

MDOS-BOERegulatory

From: Robert Davis <davisrobert854@gmail.com>
Sent: Thursday, February 16, 2023 11:03 AM
To: Fracassi, Adam (MDOS); MDOS-BOERegulatory
Subject: NEW Campaign Finance Complaint Against Citizens to Elect Fresard, Committee to Re-Elect Judge Sheila Ann Gibson, and Kelly Ann Ramsey for Judge 2022
Attachments: Davis v Fresard, et al - Appearance of Julie Dale on behalf of Fresard and Ramsey.pdf; Davis Signed February 15 2023 Campaign Finance Complaint against Fresard Gibson Ramsey Candidate committees.pdf; SIGNED AND FILED-- Judge Lillard September 15 2022 Order for substitution of counsel Julie Dale re Fresard Ramsey.pdf; Julie Dale December 2 2022 Response to Davis Campaign Finance Complaint improper use of court personnel.PDF; Register of Actions Court of Claims Case Judges Fresard, Ramsey and Gibson v SOS Benson Case No. 22-000143-MZ.pdf; Register of Actions Court of Claims Davis v Benson re Fresard.pdf; Judge Swartzle September 2 2022 opinion and order denying Davis motion for declaratory judgment and mandamus re Fresard.pdf; Richard Lynch January 18 2023 Response to Davis campaign finance complaint Case No. 2022-1-197-257.PDF

Categories:

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Mr. Fracassi,

Attached is a NEW Campaign Finance Complaint dated February 15, 2023 against Citizens to Elect Patricia Fresard, Committee to Re-Elect Judge Sheila Ann Gibson, and Kelly Ann Ramsey for Judge 2022. **It's important to note that the alleged violations raised in the attached complaint have NOT been directly addressed and/or resolved by the Secretary of State in previous complaints filed.**

Also attached are exhibits referenced in the attached campaign finance complaint, which are the following:

1. Julie Dale's Notice of Appearance in Davis v Wayne Co. Elections, [et.al.](#), Wayne Co. Case No. 22-008866-AW;
2. Order of Substitution signed September 15, 2022 in Davis v Wayne Co. Elections Commission, [et.al.](#), Wayne Co. Case No. 22-008866-AW;
3. Julie Dale's Response to Davis' Campaign Finance Complaint;
4. Richard Lynch's Response to Davis' Campaign Finance Complaint;
5. Register of Actions in the matter of Fresard, Ramsey, Gibson v Secretary of State Jocelyn Benson, Court of Claims Case No. 22-000143-MZ;
6. Register of Actions in the matter of Davis v Benson, Court of Claims Case No. 22-000125-MM.
7. Court of Claims Judge Brock Swartzle's September 2, 2022 Opinion and Order in consolidated cases.

Please confirm receipt of this email and the attached documents.

Respectfully submitted,
Robert Davis

**STATE OF MICHIGAN
SECRETARY OF STATE**

In re: Michigan Campaign Finance Complaint against
Citizens to Elect Patricia Fresard (Committee Id. #508802);
Kelly Ann Ramsey for Judge 2022 (Committee Id. #517399);
Committee To Re-Elect Sheila Ann Gibson (Committee Id. #508885).

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 Citizens to Elect Patricia Fresard
(Committee Id. #508802); Kelly Ann Ramsey for Judge 2022
(Committee Id. #517399) for violating MCL 169.209(4) and
169.233 of the Michigan Campaign Finance Act for failing to
report “in-kind” contributions and/or expenditures for legal
services provided by Julie Dale, Associate General Counsel of
Third Circuit Court, in the civil legal matter of *Robert Davis v*
Wayne County Election Commission, et.al., Wayne County Case
No. 22-008866-AW.
2. Pursuant to MCL 169.215(5) and (6) of the Michigan
Campaign Finance Act (MCFA), I, Robert Davis, hereby submit

this complaint against the Committee to Re-Elect Sheila Ann Gibson (Committee Id. #508885) for violating MCL 169.233 of the Michigan Campaign Finance Act for failing to file the 2022 Pre-General Campaign Statement.

3. My address and telephone number are as follows: Robert Davis, 180 Eason, Highland Park, MI 48203, (313) 523-7118.
4. The address for alleged violator Citizens To Elect Patricia Susan Fresard is 1751 Lochmoor, Grosse Pointe Woods, MI 48236.
5. The address for alleged violator Kelly Ann Ramsey for Judge 2022 is 9311 E. Outer Drive, Detroit, MI 48213.
6. The address for alleged violator Committee to Re-Elect Judge Sheila Ann Gibson is 19540 Afton Rd., Detroit, MI 48203.
7. This Campaign Finance Complaint shall be in addition to any other campaign finance complaint Davis may filed with the Secretary of State. This complaint shall not in any way supersede and/or replace any campaign finance complaint previously filed by Davis against the alleged violators named herein.

COUNT I

Citizens To Elect Patricia Fresard and Kelly Ann Ramsey for Judge 2022 Failed To Report “In-kind” Contributions and/or Expenditures for Legal Services provided by Julie Dale, Associate General Counsel of Third Circuit Court, in the civil legal matter of *Robert Davis v Wayne County Election Commission, et.al.*, Wayne County Case No. 22-008866-AW.

8. Upon reviewing the Pre and Post-General Campaign

Statements filed by Citizens to Elect Patricia Fresard and Kelly Ann Ramsey for Judge 2022, the “in-kind” contributions and/or expenditures for legal serves provided by Julie Dale, Associate General Counsel of Third Circuit Court, in the civil legal matter of *Robert Davis v Wayne County Election Commission, et.al.*, Wayne Co. Case No. 22-008866-AW, were **not** reported by the committees.

9. In her response to *Davis v Dale*, Campaign Finance Complaint No. 2022-10-138-257, Julie Dale admitted that she “represented Judge Fresard and Judge Ramsey at the direction of her boss, and she continued representing them for a short time in reliance on Chief Judge Kenny’s decision that she did not need to withdraw as counsel.” (See p 2 of Dale’s December 2, 2022 Response to Davis’ Campaign Finance Complaint).

10. It is undisputed that Julie Dale represented Judges Fresard and Ramsey in the matter of *Davis v Wayne County Election Commission, et.al.*, from July 28, 2022 until September 15, 2022. (See Dale's Notice of Appearance and Order allowing substitution of counsel attached).
11. In Richard Lynch's January 18, 2023 Response to Davis' Campaign Finance Complaint, Richard Lynch admits that Julie Dale was paid by Wayne County and the Third Circuit Court for her representation of Judges Fresard and Ramsey in the civil litigation of *Davis v Wayne County Election Commission, et.al.*, Case No. 22-008866-AW. (See Lynch's January 18, 2023 Response).
12. It is undisputed that Julie Dale was not compensated and/or paid by Judges Fresard and Ramsey for representing them in the civil litigation of *Davis v Wayne County Election Commission, et.al.*, Case No. 22-008866-AW.
13. Accordingly, pursuant to MCL 169.209(4) of the Michigan Campaign Finance Act, Julie Dale's legal representation of Judges Fresard and Ramsey constitute an "in-kind"

contribution and/or expenditure as those terms are defined under the Michigan Campaign Finance Act.

14. Despite reporting expenditures for legal services provided by attorney Juan Mateo, Citizens to Elect Patricia Fresard and Kelly Ann Ramsey for Judge 2022 did not report any “in-kind” contributions and/or expenditures provided by Julie Dale for her legal representation of them in the civil litigation.
15. Accordingly, the Secretary of State shall issue notices of errors to Citizens to Elect Patricia Fresard and Kelly Ann Ramsey for Judge 2022 requiring the respective candidate committees to amend their Pre-General Campaign Statements to properly report the “in-kind” contributions and/or expenditures for legal services provided by Julie Dale in the civil litigation of *Davis v Wayne County Election Commission, et.al.*, Case No. 22-008866-AW.

COUNT II

Committee To Re-Elect Judge Sheila Ann Gibson Failed To File 2022
Pre-General Campaign Statement.

16. On February 6, 2023, the Secretary of State issued Notices of Failure to File and Late Filing Fee Notices to Judge Sheila

Gibson's candidate committee for its failure to file the 2022 Post-General Campaign Statement.

17. However, the Secretary of State did **not** issue Judge Sheila Gibson's candidate committee a Notice of Failure to File the 2022 Pre-General Campaign Statement.
18. The evidence in the record, and attached hereto, clearly proves and shows that Judge Sheila Gibson's candidate committee received and/or expended \$1,000 or more during the reporting period for the 2022 Pre-General Campaign Statement as well.
19. The 2022 Pre-General Campaign Statement's reporting period was from August 22, 2022 through October 23, 2022.
20. On August 31, 2022, Judge Sheila Gibson along with Judges Patricia Fresard and Kelly Ann Ramsey filed their own civil lawsuit in the Court of Claims against the Secretary of State. (See Register of Actions in the matter of *Fresard, Ramsey, and Gibson v Jocelyn Benson*, Court of Claims Docket No. 22-000143-MZ attached).

