STATE OF MICHIGAN

COURT OF CLAIMS

MICHIGAN DEMOCRATIC PARTY and LAVORA BARNES, in her individual capacity and official capacity as the Chair of the Michigan Democratic Party,

Plaintiffs,

v

JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and JONATHAN BRATER, in his official capacity as Director of the Michigan Bureau of Elections,

Defendants.
_____/

OPINION AND ORDER

Case No. 24-000115-MB

Hon. James Robert Redford

ROSA HOLLIDAY,

Plaintiff,

v

SECRETARY OF STATE JOCELYN BENSON, in her official capacity,

Defendant.
_____/

Case No. 24-000122-MZ

Hon. James Robert Redford

CORNEL WEST FOR PRESIDENT 2024, CORNEL WEST, MELINA ABDULLAH, THOMAS HEIBEL, and MARIO NADHUM,

Plaintiffs,

v

JOCELYN BENSON, in her official capacity as Secretary of State, and JONATHAN BRATER, in

Case No. 24-000134-MB

Hon. James Robert Redford

his official capacity as Director of the Michigan Bureau of Elections,

Defendants.
_____/

OPINION AND ORDER

The consolidated matters before the Court request a determination whether Cornel West and Melina Abdullah may appear on the Michigan November 2024 General Election ballot (the "ballot") as independent candidates for President and Vice President of the United States.

When this case is distilled to its most basic elements, it presents a question of statutory interpretation. The Court must decide if, under the Michigan Election Law, MCL 168.1 *et seq*., a person who seeks to run for President or Vice President as a candidate not affiliated with a political party in Michigan, presents 26,934 signatures to the Secretary of State (SOS) in accordance with Michigan law, on a form prescribed by statute which states the undersigned petition signers "nominate" the person to be a candidate, and the SOS "estimates" 16,089 of those signatures are valid and the petitions contain at least 100 signatures from at least one-half of the congressional districts in the state, the total estimated valid signatures being well in excess of the 12,000 valid signatures required for placement on the ballot, has that person been "nominated" for the Office of President or Vice President?

The Court concludes the answer to that question is yes.

MCL 168.558(1) states: "The affidavit of identity [AOI] filing requirement does not apply to a candidate nominated for the office of President of the United States or Vice President of the United States." As a result, West and Abdullah were not required to file AOIs. The Court respectfully concludes the SOS and Director of the Bureau of Elections (DBOE) misapplied the

law in finding otherwise. The AOIs the candidates filed cannot serve as a mechanism to exclude them from the ballot. The reasons for this conclusion are set forth below.

I. PROCEDURAL & FACTUAL CONTEXT

These consolidated cases began with two separately filed actions. In Case No. 24-000115-MB (115), filed August 7, 2024, the Michigan Democratic Party and Lavora Barnes, both in her individual capacity and official capacity as Michigan Democratic Party chair, filed suit against SOS Jocelyn Benson and DBOE Jonathan Brater seeking mandamus, declaratory, and injunctive relief to exclude West and Abdullah from the ballot based on alleged deficiencies in their AOIs and nominating petitions.

In Case No. 24-000122-MZ (122), filed August 12, 2024, Rosa Holliday, a registered Michigan voter, filed suit against SOS Benson seeking declaratory and injunctive relief to exclude West and Abdullah from the ballot based on allegations that the candidates are barred by MCL 168.692a; that *American Independent Party of Mich v Secretary of State*, 397 Mich 689; 247 NW2d 17 (1976), requires the Natural Law Party to resolve internal disagreements regarding the nomination of candidates; and that there are alleged deficiencies in the candidates' AOIs and nominating petitions.

The Court will refer to plaintiffs Michigan Democratic Party, Barnes, and Holliday collectively as "plaintiffs." The Court will refer to the SOS and DBOE collectively as the "state defendants."

After these cases were filed and DBOE Brater issued the August 16, 2024 letter described below, Cornel West, Melina Abdullah, Cornel West for President 2024, and members of West's

slate of presidential electors, Thomas Heibel and Mario Nadhum, (collectively "the West plaintiffs") filed a separate suit against the state defendants in Case No. 24-000134-MB (134), on August 21, 2024, seeking mandamus and declaratory relief to include West and Abdullah on the ballot. They also previously filed motions to intervene in both 115 and 122, which this Court denied on August 22, 2024.

