STATE OF MICHIGAN

COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

v

Case No. 26-000167-MB

JOCELYN BENSON, in her official capacity as Secretary of State,

Hon. Randy J. Wallace

Defendant.
_____ /

OPINION AND ORDER

On August 6, 2026, plaintiff, Robert Davis, filed this election-related lawsuit against defendant Jocelyn Benson in her official capacity as Secretary of State (the SOS),[1] along with an emergency motion for an evidentiary hearing and issuance of nonparty discovery subpoenas on Benson and the Jocelyn Benson for Secretary of State Candidate Committee (the candidate committee). The complaint seeks a declaration that, under MCL 168.558(4), the SOS must decertify Benson as a gubernatorial candidate for purposes of the November 3, 2026 general election because she allegedly made a false statement in her affidavit of identity (AOI). The complaint further challenges the SOS's promulgation of rules relating to the timing of challenges to AOIs and raises claims under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*. On

[1] Davis sues Benson in her official capacity as Secretary of State. Benson is also the gubernatorial candidate whose candidacy plaintiff challenges in this lawsuit. Therefore, the Court will refer to Benson in her official capacity as the SOS and in her individual capacity as Benson.

August 10, 2026, following service of process, this Court issued an expedited scheduling order, requiring the SOS to respond to the complaint and emergency motion by 4:00 p.m., on August 20, 2026.

The SOS timely responded to the emergency motion and moved for summary disposition under MCR 2.116(C)(8) and (10).[2] The SOS argues that plaintiff's FOIA claims and declaratory/mandamus claims must be dismissed on the merits and that plaintiff's challenge to the promulgation of administrative rules relating to challenges to AOIs is barred by laches. Plaintiff responded to the motion for summary disposition and countermoved for summary disposition in his favor on his FOIA claims under MCR 2.116(I)(2). The SOS has filed a reply brief in support of summary disposition.

On August 12, 2026, plaintiff moved, on an emergency basis, for a declaratory judgment in relation to the FOIA claims. On the same day, plaintiff moved, on an emergency basis, for a temporary restraining order (TRO) and preliminary injunction enjoining the SOS from certifying Benson's candidacy. Finally, plaintiff has moved, on an emergency basis, to file a supplemental response in opposition to the motion for summary disposition to address the laches argument, which was not addressed in plaintiff's original response brief.

The Court dispenses with a hearing on the motions. For the reasons discussed in this Opinion and Order, the Court GRANTS the SOS's motion for summary disposition, DENIES AS MOOT plaintiff's 8/6/26 emergency motion for an evidentiary hearing and issuance of nonparty

[2] As discussed later, the SOS mistakenly omitted MCR 2.116(C)(10) as a ground for summary disposition in the motion itself but cited this subrule in her brief in support of summary disposition.

subpoenas, DENIES AS MOOT plaintiff's 8/12/26 emergency motion for a declaratory judgment on his FOIA claims, GRANTS plaintiff's motion to exceed the 20-page limit for his 8/12/26 emergency motion for declaratory judgment on Counts I through III of the amended complaint, DENIES AS MOOT plaintiff's 8/12/26 motion for a TRO/preliminary injunction, DENIES plaintiff's motion to file a supplemental response brief in opposition to summary disposition, and DISMISSES the amended complaint WITH PREJUDICE.

I. BACKGROUND

A. FOIA REQUESTS

In this lawsuit filed after the August 4, 2026 primary election, plaintiff contends that Benson falsely certified in her AOI that all late filing fees required of her or any candidate committee organized to support her election under the Michigan Campaign Finance Act (MCFA), MCL 169.201 *et seq*., have been paid.

Plaintiff asserts that, upon his review of certain public records, including campaign finance records publicly available on the SOS's website, he discovered that Benson did not pay certain $50 late filing fees that were assessed in 2015 and 2019 in connection with Benson's campaigns for Secretary of State. Plaintiff alleges that, in 2015, Benson's Secretary of State Campaign was assessed a $50 late fee for failing to file a 2015 Annual Campaign Statement on a timely basis in compliance with the MCFA. Although the $50 late fee was paid by check on February 25, 2015, plaintiff contends, "[u]pon information and belief," that the $50 check was not paid by Benson herself but was paid by the Jocelyn Benson for Secretary of State Candidate Committee. Plaintiff asserts that the payment by Benson's candidate committee violated the MCFA.

Plaintiff further asserts that, in January 2019, Benson and her SOS candidate committee were issued four separate late filing fee notices in connection with the 2018 election cycle. Plaintiff alleges that on January 22, 2019, Sally Marsh, a representative of Benson's candidate committee, e-mailed SOS election analyst Amy Lovegrove, requesting a fee waiver for the assessed late filing fees. Plaintiff alleges that the campaign-finance database does not have a copy of any communication from Lovegrove granting Marsh's fee-waiver request. However, the campaign-finance database reflects that two of the four late filing fees were paid by check on January 29, 2019. Plaintiff submits that because the database does not indicate that the other two late filing fees assessed on January 22, 2019 were paid, Benson's AOI contained a false statement that all late filing fees and fines have been filed or paid.