21. Judge Gibson's civil lawsuit filed in the Court of Claims against the Secretary of State was filed on her behalf by attorneys Juan Mateo and Gerald Evelyn. (See Register of Actions in the matter of *Fresard, Ramsey, and Gibson v Jocelyn Benson*, Court of Claims Docket No. 22-000143-MZ; and see September 2, 2022 Opinion and Order of Judge Swartzle attached).
22. The lawsuit Judges Gibson, Fresard, and Ramsey filed in the Court of Claims against the Secretary of State sought a declaration from the Court declaring that their affidavits of identity, as filed with the Secretary of State to qualify for re-election, complied with the requirements set forth under MCL 168.558 of Michigan Election Law.
23. On that same day, August 31, 2022, attorneys Gerald Evelyn and Juan Mateo also filed a motion to file an amicus brief on behalf of Judge Sheila Ann Gibson in the separate civil action, *Robert Davis v Jocelyn Benson*, Court of Claims Case No. 22-000125-MM. (See Register of Actions *Davis v Benson*,

Court of Claims Case No. 22-000125-MM; and September 2, 2022 Opinion and Order of Judge Swartzle attached).

24. It has been clearly established by campaign statements and other filings made by the candidate committees for Judges Fresard and Ramsey, that attorneys Gerald Evelyn and Juan Mateo were paid for their representation of Judges Gibson, Fresard, and Ramsey in the various civil litigations.
25. Thus, it is clear from the two (2) Court of Claims cases cited above that Judge Gibson's candidate committee expended more than a \$1,000 during the reporting period for the 2022 Pre-General Campaign Statement.
26. Therefore, because Judge Gibson's candidate committee expended more than \$1,000 during the reporting period for the 2022 Pre-General Campaign Statement, pursuant to MCL 169.233(6), Judge Gibson's candidate committee was required to file a 2022 Pre-General Campaign Statement detailing her expenditures for legal services.
27. Even if Judge Gibson's candidate committee were to somehow lie and argue that attorneys Gerald Evelyn and Juan

Mateo's legal services were provided to her pro bono, said pro bono work would have had to been reported as either an "in-kind" contribution and/or expenditure.

28. Accordingly, pursuant to MCL 169.233(7), the Secretary of State shall issue the Committee to Re-Elect Judge Sheila Ann Gibson: (1) Notice of Failure to File 2022 Pre-General Campaign Statement; (2) Notice of Assessment of Late Filing Fees for failing to file Pre-General Campaign State; (3) Late Filing Fee Notice assessing late filing fees for failing to file 2022 Pre-General Campaign Statement; (4) and pursuant to MCL 169.233(8), refer Judge Gibson to the Attorney General for prosecution.

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

30. 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 AFFIANT SAYETH NOT.



ROBERT DAVIS

180 Eason

Highland Park, MI 48203

(313) 523-7118

Davisrobert854@gmail.com

February 15, 2023

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

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

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

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)

STATE OF MICHIGAN
COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

v

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

Defendant.

_____ /

MARK T. SLAVENS, Judge of the Third Judicial
Circuit of Michigan,

Plaintiff,

v

JOCELYN BENSON, in her official capacity as
Secretary of State,

Defendant.

_____ /

PATRICIA SUSAN FRESARD, SHEILA ANN
GIBSON, and KELLY ANN RAMSEY,

Plaintiffs,

v

JOCELYN BENSON, in her official capacity as
Secretary of State,

Defendant.

_____ /

OPINION AND ORDER

Case No. 22-000125-MM

Hon. Brock A. Swartzle

Case No. 22-000141-MZ

Hon. Brock A. Swartzle

Case No. 22-000143-MZ

Hon. Brock A. Swartzle

These matters relate to Robert Davis's requests for a writ of mandamus and declaratory relief against defendant, Jocelyn Benson, in her official capacity as Secretary of State. Davis seeks to have Mark T. Slavens, Lakena Tennille Crespo, Sheila Ann Gibson, Patricia Susan Fresard, and Kelly Ann Ramsey decertified as candidates for judge of the Third Circuit Court in Wayne County.

Given that this is a time-sensitive matter, this Court issued an order on August 24, 2022, in Docket No. 22-000125-MM requiring defendant to show cause why the Court should not issue a writ of mandamus in Davis's favor. This Court invited the judicial candidates to move to participate as amici curiae. In response, defendant moves for summary disposition, arguing that Davis's claims are barred by laches and fail as a matter of law. The judicial candidates submitted helpful briefs, for which the Court is thankful. The show-cause briefing is complete, and the matter is now ripe for resolution.

In Docket No. 22-000141-MZ, Slavens sues for declaratory and injunctive relief arising out of the same set of facts as Docket No. 22-000125-MM. The Court recently consolidated the two matters. Finally, in Docket No. 22-000143-MZ, Fresard, Gibson, and Ramsey request declaratory and injunctive relief on the same set of factual and legal issues. Their motions to consolidate and for immediate consideration are GRANTED, and the matter is CONSOLIDATED with Docket Nos. 22-000125-MM and 22-000141-MZ.

The Court resolves these matters without a hearing. For the reasons discussed and among other matters resolved, Davis's requests for mandamus and declaratory relief are denied, and defendant's motion for summary disposition is granted.

I. FACTUAL BACKGROUND

Slavens, Fresard, Gibson, and Ramsey are incumbent judicial candidates for the Third Circuit Court in Wayne County. Crespo is a nonincumbent Third Circuit judicial candidate. As candidates for judicial office, Slavens, Crespo, Gibson, Fresard, and Ramsey were required to submit affidavits of identity (AOIs) with the Bureau of Elections, in accordance with MCL 168.558. They each filed an AOI, but Davis argues that the AOIs were fatally defective. The thrust of Davis's claim is that each judicial candidate was required to state that they had "no party affiliation" on their form AOIs. He asserts that each candidate failed to comply with this statutory requirement.

The form AOI contains a blank space for the candidate to fill out, and instructs the candidate as follows: "If running without party affiliation list 'No Party Affiliation.' " For candidates Fresard, Ramsey, Gibson, and Slavens, Davis alleges that they failed to comply with the statutory requirement because they left blank the designated space on the form. Crespo placed the acronym "N/A" in the designated space, which Davis alleges was a deficient statement of "no party affiliation." Fresard, Ramsey, Gibson, and Crespo signed and submitted their AOIs in early 2022. Slavens signed and submitted his AOI on December 14, 2021. Defendant concluded the AOIs met the statutory requirements and accepted the submitted AOIs.

II. LEGAL BACKGROUND

A writ of mandamus is the appropriate remedy for a party seeking to compel action by election officials. See, e.g., *Wolverine Golf Club v Hare*, 24 Mich App 711, 716; 180 NW2d 820 (1970), *aff'd* 384 Mich 461 (1971).

To obtain the extraordinary remedy of a writ of mandamus, the plaintiff must show that (1) the plaintiff has a clear, legal right to performance of the specific

duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result. In relation to a request for mandamus, a clear, legal right is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided. [*Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016) (cleaned up).]

As for the requests for declaratory relief, MCR 2.605(A)(1) provides, “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.”

As this Court recently concluded in *Belcoure v Benson*, unpublished order of the Court of Claims, issued August 19, 2022 (Docket No. 22-000117-MB), pp 1-2, while the form affidavit prepared by the Secretary of State might be an efficient way to complete the affidavit, it is the statute that controls. Looking to the statute, MCL 168.558(2) requires that a candidate for elected office submit a timely AOI that includes, among other things, “the candidate’s political party or a statement indicating no party affiliation if the candidate is running without political party affiliation.” While one who reads this clause in isolation might wonder whether it even applies to candidates for judicial office, given that the office is a nonpartisan one, there appears to be little question that the clause does, in fact, apply to judicial candidates because, in the same subsection, the statute refers explicitly to candidates for judicial office. See MCL 168.558(2) (“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.”).

