

STATE OF MICHIGAN
COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

v

Case No. 24-000069-MM

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

Hon. Christopher P. Yates

Defendant.

/

DECLARATORY JUDGMENT AND WRIT OF MANDAMUS

In a vibrant democracy, candidates for public office should have ready access to the ballot, free of onerous filing requirements and traps for the unwary. But the principles of democracy must nonetheless leave room for the exclusion of patently ineligible candidates. Plaintiff Robert Davis characterizes former 36th District Court Judge Kahlilia Yvette Davis as such a candidate. Because our Supreme Court issued an order on June 23, 2023, imposing a six-year conditional suspension that bars Kahlilia Davis from serving as a judge, see *In re Kahlilia Y Davis*, 511 Mich 1003 (2023), the Court concludes that, under the Michigan Constitution, Const 1963, art 6, § 30, the Secretary of State (SOS) has a clear legal duty not to certify Kahlilia Davis to appear on the election ballot in 2024. Thus, the Court shall issue a writ of mandamus to that effect.

I. FACTUAL BACKGROUND

In January 2022, Kahlilia Davis filed paperwork to run as an incumbent for a judgeship on the 36th District Court in Detroit. That paperwork included an “affidavit of identity” she filed on

January 25, 2022, swearing or affirming that, “[a]t this date, all statements, reports, late filing fees, and fines due from me or any Candidate Committee organized to support my election to office under the Michigan Campaign Finance Act, PA 388 of 1976, have been filed or paid.” As it turned out, however, her candidate committee owed an outstanding \$500 late fee. On February 7, 2022, her candidate committee paid the late fee, and then she withdrew her affidavit of identity and filed a new affidavit of identity. Despite those curative efforts, the SOS refused to certify Kahlilia Davis as a candidate on the 2022 ballots because she had filed a false affidavit of identity on January 25, 2022. As a result, she was barred from running for reelection as a judge of the 36th District Court, but she remained a judge of that court until she finished her term that ended on January 1, 2023.

After Kahlilia Davis completed her six-year term as a judge, our Supreme Court considered a request from the Judicial Tenure Commission to sanction her for misconduct in office as a judge. On June 23, 2023, our Supreme Court issued an order imposing “a six-year conditional suspension without pay on [Kahlilia Davis] effective on the date of this decision[,]” i.e., June 23, 2023. Our Supreme Court explained that “[s]hould [she] be elected or appointed to judicial office during that time, she ‘will nevertheless be debarred from exercising the power and prerogatives of the office until at least the expiration of the suspension’” six years after June 23, 2023. In other words, our Supreme Court made clear that Kahlilia Davis cannot serve as a judge until 2029, even if she wins a judicial election or is appointed to a judgeship by the Governor.

Remarkably, in spite of the Supreme Court’s order, Kahlilia Davis gathered signatures and filed paperwork to run for a judgeship on the 36th District Court in the 2024 primary and general elections. Even more remarkably, the SOS preliminarily approved her as a candidate for judicial office and then defended that decision in this action even though our Supreme Court left no doubt that she cannot serve as a judge until 2029. The actions of the SOS prompted plaintiff to file this

case seeking, *inter alia*, a declaratory judgment and a writ of mandamus directing the SOS to take the steps necessary to ensure that Kahlilia Davis is not certified to run for a judgeship in the 2024 primary and general elections. As a result, the Court must decide, on an expedited basis, whether such relief should be granted.

II. LEGAL ANALYSIS

According to MCR 2.605(A)(1), “[i]n 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.” That court rule affords a remedy that is preferable to an injunction when an executive branch official is named as a defendant. See *Davis v Detroit Fin Review Team*, 296 Mich App 568, 614; 821 NW2d 896 (2012). Beyond that, Michigan courts have the authority to issue a writ of mandamus to direct a public official to perform “a clear legal duty” that is “ministerial in nature such that it involves no discretion or judgment[.]” See *Barrow v Detroit Election Comm*, 301 Mich App 404, 412; 836 NW2d 498 (2013). To be sure, the writ of mandamus is an “extraordinary remedy” that ought not be lightly granted. See *id.* But under Michigan law, the SOS has “the statutory duty to submit the names of the eligible candidates for the primary election,” and “inclusion or exclusion of a name on a ballot is ministerial in nature.” *Id.* Accordingly, if plaintiff can establish that Kahlilia Davis is ineligible to be a candidate for a judgeship in 2024, the SOS simply must perform the ministerial task of not certifying or decertifying her as a candidate. With these principles in mind, the Court must address the arguments for and against certification of Kahlilia Davis as a candidate in 2024.