On July 19, 2026, plaintiff submitted three FOIA requests to the Bureau of Elections via e-mail.[3] The first request was for copies of any AOIs, including amended or duplicate AOIs, filed by Benson in 2026 to qualify as a candidate for governor in the August 4, 2026 primary election. On July 22, 2026, the SOS's FOIA Coordinator responded to this request by granting the request in part and denying the request in part. Although the SOS provided plaintiff with two copies of Benson's AOI, the copies redacted Benson's residential address (leaving only her city and ZIP code visible), her e-mail address, and her telephone number. The redacted AOIs showed Benson's complete mailing address. The AOIs were signed and notarized on April 9, 2026, and are stamped as received by the Department of State on April 16, 2026. The accompanying response letter

[3] According to the SOS, plaintiff made an earlier FOIA request, on May 12, 2026, for all AOIs filed by Benson in connection with her gubernatorial campaign, and the SOS responded on May 19, 2026, providing plaintiff with the same redacted AOI that was provided in response to his July 19, 2026 FOIA request. However, the May 12, 2026 FOIA request does not form the basis of plaintiff's FOIA claim in this lawsuit.

explained that the information was redacted on the basis of the personal-privacy exemption to FOIA, MCL 15.243(1)(a). Plaintiff represents in this lawsuit that the SOS has provided him with copies of AOIs of other candidates in response to his FOIA requests without redacting the candidate's residential address.

In his second July 19, 2026 FOIA request, plaintiff requested copies of all receipts and written documents showing proof of payment, method of payment, and the name of the payer of the $50 late filing fee paid on behalf of Benson's Secretary of State campaign on February 25, 2015. Plaintiff also requested a copy of the $50 check that was used to pay the late filing fee.

On August 10, 2026, after taking an extension permitted under FOIA, the SOS responded to the request by granting the request in part and denying the request in part. The SOS provided plaintiff with a link to the SOS's campaign finance database. Plaintiff asserts in his complaint that the database did not include all responsive documents. Plaintiff alleges that the information supplied on the database constitutes proof that SOS has further documentation about the payment of the $50 late filing fee in its possession. The SOS denied the request in part because any records that were not contained in the database were out of retention and were not available.[4]

Plaintiff's third July 19, 2026 FOIA request was for two categories of items. Item 1 was a request for "[c]opies of any and all written responses issued by Amy Lovegrove in response to Sally Marsh of the Jocelyn Benson for Secretary of State Committee['s] . . . January 22, 2019 email requesting a waiver or voiding of late filing fees the Secretary of State assessed against the

[4] Plaintiff asserts that he filed a separate FOIA request to the Department of Treasury for the same information but does not detail the response to that request or when the request was made.

Jocelyn Benson for Secretary of State Committee for its failure to file late contribution reports." Item 2 was a request for "[c]opies of any and all written waivers of late filing fees or the voiding of late filing fees that Amy Lovegrove or the Secretary of State granted to or approved for the Jocelyn Benson for Secretary of State Committee . . . in the years 2019 or 2018."

After taking a 10-business-day extension under FOIA, on August 10, 2026, the SOS responded to plaintiff's third FOIA request. The SOS denied Item 1 on the basis that the requested documents were out of retention and not available.[5] As for Item 2, the SOS granted the request to the extent the requested information was available to the public by searching a database and provided the website address for the database. Plaintiff asserts that the database did not provide all requested documents associated with this FOIA request.

B. AMENDMENTS TO AOI RULES

On June 8, 2026, amendments to Mich Admin Code, R 168.1, 168.5, and 168.6 (collectively, the AOI Rules) went into effect. The amendments removed a good-cause exception to the seven-day deadline for filing challenges to candidate AOIs. On July 7, 2026, plaintiff filed a request for a declaratory ruling in connection with the validity of the AOI Rules. On July 29, 2026, at 7:07 a.m., plaintiff submitted a second request for an expedited declaratory ruling under MCL 24.264 in relation to the AOI Rules, which raised the specific legal challenges asserted in this lawsuit. Plaintiff asked for a decision by 2:00 p.m. that day to address his inquiry "regarding the validity of Mich Admin Code, R 168.1 and R 168.5, as amended effective June 8, 2026 (Rule

[5] According to the SOS, the Department of Technology, Management, and Budget has established a seven-year retention schedule for campaign-finance payment and deposit records, and the SOS has followed that retention schedule as it relates to the requested documents.

