

STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN DEMOCRATIC STATE CENTRAL
COMMITTEE, KAREN ANWAY, and MATT
SCHLINKER,

OPINION AND ORDER

Plaintiffs,

v

Case No. 24-000112-MB

SECRETARY OF STATE JOCELYN BENSON,
GENESEE COUNTY CLERK DOMONIQUE
CLEMONS, and OAKLAND COUNTY CLERK
LISA BROWN, all in their official capacities,

Hon. James Robert Redford

Defendants.

_____/

**OPINION AND ORDER GRANTING IMMEDIATE AND EXPEDITED CONSIDERATION
AND DENYING MANDAMUS**

On July 29, 2024, plaintiffs filed a verified complaint for mandamus along with a motion for immediate and expedited consideration. On order of the Court, plaintiffs' motion for immediate and expedited consideration is GRANTED. Plaintiffs' request for a writ of mandamus is DENIED. On the Court's own motion, plaintiffs' claims against the county defendants are DISMISSED for lack of subject-matter jurisdiction.

I. BACKGROUND

This matter arises from an unexpected vacancy in the Democratic party primary election for state representative for State House District 68. Tim Sneller, a qualified candidate and dedicated public servant in service to his community and state, was certified as the Democratic

party candidate until his passing on July 11, 2024. The Court extends its condolences to the family and friends of Mr. Sneller.

MCL 168.165 provides the procedure to follow when a state house candidate dies after the close of the candidate certification period, leaving a political party without a candidate:

If a candidate of a political party for the office of state senator or state representative, as applicable, after having qualified as a candidate, dies after the last day for qualifying as a candidate, leaving the political party without a candidate for the office of state senator or state representative, a candidate to fill the vacancy caused by the death may be selected by 3 delegates elected by a majority of the precinct delegates and nominees for state representative and state senator of the candidate's political party from within the senatorial or representative district. However, if the senatorial or representative district comprises more than 1 county, the meeting shall be called and conducted by the chairperson of the state central committee or his or her authorized representative. The name of the candidate selected under this subsection shall be transmitted to the county officials required by law to print and distribute ballots. The county officials shall print the name of the candidate selected under this section on the ballot in place of the deceased candidate, or if the ballots are already printed, have the ballots reprinted with the candidate's name on the ballots and the reprinted ballots shall be distributed to the various voting precincts within their respective county.

As provided in the statute, because State House District 68 covers areas in “more than 1 county”—Oakland and Genesee—the chairperson of the Michigan Democratic State Central Committee (the Party) initiated a meeting to select a new candidate for the seat. The meeting was conducted 14 days after Mr. Sneller's passing, on Thursday, July 25, 2024, and the delegates selected Matt Schlinker as the Party's new candidate for State House District 68. This decision was communicated on the evening of July 25, 2024, to Secretary of State Jocelyn Benson, Genesee County Clerk Domonique Clemons, and Oakland County Clerk Lisa Brown. The Court acknowledges the difficult situation presented to plaintiffs in convening and conducting this emergency meeting and in selecting a new candidate under tight time constraints.

Plaintiffs' notice triggered the final sentence of MCL 168.165, which states county election officials "shall print the name of the candidate selected" in this manner on the ballot and, "if the ballots are already printed, have the ballots reprinted" with the selected candidate's name. Plaintiffs attached to their complaint the responses from the county clerks¹ that "it is not possible" to reprint the ballots with Mr. Schlinker's name because Const 1963, art 2, § 4, required all early voter ballots be mailed the following morning, Friday, July 26, 2024. Indeed, under Const 1963, art 2, § 4(1)(m), early voter ballots became available on Saturday, July 27, 2024.

II. COURT OF CLAIMS ACTION

Plaintiffs filed their motion for immediate and expedited review and their complaint for mandamus early on Monday, July 29, 2024. Upon information and belief, these documents were served on the Secretary of State through the Attorney General's office the same day, and on the respective county clerks a day later. Plaintiffs seek a writ of mandamus, alleging that the language of MCL 168.165 is mandatory, requiring the county clerks to "have the ballots reprinted" with Mr. Schlinker's name in place of Mr. Sneller's and to distribute these to the various precincts. Plaintiffs contend defendants are required to strictly comply with these provisions. Plaintiffs further contend they have a clear legal right to defendants' compliance with MCL 168.165.

