# Court of Appeals, State of Michigan

## ORDER

Michael R Griffie v Wayne County Election Commission

Docket No. 361629

LC No. 22-006088-AW

Anica Letica
Presiding Judge

Kirsten Frank Kelly

Christopher M. Murray
Judges

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Pursuant to MCR 7.216(A)(7), the Wayne Circuit Court's June 1, 2022 order is hereby AFFIRMED on several distinct grounds. Plaintiffs have failed to carry their burden of demonstrating entitlement to the extraordinary remedy of mandamus. See *Miller v City of Detroit*, 250 Mich 633, 636; 230 NW 936 (1930) ("[M]andamus will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts, or where the legal result of the facts is subject of legal controversy. If the right is reasonably in serious doubt, from either cause mentioned, the discretionary power rests with the [public] officer to decide whether or not he will proceed to enforce it[.]"); *Rental Props Owners Ass'n of Kent Co v Kent Co Treas*, 308 Mich App 498, 518; 866 NW2d 817 (2014) (holding that, among other things, a plaintiff seeking mandamus "must show that . . . the defendant has a *clear* legal duty to perform") (emphasis added); *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004) (observing that the party seeking mandamus "bears the burden of demonstrating entitlement").

To begin with, guidance issued by the Secretary of State specifically excepts "candidates seeking federal elective office" from the pertinent Affidavit-of-Identity (AOI) requirement, which is evidently based on the Secretary's altogether reasonable view that said state-law requirement is preempted by federal law or would be unconstitutional as applied to federal candidates. Indeed, although we need not reach those important federal-law issues to decide the instant case, were we to do so, we would be inclined to agree with the trial court's well-reasoned opinion that the disputed state-law requirement does not apply to a candidate for federal office in the first instance. See generally US Const, Art I, § 2; 52 USC 30143 (providing that the "the provisions of [the Federal Election Campaign Act] . . . supersede and preempt any provision of State law with respect to election to Federal office"); *US Term Limits, Inc v Thornton*, 514 US 779; 115 S Ct 1842; 131 L Ed 2d 881 (1995) (holding that qualifications for candidates for federal office may not be altered except by amendment to the United States Constitution); *Cipollone v Liggett Group, Inc*, 505 US 504, 517; 112 S Ct 2608; 120 L Ed 2d 407 (1992) ("When Congress has considered the issue of pre-emption and has included in the enacted legislation a provision explicitly addressing that issue, and when that provision provides a reliable indicium of congressional intent with respect to state authority, there is no need to infer congressional intent to pre-empt state laws from the substantive provisions of the legislation.").

In any event, even assuming that the contested state-law requirement does, in fact, apply to candidates running for federal office, plaintiffs' claims of error nevertheless fail on the merits for at least two reasons. First, in plaintiffs' brief on appeal, they admit that their claims of error regard certain omissions in Hollier's "October 2019 Quarterly Campaign Statement," and plaintiffs indicate that the

Bureau of Elections sent its related "Notice of Error or Omission . . . on November 15, 2019[.]" Because plaintiffs have failed to demonstrate that such notice was sent both "by registered mail" and "[w]ithin 4 business days after the deadline for filing," see MCL 169.216(6), plaintiffs have also failed to demonstrate that the filing of an amended report was "required of the candidate" for purposes of MCL 168.558(4); thus, plaintiffs have not proven that the contested statement in the relevant AOI was actually false. See *Reed-Pratt v Detroit City Clerk*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 357150); slip op at 5.

Second, plaintiffs admit that the Director of the Bureau of Elections has indicated that "he . . . reviewed the records and determined that [Hollier] 'did provide information sufficient to satisfy any outstanding questions regarding those notices.' " Because Hollier filed a written submission containing the necessary information with the Secretary of State prior to the signing of the relevant AOI, Hollier made no false statement in his AOI, and was not in violation of any specific statutory provision. In short, plaintiffs have failed to demonstrate that the trial court abused its discretion by denying the extraordinary remedy sought here. See *Delta College v Saginaw Co Bd of Comm'rs*, 395 Mich 562, 568; 236 NW2d 425 (1975) ("equitable estoppel is ordinarily available in mandamus cases"); *Franchise Realty Interstate Corp v Detroit*, 368 Mich 276, 279; 118 NW2d 258 (1962) (holding that "[t]he writ is one of grace" and "equitable principles" apply); *New York Mtg Co v Secretary of State*, 150 Mich 197, 205; 114 NW 82, 84 (1907) ("The naked right to the writ is not sufficient to warrant its issuance. It may be withheld where the public interest would be injuriously affected, and, if there is a doubt of its propriety, it will not be issued. This court has repeatedly held that this discretionary writ will not be awarded in all cases, even when a prima facie right to relief is shown, but regard will be had to the exigency which calls for exercise of such discretion, the nature and extent of the wrong or injury which would follow a refusal of the writ, and other facts which have a bearing upon the particular case.") (citation omitted).

This order is to have immediate effect. MCR 7.215(F)(2). This is our final judgment in this matter, see MCR 7.215(E)(1), and this Court thus retains no further jurisdiction.

Anica Letica
Presiding Judge

COURT OF APPEALS OF THE STATE OF MICHIGAN
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A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

June 3, 2022
Date

Jerome W. Zimmer Jr.
Chief Clerk