Salient to these matters, on August 16, 2024, DBOE Brater advised West that he was disqualified from appearing on the ballot because of defects in the notarization of his AOI. As a result of West's disqualification, Abdullah was also disqualified. An August 20, 2024 SOS staff report separately concluded that West's nominating petitions included significantly more than the number of required, valid signatures to be placed on the ballot. The Board of State Canvassers will review that decision on Monday, August 26, 2024. Oral arguments took place in these consolidated cases on August 23, 2024.

At this point, the Court must resolve in 115 and 122, plaintiffs' motions and claims for mandamus, declaratory relief, and injunctive relief, as well as the state defendants' motions for summary disposition. In 134, the Court must resolve the West plaintiffs' request for mandamus and declaratory relief.

II. HOW THE COURT WILL RESOLVE THE CASES

For the reasons set forth below:

In 115, the Court DENIES plaintiffs' motion and claims for a writ of mandamus, declaratory judgment, and a preliminary and permanent injunction.

In 122, the Court DENIES plaintiff's motion and claims for declaratory injunction and a permanent injunction.

In 115 and 122, the Court DENIES the state defendants' motions for summary disposition. Plaintiffs in those actions sought the disqualification of West and Abdullah from the ballot, and the state defendants granted that relief on August 16, 2024. Although courts will not generally consider issues that have been rendered moot, there is an exception for "publicly significant" issues that are "likely to recur, and yet likely to evade judicial review." *Reed-Pratt v Detroit City Clerk*, 339 Mich App 510, 515; 984 NW2d 794 (2021) (quotation marks and citation omitted).

In 134, the Court GRANTS the West plaintiffs' writ of mandamus. The state defendants are ordered to qualify West and Abdullah as independent candidates for the ballot, on the condition that the Board of State Canvassers does not determine they are disqualified after a review of the signatures on the qualifying petitions, and West complies with MCL 168.590d(2).

III. OVERVIEW

Cornel West and Melina Abdullah seek election to the Offices of President and Vice President of the United States of America respectively in the 2024 election cycle. Plaintiffs in 115 and 122 sought to exclude West and Abdullah as candidates on the ballot, alleging their AOIs were defective in several ways and that the candidates obtained ballot access in various states other than Michigan through different political parties.[1] In 122, plaintiff also contends that there is a schism

[1] Alaska: Aurora Party; Colorado: Unity Party of Colorado; Florida: Florida Natural Law Party; Mississippi: Mississippi Natural Law Party; Nebraska: Legal Marijuana Now Party; Oregon: Oregon Progressive Party; South Carolina: United State's Party; and Vermont: Green Mountain Peace and Justice Party. (Complaint, 115, p 8; Complaint, 122, p 3 n 1.)

in the national Natural Law Party, leading state Natural Law Party branches to appoint different candidates. Plaintiff asserts that the Natural Law Party must resolve that dispute internally, and West could not run as an independent in Michigan when he has been nominated by the Natural Law Party in other states.

In Michigan, West and Abdullah seek ballot access as independent candidates, submitting AOIs and qualifying petitions to the SOS on or around June 17, 2024. Plaintiffs allege that West and Abdullah falsely claimed not to have a party affiliation when filing their AOIs, that West's notarization was defective, and that Abdullah improperly indicated that she wished to be identified as "Cornel West" on the ballot. On August 16, 2024, while these cases were pending, the SOS disqualified West (and thereby Abdullah) from appearing on the ballot after determining West's AOI notarization was defective.[2] However, the SOS also reviewed the petitions filed by West and Abdullah and determined they secured well over the required number of signatures to be placed on the ballot.