Plaintiffs' complaint was filed eight days before the August 6, 2024 primary election, and two days after early voting began. This Court held a telephonic scheduling conference with

¹ Due to the expedited nature of this matter (a week from the primary election date of August 6, 2024), the Court was unable to await responses from both county clerk defendants before resolving the issue before us. Although this procedure is irregular, there is no prejudice to the county defendants as no order contrary to their interests is entered.

counsel for the Party and the assistant attorney generals representing the Secretary of State on the morning of July 30, 2024. The county clerks were not present on that call because they had yet to file an appearance. The Court thanks the parties for their willingness to convene on such short notice and for providing briefs on an extremely expedited schedule. At the scheduling conference, counsel for the Party acknowledged that early voting had already begun but stated his belief that placing Mr. Schlinker's name on the ballot was required and could potentially be accomplished in various ways, including but not limited to possibly printing a separate, single-page ballot for the Democratic primary for State House District 68 with instructions for voters.

On the afternoon of July 30, 2024, the Secretary of State filed a brief opposing plaintiffs' request for a writ of mandamus on the grounds of laches or "for the reason that the provisions of MCL 168.165 can no longer be accommodated in a manner that will ensure an orderly election for the August 6, 2024 primary." The Secretary of State attached the affidavit of Michigan Department of State Director of Elections Jonathan Brater stating that he "communicated with" a representative of the Party on July 13, 2024, and advised "that it would be impossible to reprint ballots and still meet both federal and state election deadlines for the August 6 election" even at that time. This information was again shared via e-mail on July 18, 2024. On July 25, 2024, the Party convened and determined who their new candidate would be and that same day communicated this information to the Secretary of State's election staff.

In support of its laches defense, the Secretary of State notes that absent and overseas military voter ballots "had to be made available starting June 22, 2024," under Const 1963, art 2, § 4 and MCL 168.759a. And, indeed, voting has already begun. According to Mr. Brater's affidavit, 15,488 absent voter ballots had been issued to the voters in the affected district; and 7,750 had already been returned. As of July 29, 2024, absent voter ballots were being opened and

tabulated. Further, early voting began on July 27, 2024, resulting in 258 returned ballots thus far. The Secretary of State further contends reprinting the ballots would require local clerks to reprogram the electronic voting equipment and then perform a new round of testing. In the Secretary's words, election officials "simply cannot 'redo' programming *in the middle of an election*." "Finally," the Secretary of State asserts, there is significant concern that clerks within State House District 68 would not be able "to prevent or detect cross-party or double-voting if ballots were reprinted and redistributed just for the district."

Oakland County Clerk Lisa Brown also filed a brief in opposition to the mandamus action before the close of business on July 30, 2024, concurring in the arguments raised by the Secretary of State.

III. SUBJECT-MATTER JURISDICTION

The Court of Claims does not have jurisdiction over county officials. Summary disposition under MCR 2.116(C)(4) may be granted when a trial court lacks subject-matter jurisdiction over an action. *Cairns v E Lansing*, 275 Mich App 102, 107; 738 NW2d 246 (2007). A court must entertain a challenge to its jurisdiction at any time. *O'Connell v Dir of Elections*, 316 Mich App 91, 100; 891 NW2d 240 (2016). The Court also retains the obligation to raise the issue sua sponte to ensure that it has jurisdiction over a particular action. *Id.*; *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 399; 651 NW2d 756 (2002).

"The Court of Claims is a court of legislative creation. Its statutory powers are explicit and limited." *Council of Orgs & Others for Ed About Parochiaid v Michigan*, 321 Mich App 456, 466; 909 NW2d 449 (2017) (quotation marks and citation omitted). "MCL 600.6419, which *specifically outlines* the jurisdiction of the Court of Claims, contains a requirement that the action

be ‘against the state or any of its departments or officers’ ” *Id.* at 467; MCL 600.6419(1)(a). Thus, the “Court of Claims lack[s] subject-matter jurisdiction over claims against nonstate actors.” *Id.* at 465. Included in the statutory definition of “the state or any of its departments or officers” is:

this state or any state governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of the state, or an officer, employee, or volunteer of this state or any governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of this state, acting, or who reasonably believes that he or she is acting, within the scope of his or her authority while engaged in or discharging a government function in the course of his or her duties. [MCL 600.6419(7).]