In *Belcoure*, this Court concluded that if our Legislature had intended to exempt judicial candidates from having to make a statement indicating “no party affiliation” on the AOI, then it would have made this clear by, for example, having a separate subsection devoted solely to judicial

candidates. *Belcoure*, unpub order at 2. But, by including in the same subsection a list of general affidavit requirements for all candidates, followed by specific additional requirements for judicial candidates, all the general requirements in the subsection apply to all candidates, judicial and nonjudicial alike. *Id.*

For this reason, this Court concluded that the judicial candidate must make an affirmative statement; mere silence is not sufficient. *Id.* This Court’s decision was also consistent with the Court of Appeals’ recent holding in *Davis v Highland Park City Clerk*, unpublished per curiam opinion of the Court of Appeals, issued June 2, 2022 (Docket No. 361544), pp 3-4, and the Court of Claims’ decision in *Reed-Pratt v Benson*, unpublished opinion of the Court of Claims, issued June 1, 2022 (Docket No. 22-000060-MZ), pp 4-6 (their reasoning herein incorporated), which reached the same conclusion on the party-affiliation requirement in MCL 168.558(2).

III. APPLICATION

Crespo. With this framework in mind, the Court turns first to Crespo. The Court concludes that Crespo’s statement of “N/A” satisfied MCL 168.558(2). The statute does not mandate any specific language when affirming that the candidate lacks a political-party affiliation. Crespo’s statement of “N/A” (i.e., “not applicable”) was an affirmative statement indicating that she had no party affiliation. The Court, therefore, concludes that Crespo complied with MCL 168.558(2).

Slavens. Turning next to Slavens, the Court concludes that the requirement that a judicial candidate provide a statement of “no party affiliation” did not apply to him because he submitted his AOI before the statutory amendment requiring political-party disclosure took effect. At the time Slavens submitted his AOI, on December 14, 2021, MCL 168.558(2), as amended by 2018 PA 650, provided:

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; 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. If a candidate is using a name that is not a name that he or she was given at birth, the candidate shall include on the affidavit of identity the candidate's full former name.

See also *Nykoriak v Napoleon*, 334 Mich App 370, 375; 964 NW2d 895 (2020) (interpreting the prior version of MCL 168.558(2)). The statute did not contain the language requiring that the candidate provide a statement of "no party affiliation." The Legislature amended the statute, effective December 27, 2021, to include the following relevant language:

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. [MCL 168.558(2), as amended by 2021 PA 158 (emphasis added).]

Defendant explains that before December 27, 2021, defendant required political-office candidates to disclose their political-party affiliation (or no political-party affiliation) under MCL 168.31(1)(e) (providing that the Secretary of State shall "[p]rescribe and require uniform forms, notices, and supplies the secretary of state considers advisable for use in the conduct of elections and registrations"). But defendant did not require judicial candidates to disclose any political-party information because, by law, judicial candidates have no party affiliation. The Court, therefore, concludes that Slavens complied with MCL 168.558(2), as amended by 2018 PA 650, when he submitted his AOI on December 14, 2021, i.e., prior to the effective date of the amendment that added the statutory requirement.

Davis also claims that Slavens failed to submit two copies of his AOI. At all relevant times, MCL 168.558(1) required Slavens to submit two copies of his AOI. Slavens has attached to his amicus curiae brief a contemporaneous e-mail to a Bureau of Elections official referring to the fact that he submitted two copies of his AOI. Plaintiff has not countered this evidence, and has not provided the factual basis for his claim that Slavens provided the Bureau of Elections with one copy of the AOI. Instead, he appears to rely on the fact that defendant's office only provided him with one copy of Slavens's AOI in response to his request for records. But the fact that defendant provided plaintiff with only one copy of Slavens's AOI does not establish (or even suggest) that Slavens filed only one copy. In contrast, Slavens's contemporaneous e-mail states that he submitted two copies. This Court, therefore, declines to grant any relief to Davis on this claim.

Fresard, Ramsey, and Gibson. Finally, as for Fresard, Ramsey, and Gibson, these candidates argue that their silence on their AOIs served as an adequate statement of “no party affiliation” under MCL 168.558(2). This Court recently addressed the same issue in *Belcoure*. In that case, another Third Circuit judicial candidate (Rooney Haywood) also left the party-affiliation section on his AOI blank. The Court concluded that Haywood's silent blank did *not* serve as an adequate statement of no party affiliation under MCL 168.558(2). *Id.* at 2. As this Court explained, while silence in some circumstances might serve as an adequate affirmative statement, see, e.g., *People v Alexander*, 188 Mich App 96, 103; 469 NW2d 10 (1991), our Legislature explicitly required an either/or—the affidavit must contain “the candidate's political party *or* a statement indicating no party affiliation if the candidate is running without political party affiliation.” MCL 168.558(2) (emphasis added). See also *Belcoure*, unpub order at 2. The lack of a statement is not the practical equivalent of an affirmative statement in this context because a silent blank leaves unanswered the question—is there a political affiliation or not?

Likewise, Fresard, Ramsey, and Gibson filed defective AOIs because they left blank the statement of party affiliation, and the newly amended statute was effective when they filed their AOIs (as opposed to Slavens). As their affidavits were defective, defendant should not have certified the candidates for the upcoming election. But, defendant did certify them, and this Court must determine whether, as a result, Davis is entitled to relief.

In his complaint, Davis seeks the equitable remedy of a writ of mandamus. When a party seeks equitable relief, “[t]he equitable doctrine of laches shall also apply.” MCL 600.5815. In defendant’s motion and in response to this Court’s show-cause order, defendant raises the defense of laches. “If a plaintiff has not exercised reasonable diligence in vindicating his or her rights, a court sitting in equity may withhold relief on the ground that the plaintiff is chargeable with laches.” *Knight v Northpointe Bank*, 300 Mich App 109, 114; 832 NW2d 439 (2013). The doctrine is particularly applicable in election matters. See, e.g., *New Democratic Coalition v Austin*, 41 Mich App 343, 356-357; 200 NW2d 749 (1972); *Purcell v Gonzalez*, 549 US 1, 5-6; 127 US 5; 166 L Ed 2d 1 (2006) (per curiam); *Crookston v Johnson*, 841 F3d 396, 398 (CA 6, 2016) (“Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.”); see also MCL 691.1031 (in actions filed in circuit court, creating a “rebuttable presumption of laches” if an action affecting an election is brought within 28 days of that election).

Where this case materially differs from *Belcoure* is in the application of the doctrine of laches. In *Belcoure*, the plaintiff presented undisputed evidence that he challenged Haywood’s candidacy several months earlier than Davis did in this matter. See *Belcoure*, unpublished order at 1. Specifically, in early June 2022, Belcoure’s attorney contacted defendant about the

deficiencies in Haywood’s AOI. *Id.* at 3. Defendant had been put on timely notice by the plaintiff in that case, so there was not a viable laches defense in *Belcoure*.

This case is different from *Belcoure* precisely because Davis did not act with similar diligence as the plaintiff in that other case. Each candidate here submitted their AOI in late 2021 or early 2022. The last incumbent AOI (Fresard’s AOI) was submitted on March 17, 2022. And Crespo (a nonincumbent) submitted her AOI on April 19, 2022. But Davis waited to seek relief in this Court until mid-August 2022—about four months after the last AOI was submitted. Davis did not contact defendant in advance, like *Belcoure*’s attorney did. Davis points out that he filed an earlier action in the Third Circuit Court in late July 2022, but this was still months after the candidates filed their AOIs. Davis offers no explanation for his delay, leading this Court to the conclusion that Davis simply sat on his hands for months.

The Court further concludes that allowing the matter to proceed despite Davis’s dilatory conduct would result in undue prejudice to defendant and staff, who would have to expend significant additional time and resources overseeing the revision of new ballots in one of Michigan’s most populous counties. More specifically, the Secretary of State must inform the counties of which candidates will appear on the ballot by September 9, 2022, and must print absentee ballots by September 24, 2022. A ruling in Davis’s favor would require the Secretary of State’s office to alter its election planning at the eleventh hour or, frankly, given the realities of how long any reasonable appellate review would take, at the thirteenth hour. The Court similarly recognizes the prejudice to the candidates, who have expended significant time, energy, and resources on their campaigns. Lastly, the Court observes that the failure to state affirmatively that a judicial candidate is running without a partisan designation has little practical import to electors,

as a judicial candidate cannot—by operation of law—run as a partisan. All of these considerations weigh against any equitable relief for plaintiff.

Although this Court cannot, and will not, ignore the Legislature’s clear directive in MCL 168.558(2), as evidenced by its earlier decision in *Belcoure*, the relief requested by Davis is an extraordinary one, and to be entitled to such relief, Davis needed to act with much more diligence than he did here. The Court will exercise its equitable authority and, under the doctrine of laches, it will decline to order a writ of mandamus or other similar relief to Davis.

Accordingly, the Court concludes that Davis’s challenge to Fresard’s, Gibson’s, and Ramsey’s AOIs is barred by the equitable doctrine of laches. Davis’s challenges to Crespo’s and Slavens’s AOIs fail on their merits.

