL 11508211; *Davis v Independent Citizens Redistricting Comm’n*, 508 Mich 935; 963 NW2d 600 (2021); *Davis v Wayne Cnty. Election Comm*, unpublished opinion of the Court of Appeals, issued June 2, 2022 (Docket No. 361546), 2022 WL 1814645; *Davis v Wayne Cnty. Election Comm*, (Docket No. 20-11819), 2020 WL 7353475.<sup>10</sup> This case didn’t warrant any new research because it is not the first case that Davis filed on this issue. And he did not need time to seek counsel as he is, yet again, acting *pro se*.

Davis had these affidavits of identity at least since May 18, 2022—the affidavits were provided by Defendant Cox as an attachment to his response to Davis’s motion for a writ of mandamus in another case.<sup>11</sup> Davis has been contesting affidavits of identity filed for the primary and general election for alleged facial deficiencies since at least April 28, 2022.<sup>12</sup> Despite having the at-issue affidavits since May 18, 2022, Davis inexplicably delayed this lawsuit until August 16, 2022. The following timeline of events demonstrates that Davis’s delay is inexcusable and results in prejudice:

- 12/12/21: Slavens files affidavit of identity.
- 2/8/22: Gibson files affidavit of identity.
- 3/9/22: Ramsey files affidavit of identity.
- 3/17/22: Fresard files affidavit of identity.
- 3/21/22: the last day for incumbents to file their affidavit of identity or nominating petition.<sup>13</sup>
- 4/19/22: Crespo files affidavit of identity. Also the last day for non-incumbents to file their affidavit of identity or nominating petition.<sup>14</sup>
- 4/28/22: Davis sues the Secretary of State contesting Cox’s affidavit of identity.<sup>15</sup>

---

<sup>10</sup> **Attachment F**, Unpublished Opinions.

<sup>11</sup> **Attachment G**, Response in Opposition to Plaintiff’s Emergency Motion for Writ of Mandamus.

<sup>12</sup> **Attachment H**, Emergency Motion (Case No. 22-000056-MZ).

<sup>13</sup> **Attachment I**, Election Dates Booklet.

<sup>14</sup> *Id.*

<sup>15</sup> **Attachment H**, Emergency Motion (Case No. 22-000056-MZ).

- 5/18/22: Defendant Cox provides the at-issue affidavits of identity as an attachment to his response to Davis.
- 8/16/22: Davis files a complaint against the Secretary of State, beginning this action.
- 8/31/22: last day for interested parties to file briefing with the Court of Claims.
- 9/9/22: last day for the Secretary of State to give notice of which candidates will appear on the November 2022 ballot.<sup>16</sup> And the last day to file a nominating petition under the exception in MCL 168.415.
- 9/24/22: clerks begin sending out absent voters ballots to uniformed and oversea voters, county clerks deliver voter ballots to local clerks.<sup>17</sup>
- 9/29/22: absent voters ballots must be available for issuance to voters.<sup>18</sup>

Despite his familiarity contesting affidavits of identity and despite having access to the at-issue affidavits three months prior, Davis delayed initiating this action until it became an emergency. If twenty-four days was inexcusable delay in an election matter, certainly three months (roughly ninety days) is also inexcusable. See *Id.* Particularly in light of Davis's experience in election law litigation.

Due to Davis's delay, there are corresponding changes in circumstances, resulting in prejudice. We are mere weeks away from ballot distribution. We are one week from when the Secretary of State must notify the clerks of which candidates will appear on the November 2022 election ballots. Davis sat on his hands, waiting for this situation to reach its 11<sup>th</sup> hour to hamstring the ability to defend against this action and forcing the court to expedite its review.

The remedy under MCL 168.415, as suggested by Davis in his complaint,<sup>19</sup> is illusory due to Davis's delay. Under MCL 168.415, judicial candidates can get on the ballot by providing a nominating petition by September 9, 2022. One anticipates that it would

---

<sup>16</sup> **Attachment I**, Election Dates Booklet.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> **Attachment A**, Complaint, paragraph 72.

require one thousand signatures to achieve the mandated number of signatures while preparing for “bad” signatures. Davis’s delay prevented the candidates from having time to pursue petition signatures as an alternative to get on the ballot. This Court, while expeditiously reviewing this case, cannot render a decision quickly enough for a nominating petition to be an actual remedy here. A week or less to obtain one thousand signatures is a near impossible feat. When Davis first filed his complaint on August 16, 2022, it was already too late to reasonably seek signatures—less than one month even is too short to complete a petition.