Set # 2025-52-ST)." The request for a declaratory ruling did not seek a ruling on the validity of Rule 168.6. Plaintiff contended that the SOS's Regulatory Impact Statement (RIS) for the amendments to the AOI Rules was missing several statutorily required elements and, therefore, the Rule amendments were not promulgated properly under the Administrative Procedures Act (the APA), MCL 24.245(3) and (4). Plaintiff explained that he needed an expedited response because of an expedited scheduling order issued by Judge RIORDAN in Court of Claims Case No. 26-000147-MB.[6] The focus of Count IV is on the legal issues raised in the July 29, 2026 request for a declaratory ruling.

C. MCFA COMPLAINT

On July 20, 2026, plaintiff filed a complaint under the MCFA against the candidate committee. The complaint asserted violations of the MCFA in relation to the 2015 late filing fee, which plaintiff asserted the candidate committee failed to accurately report on its quarterly campaign statements. On July 24, 2026, the SOS referred the campaign-finance complaint to the Michigan Attorney General for investigation. See MCL 169.215(9) ("If the violation involves the secretary of state, . . . the secretary of state shall refer the matter to the attorney general to determine whether a violation of this act has occurred."). Plaintiff does not allege that the Attorney General has taken further action on his MCFA complaint.

Plaintiff's challenge to the validity of the AOI Rules was the subject of a prior Court of Claims case, which related to the 2026 election cycle but involved a different candidate, Court of Claims Case No. 26-000147-MB. In an August 21, 2026 Opinion and Order, the Court of Claims,

[6] As discussed later, in Court of Claims Case No. 26-000147-MB, plaintiff raised a claim regarding the validity of the AOI Rules that is nearly identical to the issue raised in this matter.

Judge RIORDAN presiding, concluded that "the amendments to Rules 168.1, 168.5, and 168.6 that took effect on June 8, 2026, are valid and not void." *Davis v Benson*, opinion and order of the Court of Claims, issued August 21, 2026 (Docket No. 26-000147-MB), p 15. As discussed later, that decision was upheld on reconsideration in an opinion and order that expressly considered the RIS challenge plaintiff raises in this lawsuit. *Davis v Benson*, opinion and order of the Court of Claims, issued August 26, 2026 (Docket No. 26-000147-MB), p 7.

II. PROCEDURAL HISTORY

On August 6, 2026, plaintiff filed his original four-count complaint, as well as his emergency motion for an evidentiary hearing and issuance of nonparty discovery subpoenas.[7] Plaintiff requested an evidentiary hearing to take testimony from Benson or a representative of her candidate committee regarding the identity of the payor of the $50 late filing fee. The basis for plaintiff's request for emergency relief was the upcoming certification and mailing deadlines associated with the November 3, 2026 general election. Plaintiff served the complaint on the SOS, and on August 10, 2026, this Court entered an order granting expedited consideration.

On August 11, 2026, plaintiff filed an amended complaint, which incorporated two new FOIA claims based on the SOS's August 10, 2026 FOIA responses. Plaintiff represented that the amended complaint was filed as a matter of right under MCR 2.118(A)(1) and *Barkley v Southfield*,

[7] Plaintiff's request for issuance of nonparty discovery subpoenas is moot. Plaintiff's request was premised on his status as a pro se party. However, since the filing of the motion, attorney Andrew Patterson has appeared as counsel for plaintiff.

___ Mich App ___; ___ NW3d ___ (2026) (Docket Nos. 369608, 370050, 370112, 370580, 370583, 372060, and 372076).[8] The amended complaint contains seven counts:

- Count I: A claim for violation of FOIA for providing a redacted copy of Benson's AOI. Plaintiff request attorney fees and costs under MCL 15.240(6) and civil fines/punitive damages under MCL 150.240(7) for his FOIA claims.

- Count II: A claim for violation of FOIA on the basis that the SOS failed to provide all responsive documents relating to payment of Benson's $50 late filing fee in February 2015 and failed to protect those public records from destruction.

- Count III: A claim for violation of FOIA on the basis that the SOS failed to provide all documents relating to waivers of late filing fees assessed on Benson in 2019 and failed to protect the records from destruction.

- Count IV: A claim for a declaratory judgment under MCR 2.605 and MCL 24.264 that the AOI Rules, as amended effective June 8, 2026, are void and invalid.

- Count V: A claim for a declaratory judgment MCR 2.605 and MCL 24.263 that SOS has a legal duty under MCL 168.558(4) to decertify Jocelyn Benson's name to appear on the November 3, 2026 general election ballot because she submitted an AOI containing a false statement relating to the 2015 late filing fees.

- Count VI: A claim for a declaratory judgment under MCR 2.605 and MCL 24.263 that the SOS has a legal duty under MCL 168.558(4) not to certify Benson's gubernatorial candidacy because she submitted an AOI containing a false statement about late filings fees from 2019.