Counties and county officials “are never within the jurisdiction of the Court of Claims.” *Doan v Kellogg Community College*, 80 Mich App 316, 320; 263 NW2d 357 (1977). See also *Mays v Snyder*, 323 Mich App 1, 47; 916 NW2d 227 (2018) (“The jurisdiction of the Court of Claims does not extend to local officials.”).

Accordingly, the Court dismisses the claims against the county defendants for lack of jurisdiction. The Court would also alternatively dismiss the claims against the county defendants based on the doctrine of laches as discussed below.

IV. MANDAMUS AND LACHES

Plaintiffs seek a writ of mandamus requiring defendants to reprint the ballot for the August 6, 2024 election, replacing Mr. Sneller’s name with Mr. Schlinker’s for state representative of State House District 68. “Mandamus is the proper remedy for a party seeking to compel election officials to carry out their duties.” *League of Women Voters of Mich v Secretary of State*, 333 Mich App 1, 8; 959 NW2d 1 (2020) (quotation marks, citation, and alteration omitted). “Mandamus is an extraordinary remedy,” and must only be granted where (1) the moving party

“has a clear, legal right to performance of the specific duty sought,” (2) the nonmoving party “has the clear legal duty to perform the act requested,” (3) the requested act is “ministerial,” meaning “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,” and (4) there is no other legal or equitable remedy “that might achieve the same result.” *Nykoriak v Napoleon*, 334 Mich App 370, 374; 964 NW2d 895 (2020) (quotation marks and citations omitted).

On its face, MCL 168.165 mandates the reprinting of ballots in situations like this, when a candidate has passed away, leaving a political party without a candidate, such that a new candidate must be selected. Unfortunately, the statute does not incorporate any time restrictions or reference other relevant statutes that do. The statute is silent regarding the duty of the Secretary of State and county clerks to alter or reprint ballots *after* they have been mailed and voting has begun. Arguably, in a vacuum, MCL 168.165 creates a clear legal right for plaintiffs to have the ballots amended and a clear legal duty for defendants to amend and/or reprint the ballots. And in general, if a county clerk refused to comply with the statute, a writ of mandamus could remedy the violation.

However, on this late date, the writ of mandamus would not provide an appropriate remedy. Const 1963, art 2, § 4 details the rights of “[e]very citizen of the United States who is an elector qualified to vote in Michigan.” Relevant here, the constitution was amended effective December 24, 2022, to include subsection 4(1)(m), which recognizes the right to vote up to nine days before the election date:

The right, once registered, to vote in each statewide and federal election in person at an early voting site prior to election day. Voters at early voting sites shall have the same rights and be subject to the same requirements as voters at polling places on election day. . . . Each early voting site shall be open for at least nine (9)

consecutive days beginning on the second Saturday before the election [here, Saturday, July 27, 2024] and ending on the Sunday before the election [here Sunday, August 4, 2024]. . . .

Because of this 2022 amendment, early voting has already begun in the 2024 Democratic primary race for State House District 68. The constitution includes even earlier deadlines for making available absent voter and overseas military ballots, further emphasizing the import of early challenges. See Const 1963, art 2, § 4(1)(b) (absent voter ballots must be “sent to” overseas military voters at least 45 days before an election), § 4(1)(h) (all other absent voter ballots must be made available 40 days before an election).

Although MCL 168.165’s language is mandatory and requires election officials to replace a deceased candidate’s name and to even reprint the ballots if those ballots have already been prepared, MCL 691.1031 recognizes the difficulties posed by ballot challenges filed close to an election date in light of the mandatory deadlines that protect the fundamental, constitutional right to vote. MCL 691.1031 creates a rebuttable presumption of laches when a civil action related to an election is filed less than 28 days before an election:

In all civil actions brought in any circuit court of this state affecting elections, dates of elections, candidates, qualifications of candidates, ballots or questions on ballots, there shall be a rebuttable presumption of laches if the action is commenced less than 28 days prior to the date of the election affected. This section shall not apply to actions brought after the date of the affected election.

