

STATE OF MICHIGAN
COURT OF CLAIMS

PHILIP CAVANAGH,

Plaintiff,

v

JOCELYN BENSON, JONATHAN BRATER,
and MICHIGAN BOARD OF STATE
CANVASSERS,

Defendants.

_____ /

OPINION AND ORDER

Case No. 22-000077-MM

Hon. Thomas C. Cameron

This matter is before the Court on plaintiff's emergency motion for declaratory judgment and injunctive relief. The motion is DENIED. In addition, this matter is DISMISSED with prejudice under the Court's authority granted by MCR 2.116(I)(1).

Plaintiff is a candidate for the office of judge in the Third Circuit. His complaint and emergency motion purport to seek declaratory and injunctive relief against defendants and he asks the Court to enjoin defendants from preventing him from being certified to appear on the upcoming August 2, 2022 primary election ballot. Plaintiff argues that he had a sufficient number of signatures on nominating petitions to be included on the ballot, but that the Bureau of Elections recommended a number of his signatures be invalidated, leaving him short of the necessary threshold to appear on the ballot. The State Board of Canvasser met, reviewed the report, and deadlocked, meaning that plaintiff was excluded from the ballot. Plaintiff argues that the elimination of these signatures was unlawful.

As plaintiff admits, he initially filed a petition for writ of mandamus in the Court of Appeals arising out of the same transaction or occurrence. The Court of Appeals denied the petition on June 1, 2022. *Cavanagh v Bd of State Canvassers*, unpublished order of the Court of Appeals, issued June 1, 2022 (Docket No. 361583). The panel’s order denied the complaint, over which it had original jurisdiction, “*on the merits*” and “for the same essential reasons set forth in *Johnson v Bd of State Canvassers*, __ Mich App __; __ NW2d __ (2022) (Docket No. 351654) (emphasis added). Plaintiff contends that he could not have brought his current claims in the previous mandamus action because the Court of Appeals lacks original jurisdiction over claims for declaratory and injunctive relief against state actors.

Plaintiff’s lack of diligence in pursuing this action in and of itself gives the Court sufficient reason to deny the complaint and emergency motion. 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 (2006) (per curiam). Plaintiff waited until 5:22 p.m. the evening before ballots can be finalized. He also waited until after he had filed his petition for writ of mandamus in a different court and after that petition had been denied on the merits. He even concedes that he could not have brought this challenge in the Court of Appeals with his earlier petition, meaning that he has given no reason to excuse his delay in bringing this matter. Given that he seeks equitable relief, his lack of diligence in pursuing that relief is reason enough to deny the complaint. See *Dep’t of Environmental Quality v Gomez*, 318 Mich App 1, 28-29; 896 NW2d 39 (2016) (describing the doctrine of laches, generally).


Furthermore, the Court of Appeals has already ruled against plaintiff on the underlying issue regarding the legal rights and obligations of defendants with respect to the validity of the

signatures. He has not given this Court any reason why it can or should grant him the same relief—albeit under different labels—that was denied by the Court of Appeals.

Finally, plaintiff's citation to MCL 168.22d(2) is misplaced. The Board of State Canvassers took no action. See *Johnson*, __ Mich App at __, slip op at 8, 8 n 7. Thus, the Board's failure to secure "concurrence of at least 1 member of each major political party appointed to the board," see MCL 168.22d(2), does not invalidate anything that occurred before the Board or otherwise entitle plaintiff to relief.

IT IS HEREBY ORDERED that the motion for emergency relief is DENIED and that this matter is DISMISSED with prejudice under MCR 2.116(I)(1).

June 3, 2022



Thomas C. Cameron
Judge, Court of Claims