IV. CONCLUSION

Accordingly, the Court orders as follows:

IT IS ORDERED that Fresard, Ramsey, and Gibson’s motion to consolidate is GRANTED. Docket No. 22-000143-MZ is CONSOLIDATED with Docket Nos. 22-000141-MZ and 22-000125-MM. Fresard, Ramsey, and Gibson’s motion for immediate consideration of their motion to consolidate is also GRANTED.

IT IS FURTHER ORDERED that Slavens’s motion to participate as an amicus curiae in Docket No. 22-000125-MM is GRANTED, and his proposed amicus curiae brief is accepted as-filed.

IT IS FURTHER ORDERED that Fresard, Ramsey, and Gibson's motion to participate as amici curiae in Docket No. 22-000125-MM is GRANTED, and their proposed brief is accepted as-filed.

IT IS FURTHER ORDERED that Davis's requests for mandamus and declaratory relief in Docket No. 22-000125-MM are DENIED.

IT IS FURTHER ORDERED that defendant's motion for summary disposition in Docket No. 22-000125-MM is GRANTED.

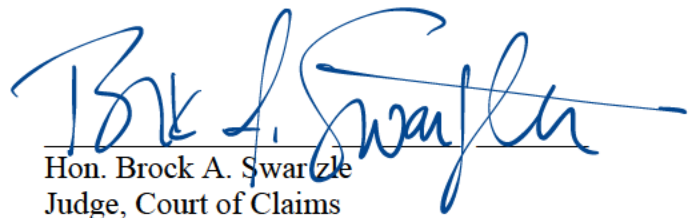
IT IS FURTHER ORDERED that Slavens's request for declaratory and injunctive relief in Docket No. 22-000141-MZ is GRANTED.

IT IS FURTHER ORDERED that Fresard's, Ramsey's, and Gibson's request for declaratory and injunctive relief in Docket No. 22-000143-MZ is GRANTED IN PART and DENIED IN PART. The relief is granted to the extent consistent with this opinion and order, i.e., that Davis has not met the high bar for mandamus or other relief against defendant Secretary of State, specifically in light of the application of laches; their requested relief is otherwise denied.

IT IS FURTHER ORDERED that the motion entitled "8/31/22 Non-party Third Judicial Circuit Court of Michigan's Motion to Intervene" is DENIED.

IT IS SO ORDERED. This is the final order and closes each of the three consolidated cases.

Date: September 2, 2022


Hon. Brock A. Swartzle
Judge, Court of Claims



COLLINS EINHORN

Donald D. Campbell

Collins Einhorn Farrell PC

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

December 2, 2022

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

Re: Davis v Dale
 Campaign Finance Complaint No. 2022-10-138-257

Dear Mr. Fracassi,

Enclosed please find Julie Dale's response to the complaint.

Very truly yours,

COLLINS EINHORN FARRELL PC

Donald D. Campbell

Donald D. Campbell

DDC/slm
Enclosure



COLLINS EINHORN

Donald D. Campbell

Collins Einhorn Farrell PC

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

December 2, 2022

Via U.S. Mail & email
Regulatory Section
Bureau of Elections
Michigan Department of State
BOERegulatory@michigan.gov

Re: Davis v Dale
Campaign Finance Complaint No. 2022-10-138-257

RESPONSE TO COMPLAINT

Respondent, Julie Dale, through her attorneys, Collins Einhorn Farrell PC, and for her response to the above-captioned complaint states as follows:

The Bureau of Elections already dispensed with all of the allegations under the Government Tort Liability Act (GTLA) as well as the allegations against the Third Judicial Circuit Court, Chief Judge Kenny, Judge Fresard, and Judge Ramsey under the MCFA. The only remaining issue in this matter is whether Davis provided evidence sufficient to establish that Julie Dale violated the Michigan Campaign Finance Act (MCFA) by representing Judge Fresard and Judge Ramsey. Davis has not done so.

Davis failed to provide evidence establishing a violation of the MCFA. The only evidence proffered by Davis includes: (1) the complaint he filed in the Third Judicial Circuit Court in the “Wayne County Election Lawsuit;” (2) two emails alleging that the

December 2, 2022

Page 2

Third Judicial Circuit Court violated the MCFA and GTLA; (3) an email requesting that Dale be disqualified from representing Judge Fresard and Judge Ramsey without a single legal citation for doing so; (4) an appearance filed by Dale in the Wayne County Election Lawsuit on July 28, 2022; (5) Judge Biernat's August 20, 2022 order disqualifying Chief Judge Kenny; and (6) a Response filed by Dale on behalf of Judge Ramsey and Judge Fresard. Davis provided no evidence establishing that Dale violated the MCFA.

Violations of the MCFA, under MCL 169.254(5) and MCL 169.257(4), must be done knowingly. Davis also provided no evidence that any alleged violation was done knowingly. Dale represented Judge Fresard and Judge Ramsey at the direction of her boss, and she continued representing them for a short time in reliance on Chief Judge Kenny's decision that she did not need to withdraw as counsel. Despite Davis's repeated claims that Dale's appearance prejudiced him, when Dale sought to withdraw, he sought to put up roadblocks to that process, stating he might *object* to her withdrawal:

From: Robert Davis <davisrobert854@gmail.com>
Date: 8/30/22 5:33 PM (GMT-05:00)
To: "Dale, Julie" <Julie.Dale@3rdcc.org>
Cc: "Lynch, Richard" <Richard.Lynch@3rdcc.org>, "Sallan, Vincent C." <vsallan@clarkhill.com>, Rebecca Camargo <rcamargo@waynecounty.com>, Nkrumah Johnson-Wynn <Njohnson3@waynecounty.com>, geraldevelyn@yahoo.com, mateoja@aol.com, "James J. Hunter" <James.Hunter@ceflawyers.com>, "Trebilcock, Christopher M." <ctrebilcock@clarkhill.com>, 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

As shown in the above email, Davis's only goals are obfuscation and gamesmanship, which shouldn't be credited by this department.

Further, the MCFA bars certain contributions and expenditures on behalf of campaigns. But Davis did not proffer any evidence that Dale made contributions or expenditures on behalf of any 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). 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)

Davis provided no evidence that Dale 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). Dale's purpose in representing Judge Fresard and Judge Ramsey was to perform her job duties as directed. Davis also provided no evidence that Dale 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). As Associate General Counsel, Dale is not authorized to make expenditures. Davis’s proffered evidence does not prove that Dale knowingly violated the MCFA.

Nevertheless, Dale has withdrawn as counsel for Judge Ramsey and Judge Fresard. Dale submitted a proposed order authorizing the substitution of Juan A. Mateo and Gerald K. Evelyn in place of Dale as counsel for Judge Fresard and Judge Ramsey on August 29, 2022. Judge Lillard entered that order for substitution on September 15, 2022. (Attachment A, Judge Lillard Substitution Order). There is no risk of further violation of the MCFA as there was no violation to begin with. Even assuming in *arguendo* 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.

Additionally the Secretary of State “shall endeavor to correct the violation or prevent a 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). While there is no MCFA violation here, even if there was, the Bureau of Elections is obligated to resolve this matter through informal methods.



The Bureau of Elections should dismiss Davis's complaint because he failed to provide any evidence showing that Dale violated the MCFA.