This Court denied Haywood the laches defense in *Belcoure v Benson*, but this case stands in stark contrast to *Belcoure*—unlike Haywood, these judicial candidates are all running uncontested.<sup>20</sup> So, removing them from the ballot leaves a vacancy that was not left when removing Haywood from the ballot. And now it is too late for new candidates to replace these currently uncontested candidates on the ballot such that voters can express their right to vote for the candidates. In addition, unlike in *Belcoure*, Davis offers no evidence that he previously moved the Secretary of State to de-certify the candidates from the ballot prior to filing the present suit. *Belcoure v Benson*, \*3. The only remaining outcome to fill the vacancies then becomes gubernatorial appointment. This change in circumstances as a result of delay was not present in *Belcoure*, while it is present here.

The practical effect of granting Davis’s motion is to create a far bigger injury to the general public—depriving them of the opportunity to vote for or withhold their vote from unopposed judicial candidates and for the contested judicial candidate or a different candidate in the Third Circuit. Instead Davis’ complaint places the decision into the hands

---

<sup>20</sup> **Attachment J**, Order *Belcoure v Benson*.

of the governor. Not only has Davis's delay prejudiced the judicial candidates, the Third Circuit, and the Secretary of State, but also, most importantly, the citizens of Wayne County.

### **Conclusion**

Third Circuit requests this Court grant its motion to intervene. Granting Davis's motion would cause far greater injury to Wayne County residents than denying his motion. More, Davis's claims are barred by lack of standing and the doctrine of laches. Finally, enforcement of MCL 168.558 in this case violates the Michigan Constitution and is contrary to the legislative intent of MCL 168.558.

Respectfully submitted,

COLLINS EINHORN FARRELL PC

/s/ Donald D. Campbell

DONALD D. CAMPBELL (P43088)

JAMES J. HUNTER (P74829)

Counsel for Defendants

4000 Town Center, 9<sup>th</sup> Floor

Southfield, MI 48075

(248) 355-4141

Dated: August 31, 2022

### **PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein via MITrue Filing E-File and E-Serve on August 31, 2022.

By: /s/ Sherrie L. Marinkovich

Sherrie L. Marinkovich

For Collins Einhorn Farrell PC



## MDOS-BOERegulatory

---

**From:** James J. Hunter <James.Hunter@Ceflawyers.com>  
**Sent:** Wednesday, January 18, 2023 12:02 PM  
**To:** Fracassi, Adam (MDOS)  
**Cc:** MDOS-BOERegulatory; Donald Campbell; Tracy B. Parkin  
**Subject:** Davis v Lynch - MCFA Complaint No 2022-11-197-257  
**Attachments:** 38U1227-Final MCFA Response w attach.PDF

**CAUTION: This is an External email. Please send suspicious emails to [abuse@michigan.gov](mailto:abuse@michigan.gov)**

This message was sent securely using Zix®

Mr. Fracassi,

Attached please a copy of Richard Lynch's response to the above-referenced complaint. We will send a copy today via US Mail as well. Please confirm receipt and advise whether any additional steps are required to effectuate service of the response.

We are available to discuss this matter at your convenience, if you'd like.

Jim



4000 Town Center, 9th Floor  
Southfield, MI 48075

**James J. Hunter**  
Attorney at Law  
Office: (248) 663-7716  
Cell: (248) 798-8141  
Fax: (248) 663-7717  
[James.Hunter@cefLawyers.com](mailto:James.Hunter@cefLawyers.com)  
[www.ceflawyers.com](http://www.ceflawyers.com) | [vCard](#) | [Bio](#)

This electronic message and all contents contain information from the law firm of Collins Einhorn Farrell PC which may be privileged, confidential or otherwise protected from disclosure. The information is intended to be for the addressee only. If you are not the addressee, any disclosure, copy, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately and destroy the original message and all copies.