Following their disqualification, the West plaintiffs filed suit in 134 against the state defendants seeking placement of West and Abdullah on the ballot. They contend they were not required to file AOIs as candidates nominated for President and Vice President, making any deficiencies in their AOIs irrelevant. Even if they were required to file AOIs, the West plaintiffs contend, the state defendants erred in disqualifying West based on the allegedly imperfect

[2] Both sides in these suits claim the others delayed to their prejudice. In election cases, MCL 691.1031 creates a rebuttable presumption of laches when an "action is commenced less than 28 days prior to the date of the election affected." Although ballot preparation deadlines are looming, given the time remaining until the general election, the Court declines to apply the doctrine of laches to preclude the parties' claims and defenses.

notarization. The AOI was notarized in Colorado, and under Colorado law, substantial compliance is sufficient to render a notarization valid. The West plaintiffs assert the candidates filed as independent, with no party affiliation, but do not explain how they may run as independent when West has been nominated by parties in at least eight other states.

The Court has held two status conferences and a hearing regarding the parties' complaints and various motions. The Court is now ready to resolve these consolidated actions.

IV. STANDARDS FOR SUBSTANTIVE CLAIMS

A. MANDAMUS

A writ of mandamus is an "extraordinary remedy," *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016); it "is not a matter of right," but rather is a remedy within the discretion of the courts. *Bd of Ed of Oakland Schs v Superintendent of Pub Instruction*, 401 Mich 37, 43; 257 NW2d 73 (1977). "Mandamus is a legal remedy, but mandamus proceedings are essentially equitable in principle." *Davis v Secretary of State*, ___ Mich App ___; ___ NW3d ___ (2023) (Docket No. 362841); slip op at 9. As such, "[i]ssuance of a writ of mandamus is governed by equitable principles." *Bd of Ed of Oakland Schs*, 401 Mich at 44.

"A writ of mandamus is issued by a court of superior jurisdiction to compel a public officer to perform a clear legal duty," and "is the appropriate remedy for a party seeking to compel action by election officials." *Barrow v Wayne Co Bd of Canvassers*, 341 Mich App 473, 484; 991 NW2d 610 (2022) (quotation marks and citation omitted).

> To be entitled to a writ of mandamus, a 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. [*Id*. at 484-485 (quotation marks and citation omitted).]

A plaintiff's clear legal right to the performance of a specific duty 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." *Id*. at 485 (quotation marks and citation omitted). A defendant's clear legal duty arises from "a statute that plainly instructs that agency to perform a certain action." *Id*.

"A ministerial act is one in which the law prescribes and defines the performance with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Id*. at 486. See also *Berry*, 316 Mich App at 42.

B. DECLARATORY JUDGMENT

> MCR 2.605 governs a trial court's power to enter a declaratory judgment. The court rule provides, in pertinent part, that "[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." MCR 2.605(A)(1). The language in this rule is permissive, and the decision whether to grant declaratory relief is within the trial court's sound discretion. *PT Today, Inc v Comm'r of Office of Fin & Ins Servs*, 270 Mich App 110, 126; 715 NW2d 398 (2006). [*Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 545; 904 NW2d 192 (2017).]

"An actual controversy exists when a declaratory judgment is necessary to guide the plaintiff's future conduct in order to preserve the plaintiff's legal rights." *Id*. at 545-546.

C. INJUNCTIVE RELIEF

" '[I]njunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.' " *Johnson v Mich Minority Purchasing Council*, 341 Mich App 1, 8; 988 NW2d 800

(2022), quoting *Davis v Detroit Fin Review Team*, 296 Mich App 568, 613-614; 821 NW2d 896 (2012). There is a four-part test for preliminary injunctions:

> (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 648; 825 NW2d 616 (2012) (quotation marks and citation omitted).]

Before entering a permanent injunction, a court must consider:

> (a) the nature of the interest to be protected, (b) the relative adequacy to the plaintiff of injunction and of other remedies, (c) any unreasonable delay by the plaintiff in bringing suit, (d) any related misconduct on the part of the plaintiff, (e) the relative hardship likely to result to defendant if an injunction is granted and to plaintiff if it is denied, (f) the interests of third persons and of the public, and (g) the practicability of framing and enforcing the order of judgment. [*Brosamer v Lenawee Community Mental Health Auth*, 328 Mich App 267, 276; 936 NW2d 870 (2019) (quotation marks and citation omitted).]

