STATE OF MICHIGAN

COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

v

Case No. 26-000153-MZ

STATE BUREAU OF ELECTIONS, DEPARTMENT OF STATE, and JOCELYN BENSON, in her official capacity as duly elected Secretary of State,

Hon. Randy J. Wallace

Defendants.
_____ /

OPINION AND ORDER

This lawsuit arises from a June 22, 2026 request that plaintiff, Robert Davis, submitted to defendant Department of State under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*., requesting the affidavits of identity (AOIs), including amended AOIs, filed by Third Circuit Court judicial candidate Shakira Hawkins in April 2026. On June 25, 2026, the Department of State denied the request, explaining that "the Department [of State] is not the filing office for this candidate." The Department of State recommended that plaintiff contact Wayne County. On July 17, 2026, plaintiff filed this lawsuit, seeking to compel disclosure of the requested documents. He also requested attorney fees, costs, and disbursements under MCL 15.240(6), as well as punitive damages under MCL 15.240(7). Plaintiff also moved, on an emergency basis, for a declaratory judgment and an award of allowable attorney fees and costs under FOIA. Following service of process, this Court entered an expedited scheduling order, requiring defendants—the

Department of State, the State Bureau of Elections, and Secretary of State Jocelyn Benson—to respond to the complaint and the emergency motion on or before August 10, 2026.

On August 10, 2026, defendants moved for summary disposition under MCR 2.116(C)(10) and responded to plaintiff's emergency motion. Defendants contend that this lawsuit was not necessary to compel production of the requested AOIs because the denial of the FOIA request was premised on the mistaken assumption that the Department of State was not the filing office for the candidate. They argue that plaintiff could have submitted a written appeal to the head of the Department of State, as outlined in MCL 15.235(8)(a) and MCL 15.240(1)(a), or simply contacted the Department of State to remedy the situation. Instead, plaintiff inexplicably waited 22 days after the FOIA request was denied and then filed this lawsuit without contacting the Department of State again. Upon plaintiff's filing of the lawsuit, the Department of State immediately recognized the error and provided the documents to plaintiff via e-mail, free of charge. Defendants argue that the disclosure of the responsive documents rendered the substantive component of plaintiff's FOIA complaint moot. Defendants further argue that plaintiff is not entitled to fees, costs, or disbursements because the lawsuit was not reasonably necessary to compel disclosure of the public records and did not have a substantial causative effect on the delivery of the information.

On August 13, 2026, plaintiff filed an amended complaint, purportedly as a matter of right under MCR 2.118(A)(1). In addition to his original claims, plaintiff raised new claims for declaratory and mandamus relief relating to Hawkins's certification as a judicial candidate on the November 3, 2026 general election ballot. Plaintiff relies on a recent Court of Appeals opinion, *Barkley v Southfield*, ___ Mich App ___; ___ NW3d ___ (2026) (Docket Nos. 369608, 370050, 370112, 370580, 370583, 372060, and 372076), to support his position that he could file an

amended complaint as a matter of right under MCR 2.118(A)(1) even after a motion for summary disposition was filed because no "responsive pleading" has been filed.

On the same day, plaintiff filed a notice of withdrawal of his emergency motion for a declaratory judgment and award of attorney fees and costs under FOIA. Plaintiff also responded to the motion for summary disposition, arguing that the amended complaint superseded the original complaint and rendered defendants' motion for summary disposition moot. On August 14, 2026, plaintiff moved, on an emergency basis, for an ex parte temporary restraining order (TRO) preventing defendants from certifying Hawkins as a judicial candidate for the upcoming general election.