A. STANDING

As a threshold matter, Kahlilia Davis contends in an amicus curiae brief that plaintiff lacks standing to challenge her right to run for a seat on the 36th District Court because he does not live

in the city of Detroit,¹ which comprises the jurisdiction of the 36th District Court.² Standing is the legal term “used to denote the existence of a party’s interest in the outcome of the litigation; an interest that will assure sincere and vigorous advocacy.” *Mich Alliance for Retired Americans v Secretary of State*, 334 Mich App 238, 249; 964 NW2d 816 (2020). Although a plaintiff who lacks standing cannot pursue relief in court, see *Salem Springs, LLC v Salem Twp*, 312 Mich App 210, 225-226; 880 NW2d 793 (2015), “the bar for standing is lower when a case concerns election law.” *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 587; 957 NW2d 731 (2020). Indeed, our Court of Appeals has explained that “[e]lection cases are special . . . because without the process of elections, citizens lack their ordinary recourse.” *Deleeuw v State Bd of Canvassers*, 263 Mich App 497, 505-506; 688 NW2d 847 (2004). “For this reason,” our Court of Appeals has “found that ordinary citizens have standing to enforce the law in election cases.” *Id.* at 506. Thus, “[i]n the absence of a statute to the contrary, . . . a private person . . . may enforce by mandamus a public right or duty relating to elections without showing a special interest distinct from the interest of the public.” *League of Women Voters*, 506 Mich at 587 (quotation marks and citations omitted). Based on this capacious approach to standing in election cases, plaintiff has standing to seek relief in this case.

¹ Plaintiff Robert Davis lives in the city of Highland Park, which is enveloped by the city of Detroit and is the home of the 30th District Court.

² The procedural framework for a challenge to a candidate for public office is cumbersome and, to some degree, both illogical and unfair to challenged candidates. A challenger can file suit against the SOS to have a candidate decertified, rendering the challenged candidate dependent on the SOS to make arguments for the candidate. If the SOS chooses not to do so, the candidate is effectively unrepresented in the face of a challenge. Therefore, the Court allows challenged candidates to file amicus curiae briefs. Here, the Court accepted an amicus curiae brief filed by Kahlilia Davis that raises a standing argument the SOS did not make. In an ordinary case, the Court will not entertain an argument made only in an amicus curiae brief. But as a matter of completeness and in fairness to the challenged candidate, the Court will entertain the standing argument on the merits.

B. ELIGIBILITY TO APPEAR ON THE BALLOT

Taking up the cudgels for Kahlilia Davis, the SOS insists that ballot eligibility in this case is justified because Kahlilia Davis gathered the requisite number of signatures to run for a seat on the 36th District Court, paid all outstanding financial obligations and had no unfiled reports from the 2022 election cycle, and filed a proper “incumbent judicial affidavit of identity and affidavit of candidacy.” That analysis, however, does not take into account our Supreme Court’s order that bars Kahlilia Davis from serving as a judge until 2029. See *In re Davis*, 511 Mich 1003. At oral argument, the SOS brushed away concerns about the implications of that order by noting that our Supreme Court barred judicial service “[s]hould [Kahlilia Davis] be elected or appointed to judicial office during that time” before her six-year conditional suspension expires in 2029. *Id.* at 1004. In the SOS’s view, that language opened the door to a run for judicial office by Kahlilia Davis in 2024. Nothing could be further from the truth.

The Supreme Court order reflects a concern that a run for judicial office by Kahlilia Davis, although audacious, might somehow take place. So in the unlikely event of such a misadventure, our Supreme Court made absolutely certain that she could not serve as a judge until 2029. That edict, however, is not self-executing. It depends on the cooperation of the coordinate branches of government in Michigan’s tripartite system. By refusing to abide by a directive handed down by our Supreme Court, the SOS has rendered nugatory the power granted by Article 6, Section 30, of the Michigan Constitution to our Supreme Court to “censure, suspend with or without salary, retire or remove a judge” for “misconduct in office[.]” See Const 1963, art 6, § 30. In our constitutional system, this abdication of responsibility is untenable. It may well be that no statute forbids Kahlilia Davis to run for a judgeship in 2024 given her compliance with the statutory filing requirements, but the Michigan Constitution is higher law that cannot simply be ignored.

In light of the constitutional authority conferred on our Supreme Court by Const 1963, art 6, § 30, and our Supreme Court's clearly defined sanction against Kahlilia Davis expressed in its order issued on June 23, 2023, barring her from judicial service for six years, the Court concludes that plaintiff is entitled to a declaratory judgment that Kahlilia Davis is ineligible to be certified as a candidate for a judgeship on the 36th District Court in 2024. Moreover, because our Constitution imposes on the SOS a "clear legal duty" to perform the "ministerial act" of excluding the name of Kahlilia Davis from the ballot in the 2024 election cycle, see *Barrow*, 301 Mich App at 412, a writ of mandamus hereby issues directing the SOS to not certify (or decertify if certification has taken place) Kahlilia Davis as a candidate for a judgeship on the 36th District Court in 2024.³

IT IS SO ORDERED.

Date: June 3, 2024

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Christopher P. Yates
Judge, Court of Claims



³ Because our Supreme Court's order applies only to judicial service by Kahlilia Davis, it does not bar her from the ballot if she seeks a non-judicial public office.