V. WEST AND ABDULLAH WERE NOT REQUIRED TO FILE AOIs SO ANY DEFICIENCIES ARE IRRELEVANT TO BALLOT QUALIFICATION

There is more than one way to be nominated as a candidate in Michigan. Of relevance here, is whether an independent candidate for President or Vice President is "nominated" by securing the requisite number of valid signatures on a qualifying petition. If so, the independent candidate for President or Vice President would not be required to file an AOI along with the petition under MCL 168.558(1). That subsection states in full:

> When filing a nominating petition, qualifying petition, filing fee, or affidavit of candidacy for a federal, county, state, city, township, village, metropolitan district, or school district office in any election, a candidate shall file with the officer with whom the petitions, fee, or affidavit is filed 2 copies of an [AOI]. A candidate nominated for a federal, state, county, city, township, or village office at a political party convention or caucus shall file an [AOI] within 1 business day after being nominated with the [SOS]. *The [AOI] filing requirement does not apply to a*

> *candidate nominated for the office of President of the United States or Vice President of the United States*. [*Id*. (emphasis added).]

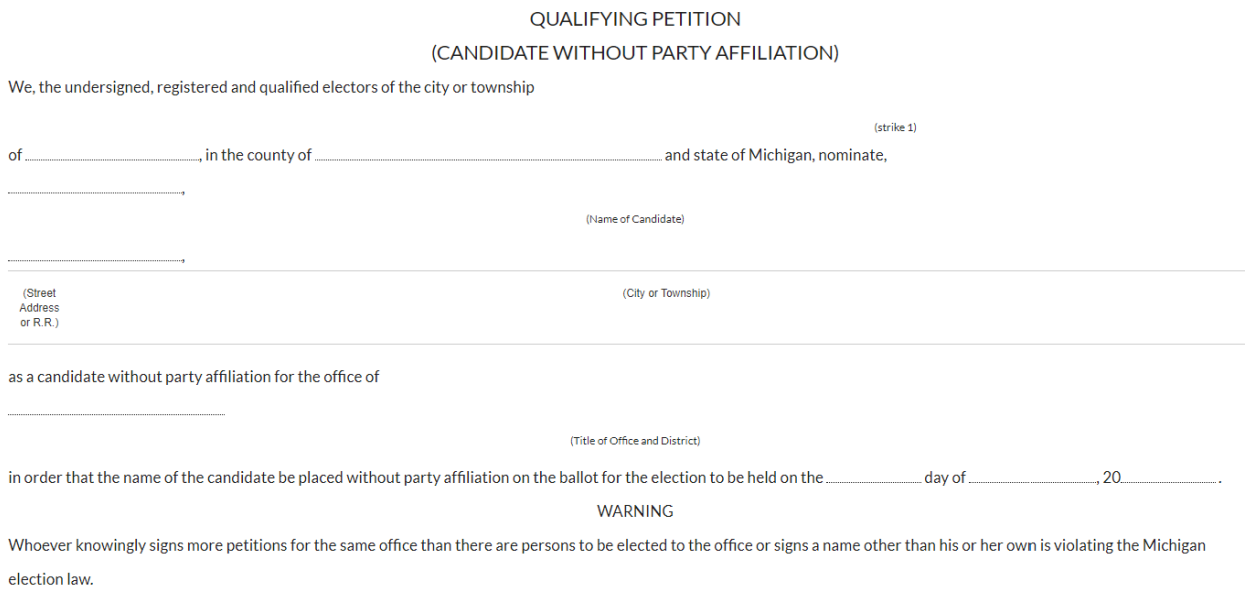
The parties disagree about the meaning of "nominated" in the final sentence of this subsection.

