STATE OF MICHIGAN

COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

v

Case No. 26-000220-MB

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

Hon. Michael J. Riordan

Defendants.
_____ /

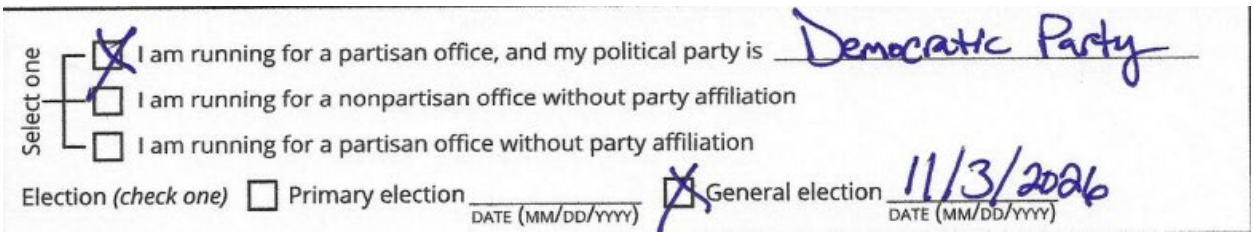
OPINION AND ORDER GRANTING DEFENDANTS' 10/21/26 MOTION FOR SUMMARY DISPOSITION

The deadline to file a declaration of intent (DOI) to run as a write-in candidate for the November 2026 General Election is 4:00 p.m. on Friday, October 23, 2026. Plaintiff, Robert Davis, waited to file his DOI to run as a write-in candidate for United States Senate until Tuesday, October 13, 2026, 21 days before the election, and waited to file this action until October 19, 2026, only 15 days before the election. The Court finds consistent with MCL 691.1031 that plaintiff's action is barred by the doctrine of laches. Even if the action were not barred, the Court would dismiss plaintiff's complaint because his claims lack merit.

Therefore, the Court GRANTS defendants Secretary of State Jocelyn Benson and the State Bureau of Elections' motion for summary disposition and DISMISSES plaintiff's complaint with prejudice. The Court also DENIES plaintiff's emergency motion to supplement the record with sample ballots, and on its own initiative.

I. BACKGROUND

Plaintiff seeks to run as a write-in candidate and join the race for the United States Senate. On Tuesday, October 13, 2026, plaintiff filed a copy of his signed and notarized DOI with defendants. In § 2 of the DOI, plaintiff identified his political party as Democratic Party as follows:


Select one
☒ I am running for a partisan office, and my political party is Democratic Party
☐ I am running for a nonpartisan office without party affiliation
☐ I am running for a partisan office without party affiliation
Election *(check one)* ☐ Primary election DATE (MM/DD/YYYY) ☒ General election 11/3/2026 DATE (MM/DD/YYYY)

At 4:02 p.m. that same day, the Michigan Bureau of Elections Filing and Canvassing Section notified plaintiff that it must reject the DOI because plaintiff filed a copy instead of the original document. The notification further advised plaintiff that "[w]rite-in candidates seeking election to a partisan office at a general election are required to run without party affiliation" and, accordingly, plaintiff should check the box for "I am running for a partisan office without party affiliation" when refiling his DOI.

At 9:15 a.m. on Wednesday, October 14, 2026, plaintiff inquired into the statutory authority for requiring a write-in candidate for a partisan office in the General Election to run without party affiliation. Defendants' agent responded with an email to plaintiff at 1:57 p.m. on Friday, October 16, 2026, and cited Chapter 4 of the *Election Officials' Manual: Write-In Candidates* and MCL 168.97 as the sources of the rule.

MCL 168.97 states:

> The candidate of each political party for the office of United States senator receiving the greatest number of votes cast for candidates for said office, as set forth

> in the report of the board of state canvassers, based on the returns from the various boards of county canvassers, or as determined by the board of state canvassers as the result of a recount, shall be declared ***the*** *nominee of that political party* for said office at the next ensuing November election. The board of state canvassers shall forthwith certify such nomination to the secretary of state. [Emphasis added.]

Pertinent to the matter here, the Democratic Party selected its candidate for the U.S. Senate through the August 2026 Primary Election. Because plaintiff was not that candidate, he cannot now identify as running for the Democratic Party at the General Election.

Plaintiff alleges that he did not receive the email from defendants and so appeared in person at defendants' principal office on the afternoon of Friday, October 16, 2026. Defendants' agent provided the same information in person to plaintiff and defendants again rejected plaintiff's DOI.