This message was secured by Zix®.



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

January 19, 2023

Robert Davis  
180 Eason  
Highland Park, MI 48203

*Via email*

Re: *Davis v. Fresard et al.*  
Campaign Finance Complaint No. 2022-11-197-257

Dear Mr. Davis:

The Department of State received a response from Richard Lynch 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](mailto:BOERegulatory@Michigan.gov) or mailed to the Department of State, Bureau of Elections, Richard H. Austin Building, 1<sup>st</sup> Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

Regulatory Section  
Bureau of Elections  
Michigan Department of State

c: Richard Lynch

**STATE OF MICHIGAN  
SECRETARY OF STATE**

**ROBERT DAVIS,**

Complainant/Petitioner,

Case No. 2022-11-197-257

v

**Richard Lynch**, in his official capacity as  
General Counsel for Third Circuit Court,  
Respondent.

---

**COMPLAINANT/PETITIONER ROBERT DAVIS' REBUTTAL TO  
RESPONDENT RICHARD LYNCH'S RESPONSE**

**NOW COMES**, Complaint/Petitioner, ROBERT DAVIS, in his own proper person, and for his Rebuttal to Respondent Richard Lynch's January 18, 2023 Response, states the following: a natural person, being first duly sworn and deposed, and under the penalty of perjury, states the following:

Section 57 of the Campaign Finance Act, MCL 169.257(1),  
provides, in part, as follows:

***A public body or a person acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, **property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services** that are excluded from the definition of contribution under section 4(3)(a). (emphasis supplied).***

MCL 169.211(7)(d) defines a “public body” to include “[a]ny other body that is created by state or local authority or is primarily funded by or through state or local authority, if the body exercises governmental or proprietary authority or performs a governmental or proprietary function.” (emphasis supplied). See MCL 169.211(7)(d). “When a statute specifically defines a given term, that definition alone controls.” *Haynes v Neshwat*, 477 Mich. 29, 35; 729 NW2d 488 (2007).

It is undisputed that the Third Judicial Circuit Court was created by state authority, MCL 600.504 and 600.601. In addition, the Third Judicial Circuit Court performs a governmental function authorized by Const 1963, Article VI, §§ 11, 13. Accordingly, the Third Judicial Circuit Court is a “public body” within the meaning of the Michigan Campaign Finance Act. *In re Brennan*, 504 Mich. 80, \_\_\_\_; 929 NW2d 290, 312-313 (2019).

On January 18, 2023, counsel for Respondent Lynch filed a response to Petitioner Davis’ meritorious complaint filed in accordance with the Michigan Campaign Finance Act (MCFA). In their response, counsel for Respondent Lynch **admits** that “Respondent was acting in his capacity as General Counsel for the Third Judicial Circuit Court in

assigning [Julie] Dale to the [Wayne County Election Case filed by Petitioner Davis]. **See ¶20 of Respondent Lynch’s Response.**

Counsel for Respondent Lynch also **admits** that “Attorney Dale was assigned the representation as part of her role as associate general counsel” of Third Judicial Circuit Court. **See ¶31 of Respondent Lynch’s Response.**

Additionally, counsel for Respondent Lynch **admits** that Julie Dale received her full salary when she represented Judges Patricia Fresard and Judge Kelly Ann Ramsey in the Wayne County Circuit Court Election Matter, in which they were sue in their “individual” capacities. **See ¶32 of Respondent Lynch’s Response.** Counsel for Respondent Lynch also **admits** that Julie Dale was paid with Wayne County tax payers’ funds when she represented Judges Patricia Fresard and Kelly Ann Ramsey in the Wayne County Circuit Court Election Matter, in which they were sued in their “individual” capacities as candidates. **See ¶33 of Respondent Lynch’s Response.**

Moreover, counsel for Respondent Lynch also **admits** that Julie Dale did **not** take off work from her position as associate general counsel of Third Judicial Circuit Court when she represented Judges