Respectfully submitted,

COLLINS EINHORN FARRELL PC

Donald D. Campbell

DONALD D. CAMPBELL (P43088)

JAMES J. HUNTER (P74829)

Attorneys for Respondent

4000 Town Center, 9th Floor

Southfield, MI 48075

(248) 355-4141/ Fax - (248) 351-5451

donald.campbell@ceflawyers.com

james.hunter@ceflawyers.com

Attachment A

Judge Lillard Substitution Order

Kimberly Davis
9/15/2022 1:45 PM
WAYNE COUNTY CLERK
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 CLAIMS	REGISTER OF ACTIONS	CASE ID 22-000143-MZ C/COC/MI	Public 2/1/2023 3:53:41 PM Page: 1 of 2
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CASE

Judicial Officer	Date Filed	Adjudication	Status
SWARTZLE, BROCK	8/31/22	ORDER ENTERED 9/2/22	CLOSED 9/2/22

PARTICIPANTS

PLAINTIFF 1	FRESARD, PATRICIA SUSAN	FILED: 8/31/22
	ATTY: JUAN A. MATEO # 33156 PRIMARY RETAINED	
PLAINTIFF 2	GIBSON, SHEILA ANN	FILED: 8/31/22
	ATTY: JUAN A. MATEO # 33156 PRIMARY RETAINED	
PLAINTIFF 3	RAMSEY, KELLY ANN	FILED: 8/31/22
	ATTY: JUAN A. MATEO # 33156 PRIMARY RETAINED	
DEFENDANT 1	BENSON, JOCELYN	FILED: 8/31/22

RECEIVABLES/PAYMENTS

	Assessed	Paid/Adjusted	Balance
PTF 1 PATRICIA SUSAN FRESARD	\$175.00	\$175.00	\$0.00

RELATED CASES

Case ID	Entitlement	Primary/Secondary
22-000141-MZ	MARK T SLAVENS V JOCELYN BENSON	Secondary

CHRONOLOGICAL LIST OF ACTIVITIES

Activity Date	Activity	User	Entry Date
8/31/22	SUMMONS AND COMPLAINT		
	PTF 1	ma	9/1/22
	PTF 2	ma	9/1/22
	PTF 3		
	DEF 1		
8/31/22	BRIEF FILED IN SUPPORT OF PLAINTIFFS' COMPLAINT FOR DECLARATORY RELIEF		
	PTF 1	ma	9/1/22
	PTF 2		
	PTF 3		
8/31/22	MOTION TO CONSOLIDATE		
	PTF 1	ma	9/1/22
	PTF 2		
	PTF 3		
8/31/22	MOTION FOR IMMEDIATE CONSIDERATION		
	PTF 1	ma	9/1/22
	PTF 2		
	PTF 3		
8/31/22	JUDICIAL OFFICER ASSIGNED TO SHAPIRO, DOUGLAS B. P39827	ma	9/1/22
8/31/22	JUDICIAL OFFICER REASSIGNED FROM SHAPIRO, DOUGLAS B. P39827	ma	9/1/22

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 22-000143-MZ C/COC/MI	Public 2/1/2023 3:53:41 PM Page: 2 of 2
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Activity Date	Activity	User	Entry Date
8/31/22	RECEIVABLE MOTION FEE \$20.00	ma	9/1/22
8/31/22	RECEIVABLE ELECTRONIC FILING SYSTEM FEE \$25.00	ma	9/1/22
8/31/22	RECEIVABLE FILING FEE \$150.00	ma	9/1/22
9/1/22	RECEIVABLE ADJUSTMENT MOTION FEE (\$20.00) motion filed with complaint - fee assessed in error CLERICAL DECREASE AMOUNT	ma	9/1/22
9/1/22	PAYMENT \$175.00 RECEIPT NUMBER: COC-LAN.0006537 METHOD: ELECTRONIC FUND TRANSFER \$175.00 Bundle - TEMP-9KD2VBGV-27033182	ma	9/1/22
9/1/22	ORDER OF REASSIGNMENT PURSUANT TO MCR 8.111(D) GLEICHER, ELIZABETH 30369	ma	9/1/22
9/1/22	JUDICIAL OFFICER ASSIGNED TO SWARTZLE, BROCK A 58993	ma	9/1/22
9/1/22	NOTICE OF FILING SUPPLEMENTAL EXHIBIT 4A TO COMPLAINT PTF 1 PTF 2 PTF 3	ma	9/1/22
9/2/22	OPINION AND ORDER DEF 1	ma	9/2/22
9/2/22	CLOSE CASE STATUS	ma	9/2/22

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 22-000125-MM C/COC/MI	Public 9/2/2022 4:05:17 PM Page: 1 of 4
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CASE

Judicial Officer	Date Filed	Adjudication	Status
SWARTZLE, BROCK	8/16/22	SUMMARY DISPOSITION 9/2/22	CLOSED 9/2/22

PARTICIPANTS

PLAINTIFF 1	DAVIS, ROBERT	FILED: 8/16/22
	ATTY: - PRO PER # 99999 PRIMARY RETAINED	
DEFENDANT 1	BENSON, JOCELYN	FILED: 8/16/22
	ATTY: HEATHER S. MEINGAST # 55439 PRIMARY RETAINED	
MISCELLANEOUS 1	CRESPO, LAKENA T	FILED: 8/22/22
	ATTY: CHRISTOPHER M. TREBILCOCK # 62101 PRIMARY RETAINED	
MISCELLANEOUS 2	SLAVENS, MARK THOMAS	FILED: 8/31/22
	ATTY: STEVEN C. LIEDEL # 58852 PRIMARY RETAINED	
MISCELLANEOUS 3	GIBSON, SHEILA A	FILED: 8/31/22
	ATTY: JUAN A. MATEO # 33156 PRIMARY RETAINED	
MISCELLANEOUS 4	FRESARD, PATRICIA S	FILED: 8/31/22
	ATTY: JUAN A. MATEO # 33156 PRIMARY RETAINED	
MISCELLANEOUS 5	RAMSEY, KELLY ANN	FILED: 8/31/22
	ATTY: JUAN A. MATEO # 33156 PRIMARY RETAINED	
INTERVENING PARTY 1	THIRD JUDICIAL CIRCUIT COURT OF MICHIGAN	FILED: 8/31/22
	ATTY: DONALD D. CAMPBELL # 43088 PRIMARY RETAINED	

RECEIVABLES/PAYMENTS

	Assessed	Paid/Adjusted	Balance
PTF 1 ROBERT DAVIS	\$195.00	\$195.00	\$0.00
	Assessed	Paid/Adjusted	Balance
DEF 1 JOCELYN BENSON	\$20.00	\$20.00	\$0.00
	Assessed	Paid/Adjusted	Balance
MISC 1 LAKENA T CRESPO	\$20.00	\$20.00	\$0.00
	Assessed	Paid/Adjusted	Balance
IVP 1 THIRD JUDICIAL CIRCUIT COURT OF MICHIGAN	\$20.00	\$20.00	\$0.00

RELATED CASES

Case ID	Entitlement	Primary/Secondary
22-000141-MZ	MARK T SLAVENS V JOCELYN BENSON	Secondary

CHRONOLOGICAL LIST OF ACTIVITIES

Activity Date	Activity	User	Entry Date
8/16/22	SUMMONS AND COMPLAINT	ma	8/16/22
		ma	8/16/22

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 22-000125-MM C/COC/MI	Public 9/2/2022 4:05:17 PM Page: 2 of 4
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Activity Date	Activity	User	Entry Date
	PTF 1 DEF 1		
8/16/22	MOTION - EMERGENCY MOTION FOR DECLARATORY JUDGMENT, WRIT OF MANDAMUS AND ORDER TO SHOW CAUSE PTF 1	ma	8/16/22
8/16/22	JUDICIAL OFFICER ASSIGNED TO CAMERON, THOMAS C. P54636	ma	8/16/22
8/16/22	JUDICIAL OFFICER REASSIGNED FROM CAMERON, THOMAS C. P54636	ma	8/16/22
8/16/22	RECEIVABLE ELECTRONIC FILING SYSTEM FEE \$25.00	ma	8/16/22
8/16/22	RECEIVABLE FILING FEE \$150.00	ma	8/16/22
8/16/22	PAYMENT \$175.00 RECEIPT NUMBER: COC-LAN.0006487 METHOD: ELECTRONIC FUND TRANSFER \$175.00 Bundle - TEMP-N23PG5JH-26620009	ma	8/16/22
8/16/22	ORDER OF DISQUALIFICATION AND REASSIGNMENT GLEICHER, ELIZABETH 30369	ma ma	8/16/22 8/16/22
8/16/22	JUDICIAL OFFICER ASSIGNED TO SHAPIRO, DOUGLAS B. P39827	ma	8/23/22
8/18/22	RETURN OF SERVICE - PERSONAL DEF 1	ma	8/18/22
8/19/22	EX PARTE MOTION TO REASSIGN CASE TO JUDGE BROCK SWARTZLE PURSUANT TO MCR 8.111(D)(1) PTF 1	ma ma	8/22/22 8/22/22
8/19/22	RECEIVABLE MOTION FEE \$20.00	ma	8/22/22
8/22/22	PAYMENT \$20.00 RECEIPT NUMBER: COC-LAN.0006503 METHOD: ELECTRONIC FUND TRANSFER \$20.00 Bundle - 22-000125-MM-26758501	ma	8/22/22
8/22/22	MOTION FOR LEAVE TO FILE AMICUS BRIEF \$20.00 MISC 1	ma ma	8/23/22 8/23/22
8/22/22	RECEIVABLE MOTION FEE \$20.00	ma	8/23/22
8/23/22	JUDICIAL OFFICER REASSIGNED FROM SHAPIRO, DOUGLAS B. P39827	ma	8/23/22
8/23/22	PAYMENT \$20.00 RECEIPT NUMBER: COC-LAN.0006507 METHOD: ELECTRONIC FUND TRANSFER \$20.00 Bundle - 22-000125-MM-26784148	ma	8/23/22
8/23/22	ORDER GRANTING PLAINTIFF'S EMERGENCY EX PARTE MOTION TO REASSIGN CASE TO JUDGE BROCK A SWARTZLE PURSUANT TO MCR 8.111(D)(1) SHAPIRO, DOUGLAS P39827	ma	8/23/22
8/23/22	JUDICIAL OFFICER ASSIGNED TO SWARTZLE, BROCK A 58993	ma	8/23/22
8/24/22	ORDER TO SHOW CAUSE PTF 1 DEF 1 MISC 1	amd	8/24/22
8/24/22	APPEARANCE DEF 1	amd	8/24/22