Plaintiff filed this emergency action on Monday, October 19, 2026, seeking a declaratory judgment and writ of mandamus compelling defendants to accept his DOI to run as a write-in candidate for United States Senate with a Democratic Party affiliation. Defendants seek summary disposition, contending that plaintiff's action is barred by the doctrine of laches and because defendants' rejection of the DOI was supported by law. Because the record is sufficiently developed to decide the issues raised in this matter, the Court dispenses with a hearing.

II. APPLICABLE LAW

Plaintiff seeks a declaratory judgment and a writ of mandamus. MCR 2.605 governs a trial court's power to enter a declaratory judgment. The court rule provides, in pertinent part, that "[i]n 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." MCR 2.605(A)(1). See also *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 545; 904 NW2d 192 (2017). The language in this rule is

permissive, and the decision whether to grant declaratory relief is within the trial court's sound discretion. *PT Today, Inc v Comm'r of Office of Fin & Ins Servs*, 270 Mich App 110, 126; 715 NW2d 398 (2006). An actual controversy exists "when a declaratory judgment is necessary to guide the plaintiff's future conduct in order to preserve the plaintiff's legal rights." *Shavers v Attorney General*, 402 Mich 554, 588-589; 267 NW2d 72 (1978).

Mandamus is an extraordinary remedy. It "is not a matter of right, but rather one of grace and of discretion." *Toan v McGinn*, 271 Mich 28, 33; 260 NW 108 (1935); *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518-519; 866 NW2d 817 (2014). To support a claim for mandamus, a plaintiff must demonstrate that: (1) he has a "clear, legal right to performance of the specific duty sought," (2) the opposing party "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." *Rental Props Owners Ass'n*, 308 Mich App at 518-519.

> An executive agency may have a clear legal duty when there is a statute that plainly instructs that agency to perform a certain action. Similarly, 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. [*Barrow v Wayne Co Bd of Canvassers*, 341 Mich App 473, 485; 9981 NW2d 610 (2022) (quotation marks and citations omitted).]
>
> Defendants seek summary disposition under MCR 2.116(C)(8) and (10).
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> A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint. When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone. A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery.
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> A motion under MCR 2.116(C)(10), on the other hand, tests the *factual sufficiency* of a claim. When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted

> when there is no genuine issue of material fact. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [*El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019) (quotation marks and citations omitted, emphasis in original.]

III. ANALYSIS

A. LACHES

Effective April 2, 2025, the Legislature enacted MCL 691.1031, which states:

> In a civil action brought in any court of this state affecting elections, dates of elections, candidates, qualifications of candidates, ballots or questions on ballots, or polling places, drop box locations, or early voting locations that are established by the applicable deadline, there is a rebuttable presumption of laches if the action is commenced less than 45 days before the date of the election affected. This section does not apply to an action brought after the date of the affected election.

Plaintiff filed this suit only 15 days before the General Election. Accordingly, the rebuttable presumption of laches applies in this action. "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).

Plaintiff contends that he could not file this action until his claim was ripe, meaning until defendants rejected his DOI. However, plaintiff did not have to wait until October 13, 2026, to file his DOI to run for United States Senate. Plaintiff could have filed a DOI at any time after the August 4, 2026 Primary Election to be considered a write-in candidate for the November 3, 2026 General Election. Because he waited until only 21 days before the General Election to file his DOI, plaintiff created this situation in which defendants could not review and reject his DOI until 18 days before the election in question.

Plaintiff also contends that defendants cannot raise the defense of laches because they come to this Court with "unclean hands." Defendants' hands are unclean, plaintiff argues, because they rejected his DOI in contravention of law. A defendant's hands cannot be deemed unclean simply because the defendant relied on a statutory interpretation that the plaintiff now challenges. Plaintiff is well aware that this argument is without merit as he has raised substantively identical arguments in more than one prior action without success. See *Davis v Secretary of State*, 346 Mich App 445, 463-465; 12 NW3d 653 (2023); *Davis v Secretary of State*, unpublished per curiam opinion of the Court of Appeals, issued August 28, 2026 (Docket No. 382090), pp 7-8. Plaintiff's contention that the equitable doctrine of laches cannot apply in this case because an adequate remedy is provided by the statutes underlying his claims similarly has been rejected by the Court of Appeals in another case filed by this plaintiff. See *Leggs v Secretary of State*, unpublished opinion of the Court of Appeals, issued August 25, 2026 (Docket No. 382065), pp 7-8.