Fresard and Judge Ramsey in the Wayne County Circuit Court Election Matter. **See ¶34 of Respondent Lynch’s Response.** It is undisputed that Julie Dale entered an appearance on behalf of Judge Fresard and Judge Ramsey in the Wayne County Circuit Court Election Matter on July 28, 2022 and that her representation of Judge Fresard and Judge Ramsey in the Wayne County Circuit Court Election Matter did not end until September 15, 2022 when Wayne County Circuit Court Judge Qiana Lillard signed the order allowing July Dale to withdraw as counsel. **See ¶30 of Respondent Lynch’s Response, and also see pp 10-11 of Respondent Lynch’s Response.**

Counsel for Respondent Lynch attempts to justify his unethical conduct by asserting the absurd and frivolous argument that Respondent “Lynch instructed Dale to represent Judge Fresard and Judge Ramsey under the belief that there was no issue with such representation under the MCFA, as the suit sought to disrupt the re-election of two unopposed judicial candidates to their existing offices”, and that “[t]he removal of the judicial candidates presented the risk of disrupting court operations and further impeded efforts to fully restore

court operations following the COVID-19 pandemic.” See p 12 of Respondent Lynch’s Response.

However, what Respondent Lynch and his counsel fail to comprehend and realize is that Julie Dale’s representation of Judge Fresard and Judge Ramsey, who were being sued in their “individual” capacities as candidates, directly influenced their re-election to their respective judicial positions as Respondent Lynch clearly admits on page 12 of his Response. The Wayne County Circuit Court Election Matter sought to have the names of Judge Fresard and Judge Ramsey removed from November 8, 2022 general election ballot as candidates for re-election to one of the 15 incumbent positions for the Third Judicial Circuit Court. Julie Dale’s representation of Judge Fresard and Judge Ramsey constituted both a “contribution” and an “expenditure” as those terms are defined under the MCFA.

MCL 169.204(1) of the MCFA defines the term “contribution” to mean “a payment, gift, subscription, assessment, expenditure, contract, ***payment for services***, dues, advance, forbearance, loan, or ***donation of money or anything of ascertainable monetary value***, or a transfer of anything of ascertainable monetary value to a person, ***made***

*for the purpose of influencing the nomination or election of a candidate*, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party.” (emphasis supplied).

Contrary to Respondent Lynch’s counsel’s absurd and frivolous arguments, Julie Dale’s representation of Judge Fresard and Judge Ramsey sought to prevent their removal from the November 8, 2022 general election ballot as judicial candidates. This representation, which sought to prevent their removal, influenced their re-election to the bench because as Respondent Lynch admits, **“the suit sought to disrupt the re-election of two unopposed judicial candidates to their existing offices.” See p 12 of Respondent Lynch’s Response.**

Accordingly, because Julie Dale **admittedly** was paid with Wayne County taxpayers’ funds the entire time she represented the two judges, and **admittedly** she did so at the direction of Respondent Lynch, who serves as her direct supervisor in his role as General Counsel, both financial and other resources of the Third Judicial Circuit Court were improperly used to influence the re-election of Judge Fresard and Judge Ramsey.



Similarly, Respondent Lynch's conduct also constituted an "expenditure" under the MCFA. MCL 169.206(1)(a) defines the term "expenditure" to mean:

(1) "Expenditure" means a payment, donation, loan, or ***promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate***, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party. Expenditure includes, but is not limited to, any of the following:

(a) ***A contribution or a transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of a candidate***, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party. (emphasis supplied).

In the case at bar, it is undisputed that Julie Dale was paid by the Third Judicial Circuit Court for the entire time Julie Dale improperly represented Judge Fresard and Judge Ramsey in the Wayne County Circuit Court Election Matter, in which they were being sued in their "individual" capacities as judicial candidates. It is also undisputed that the Third Judicial Circuit Court paid for the materials Julie Dale used while representing Judge Fresard and Judge Ramsey. More importantly, it is also undisputed, that in his official capacity as General Counsel of the Third Judicial Circuit Court, Respondent Lynch directed Julie Dale to represent Judge Fresard and Judge Ramsey.