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 22-000125-MM C/COC/MI	Public 9/2/2022 4:05:17 PM Page: 3 of 4
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Activity Date	Activity		User	Entry Date
8/25/22	AFFIDAVIT OF ROBERT DAVIS CONCERNING SERVICE VIA EMAIL OF COURTESY COPIES OF PLEADINGS, MOTIONS, AND COURT ORDERS UPON NONPARTY JUDICIAL CANDIDATES PTF 1		ma	8/26/22
8/31/22	BRIEF FILED OF AMICUS CURIAE JUDGE MARK THOMAS SLAVENS WITH PROOF OF SERVICE MISC 2		ma	8/31/22
8/31/22	APPEARANCE - GERALD EVELYN WITH PROOF OF SERVICE MISC 3 MISC 4 MISC 5		ma	8/31/22
8/31/22	APPEARANCE - JUAN MATEO WITH PROOF OF SERVICE MISC 3 MISC 4 MISC 5		ma	8/31/22
8/31/22	MOTION TO INTERVENE IVP 1	\$20.00	ma ma	8/31/22 8/31/22
8/31/22	RECEIVABLE MOTION FEE	\$20.00	ma	8/31/22
8/31/22	PAYMENT RECEIPT NUMBER: COC-LAN.0006531 METHOD: ELECTRONIC FUND TRANSFER \$20.00 Bundle - 22-000125-MM-27013160	\$20.00	ma	8/31/22
8/31/22	EXHIBITS - UNABRIDGED EXHIBITS TO NON-PARTY THIRD JUDICIAL CIRCUIT COURT OF MICHIGAN'S MOTION TO INTERVENE WITH PROOF OF SERVICE IVP 1		ma	8/31/22
8/31/22	MOTION FOR SUMMARY DISPOSITION WITH PROOF OF SERVICE DEF 1	\$20.00	ma ma	8/31/22 8/31/22
8/31/22	RECEIVABLE MOTION FEE	\$20.00	ma	8/31/22
8/31/22	PAYMENT RECEIPT NUMBER: COC-LAN.0006534 METHOD: ELECTRONIC FUND TRANSFER \$20.00 Bundle - 22-000125-MM-27015976	\$20.00	ma	8/31/22
8/31/22	RESPONSE TO ORDER TO SHOW CAUSE AND BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION WITH PROOF OF SERVICE DEF 1		ma	8/31/22
8/31/22	BRIEF FILED OF AMICI CURIAE SHEILA A. GIBSON, PATRICIA S. FRESARD AND KELLY ANN RAMSEY MISC 3 MISC 4 MISC 5		ma	8/31/22
9/1/22	RESPONSE TO NON-PARTY THIRD CIRCUIT COURT OF MICHIGAN'S MOTION TO INTERVENE WITH PROOF OF SERVICE PTF 1		ma	9/1/22
9/1/22	REPLY/RESPONSE TO DEFENDANT'S BRIEF IN OPPOSITION AND AMICUS CURIAES WITH PROOF OF SERVICE PTF 1		ma	9/1/22

STATE OF MICHIGAN COURT OF CLAIMS		REGISTER OF ACTIONS	CASE ID 22-000125-MM C/COC/MI	Public 9/2/2022 4:05:17 PM Page: 4 of 4	
Activity Date	Activity			User	Entry Date
9/1/22	APPEARANCE OF COUNSEL (22-000141-MZ) DEF 1			ma	9/1/22
9/2/22	OPINION AND ORDER DEF 1			ma	9/2/22
9/2/22	CLOSE CASE STATUS			ma	9/2/22



COLLINS EINHORN

Collins Einhorn Farrell PC

Donald D. Campbell

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

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.¹ 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.

¹ 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

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From: Robert Davis <davisrobert854@gmail.com>
Date: 8/30/22 5:33 PM (GMT-05:00)
To: "Dale, Julie" <Julie.Dale@3rdcc.org>
Cc: "Lynch, Richard" <Richard.Lynch@3rdcc.org>, "Sallan, Vincent C." <vsallan@clarkhill.com>, Rebecca Camargo <rcamargo@waynecounty.com>, Nkrumah Johnson-Wynn <Njohnson3@waynecounty.com>, geraldevelyn@yahoo.com, mateoja@aol.com, "James J. Hunter" <James.Hunter@ceflawyers.com>, "Trebilcock, Christopher M." <ctrebilcock@clarkhill.com>, 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,

-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. Timothy M. Kenny
Chief Judge**

ROBERT DAVIS, Pro se Plaintiff
180 Eason
Highland Park, MI 48203
(313) 523-7118
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

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
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

**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
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

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
grille@michigan.gov

COLLINS EINHORN FARRELL PC
DONALD D. CAMPBELL (P43088)
JAMES J. HUNTER (P74829)
Attorneys for The Third Circuit Court
4000 Town Center, 9th Floor
Southfield, MI 48075
(248) 355-4141
Donald.Campbell@ceflawyers.com
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, 2022.¹ 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.² 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.³

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.⁴ The Third Circuit sought concurrence on August 31, 2022, and Davis has not acquiesced to the relief sought in this motion.

¹ **Attachment A**, Complaint.

² *Id.*

³ *Id.*

⁴ **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, 9th 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.⁵

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

⁵ **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.⁶ 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.’”⁷ 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.⁸

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.⁹ 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

⁶ **Attachment D**, Affidavits of Identity.

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

⁸ *Id.*

⁹ **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 7353475.¹⁰ 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.¹¹ Davis has been contesting affidavits of identity filed for the primary and general election for alleged facial deficiencies since at least April 28, 2022.¹² 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.¹³
- 4/19/22: Crespo files affidavit of identity. Also the last day for non-incumbents to file their affidavit of identity or nominating petition.¹⁴
- 4/28/22: Davis sues the Secretary of State contesting Cox’s affidavit of identity.¹⁵

¹⁰ **Attachment F**, Unpublished Opinions.

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

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

¹³ **Attachment I**, Election Dates Booklet.

¹⁴ *Id.*

¹⁵ **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.¹⁶ 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.¹⁷
- 9/29/22: absent voters ballots must be available for issuance to voters.¹⁸

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 11th 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,¹⁹ 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

¹⁶ **Attachment I**, Election Dates Booklet.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ **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.²⁰ 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

²⁰ **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, 9th 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

Kimberly Davis
9/15/2022 1:45 PM
WAYNE COUNTY CLERK
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
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

March 20, 2023

Robert Davis
180 Eason
Highland Park, MI 48203

Re: *Davis v. Fresard et al.*
Campaign Finance Complaint No. 2023-021

Dear Robert Davis:

The Department of State (Department) acknowledges receipt of your February 15, 2023, complaint alleging violations of the Michigan Campaign Finance Act (MCFA or Act).

The instant complaint is one of a series of complaints submitted to the Department by you against Judge Fresard, Judge Ramsey, Judge Gibson, or their committees, which include the following:

Davis v. Fresard et al. (Complaint no. 2022-10-138-254) received 10/13/2022
Davis v. Fresard et al. (Complaint no. 2022-11-197-257) received 11/2/2022
Davis v. Back the Bench et al. (Complaint no. 2022-11-221-24) received 11/17/2022
Davis v. Fresard and Gibson (Complaint no. 23-005) received 1/30/2023
Davis v. Ramsey and Cunningham (Complaint no. 23-009) received 2/1/2023
Davis v. Fresard et al. (Complaint no. 2023-021) received 2/16/2023

Specifically, this complaint is a continuation of complaint nos. 2022-10-138 and 2022-11-221, which all allege the same violation and all ask the Department to circumvent its standard processes and issue a parallel determination on matters actively under investigation and review.

Section 53 of the Administrative Rules governing campaign finance provides that “[i]f, upon reading the complaint, the secretary of state determines a complaint is frivolous . . . the secretary of state may summarily dismiss the complaint without prejudice.” R 169.53.