"The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature" by examining the language of the statute – "both the plain meaning of the critical word[s] or phrase[s] as well as its placement and purpose in the statutory scheme." *Sun Valley Foods Co v Ward*, 460 Mich 230, 236-237; 596 NW2d 119 (1999) (quotation marks and citation omitted). "If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted." *Tryc v Mich Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). These precepts apply with equal weight to the Michigan Election Law and, in particular, § 558 thereof. Michigan's appellate courts have on several occasions held candidates to "strict compliance with the requirements of MCL 168.558" but not to the SOS's requirements or instructions related to the AOI. See *Stumbo v Roe*, 332 Mich App 479, 488-490; 957 NW2d 830 (2020); *Moore v Genesee Co*, 337 Mich App 723, 729-730; 976 NW2d 921 (2021).

The Court notes that MCL 168.590(1) defines a "qualifying petition" as "a *nominating* petition required of and filed by a person to qualify to appear on an election ballot as a candidate for office without political party affiliation." MCL 168.590h(1) (emphasis added). The Legislature dictates the form of qualifying petitions.

MCL 168.531 provides that when a primary is conducted, "the nomination of candidates shall be made by direct vote of the qualified and registered electors of each political party participating." MCL 168.532 provides for the nomination of candidates by minor political parties (those "whose principal candidate received less than 5% of the total vote cast for all candidates for

the office of [SOS] in the last preceding state election") "shall be made by means of caucuses or conventions." Of relevance to the current matter, a candidate without party affiliation may be nominated by securing sufficient, valid signatures on a nominating petition, also known as a qualifying petition. The qualifying petition itself "must be in the following form":



QUALIFYING PETITION

(CANDIDATE WITHOUT PARTY AFFILIATION)

We, the undersigned, registered and qualified electors of the city or township

(strike 1)

of ....., in the county of ..... and state of Michigan, nominate,

....., (Name of Candidate)

....., (Street Address or R.R.) (City or Township)

as a candidate without party affiliation for the office of

..... (Title of Office and District)

in order that the name of the candidate be placed without party affiliation on the ballot for the election to be held on the ..... day of ....., 20.....

WARNING

Whoever knowingly signs more petitions for the same office than there are persons to be elected to the office or signs a name other than his or her own is violating the Michigan election law.

MCL 168.590h(1). The petition itself states that the signors "nominate" the named candidate.

According to the plain language of these statutes, the qualifying petitions filed by West were "nominating" petitions because they nominated West for the purposes of MCL 168.558(1). The "registered and qualified electors" who signed the qualifying petitions "nominate[d]" the named individual—Cornel West—"as a candidate without party affiliation for the office of" President of the United States "in order that the name of the candidate be placed without party affiliation on the ballot" for the November 5, 2024 general election. These petitions served to nominate West as an independent presidential candidate.

However, the parties arguing that West is not qualified to appear on the ballot contend that the final sentence of subsection 558(1) serves to clarify the immediately preceding sentence. The penultimate sentence pertains to candidates "nominated for a federal, state, county, city, township, or village office at a political party convention or caucus" and requires those candidates to file AOIs. The challenging parties therefore contend that use of the term "nominated" in the final sentence must refer to a candidate for President or Vice President nominated "at a political party convention or caucus." The Court does not agree. The challenging parties seek to inject language into a plain and clear statutory sentence to limit its applicability.

As West and Abdullah were not required to file AOIs, any defect in the filed affidavits is irrelevant to their eligibility to appear on the ballot. The state defendants improperly relied on the perceived defects to disqualify West and Abdullah from the ballot. With more than sufficient signatures on their timely filed qualifying petitions, the state defendants' duty to certify West and Abdullah for placement on the ballot was ministerial. Accordingly, in 134, the Court GRANTS the West plaintiffs' request for a writ of mandamus, directing the state defendants to qualify West and Abdullah for placement on the ballot as independent candidates for President and Vice President of the United States, on the condition that the Board of State Canvassers does not determine they are disqualified after a review of the signatures on the qualifying petitions and so long as West complies with MCL 168.590d(2).

The inapplicability of the AOI requirement requires the Court:

In 115, to DENY plaintiffs' motion and complaint for mandamus, declaratory judgment, and a preliminary and permanent injunction,

In 122, to DENY plaintiff's motion and claims for declaratory injunction and a permanent injunction, and

In 115 and 122, to DENY the state defendants' motions for summary disposition.