Accordingly, because the Third Judicial Circuit Court is a “public body” as that term is defined under the MCFA, and Respondent Lynch, on behalf of the Third Judicial Circuit Court, directed Julie Dale to represent the two judges sued in their “individual” capacities, pursuant to MCL 169.257(1), Respondent Lynch **authorized “*the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure...*”**

#### **PRAYER/REQUEST FOR RELIEF**

**WHEREFORE**, for the foregoing reasons and for the reasons stated in the amended/renewed campaign finance complaint, Complainant/Petitioner Robert Davis respectfully requests the Secretary of State determines that Respondents Richard Lynch and Julie Dale violated MCL 169.257(1) of the MCFA.

Dated: February 2, 2023

Respectfully submitted,

/s/ROBERT DAVIS

**ROBERT DAVIS, *Pro Se***

Complainant/Petitioner

180 Eason

Highland Park, MI 48203

(313) 523-7118

[Davisrobert854@gmail.com](mailto:Davisrobert854@gmail.com)



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

April 7, 2023

Donald D. Campbell  
Attorney for Julie Dale and Richard Lynch  
4000 Town Center, 9<sup>th</sup> Floor  
Southfield, MI 48075-1473

Re: *Davis v. Fresard et al. 1 (Dale)*  
Campaign Finance Complaint No. 2022 -10-138- 257

*Davis v. Fresard et al. 2 (Lynch)*  
Campaign Finance Complaint No. 2022-11-197-257

Dear Mr. Campbell:

The Department of State (Department) has finished investigating the above referenced complaints filed by Robert Davis, against your clients Julie Dale and Richard Lynch, alleging violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*<sup>1</sup> The Department has determined that Complaint Nos. 2022 -10-138- 257 and 2022-11-197-257 arise from the same set of facts and the allegations made by Davis relate to the same section of the Act. As such, this determination will address the disposition of both complaints.

The complaints received October 13, 2022 and November 2, 2022, respectively, allege Lynch violated section 57 of the Act by authorizing Third Judicial Circuit Court staff to represent Judges Fresard and Ramsey in reelection litigation filed by Davis. Davis also alleges that by representing Judges Fresard and Ramsey as directed by Lynch, Dale violated section 57 of the Act.<sup>1</sup>

Both Lynch and Dale responded to the complaint in which they were named. In his response to Complaint 2022 -11-197-257, received by the Department January 18, 2023, Lynch argued that while he did authorize Dale to enter her appearance in the reelection litigation, he did so “as he viewed the challenge as one against the institution due to the threat of seeking to deprive the Third Judicial Court of two judges.” See ¶17 of Respondent Lynch’s Response. Lynch argued that as he was acting in the interest of the Third Judicial Court and not on behalf of a specific

---

<sup>1</sup> In separate correspondence to Mr. Davis (copy enclosed), the Department dismissed several allegations of the complaint. The only remaining allegations that the Department is investigating is whether public resources have been improperly utilized by representing candidates for office.

candidate or issue, neither his nor Dale's actions constituted an expenditure or contribution towards a specific candidate and therefore did not violate the Act. Finally, Lynch stated that because he believed himself to be acting on behalf of the Third Judicial Court and not a specific candidate, there could be no knowing violation of the Act.

Dale, in her response to Complaint No. 2022-10-138-257, received December 2, 2022, relied on many of the same arguments. She stated that as Assistant General Counsel, she was following the instructions of her supervisor in representing Judges Fresard and Ramsey and did not knowingly or intentionally violate the Act. Dale also argued that as her representation was not in support of or opposition to a specific candidate or issue, it would not fall under the definition of an expenditure or contribution as defined by the Act and therefore did not violate the Act.

Davis provided a rebuttal statement to Lynch's response, received by the Department on February 2, 2023. In the provided rebuttal, Davis reiterated the Third Judicial Court's role as a public body and outlined the ways Dale's representation of Judges Fresard and Ramsey used public resources, including but not limited to the use of court buildings, computers, and staff, including payment of Dale's salary while she represented Judges Fresard and Ramsey. Davis also argued that his suit was brought against Judges Fresard and Ramsey in their capacity as candidates, not as incumbent members of the bench, and therefore any action taken by the Third Judicial Court was by definition in support of a candidate and therefore covered under the Act. A rebuttal was not provided in the Dale complaint.