- Count VI: A claim for a writ of mandamus compelling the SOS not to certify Benson to appear on the November 3, 2026 general election ballot as the Democratic Party nominee for governor.

[8] Plaintiff filed his amended complaint several days before the SOS's response to the original complaint was due under this Court's expedited scheduling order. The SOS does not challenge plaintiff's ability to amend the complaint following the entry of this Court's expedited scheduling order and has responded to the claims in the amended complaint on the merits in her motion for summary disposition. Accordingly, the Court will consider the amended complaint as the operative complaint.

On August 12, 2026, plaintiff moved for a declaratory judgment on the FOIA claims in his amended complaint (Counts I through III), requesting an expected hearing under MCL 15.240(5).[9] On the same day, plaintiff moved, on an emergency basis, for an ex parte TRO to enjoin the SOS from proceeding with certifying Benson as a gubernatorial candidate to appear on the November 3, 2026 general election ballot. He alternatively requested an order to show cause why a preliminary injunction should not issue.

The SOS timely moved for summary disposition of the amended complaint under MCR 2.116(C)(8) or MCR 2.116(C)(10)[10] in a combined brief that addressed plaintiff's motions. The SOS argues that plaintiff received all documents in response to his FOIA requests that are in the possession of the SOS and that are not exempt under FOIA. More specifically, the SOS argues that the requested campaign-finance records are exempt from disclosure under MCL 15.243(1)(r), which exempts "[r]ecords of a campaign committee including a committee that receives money from a state campaign fund." She argues that her home address is exempt from disclosure under the privacy exemption, MCL 15.243(1)(a), which exempts "[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an

[9] Plaintiff's filed motion was 38 pages. He moved to exceed the 20-page limit for purposes of this motion, only. The Court will GRANT the request to exceed page limit for purposes of the motion for declaratory judgment, only. The motion filed on August 12 is accepted as filed.

[10] Plaintiff argues in his response brief that the SOS relies improperly on Brater's affidavit to support her motion for summary disposition because a motion for summary disposition under MCR 2.116(C)(8) must be based on the pleadings alone. However, the SOS alternatively moved for summary disposition under MCR 2.116(C)(10). Regardless, as noted later, the Court concludes that summary disposition is appropriate under MCR 2.116(C)(8) and, therefore, need not consider Brater's affidavit.

individual's privacy." The SOS argues that any prior disclosures of a candidate's address on an AOI was a mistake.

The SOS argues that plaintiff's challenge to the AOI Rules is barred by laches and fails on the merits because the promulgation of the 2026 amendments satisfied the APA requirements. Regarding plaintiff's declaratory and mandamus claims, the SOS contends that Board of State Canvassers is the entity that certifies party candidates for governor following a primary election. The SOS argues that, although the documents themselves were not retained, internal system notes indicate that the 2015 late filing fees were paid and that the 2019 late filing fees were voided.

Plaintiff responded to the motion for summary disposition, arguing, in relevant part, that the requested campaign finance records in his second and third FOIA requests are not exempt under MCL 15.243(1)(r) because the MCFA requires campaign finance records filed by campaign committees to be open for public inspection. He argues that the MCFA is the more specific statute and should control over FOIA. Plaintiff further argues that the seven-year retention schedule violates Const 1963, art IX, § 23. Plaintiff also contends that the SOS has not justified the partial denial of the FOIA requests. Plaintiff further argues that the AOI Rules are void because the RIS the SOS submitted when promulgating those rules did not comply with certain requirements under the APA. Defendant has submitted a reply brief.

III. ANALYSIS

A. STANDARDS OF REVIEW

The SOS moves for summary disposition under MCR 2.116(C)(8) or, alternatively, MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(8) examines the legal sufficiency of the plaintiff's claims on the basis of the factual allegations raised in the complaint.

El-Khalil v Oakwood Healthcare, Inc, 504 Mich 152, 159; 934 NW2d 665 (2019). The Court accepts the factual allegations in the complaint as true and will decide the motion on the pleadings alone. *Id*. at 160. The motion will be granted if the claim is so clearly unenforceable as a matter of law that no factual development would justify recovery. *Id*. "A motion under MCR 2.116(C)(10), on the other hand, tests the *factual sufficiency* of a claim." *Id*. The Court reviews the evidence submitted by the parties in the light most favorable to the nonmoving party and dismiss the action if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id*.

Plaintiff requests a declaratory judgment. MCR 2.605(A)(1) provides, "In 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." Plaintiff also seeks a writ of mandamus. A writ of mandamus is an extraordinary remedy falling within the Court's discretion to grant or deny. *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016).

> To obtain the extraordinary remedy of a writ of mandamus, the 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. In relation to a request for mandamus, a clear, legal right 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*. (quotation marks and citation omitted).]