VI. IF AOIs WERE REQUIRED, THE EXTRAORDINARY REMEDY OF MANDAMUS WOULD BE INAPPROPRIATE

The Court understands that it lacks authority to issue an advisory opinion. See Mich Const 1963, art 3, § 8 (limiting the power to issue advisory opinions to the Michigan Supreme Court). The Court may, however, reach alternative grounds for challenging the state defendants' action. As explained by the Court of Appeals in *Berry*, 316 Mich App at 50:

> Having concluded that the trial court failed to exercise its discretion to decide this issue, we would ordinarily remand this matter to the trial court for further proceedings. Given the exigencies of this election matter, however, and the reality of the trial court's docket [or the demands on the SOS's time leading up to September 6, 2024], a remand order at this time would likely render plaintiff's action moot before the trial court would have an opportunity to rule [or here, before the SOS could consider the remaining grounds]. Hence, we feel compelled to consider the substantive merits and render a decision. . . .

Given the compressed time period in which to raise these challenges to the ballot, and to ensure the opportunity for robust appellate review, the Court finds it necessary to consider the challenges to the candidates' AOIs in the event an appellate court finds this Court's conclusion that the candidates were not required to file AOIs erroneous.

MCL 168.558(2) outlines the information that must be included in an AOI:

> An [AOI] 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. . . .

A. THE STATE DEFENDANTS ERRONEOUSLY DISQUALIFIED WEST FROM THE BALLOT AFTER DETERMINING THAT HIS AOI WAS NOT PROPERLY NOTARIZED

MCL 168.558(4) requires that an AOI be signed and notarized, attesting to the accuracy and completeness of "all statements, reports, late filing fees, and fines . . . have been filed or paid," and acknowledging that any false statements amount to perjury. If a candidate does not comply with this section, the DBOE "shall not certify" the candidate for placement on the ballot. *Id*. The statute uses mandatory language and does not expressly permit "substantial compliance" with its requirements. This means that substantial compliance is insufficient and strict compliance is required under Michigan law. *Stand Up For Democracy v Secretary of State*, 491 Mich 588, 602; 822 NW2d 159 (2012); *Barrow v City of Detroit Election Comm*, 301 Mich App 404, 415-416; 836 NW2d 498 (2013).

MCL 168.558 does not require a notary to use any particular language when notarizing an AOI. Accordingly, the Court must look to the Michigan law on notarial acts, MCL 55.261 *et seq*. MCL 55.287 dictates what information must appear in a notary's certification on a document in Michigan as follows:

> (1) A notary public shall place his or her signature on every record upon which he or she performs a notarial act. The notary public shall sign his or her name exactly as his or her name appears on his or her application for commission as a notary public.
>
> (2) On each record that a notary public performs a notarial act and immediately near the notary public's signature, as is practical, the notary public shall print, type, stamp, or otherwise imprint mechanically or electronically sufficiently clear and legible to be read by the secretary and in a manner capable of photographic reproduction all of the following in this format or in a similar format that conveys all of the same information:

(a) The name of the notary public exactly as it appears on his or her application for commission as a notary public.

(b) The statement: "Notary public, State of Michigan, County of _____.".

(c) The statement: "My commission expires _____.".

(d) If performing a notarial act in a county other than the county of commission, the statement: "Acting in the County of _____.".

(e) The date the notarial act was performed.

(f) If applicable, whether the notarial act was performed using an electronic notarization system under section 26a or performed using a remote electronic notarization platform under section 26b.

(3) A notary public may use a stamp, seal, or electronic process that contains all of the information required under subsection (2). However, the notary public shall not use the stamp, seal, or electronic process in a manner that renders anything illegible on the record being notarized. . . .

The notary section of West's AOI included all information required by MCL 55.287. Notary Dana L. Manning placed her signature on the AOI, printed her name, indicated when her commission expired, stated in which county she was acting, and inserted the date.

Manning did not include the statement "Notary public, State of Michigan, County of _____" because she is a licensed notary in the state of Colorado. Instead, she crossed out "County of Commission" on the AOI form and inserted "State of Colorado." The Michigan law on notarial acts includes a reciprocity provision. MCL 55.285a places the following conditions on the use of out-of-state notaries:

(1) All of the following apply with regard to a notarial act that is performed in another state:

(a) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by any of the following individuals:

(*i*) A notary public who is authorized to perform notarial acts in the state in which the act is performed.

