STATE OF MICHIGAN

COURT OF CLAIMS

CASSANDRA ANDERSON, GARRETT DEWYSE, RYAN DURUSSELL, MELISSA DURUSSELL, ERIC OSTERGEN, PATRICK KIESSEL, and THOMAS ROY,

Plaintiffs,

v

Case No. 25-000131-MZ

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan,

Hon. James Robert Redford

Defendants.
_____ /

OPINION AND ORDER DISMISSING COMPLAINT AS MOOT

In November 2024, Kristen McDonald Rivet, who was then the state senator for Michigan State Senate District 35, won her election to serve in the United States House of Representatives. On January 3, 2025, Congresswoman Rivet took her new seat, leaving a vacancy in the Michigan State Senate.

On August 10, 2025, after more than 200 days without representation in Michigan's 35th State Senate District, plaintiffs filed suit against Governor Gretchen Whitmer, seeking a declaratory judgment regarding the Governor's duty under Const 1963, art 5, § 13 to hold a special election to fill the vacancy, a writ of mandamus and injunction compelling the Governor to issue a writ of election and to schedule the special election, and "all attorney fees, costs, and any other relief this Court deems just and proper." On August 12, the Court expedited the matter and entered

a scheduling order setting pleading deadlines and dates for oral argument. Plaintiffs moved for summary disposition on August 14, and the Governor responded and filed a competing motion for summary disposition on August 28. While these motions were pending, on August 29, Governor Whitmer issued a writ of election and called for the special primary and general election to be held in February and March of 2026 respectively. The Governor filed a Notice of Executive Action with the Court the same day.

The Court held a telephonic status conference on September 9, 2025, the same day that plaintiffs moved to file a response to the Notice of Executive Action. The Court granted plaintiffs' motion, authorized the filing of an additional pleading in support of plaintiffs' motion, and directed the Governor to file a supplemental responsive brief. The September 9 Order "encouraged" the parties to "focus on the concerns raised in plaintiffs' September 9, 2025 motion—predominantly the question of whether the Notice of Executive Action renders plaintiffs' claims moot or otherwise nonjusticable."

The Court has reviewed the briefs submitted in response to the September 9 Order and DISMISSES plaintiffs' complaint as MOOT.

ANALYSIS

The Court finds that the writ of election issued by the Governor on August 29, 2025, has rendered plaintiffs' complaint MOOT. Trial courts in Michigan "exist to decide actual cases and controversies." *In re Tchakarova*, 328 Mich App 172, 178; 936 NW2d 863 (2019) (quotation marks and citation omitted). If the court's ruling can have no "practical legal effect" because there is no existing controversy, an action is moot. *Bailey v Antrim Co*, 341 Mich App 411, 419; 990 NW2d 372 (2022) (quotation marks and citation omitted). Stated differently, "[a]n issue is moot

if an event has occurred that renders it impossible for the court to grant relief." *Tripp v Baker*, 346 Mich App 257, 274; 12 NW3d 45 (2023) (quotation marks and citation omitted).

Plaintiffs' complaint sought a declaratory judgment affirming their constitutional right to have a special election called, as well as a writ of mandamus and injunction compelling the issuance of a writ of election and the scheduling of the special election. This relief has been granted: the Governor has issued the writ of election and the special election has been scheduled. The parties' dispute over whether the Governor was required to issue the writ of election is no longer an actual case and controversy; it has become hypothetical. Any decision by the Court would be advisory only. Actual-case-and-controversy principles preclude this Court from issuing such an advisory opinion. See *In re Smith*, 324 Mich App 28, 41; 919 NW2d 427 (2018) ("This requirement, commonly known as the real-case-or-controversy requirement, prevents this Court from rendering advisory opinions that have no practical legal effect in a case.") (quotation marks and citation omitted).

Plaintiffs argue that their request for nominal damages keeps their complaint regarding the underlying constitutional violation alive. While the Court of Appeals has recognized the possibility for an otherwise moot case to proceed in order to allow the recovery of nominal damages, see *Duckett v Solky*, 341 Mich App 706, 732; 991 NW2d 852 (2022), this does not apply here. In *Duckett*, the plaintiff sued the state hospital director, in both her individual and official capacity, claiming the director deprived him of his procedural due process rights by failing to notify him of the right to appeal her order revoking a contract allowing him to live in the community and reinstating his involuntary hospitalization. *Id*. at 712-713. The Court of Appeals held that the plaintiff's claim for injunctive relief was precluded on immunity grounds and that he could not bring a claim for damages against the director in her official capacity, leaving only his

claim for damages against the director in her individual capacity. *Id*. at 729. The Court of Appeals then turned to the question of whether the plaintiff's continued involuntary hospitalization rendered his claim for damages against the director moot. *Id*. at 731. The Court concluded that if the plaintiff could establish a due-process violation on remand, he would be entitled to nominal damages. Id. at 732. Under the circumstances, a trial court judgment in the plaintiff's favor would have a practical, legal effect on an existing controversy, i.e., monetary damages suffered by the plaintiff as a result of the constitutional deprivation.

The same is not true here. Plaintiffs sue the Governor in her official capacity only to compel her to take official action. Any potential nominal damages bear no relation to the relief requested, which is the right to vote in a special election. The controversy between the parties was the special election, and a judgment as to whether plaintiffs can or should collect $1.00 in damages given that the writ of election has been issued and election dates have been set can have no "practical legal effect on the controversy." *Duckett*, 341 Mich App at 731-732. The case is moot. Plaintiffs did not request nominal damages in the initial complaint. Their reason for doing so now appears more related to seeking an advisory opinion regarding the Governor's duty under Const 1963, art 5, § 13, than an actual harm that could be remedied by $1.00 in damages. The case-and-controversy underlying this request is moot and no exception to the mootness doctrine applies.

IT IS ORDERED:

1. The Court DISMISSES plaintiffs' complaint as MOOT.

2. This is a final order resolving all issues in this case.

Date: October 3, 2025

James Robert Redford
Judge, Court of Claims