Having reviewed the pending motions and responses, the Court REJECTS plaintiff's amended complaint. MCR 2.118(A)(1) allows a party to amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party. MCR 2.110(A) defines the term "pleading." A motion for summary disposition is not included within the definition of "pleading" in MCR 2.110(A) and, therefore, does not trigger the 14-day period for amending the complaint under MCR 2.118(A)(1). Instead, once the motion for summary disposition was filed, plaintiff was required to move to amend the complaint under MCR 2.118(A)(2), which provides that except as provided in MCR 2.118(A)(1), a party may only amend a pleading by leave of the Court or the adverse party's written consent. See *Blade v Oakland Co*, unpublished per curiam opinion of the Court of Appeals, issued June 12, 2025 (Docket No. 371082), p 5 ("Because a motion for summary disposition is not a responsive pleading, . . .

plaintiff did not have an opportunity to file an amended complaint as a matter of right under MCR 2.118(A)(1).").[1]

To support that he could amend the complaint as a matter of course under MCR 2.118(A)(1), plaintiff relies on *Barkley*, a recent Court of Appeals opinion in which the Court held that the plaintiffs could amend their complaints as a matter of right under MCR 2.118(A)(1). *Barkley* is distinguishable from this matter because *Barkley* presented a distinct issue of whether the plaintiffs could amend their complaint as a matter of right before the defendants were served with the original complaint. *Barkley*, ___ Mich App at ___; slip op at 7-8. Because the defendants were not served before the complaint was amended, they did not have the opportunity to respond, and the amendment was permitted. See *id*. at ___; slip op at 7-8, 12-13. Thus, *Barkley* did not present the scenario presented in this case where defendants were served with the original complaint, expedited consideration was granted and a scheduling order was entered, and defendants moved for summary disposition before the amended complaint was filed. For these reasons, this Court rejects plaintiff's 8/13/26 amended complaint.

Under this Court's scheduling order, plaintiff's response to defendants' motion for summary disposition was due by 4:30 p.m., on August 17, 2026. Plaintiff timely responded to the motion for summary disposition on August 14, 2026, but the only argument raised was that the filing of the amended complaint rendered the motion for summary disposition moot. The motion for summary disposition is not moot because plaintiff could not amend his complaint as a matter

[1] Although unpublished opinions of the Court of Appeals are not binding precedent, they may be considered for their persuasive value. See *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017)

of right under MCR 2.118(A)(1). Because plaintiff did not address the merits of the motion for summary disposition, the motion is treated as uncontested under Court of Claims LCR 2.119(C)(3).

The uncontested evidence shows that defendants voluntarily provided plaintiff with the records he requested under FOIA upon the filing of this lawsuit. Accordingly, the Court grants defendant's motion for summary disposition and dismisses the substantive component of plaintiff's complaint as moot. See *King v Mich State Police Dep't*, 303 Mich App 162, 194; 841 NW2d 914 (2013) ("When the disclosure that a [FOIA] suit seeks has already been made, the substance of the controversy disappears and becomes moot.") (quotation marks and citation omitted; alteration in original).

As for plaintiff's request for fees, costs, and punitive damages, the uncontested reason for the failure to disclose is that the Department of State mistakenly believed it was not the correct filing office for the candidate. Given that defendants immediately disclosed the requested documents upon receipt of the lawsuit and plaintiff did not take any steps to obtain disclosure in lieu of litigation, the Court concludes that the lawsuit was not reasonably necessary to compel disclosure. See *Woodman v Dep't of Corrections*, 511 Mich 427, 443; 999 NW2d 463 (2023) ("We have explained that to 'prevail' under MCL 15.240(6), a court must conclude that the action was reasonably necessary to compel the disclosure of public records, and that the action had a substantial causative effect on the delivery of the information to the plaintiff.") (quotation marks and citation omitted). Plaintiff is not entitled to fees, costs, or disbursements under MCL 15.240(6). For the same reasons, defendants did not arbitrarily and capriciously violate FOIA, and plaintiff is not entitled to punitive damages under MCL 15.240(7).

Therefore, the Court GRANTS defendants' motion for summary disposition and DISMISSES the complaint WITH PREJUDICE. Finally, plaintiff's emergency motion for a TRO is DENIED AS MOOT.

IT IS SO ORDERED. This order resolves the last pending claim and closes the case.

Date: August 18, 2026

Hon. Randy J. Wallace
Judge, Court of Claims