* * *

> (b) The signature and title of an individual described in subdivision (a)(*i*) to (*iii*) who performs a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.
>
> (c) The signature and title of an individual described in subdivision (a)(*i*) or (*ii*) who performs a notarial act in another state conclusively establish the authority of the individual to perform the notarial act.

Under MCL 55.285a(1), Manning's signature and designation as a notary on the AOI is prima facie evidence that her signature is genuine and that she is actually a notary in the state of Colorado. Her signature also was conclusive evidence of her authority to perform a notarial act.

The notarization of West's AOI strictly complies with Michigan's notary law by including all required information. The challengers, however, contend that Manning did not strictly comply with the notary requirements of Colorado, making the notarial act not "authorized." The challengers' specific complaint is that Manning's official stamp was not affixed to the front of the AOI, near the notary certificate form. Manning attests she stamped the back of the AOI to prevent the stamp from rendering any portion of the form illegible. DBOE Brater attests the stamp was affixed to a separate piece of paper that was not stapled to the AOI. Colorado Rev Statute, CRS 24-21-517 (1)(b) provides that notary's official stamp must "[b]e capable of being copied together with the record to which it is affixed or attached or with which it is logically associated."

The challengers assert the Colorado notary was required to strictly comply with these Colorado statutory provisions because strict compliance is required under Michigan Election Law. They further assert that Colorado law does not truly validate notarial acts when a notary substantially complies with the law. This is not accurate. Michigan's notarial reciprocity statute gives an out-of-state notarization full faith and credit as long as the act was authorized under the other state's law. Colorado Rev Statute 24-21-504(2) provides that a notarial act is only voidable

if the notary performs "a notarial act with respect to a record in which the officer has a disqualifying interest." There is no claim of a disqualifying interest in this case. Further, in a Colorado case pertaining to constitutional initiative petitions, the Colorado Supreme Court expressly held that the doctrine of substantial compliance applies to the notarization of initiative petitions. See *Fabec v Beck*, 922 P2d 330, 343-344 (Co, 1996) (holding that the doctrine of substantial compliance applies when considering the validity of a notarial act). Indeed, in *In re Estate of Mark Stephen Russell*, unpublished opinion of the Colorado Court of Appeals, issued August 8, 2024 (Docket No. 23CA1354), 2024 WL 3874206, the Colorado Court of Appeals held that a notarial act was valid despite that the notary failed to include the date on and county in which he or she notarized a will codicil. See *Patterson v James*, 2018 Co App 173; 454 P3d 345, 353 (2018) (holding that courts may consider an unpublished opinion of the Colorado Court of Appeals "for whatever persuasive value it may have had").

Accordingly, under Colorado law, the Colorado notary's notarization is not void or invalid. It also included all information required under Michigan's notary laws. The Court concludes that the state defendants improperly disqualified West on this ground.

B. WEST WOULD NOT BE ENTITLED TO MANDAMUS, HOWEVER, BECAUSE IT IS NOT CLEAR HE WAS TRULY WITHOUT A PARTY AFFILIATION

The second challenge raised to the AOIs submitted by both West and Abdullah contests their identification as "running for a partisan office without party affiliation." Plaintiffs assert that West was nominated by the "Natural Law Party of the United States," which according to news articles attached as exhibits to plaintiffs' complaints "is not associated with the Natural Law Party of Michigan, which already voted earlier this year to endorse the Robert F. Kennedy, Jr. presidential campaign." Evans, *Natural Law Party of the United States Endorses 2024*

Presidential Ticket of Cornel West and Melina Abdullah, Independent Reporter, August 11, 2024. Moreover, plaintiffs present news articles identifying West's affiliation with eight other minority political parties in other states as noted above.