To the extent that this case also involves questions of statutory interpretation, the Court recognizes the following principles:

> When interpreting a statute, [the] foremost rule of construction is to discern and give effect to the Legislature's intent. Because the language chosen is the most reliable indicator of that intent, [a court will] enforce clear and unambiguous

> statutory language as written, giving effect to every word, phrase, and clause. If the statutory provision at issue is clear and unambiguous, it must be enforced as written, and no judicial construction is permitted or required. [*Lockport Twp v Three Rivers*, 319 Mich App 516, 520; 902 NW2d 430 (2017) (quotation marks and citations omitted; first alteration in original).]

B. FOIA CLAIMS (COUNTS I–III)

In Count I of the complaint, plaintiff challenges the redaction of Benson's residential street address, telephone number, and e-mail address from the AOI under FOIA's privacy exemption. Plaintiff does not address the SOS's arguments on the merits in his response brief, opting instead to incorporate by reference the factual and legal allegations in his amended complaint.

"The privacy exemption permits a public body to exempt from disclosure [i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." *Bitterman v Village of Oakley*, 309 Mich App 53, 61; 868 NW2d 642 (2015) (quotation marks and citation omitted; alteration in original). The public body has the burden to support the decision to withhold the requested records from disclosure under the privacy exemption. *Id*. at 61-62. The public body must establish that the requested information is "of a personal nature," and, if that element is established, that the public disclosure "would constitute a clearly unwarranted invasion of an individual's privacy." *Id*. at 62 (quotation marks and citation omitted). This is determined by a balancing of the public interest in disclosure against the interest that the privacy exemption was designed to protect. *Id*. Information is "of a personal nature" when it is "intimate, embarrassing, private, or confidential." *Id*. (quotation marks and citation omitted). As it relates to the second prong of the privacy-exemption, "[t]he only relevant public interest in disclosure to be weighed in this balance is the extent to which disclosure would serve the core purpose of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government." *Id*. at 64 (quotation marks and citation omitted).

The Court must examine "whether the requested information would shed light on the governmental agency's conduct or further the core purposes of FOIA." *Id*. (quotation marks and citation omitted).

The SOS did not violate FOIA by redacting Benson's residential street address, e-mail address, and personal telephone number. The requested information is of a personal nature because it involves private information about Benson's residence and personal means of communication. Public disclosure would constitute a clear unwarranted invasion of Benson's privacy. No purpose under FOIA is served by disclosure of Benson's residential address and private telephone and e-mail information. This information does not contribute to a public understanding of the operations or activities of the government, it reveals nothing about the SOS's conduct, and it does not otherwise further the core purposes of FOIA. See MCL 15.231(2) (outlining the purpose of FOIA). Plaintiff speculates that Benson does not reside at the address listed on her AOI but does not support that allegation or explain how his belief would affect the application of the privacy exemption.

Nor would the requested information shed light on Benson's qualifications to run for governor. The only relevant requirement for eligibility to run for the office of governor is that the individual must be a registered and qualified elector in the State for the prior four years. See MCL 168.51. The SOS provided plaintiff with a copy of the AOI containing the city and zip code for the address where Benson resides, which is within Michigan. Plaintiff does not dispute that Benson has been a registered and qualified Michigan elector for the previous four years while she has been serving as Secretary of State. Thus, there is no real public interest at issue as it relates to Benson's home address, e-mail address, or telephone number. The redaction were appropriate under FOIA's privacy exemption.

As for the FOIA requests in Counts II and III, the SOS invoked the campaign-finance exemption in MCL 15.243(1)(r), which again allows a public body to exempt from disclosure "[r]ecords of a campaign committee including a committee that receives money from a state campaign fund." Plaintiff does not challenge whether the campaign committee exemption applies. Instead, he contends that the exemption conflicts with several provisions of the MCFA—MCL 169.216, MCL 169.218(1), and MCL 169.236(7)—which he contends collectively require campaign finance records to be open for public inspection. Plaintiff argues that reading the MCFA and FOIA *in pari materia* results in the conclusion that the MCFA controls over FOIA. He relies on the principle of statutory interpretation that "[w]hen two statutes are *in pari materia* but conflict with one another on a particular issue, the more specific statute must control over the more general statute." *Parise v Detroit Entertainment, LLC*, 295 Mich App 25, 27-28; 811 NW2d 98 (2011) (quotation marks and citation omitted).

