STATE OF MICHIGAN

COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

v

Case No. 26-000114-MB

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

Hon. Sima G. Patel

Defendant.
_____ /

OPINION AND ORDER GRANTING DEFENDANT'S 6/3/26 MOTION FOR SUMMARY DISPOSITION

At 3:55 p.m. on May 20, 2026, plaintiff filed an amended complaint in 26-000104-MB *Davis v Benson*, to add a challenge to the candidacy of Michael Howard for State House District 11. This Court struck that claim because the "unrelated claim regarding a newly identified candidate [could not] be raised in an amended complaint and must be raised in a new action." At oral argument on May 22, plaintiff indicated on the record that he had filed or would be filing a complaint raising his challenge to Howard's candidacy that day. Instead, with full knowledge that all challenges related to the 2026 primary election must be completely resolved by June 5, plaintiff waited until the close of business on June 1, 10 days later, to file this action. Plaintiff proceeded to file an emergency motion to file an amended, notarized complaint at 2:40 p.m. on June 2 (which this Court granted), an index of exhibits for his complaint at 6:47 a.m. on June 3, and then an emergency motion for a temporary restraining order or preliminary injunction at 4:12 p.m. on June 3.

In a June 2, 2026 emergency scheduling order, the Court ordered plaintiff to serve defendant by noon that day. Plaintiff provided copies of all pleadings in this case to defendant via e-mail. MCR 2.107(C)(4) provides that service may be effectuated by alternative electronic means but only upon stipulation of the parties. Plaintiff never secured a stipulation from defendant and, when defendant sought dismissal on this ground, plaintiff filed an ex parte motion for alternative service at 10:44 a.m. on June 4, 2026.

Candidate Howard accepted service via e-mail on June 4, 2026. Howard moved to intervene in this action at 8:02 a.m. on the same day.

The Court DENIES Howard's motion to intervene as a party, but, in the alternative, will consider his brief as an amicus.[1] The Court GRANTS plaintiff's emergency motion for alternative service but with conditions as cited below. The Court GRANTS defendant's motion for summary disposition of this action, and DENIES plaintiff's June 2, 2026 motion for an emergency evidentiary hearing and June 3, 2026 emergency motion for a TRO or preliminary injunction under the laches doctrine. The Court DISMISSES plaintiff's action WITH PREJUDICE.

The Court of Appeals explained the doctrine of laches in *Davis v Secretary of State*, 346 Mich App 445, 462; 12 NW3d 653 (2023):

> Laches is an equitable tool that may be used to remedy the inconvenience or prejudice to a party caused by an improper delay in asserting a right. *Pub Health Dep't v Rivergate Manor*, 452 Mich 495, 507; 550 NW2d 515 (1996). The issue of whether relief will be withheld on the basis of laches is contingent upon the facts and circumstances of the particular case. *Henderson v Connolly's Estate*, 294 Mich

[1] As Howard's candidacy is being challenged, his intervention would be in the role of a defendant. This Court lacks subject matter jurisdiction to consider claims against non-state actors. *Council of Orgs & Others for Ed about Parochiaid v State*, 321 Mich App 456, 465-466; 909 NW2d 449 (2017)

> 1, 19; 292 NW 543 (1940). When no acceptable explanation is proffered for a plaintiff's delay, a plaintiff's requested relief should be barred by unexcused laches. See *id*. Rather, equity will aid the vigilant, not those that "slumber on their rights." *Id*. The purpose of the rule is to promote diligence, discourage laches, and "prevent the enforcement of stale demands." *Id*. As the Court of Claims observed, legal challenges that affect elections are especially prone to causing profound harm to the public and to the integrity of the election process the closer in time those challenges are made to the election, making laches especially appropriate to apply in such matters. *Purcell v Gonzalez*, 549 US 1, 4-6; 127 S Ct 5; 166 L Ed 2d 1 (2006); *New Democratic Coalition v Secretary of State*, 41 Mich App 343, 356-357; 200 NW2d 749 (1972). "[E]lections require the existence of a reasonable amount of time for election officials to comply with the mechanics and complexities of our election laws." *Id*. at 356. "Courts can reasonably endeavor to avoid unnecessarily precipitate changes that would result in immense administrative difficulties for election officials." *Id*. at 357.