Although not defined in the MCFA, the Revised Judicature Act defines frivolous for the purposes of determining whether a civil action or defense of a civil action is frivolous as meeting one of the following: (1) the party’s primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party, (2) the party had no reasonable

basis to believe that the facts underlying that party's legal position were in fact true, (3) the party's legal position was devoid of arguable legal merit. MCL 600.2591.

Given that the instant complaint is the sixth against the same parties and the third alleging the same violation, the Department has reason to believe that the instant complaint is frivolous. As previously stated, the instant complaint is duplicative of complaints already pending before the Department against the same parties and which rely on the same set of underlying facts and evidence. In fact, the second count of the instant complaint against Judge Gibson is almost identical to the rebuttal you filed in 2022-11-221, with only minor changes to formatting and content. It is important to understand 2022-11-221 is currently being reviewed, and the next step for the Department is to issue a determination. The Department has not made a final decision whether sufficient evidence has been submitted to support a finding of a potential violation in that complaint. As such, the Department dismisses the instant complaint as provided in section 53 of the Administrative Rules. R 169.53.

Further, a review is now being conducted to determine if a false certificate was filed as part of this instant complaint, as prohibited in section 15(8) of the Act. MCL 169.215(8). The review of this allegation is governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.*

In Michigan, the Department is charged with investigating alleged violations of the Act with a valid complaint, which must include a signed and dated certification that "to the best of the complainant's knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence." MCL 169.215(6)(c). Anyone found to have filed a false certificate as part of a complaint is responsible for a civil violation of the Act and may be subject to sanctions including repayment of costs and fees to both the Department and the subject of the complaint. MCL 169.215(8), MCL 169.215(16).

The purpose of this letter is to inform you that the Department is dismissing the instant complaint as noted above and requesting a response from you to determine whether a false certificate was filed under section 15 of the Act. **If you wish to file a written response to this allegation detailing why you believe you have not violated MCL 169.215(6)(c), 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. If you fail to submit a response, the Department will render a decision based on the evidence provided in your initial complaint in comparison with Campaign Finance Complaint nos. 2022-10-138 and 2022-11-221.

After reviewing the statements and materials provided, the Department will determine whether the complaint was signed "with a false certificate under subsection (6)(c)." MCL 169.215(8). Note that the Department's enforcement powers include the possibility of issuing sanctions as provided for under the Act, issuing a fine, or conducting an administrative hearing. MCL 169.215(11), MCL 169.215(15), MCL 169.215(16)

Robert Davis

Page 3

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

Sincerely,

Adam Fracassi, Regulatory Manager
Bureau of Elections

MDOS-BOERegulatory

From: MDOS-BOERegulatory
Sent: Friday, April 7, 2023 5:30 PM
To: Robert Davis
Subject: RE: Davis v. Fresard et al. campaign finance complaint

Mr. Davis,

Your request for an extension is granted. Your response is due an additional 15 business days after your initial deadline, or Monday, May 1, 2023.

Bureau of Elections, Regulatory Section
Michigan Department of State
Secretary of State Jocelyn Benson
P.O. Box 20126
Lansing, Michigan 48901

From: Robert Davis <davisrobert854@gmail.com>
Sent: Friday, April 7, 2023 1:51 PM
To: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>; Fracassi, Adam (MDOS) <FracassiA@michigan.gov>
Subject: Re: Davis v. Fresard et al. campaign finance complaint

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

Mr. Fracassi,

I am writing to respectfully request a 5 business day extension to file a thorough rebuttal to your March 20, 2023 correspondence and determination finding my meritorious campaign finance complaint frivolous. Please advise ASAP if my request for an extension is granted.

Robert Davis

On Mon, Mar 20, 2023 at 9:46 AM MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov> wrote:

Dear Mr. Davis,

Please see the attached.

Bureau of Elections, Regulatory Section
Michigan Department of State
Secretary of State Jocelyn Benson
P.O. Box 20126
Lansing, Michigan 48901

MDOS-BOERegulatory

From: Robert Davis <davisrobert854@gmail.com>
Sent: Monday, May 1, 2023 4:48 PM
To: Fracassi, Adam (MDOS)
Cc: MDOS-BOERegulatory; Meingast, Heather (AG); Brater, Jonathan (MDOS)
Subject: Re: Davis v. Fresard et al. campaign finance complaint

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

Mr. Fracassi,

This simple email shall serve as my official response to your frivolous finding that my meritorious campaign finance complaint filed on February 15, 2023 was somehow frivolous. I will not be subjected to such an unconstitutional and unethical process that violates my due process rights. You nor any person in that office are fair and impartial in light of the ongoing litigation I have with the SOS office regarding the candidates subject to my campaign finance complaints. A review of the February 15, 2023 and the subsequent decisions you have rendered clearly indicate that the subject matter addressed in the February 15, 2023 complaint were not addressed despite their obvious violations. Accordingly, if you attempt to proceed with this unconstitutional proceeding and subjective review, I am respectfully requesting a hearing be held in accordance with the Michigan Campaign Finance Act and the Administrative Procedures Act (APA). Please be advised that your unethical and unlawful conduct with respect to addressing the merits of the meritorious complaints that were filed will be separately addressed in civil litigation and I will be filing a formal complaint with the Attorney Grievance Commission advising them of your unethical and unlawful conduct.

Again, if you choose to proceed with such unwarranted sanctions, I am respectfully requesting that a formal hearing be scheduled and held in accordance with the Michigan Campaign Finance Act and the APA, before a fair and impartial decision maker. There is no promulgated rule and or provision in the Michigan Campaign Finance Act that governs this proceeding you are attempting to invoke, and more importantly, the statute does not define what constitutes a "frivolous" filing. I will not be subjected to your biased review and I will allow the Attorney Grievance Commission to determine whether your conduct warrants discipline.

Respectfully submitted,
Robert Davis

On Wed, Apr 19, 2023 at 3:02 PM Robert Davis <davisrobert854@gmail.com> wrote:

Mr. Fracassi,

I have reviewed the purported rules cited in your March 20, 2023 correspondence and NONE of the purported rules define what constitutes a "frivolous" complaint nor do any of the purported rules you provided provide the administrative procedure that the Secretary of State is authorized to undertake in order to find a complaint "frivolous" and whether to assess a fine or costs.

Additionally, NONE of the rules you provided provide a standard for the SOS to apply in order to determine whether a campaign finance complaint contains a false certificate under subsection (6)(c) and under what standard the SOS is to apply in order to assess a person civil fine and/or costs.

Accordingly, please provide me with the specific rules or guidelines that sets forth with specificity what constitutes a "frivolous" campaign finance complaint and the administrative process that your office must follow in order to

determine whether a person filed a campaign finance complaint containing a false certificate under subsection (6)(c). Please respond to this request by the close of business tomorrow, April 20th.

Robert Davis

On Fri, Apr 14, 2023 at 10:38 AM Fracassi, Adam (MDOS) <FracassiA@michigan.gov> wrote:

Mr. Davis:

The administrative rules promulgated by the Department in 1979 and amended in 1982 are available on the Department of Licensing and Regulatory Affairs' website here:

https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=1300_2013-102ST_AdminCode.pdf&ReturnHTML=True.

Regarding the history of the rule promulgation, I would refer you to LARA directly. The record retention schedule for promulgated rules is 2 years from the effective date of promulgation.

Adam

From: Robert Davis <davisrobert854@gmail.com>

Sent: Thursday, April 13, 2023 2:45 PM

To: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>; Fracassi, Adam (MDOS)

<FracassiA@michigan.gov>

Cc: Meingast, Heather (AG) <MeingastH@michigan.gov>; Brater, Jonathan (MDOS) <BraterJ@michigan.gov>

Subject: Re: Davis v. Fresard et al. campaign finance complaint

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

Mr. Fracassi,

In your March 20, 2023 correspondence you cite various "Administrative Rules" that were purportedly promulgated under the Administrative Procedures Act ("APA"). Specifically, you cite R 169.51, et.seq., and R 169.53. In order to properly prepare my response to your biased and frivolous March 20th correspondence, I've attempted to locate said "rules", but have not been able to locate them. Moreover, in light of your office's past violations of the APA, Michigan Election Law and other ethical violations, it is unclear whether the "rules" you cite were properly promulgated in accordance with the APA.

Accordingly, by the close of business tomorrow, April 14, 2023, can you please provide me with copies of the "rules" you cite in your March 20th correspondence or provide me with the website where I can locate them? Additionally, can you please provide me with proof that said "rules" you cite were properly promulgated in accordance with the APA? I will await your response.