Defendants have suffered substantial prejudice as a result of plaintiff's delay. With the deadline for filing a DOI only four days from the date the complaint was filed and only three days after the complaint was served and proof of service filed, defendants were left with little time to respond. Moreover, there was little time for this Court to reach an informed decision and for any appeal to be filed. This is the very type of case MCL 691.1031 was enacted to protect against. Plaintiff has not overcome the presumption of laches.

Accordingly, the Court GRANTS defendants' motion for summary disposition on this ground.

B. MERITS

Given the expedited nature of these proceedings, this Court also will address defendants' motion for summary disposition based on the merits of plaintiff's challenge. Summary disposition is warranted on this ground as well.

MCL 168.737a provides the general requirements to file a DOI to run as a write-in candidate:

> (1) Except as otherwise provided in this section, the board of election inspectors shall not count a write-in vote for a person unless that person has filed a [DOI] to be a write-in candidate as provided in this section. The write-in candidate shall file the [DOI] to be a write-in candidate with the filing official for that elective office on or before 4 p.m. on the second Friday immediately before the election. . . .
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> * * *
>
> (4) The secretary of state shall prescribe forms for the [DOI] to be a write-in candidate. . . . The [DOI] to be a write-in candidate form must include all of the following information:
>
> (a) The name of the person intending to be a write-in candidate.
>
> (b) The elective office that the person seeks as a write-in candidate.
>
> (c) The residence address of the person seeking elective office as a write-in candidate.
>
> (d) Other information the secretary of state considers appropriate.

As noted above, MCL 168.97 governs the placement of United States Senate candidates on the ballot and states that the candidate from each Party receiving the greatest number of votes "shall be declared the nominee of that political party for said office at the next ensuing November election." "The" is "a definite article, which has a specifying or particularizing effect." *Maples v State*, 507 Mich 461, 472; 968 NW2d 446 (2021) (quotation marks and citation omitted). When the definite article "the" is followed by a singular noun such "nominee," the Michigan Supreme

Court has held that "it is clear that" the Legislature intended there to be only one. *Robinson v Detroit*, 462 Mich 439, 461-462; 613 NW2d 307 (2000) (holding that "the proximate cause" means a single proximate cause). Accordingly, the plain language of MCL 168.97 dictates that a political party have only one candidate for a United States Senate seat. That candidate was selected through the August 4, 2026 Primary Election.

Consistent with the language of MCL 168.97, and under the authority granted by MCL 168.737a(4), defendants instruct in the *Election Officials' Manual: Write-In Candidates* (July 2024), Chapter 4, p 1: "Write-in candidates seeking election to a partisan office at a general election are required to run without party affiliation." Plaintiff has every right to run as a write-in candidate for United States Senate in the November 3 General Election, provided that he meets all legal requirements. However, plaintiff must do so without party affiliation.

Plaintiff provides the instructions from the Secretary of State website for write-in candidates' DOIs. Those instructions state in relation to § 2 of the DOI: "Next, mark your political party affiliation. If running for a partisan office, list your political party in the space provided." Those instructions do not distinguish between Primary and General Elections and so do not explicitly inform potential candidates for partisan offices in the General Election that they must run with no party affiliation. However, instructions provided with forms do not supersede the plain language of statutory requirements. See *Bonter v Progressive Marathon Ins Co*, ___ Mich ___; 21 NW3d 908, 909 n 4 (2025), citing *In re Complaint of Rovas*, 82 Mich 90; 754 NW2d 259 (2008) ("[G]uidance posted on an administrative agency's website—like any agency interpretation—cannot rewrite the plain language of a statute.").

Defendants rejected plaintiff's DOI based on the plain language of MCL 168.97. Accordingly, plaintiff cannot establish that he is entitled to the relief request and is not entitled to a declaratory judgment. Plaintiff also cannot establish a clear right to have his DOI accepted or a clear legal duty on defendants' part to accept the DOI for purposes of his claim for mandamus relief. The Court GRANTS defendants' motion for summary disposition on this ground as well.

III. CONCLUSION

Accordingly, it is ordered:

1. Plaintiff's October 22, 2026 emergency motion to supplement the record is DENIED as the evidence presented has no bearing on the legal or factual issues presented in this matter.
2. Plaintiff's emergency motion for declaratory judgment, writ of mandamus, and order to show cause is DENIED.
3. Defendant's motion for summary disposition is GRANTED.
4. The Court DISMISSES plaintiff's action in its entirety and with prejudice.
5. This is a final order resolving all issues in this matter.

Date: October 22, 2026

Michael J. Riordan
Judge, Court of Claims