Even accepting, arguendo, that West and/or Abdullah are affiliated with these political parties in each respective state, the Court finds this insufficient evidence to render either candidate's respective AOI invalid. Any requirement to file the AOI as a prerequisite to appearing as a Presidential and Vice Presidential candidate for the United States emanates from Michigan's Election Code, which "emanate[s] from Const 1963, art 2, §4(2), which provides the Michigan Legislature with the power to 'enact laws to regulate the time, place and manner of all nominations and elections[.]' " *Davis v Wayne Co Election Comm'n*, ___ Mich App ___; ___ NW3d ___ (2023) (Docket No. 368615); slip op at 3. This includes procedures and timing for the name of a "candidate of a new political party" to be printed on the official ballot in any election, MCL 168.165, and there is no evidence in the record that West, Abdullah, or any representative from any of the above-named political parties initiated this procedure. In sum, the AOI required West and Abdullah to identify the party affiliation with which each of them wished to be recognized on the ballots circulated in Michigan, and both stated that they were running without party affiliation. Plaintiffs' only evidence refuting this is allegations that at least West has claimed an affiliation with political parties on ballots outside of Michigan. This is not sufficient to disprove the truth of their statements related to the Michigan ballot. The Court finds both West and Abdullah's AOIs compliant with Michigan law to the extent they claimed no party affiliation with respect to the ballots to be printed for the Michigan November 2024 General Election.

C. PLAINTIFFS CORRECTLY CONTEND THAT ABDULLAH'S AOI IS DEFECTIVE, BUT THIS CONCLUSION IS NOT OUTCOME-DETERMINATIVE

The third and final challenge plaintiffs raise is an incorrect statement in § 2 of Abdullah's AOI. Specifically, following the request for an indication of "exactly how you want your name to be printed on the ballot (use upper and lower case letters)," Abdullah's AOI reads "Cornel West." There is no argument that this was incorrect, perhaps a scrivener's error or reflective of a misunderstanding as to the information sought in this portion of the AOI. Regardless, the Court agrees with plaintiffs that this error renders Abdullah's AOI defective.

Abdullah's error in the AOI would not disqualify West from appearing on the ballot. A presidential candidate without a party affiliation "shall file with the [SOS] the names and addresses of persons chosen to be presidential electors and the name of the person who shall appear on the ballot as candidate for vice-president under section 706." MCL 168.590d(2). As noted by the state defendants, the deadline for filing this information is August 31, 2024. Accordingly, West still has time to name his vice-presidential running mate and the defect in Abdullah's AOI would not require disqualification at this point. It would be improper to enter a writ of mandamus directing the state defendants to disqualify West from the ballot on this ground.

VII. CONCLUSION

When 26,934 signatures appear on a petition that states that they "nominate" a person as a candidate without party affiliation for the office of President of the United States and the staff of the Chief Elections Officer of the State of Michigan report that an estimated 16,089 are legitimate signatures from Michigan registered and qualified electors and the laws of our state require such a candidate to receive 12,000 legitimate signatures to be placed on the ballot for that office as a candidate without party affiliation; then that candidate has been nominated for President of the

United States. See Const 1963, art 1, § 1 ("All political power is inherent in the people."). As a result, the candidate is not required to file an AOI in order to be placed on the ballot pursuant to MCL 168.558(1).

IT IS ORDERED:

1. In Case No. 24-000115-MB, the Court DENIES plaintiffs' motion and claims for a writ of mandamus, declaratory judgment, and a preliminary and permanent injunction.

2. In Case No. 24-000122-MZ, the Court DENIES plaintiff's motion and claims for declaratory injunction and a permanent injunction.

3. In Case Nos. 24-000115-MB and 24-000122-MZ, the Court DENIES the state defendants' motions for summary disposition.

4. In Case No. 24-000134-MB, the Court GRANTS the West plaintiffs' writ of mandamus.

5. The state defendants are ordered to qualify West and Abdullah as independent candidates for the ballot, on the condition that the Board of State Canvassers does not determine they are disqualified after a review of the signatures on the qualifying petitions and West complies with MCL 168.590d(2) .

6. This is a final order resolving all issues in these consolidated cases.

IT IS SO ORDERED.

Date: August 24, 2024

James Robert Redford
Judge, Court of Claims