Respectfully submitted,

Robert Davis

On Fri, Apr 7, 2023 at 5:30 PM MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov> wrote:

Mr. Davis,

Your request for an extension is granted. Your response is due an additional 15 business days after your initial deadline, or Monday, May 1, 2023.

Bureau of Elections, Regulatory Section

Michigan Department of State

Secretary of State Jocelyn Benson

P.O. Box 20126

Lansing, Michigan 48901

From: Robert Davis <davisrobert854@gmail.com>

Sent: Friday, April 7, 2023 1:51 PM

To: MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>; Fracassi, Adam (MDOS) <FracassiA@michigan.gov>

Subject: Re: Davis v. Fresard et al. campaign finance complaint

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

Mr. Fracassi,

I am writing to respectfully request a 5 business day extension to file a thorough rebuttal to your March 20, 2023 correspondence and determination finding my meritorious campaign finance complaint frivolous. Please advise ASAP if my request for an extension is granted.

Robert Davis

On Mon, Mar 20, 2023 at 9:46 AM MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov> wrote:

Dear Mr. Davis,

Please see the attached.

Bureau of Elections, *Regulatory Section*

Michigan Department of State

Secretary of State Jocelyn Benson

P.O. Box 20126

Lansing, Michigan 48901



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

July 6, 2023

Robert Davis
180 Eason
Highland Park, MI 48203

Re: *Davis v. Fresard et al.*
Campaign Finance Complaint No. 23-021

Dear Robert Davis:

The Department of State (Department) has finished investigating the campaign finance complaint filed February 15, 2023, alleging violations of the Michigan Campaign Finance Act (MCFA or Act).

On March 6, 2023, the Department dismissed the instant complaint, which alleged violations of the Act by Judge Fresard, Judge Ramsey, Judge Gibson or their committees, after determining that the complaint was frivolous under section 53 of the Administrative Rules. Specifically, the Department determined that the complaint was a continuation of complaint nos. 2022-10-138 and 2022-11-221, all of which alleged the same violation. Moreover, the complaint was the sixth complaint filed by you against the same parties and concerning the same general fact pattern, in a series of complaints beginning in October 2022.

You were notified as part of the dismissal that since this was your sixth complaint against the same parties and your third alleging the same violation, the Department had reason to believe that the instant complaint was frivolous.

Additionally, you were notified that the Department would be investigating to determine if a false certificate was filed as part of the instant complaint, as prohibited in section 15(8) of the Act. MCL 169.215(8). The review of this allegation is governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.*

As part of the complaint process, a complaint must include the complainant's certification that "to the best of the complainant's knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence." MCL 169.215(6)(c). Anyone found to have filed a false certificate as part of a complaint is responsible for a civil violation of the Act and may be subject to sanctions including

repayment of costs and fees to both the Department and the subject of the complaint. MCL 169.215(8), MCL 169.215(16).

In the Department's March 20 dismissal, you were given the opportunity to provide a response within 15 business days (by April 10, 2023) detailing why your complaint did not include a false certificate and why your conduct should not be subject to sanctions. On April 7, 2023, you requested an extension to file your response, which was granted that same day, extending your response deadline by an additional 15 business days to May 1, 2023.

On April 11, 2023, one day after your initial deadline to respond to the Department's request, rather than responding to that request you instead filed a request for a declaratory ruling with the Department, in which you largely restated the allegations included in your previous complaints.

On May 1, 2023, you responded to the Department's request for a response in its investigation of whether your February 15, 2023, complaint included a false certificate and whether your conduct should be subject to sanctions. In your response, you declared the Department's finding that your complaint was frivolous to be, itself, frivolous, and described the Department's process as "an unconstitutional and unethical process that violates my due process rights." Further, you threatened to file a grievance with the Attorney Grievance Commission regarding what you describe as my "unethical and unlawful conduct with respect to addressing the merits of the meritorious complaints that were filed." Notably, you did not respond to the substance of the Department's request.

In Michigan, the Department is charged with investigating alleged violations of the Act with a valid complaint, which must include a signed and dated certification that "to the best of the complainant's knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence." MCL 169.215(6)(c). Anyone found to have filed a false certificate as part of a complaint is responsible for a civil violation of the Act and may be subject to sanctions including repayment of costs and fees to both the Department and the subject of the complaint. MCL 169.215(8), MCL 169.215(16).

After reviewing the statements and materials provided, the Department will determine whether the complaint was signed "with a false certificate under subsection (6)(c)." MCL 169.215(8). Note that the Department's enforcement powers include the possibility of issuing sanctions as provided for under the Act, issuing a fine, or conducting an administrative hearing. MCL 169.215(11), MCL 169.215(15), MCL 169.215(16).

While the MCFA provides for the possibility of sanctions under subsection 16, neither it nor the Administrative Rules provide a test for the Department to determine whether a violation of the MCFA is sanctionable. Accordingly, the Department must identify a test and apply it to the facts at hand to determine whether sanctions are appropriate.

In its January 2023 order in *Robert Davis v. Wayne County Judges*, which concerns the same fact pattern and parties, the Michigan Court of Appeals considered a number of factors, which the Department will apply as a multi-part test to determine whether an individual has submitted a false certificate and should be sanctioned.

First, was the complaint moot or duplicative when it was brought? At the time was brought, the complaint was not moot, given that the Department had not issued determinations in your previous complaints. However, it was duplicative. As described above, your other complaints with substantially the same allegations were proceeding through the complaint process specified in section 15 of the MCFA.

Second, was the filing intended as a hindrance or to cause delay, without a reasonable basis or belief a valid claim existed which needed an answer? The instant complaint can be seen as nothing other than an action to cause hindrance or delay. The issues raised were already being reviewed by the Department and were nearing the final steps of the statutory complaint process, awaiting determinations to be drafted. A conclusion of hindrance and delay is supported by your actions in response to the Department's dismissal and request for a response. As described above, you asked for an extension to file a response, then instead filed a request for a declaratory ruling regarding the same issues, then your eventual response attacked the Department's process but did not substantiate your complaint or rebut the Department's finding in its dismissal in any way.

Third, does the complaint present a new issue, or is it a reworking of a previous complaint with no substantive additions? The instant complaint does not present a new issue. "Count I" of your instant complaint repeats the allegation in paragraph 42 of complaint no. 2022-10-138, which you filed October 13, 2022. "Count II" of the instant complaint repeats, almost verbatim, part B3 of your rebuttal submitted in complaint no. 2022-11-221, which you filed only two days before filing the instant complaint. Any changes in the instant complaint were minor, consisting of formatting and small changes to words. There were no additional allegations raised or facts presented.

Fourth, was the act of filing the complaint reasonable? The act of filing the instant complaint was not reasonable. The matters raised in the complaint were being actively reviewed for compliance with the MCFA and your history with the complaint process means that you must have known that a determination would be issued shortly. In fact, you have previously questioned the Department's calculations of business days for the various steps in the complaint process, showing your working knowledge of the timeline.

Application of the relevant Court of Appeals' factors¹ to the matter at hand supports a conclusion that you filed the instant complaint with a false certificate, and therefore the filing is worthy of sanctions. The complaint was duplicative of previous complaints and introduced no new

¹ The Court of Appeals also included a fifth factor considering whether the filing of the complaint was an example of process shopping. Given that all of the MCFA complaints are filed with the same department and handled by the same staff under the same Act, this factor does not seem applicable.

arguments. It was intended to hinder and delay and, indeed, to harass the subjects of the complaint. While the MCFA does not describe the factors to consider when deciding whether sanctions for filing a false certificate are appropriate, it does describe the amount of the sanctions: the expenses incurred by the Secretary of State as a direct result of the filing of the complaint; some or all of the expenses incurred by the subject of the complaint as a direct result of the filing; or both. MCL 169.215(16).

However, this situation is a matter of first impression for the Department. Never in recent history has a complainant abused the system to such an extent that a determination as to sanctions was necessary. While the current fact pattern is an extreme case, less egregious fact patterns may support a conclusion that the complaint was filed with a false certificate and may warrant sanctions.

Accordingly, the Department sets forth the above test as a standard in determining whether sanctions for filing a false certificate are appropriate going forward. Be advised that the factors above will be used to determine whether a filing is submitted with a false certification, and after reaching that conclusion, whether sanctions are appropriate according to the Department's authority under the MCFA. MCL 169.215(16).

You are also advised that this notice will serve to remind you of your obligations under the Act and will be used in future proceedings as evidence that tends to establish a knowing violation. If you have any questions concerning this matter, you may contact the Regulatory Section of the Bureau of Elections at BOERegulatory@Michigan.gov.

Sincerely,

Adam Fracassi, Regulatory Manager
Bureau of Elections