In Michigan, it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words "contribution" and "expenditure" are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of a candidate. MCL 169.204(1), 169.206(1). A knowing violation of this provision is a misdemeanor offense. MCL 169.257(4).

The Department has reviewed the evidence submitted in this matter and finds that sufficient evidence has been presented to support a finding of a potential violation of the MCFA. First, the Department examined whether the litigation brought against Judges Fresard and Ramsey arose from their roles as candidates or from their positions as sitting members of the Third Judicial Circuit Court. From the nature of the litigation as well as the evidence provided by Davis and Lynch, it is clear Davis's suit was brought against Fresard and Ramsey as candidates, rather than as sitting judges. The basis of the suit was to disqualify Judges Fresard and Ramsey from the ballot for improperly filing their respective Affidavits of Identity. A completed Affidavit of Identity is required only of candidates, not of sitting members of the bench. As such, the Department finds the allegations must be viewed as they relate to Judges Fresard and Ramsey as candidates, rather than as sitting members of the Third Judicial Court.

Next, the Department must determine whether the actions of Lynch and Dale in representing the candidates violated section 57 of the Act. In using his role as general counsel for the Third

Judicial Court to authorize representation for two judicial candidates, the Department determines that there may be reason to believe that Lynch violated section 57 of the Act. The litigation in question was specific to actions which arose *because* of their roles as candidates and not their status as sitting members of the bench. By instructing Dale to represent the candidates, Lynch authorized court staff time and resources for the specific purpose of assisting candidates in remaining on the ballot. This is the very definition of an unauthorized use of public resources as defined by the Act.

By representing the candidates as directed by her manager while receiving her regular salary, there may also be reason to believe that Dale violated section 57 of the Act, improperly using the resources of a public body in support of the candidates.

The Department recognizes this finding represents an interpretation of the Act as applied to a particular set of facts that this office had not considered as of the date the violations occurred. On February 7, 2023, the Department issued a declaratory ruling specifically finding a candidate may use campaign contributions to pay for legal fees associated with lawsuits directly challenging a candidate's compliance with Michigan Election Law. A copy of the ruling in its entirety can be found on the Department's [website](#). The Department also recognizes that attempts by Dale to withdraw her representation via email on August 30, 2022, were met with resistance from Davis, who threatened to object to Dale's proposed order for substitution of counsel. While Dale's representation may be a violation of the Act, Davis' actions to delay a remedy and then to argue in his complaint that the matter was not remedied do not show good faith on behalf of the complainant.

When the Department finds that there may be reason to believe a violation has occurred, the Act requires the Department to use "informal methods such as conference [or] conciliation" to correct the potential violation or to prevent further violation. MCL 169.215(10). This is a matter of first impression for the Department, and given the unique character of the complaint and Mr. Davis' lack of good faith in submitting a complaint about actions he sought to perpetuate, the Department concludes that a formal warning is the appropriate resolution to the complaint.

To that end, this letter should serve as notice to public bodies and officials who may be considering representation of incumbent candidates in election-related litigation. Such representation is considered an expenditure on behalf of a candidate and is a potential violation of the Act. The costs of election-related litigation are permissible campaign expenses when the litigation is directly connected to a candidate's campaign or ability to stand for office. Any expenses incurred in connection with such litigation must comply with applicable sections of the Act, including disclosure and reporting provisions. Please be advised that this notice has served to remind your clients of obligations under the Act and may be used in future proceedings as evidence to establish a knowing violation of the Act. A knowing violation is a misdemeanor offense and may merit referral to the Attorney General for enforcement action. MCL 169.257(4).

Donald D. Campbell  
Page 4

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam Fracassi". The signature is fluid and cursive, with the first name "Adam" and last name "Fracassi" clearly distinguishable.

Adam Fracassi, Regulatory Manager  
Regulatory Section  
Bureau of Elections  
Michigan Department of State

c: Robert Davis