See *Nykoriak*, 334 Mich App at 382-383 (“Moreover, in election cases, MCL 691.1031 creates a rebuttable presumption of laches[.]”). Here, plaintiffs filed their action on July 29, 2024, eight days before the 2024 primary election, resulting in a rebuttable presumption that plaintiffs’ claim is barred by the doctrine of laches.

“Laches is an equitable tool that may be used to remedy the inconvenience or prejudice caused to a party because of an improper delay in asserting a right.” *Davis v Secretary of State*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket No. 362841); slip op at 9. It “is founded upon long inaction to assert a right, attended by such intermediate change of conditions as renders it inequitable to enforce the right.” *Lyon Charter Twp v Petty*, 317 Mich App 482, 490; 896 NW2d 477 (2016) (quotation marks and citation omitted), vacated in part on other grounds 500 Mich 1010 (2017). “The issue of whether relief will be withheld on the basis of laches is contingent upon the facts and circumstances of the particular case.” *Davis*, ___ Mich App at ___; slip op at 9. As an “equitable tool,” laches applies even to claims for mandamus as “mandamus proceedings are essentially equitable in principle.” *Id.*

Here, the Party waited 14 days between the date of Mr. Sneller’s passing and the date a new candidate was selected to present their new candidate to defendants. While the Court is sympathetic to the unfortunate and difficult predicament the Party faced, the reasons for the 14-day delay are insufficient to overcome the presumption of laches codified in MCL 691.1031. If plaintiffs had selected a replacement candidate by the Monday following Mr. Sneller’s passing, on July 15, 2024, there would have been at least 24 days until the primary election. The Court recognizes, however, the Secretary of State’s position that even that date would have been too late. By July 25, 2024, defendants were in a position where they could not comply with the constitutionally required early voting timelines and reprint the ballots to replace Mr. Sneller’s name with Mr. Schlinker’s. Even if there had been time to reprint the ballots or employ an alternate remedy suggested by plaintiffs and still meet the early voting deadlines, such actions would have

resulted in chaos and certain election challenges as the absent voter and military ballots had already been mailed.²

While arising under different circumstances, the Court of Appeals has recognized the importance of legislatively selected deadlines affecting the voting process and the need to place time restrictions on challenges: “Obviously, . . . there must be a deadline—at some point, the ballots must be counted and a winner declared.” *League of Women Voters of Mich*, 333 Mich App at 20. Similarly, there must obviously be a deadline for ballots to be distributed and challenges to end.

Ultimately, the doctrine of laches precludes plaintiffs’ request for mandamus relief related to the ballots for the August 6, 2024 primary. This opinion has no bearing on any relief that may be sought or actions taken in relation to the November 2024 general election ballot.

² The Court notes that in the affidavit filed with the Secretary of State’s brief, Brater avers in ¶ 15 that all tabulators would have to be reprogrammed and tested, and in ¶ 21 avers that nearly 6,000 absentee ballots, or almost 50% of those distributed to the applicable precincts, have been returned. He further averred that once these absent voter ballots have been opened, it is very difficult to discern who voted; thereby, risking a compromise to the entire primary election. The Court understands that in the expedited electronically filed pleadings, Mr. Brater’s attestation had not yet been attached to the affidavit but that it would be filed subsequently. Regarding this issue, the Court accepts the affidavit as if sworn for expediency sake, so as to allow plaintiffs to seek appellate review as quickly as possible if they choose to; but reserves the right to strike this footnote of the Opinion if a sworn affidavit is not filed. Additionally, the Court’s Opinion would be the same with or without this footnote.

IT IS ORDERED:

1. Plaintiffs' motion for immediate and expedited consideration is GRANTED.
2. Plaintiffs' claims against the county defendants are DISMISSED for lack of subject-matter jurisdiction.
3. Plaintiffs' request for a writ of mandamus is DENIED.
4. Plaintiffs' complaint is DISMISSED in its entirety. This is a final order resolving all issues in this case.

Date: July 31, 2024


James Robert Redford
Judge, Court of Claims