The cited provisions of the MCFA contemplate and outline the requirements of the internet disclosure system that was accessible to plaintiff. As noted earlier, the SOS provided plaintiff with a website link where he could locate the database. The statutory schemes do not conflict but instead show a desire by the Legislature to allow for the disclosure of certain campaign finance records on a database as contemplated under the MCFA and to otherwise exempt disclosure of records of a campaign committee under FOIA. Therefore, the SOS did not violate FOIA by denying in part plaintiff's second and third FOIA requests on the basis that they requested records of a campaign committee exempted under FOIA.[11] Finally, because plaintiff has not prevailed on

[11] It is also questionable how this Court could order the production of these records, which are no longer retained by the SOS. Regardless, the retention issue is moot because the SOS did not violate FOIA.

his FOIA claims, he is not entitled to fees, costs, or disbursements under MCL 15.240(6), or punitive damages/civil fines under MCL 15.240(7). The SOS is entitled to summary disposition under MCR 2.116(C)(8) on Counts I through III of the amended complaint.

C. CHALLENGE TO R 168.1, 168.5, AND 168.6 (COUNT IV)

In Count IV of the complaint, plaintiff challenges the validity of the June 8, 2026 amendments to the administrative rules relating to challenges to AOIs, which, among other things, require a filing official to reject a challenge to an AOI received more than seven days after the deadline for filing the AOI. Plaintiff acknowledges in his response brief that these rules prevented him from submitting an untimely challenge to Benson's AOI.

On July 29, 2026, plaintiff submitted an expedited request for a declaratory ruling on the validity of R 168.1 and R 168.5 under MCL 24.264. MCL 24.264 permits the filing of an action for declaratory judgment relating to the validity or applicability of an administrative rule. The statute provides, in relevant part, that "[a]n action for declaratory judgment may not be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously." *Id*. In *Warren Consol Sch Dist v Sch Dist of Hazel Park*, ___ Mich ___, ___; ___ NW3d __ (2026) (Docket No. 167643); slip op at 13, the Michigan Supreme Court held as follows: "MCL 24.264, however, *requires* regulated parties seeking a declaratory decision regarding an agency's *rule* to first present their request to the agency. If such a request is actually or constructively denied, the party may then file a declaratory judgment action in circuit court."

As the Court of Appeals recently observed in an unpublished opinion that this Court finds persuasive, MCL 24.264 does not include a time limit in which a ruling must be provided or allow

a requesting party to dictate a due date for the agency's decision. *Davis v Benson*, unpublished per curiam opinion of the Court of Appeals, issued August 28, 2026 (Docket No. 382090), p 4. As of the date of this Opinion and Order, defendant has not responded to plaintiff's July 29, 2026 request for a declaratory ruling.

Plaintiff challenged the same AOI Rules in Court of Claims Case No. 26-000147-MB, which Judge RIORDAN examined under the framework of exhaustion of administrative remedies. In that matter, plaintiff argued in his original complaint that the SOS violated the APA when promulgating the amendments to the AOI Rules. *Davis v Benson*, opinion and order of the Court of Claims, issued August 26, 2026 (Docket No. 26-000147-MB), p 5. Plaintiff later attempted, on July 30, 2026, to amend his complaint under MCR 2.118(A)(1), after the SOS moved for summary disposition, to raise the same challenge to the promulgation of the amended Rules that he attempts to raise in this case—"that the [RIS] for the proposed amendments did not comply with MCL 24.245(3) and the SOS failed to comply with MCL 24.245(4)." *Id*. at 5.

When ruling on whether the Court should have permitted plaintiff to amend his complaint to add this claim, Judge RIORDAN explained as follows:

> Davis filed a request for an expedited declaratory ruling to challenge the adequacy of the RIS at 7:07 a.m. on July 29, 2026, and demanding a ruling by 2 p.m. that day. Given that the business day generally does not begin until 9 a.m., this gave the SOS only five hours to reach a decision. In the normal course, the SOS must make a request for a declaratory ruling public and allow time for public inspection and for interested persons to submit written comments. The SOS is given 60 days after receipt to issue the declaratory ruling. MCL 169.215(2). It is not surprising that the SOS was unable to resolve Davis's expedited request by the unilaterally designated time for response. Given this extremely truncated timeline dictated by Davis, the Court does not find the SOS's lack of response to be a failure "to act upon it expeditiously." [*Id*. at 7.]

Judge RIORDAN ruled that because the SOS had not denied or failed to expeditiously reach a decision when plaintiff filed his amended complaint on 3:33 p.m., on July 30, 2026, plaintiff could not raise a valid claim for declaratory judgment in connection with the validity of the AOI Rules. See *id*.