In his complaint, plaintiff asserts that he was delayed in bringing this action because this Court struck his claim from his amended complaint in Docket No. 24-104. The Court's May 20, 2026 order did not delay the timely filing of this complaint. The Court's order merely required the challenge to Howard's candidacy be properly initiated. Moreover, Howard filed his candidacy paperwork, including the challenged affidavit of identity on October 29, 2025, giving plaintiff more than ample time to review and challenge his candidacy.

Plaintiff also asserts that he did not obtain sufficient funds to file this action until "about Noon" on June 1. This does not explain why plaintiff waited until 4:28 p.m. to file this action, especially in light of his statement on the record on May 22. If plaintiff believed he had already filed this complaint on May 22, or that he would be filing it that day, the complaint should have been ready to file immediately upon receiving the funds to do so.

Just as in *Davis*, 346 Mich App at 463, plaintiff contends that defendant may not raise the defense of laches because defendant has "unclean hands."

> A defendant who has acted inequitably or in bad faith may not avail itself of the equitable doctrine of laches. *Attorney General v Thomas Solvent Co*, 146 Mich

> App 55, 66; 380 NW2d 53 (1985). Equity does not require complete blamelessness but rather that a party has not acted in bad faith regarding the matter in which relief is sought; furthermore, it should take into account possible injury to the public. *Precision Instrument Mfg Co v Auto Maintenance Machinery Co*, 324 US 806, 814-815; 65 S Ct 993; 89 L Ed 1381 (1945). [*Davis*, 346 Mich App at 463.]

Plaintiff asserts that defendant's hands are unclean because, as of the filing of the complaint, she had not issued a final determination with respect to the certification of candidates for the August 4, 2026 primary election. As of 10:00 a.m. on June 2, 2026, Howard's name appeared on the Secretary of State's website on the "2026 August Primary Candidate Listing" with no notation in the "status" column indicating he had been disqualified or had withdrawn. MCL 168.552(14) states:

> *Not less than 60 days before* the primary election at which candidates are to be nominated, the secretary of state shall certify to the proper boards of election commissioners in the various counties in the state, the name and post office address of each partisan or nonpartisan candidate whose petitions have been filed with the secretary of state and meet the requirements of this act, together with the name of the political party, if any, and the office for which he or she is a candidate. [Emphasis added.]

Sixty days before the August 4, 2026 primary is June 5, 2026. Defendant's hands cannot be unclean when she has followed the plain language of the Michigan Election Laws and will certify the slate of candidates on a date in accordance with the law.

The Court further finds that plaintiff did not properly serve defendant. MCR 2.107(C)(4) states that "the parties may agree to alternative electronic service among themselves by filing a stipulation in that case." Plaintiff never asked defendant if she would agree to alternative service via e-mail. This is not the first matter in which plaintiff sent pleadings to defendant via e-mail without securing the necessary stipulation. MCR 2.105(J)(1) gives the Court discretion to permit service by alternative means if "reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard." Defendant had actual notice of these proceedings

and so the Court will not dismiss plaintiff's action on this ground. However, plaintiff is advised to review MCR 2.107(C)(4) and properly request a stipulation from defendant in all future matters before attempting to effectuate service via e-mail. The Court will not proceed on future matters, especially election matters in which time is of the essence, unless service is properly effectuated.

Accordingly,

1. Howard's motion to intervene is DENIED, but the Court considers his pleading as an amicus brief.
2. Plaintiff's emergency motion for alternative service is GRANTED with notice that future actions filed by plaintiff against defendant must be properly served.
3. Plaintiff's June 1, 2026 emergency motion for an evidentiary hearing, declaratory judgment, and writ of mandamus is DENIED.
4. Plaintiff's June 3, 2026 emergency motion for a TRO or preliminary injunction is DENIED.
5. Defendant's motion for summary disposition is GRANTED.
6. Plaintiff's complaint is DISMISSED WITH PREJUDICE.
7. This is a final order resolving all issues in this case.

Date: June 4, 2026

Sima G. Patel
Judge, Court of Claims