Although the SOS does not argue that the ruling in Case No. 26-000147-MB bars relitigation of the issues raised in Count IV, the Court finds that, at the very least, the same rationale on exhaustion of administrative remedies applies in this case. Although this lawsuit was filed on August 6, 2026—7 days after plaintiff filed the amended complaint in Case No. 26-000147-MB—plaintiff provides no argument on why the one-week difference in the filing of the complaints would be dispositive. As Judge RIORDAN noted, plaintiff gave the SOS an "extremely truncated timeline" for responding to his July 29, 2026 request for declaratory ruling. Plaintiff provides no legal basis to support that one week is enough time to act expeditiously in this circumstance, particularly when plaintiff filed his request in the midst of a busy election season and mere weeks before the certification and ballot-printing deadlines for the November 3, 2026 general election. Because the SOS did not deny plaintiff's request for a declaratory ruling (either actually or constructively) before this lawsuit was filed, plaintiff could not commence an action for declaratory relief to void the AOI Rules under MCL 24.264.

Even if plaintiff had exhausted his administrative remedies, his claim in Count IV is barred by laches. "Laches is an equitable tool used to provide a remedy for the inconvenience resulting from the plaintiff's delay in asserting a legal right that was practicable to assert." *Knight v Northpointe Bank*, 300 Mich App 109, 115; 832 NW2d 439 (2013). "To successfully assert laches as an affirmative defense, a defendant must demonstrate prejudice occasioned by the delay."

Nykoriak v Napoleon, 334 Mich App 370, 382; 964 NW2d 895 (2020) (quotation marks and citation omitted).

> [L]egal 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. [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. Courts can reasonably endeavor to avoid unnecessarily precipitate changes that would result in immense administrative difficulties for election officials. [*Davis v Secretary of State*, 346 Mich App 445, 462; 12 NW3d 653 (2023) (quotation marks and citations omitted; second alteration in original).]

Plaintiff did not address the laches argument in his response to the motion for summary disposition, despite the fact that this Court granted plaintiff's request to exceed the 20-page limit. On August 31, 2026, plaintiff moved for leave of the Court to file an additional 14-page brief in response to the laches argument raised in the SOS's motion for summary disposition. Plaintiff cites no legal authority to support his request and provides no explanation for the delay. The Court, therefore, denies the request for leave to file a supplemental response brief and deems the laches argument uncontested under Court of Claims LCR 2.119(C)(3).

Plaintiff delayed the filing of this action. Plaintiff does not assert that he challenged the promulgation of the AOI Rules during the rulemaking process in late 2025 and early 2026. There is also no dispute that Benson's AOI was received by the SOS on April 16, 2026. Yet plaintiff waited until July 19, 2026, to submit his FOIA requests and waited until July 29, 2026, to submit a challenge to the promulgation of the Rules on the basis of the RIS. Plaintiff did not file this lawsuit until August 6, 2026—nearly four months after Benson filed her AOI and approximately one month before the certification of the ballots for the November 3, 2026 general election. Plaintiff's legal claims were practicable to assert much earlier in this year, and plaintiff delayed unnecessarily in asserting the legal challenges raised in this lawsuit.

The SOS has demonstrated prejudice because of the delay. This lawsuit was not filed until August 6, 2026, and plaintiff amended his complaint on August 11, 2026. This Court issued an expedited scheduling order, and briefing concluded on August 31, 2026. Because of the truncated timeline, this matter could not be resolved until the first week of September 2026, which is the same week as the September 4, 2026 date that the SOS must notify counties of the slate of candidates to appear on the general election ballot. As the SOS explains, this is the practical deadline to ensure ballots are ready to be mailed to military and overseas voters on September 19, 2026, and other absentee voters on September 24, 2026. Plaintiff's unjustified delay in pursuing his claims has effectively denied the SOS the opportunity for meaningful appellate review of the issues raised in the complaint. Accordingly, even if plaintiff had exhausted his administrative remedies, plaintiff's challenge to the AOI Rules is also barred by laches.

D. CLAIMS FOR DECLARATORY AND MANDAMUS RELIEF (COUNTS V–VII)

In Counts V–VII of the amended complaint, plaintiff requests a declaration under MCR 2.605 and MCL 24.263 that Benson's AOI contained a false statement under MCL 168.558(4) and that the SOS had a duty to decertify her as a candidate. Notably, plaintiff does not respond to the SOS's arguments raised in her motion for summary disposition on this issue and, instead, incorporates by reference the allegations in Counts V through VII of the amended complaint.

To start, plaintiff does not dispute that his challenge to the AOI was untimely under the AOI Rules, which require that the challenge be filed within seven days. The AOI was filed in mid-April 2026. The deadline to file AOIs expired later that month. Plaintiff did not file this lawsuit until August 6, 2026—over three months later. He did not file a challenge with the filing official within seven days after the deadline for the filing of the AOI, as required under Rule 168.5. The SOS would have needed to reject any challenge filed beyond that deadline. See *id*. Plaintiff asserts

that these claims were not ripe for judicial review until after the August 4, 2026 primary election but does not substantiate that assertion with any legal support.[12] He therefore cannot obtain relief in relation to the AOI challenge.

Even if plaintiff could challenge the AOI months after the expiration of the deadline, plaintiff has not exhausted the administrative complaint process under the MCFA, which is necessary to obtain judicial review of his campaign-finance claims. Plaintiff's claims for declaratory and mandamus relief are premised on the assertion that Benson submitted a false AOI, which necessarily requires a finding that she violated the MCFA with respect to the payment of late filing fees. The MCFA, MCL 169.215(17), provides, in relevant part, that "there is no private right of action, either in law or in equity, under this act." The MCFA further clarifies, "[T]he remedies provided in this act are the exclusive means by which this act may be enforced and by which any harm resulting from a violation of this act may be redressed." *Id*. MCL 169.215(5) through (12) outline the administrative procedures under the MCFA, and MCL 169.215(12) provides that only a final decision and order of the SOS may be subject to judicial review.

Plaintiff filed an MCFA complaint on the 2015 late filing fee issue, only, on July 20, 2026—one day after he requested the relevant records via FOIA. On July 24, the SOS referred plaintiff's MCFA complaint to the Attorney General to decide whether a violation of the MCFA occurred, in compliance with MCL 169.215(9). The Attorney General had only a matter of days to consider the matter before plaintiff filed this lawsuit on August 6, 2026. The language of the

[12] The SOS argues that the Board of State Canvassers is the party that would need to decertify Benson's candidacy following the primary election. See MCL 168.581(3). However, because plaintiff's claims in Counts V through VI fail on the preliminary grounds of failure to exhaust and and laches, the Court need not address whether the SOS is the proper defendant.

MCFA does not suggest that the situation differs in any material respect when the Attorney General investigates the allegations. In other words, without a final decision on the MCFA complaint relating to the 2015 late filing fees (and without *any* complaint relating to the 2019 late filing fees), plaintiff has not exhausted the procedures under the MCFA.[13]

Finally, even if plaintiff could overcome these procedural hurdles, his claims relating to Benson's AOI would be barred by laches for the same reasons noted earlier in relation to Count IV of the complaint. Plaintiff did not file a challenge to Benson's AOI within the seven-day deadline and did not file a campaign-finance challenge until July 20, 2026.[14] Once again, plaintiff presents no excuse for his four-month delay in filing this lawsuit following the filing of the AOI, his months-long delay in submitting his FOIA requests pertaining to the AOI, or his years-long delay in filing the campaign-finance complaint. The SOS has demonstrated prejudice caused by the delay. Therefore, the SOS is entitled to summary disposition of Counts V and VI. Count VII is premised on the success of the claim for declaratory relief. So the Court grants summary disposition in the SOS's favor on Count VII as well.

Because plaintiff has not pleaded a viable legal claim, plaintiff's 8/6/26 emergency motion for an evidentiary hearing and issuance of discovery subpoenas, 8/12/26 emergency motion for a

[13] As this Court recently ruled in a case involving the same parties, there is no private cause of action under the MCFA, and the administrative complaint process under the MCFA is the exclusive means to obtain a determination that a candidate has violated the MCFA, even in the context of a challenge to an alleged false statement in an AOI. See *Davis v Benson*, opinion and order of the Court of Claims, issued August 27, 2026 (Case No. 26-000158-MB).

[14] Plaintiff's assertion that his "campaign finance complaint . . . does **NOT** address any of the allegations or claims as pled" in his complaint is undermined by the content of the campaign finance complaint. If anything, the failure to address these issues in the MCFA complaint filed within days of this lawsuit provides further support for application of the doctrine of laches.

declaratory judgment on the FOIA claims, and 8/12/26 emergency motion for an ex parte TRO are DENIED AS MOOT.

IV. CONCLUSION

For the reasons discussed in this Opinion and Order,

IT IS ORDERED that the SOS's motion for summary disposition under MCR 2.116(C)(8) is GRANTED. Plaintiff's countermotion for summary disposition of Counts I through III of the amended complaint under MCR 2.116(I)(2) is DENIED.

IT IS FURTHER ORDERED that plaintiff's amended complaint is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that plaintiff's 8/6/26 emergency motion for an evidentiary hearing and issuance of nonparty discovery subpoenas is DENIED AS MOOT.

IT IS FURTHER ORDERED that plaintiff's 8/12/26 emergency motion for declaratory judgment on Counts I through III of the amended complaint is DENIED AS MOOT. Plaintiff's motion to exceed the 20-page limit for this motion is GRANTED.

IT IS FURTHER ORDERED that plaintiff's 8/12/26 emergency ex parte motion for a TRO/preliminary injunction is DENIED AS MOOT.

IT IS FURTHER ORDERED that plaintiff's 8/31/26 motion to file a supplemental brief in opposition to the SOS's motion for summary disposition is DENIED.

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

Date: September 3, 2026

Hon. Randy J. Wallace
Judge, Court of Claims