STATE OF MICHIGAN
COURT OF CLAIMS

CASSANDRA ANDERSON, GARRETT DEWYSE, RYAN DURUSSEL, MELISSA DURUSSEL, ERIC OSTERGREN, PATRICK KIESSEL and THOMAS ROY,

Plaintiffs,

v

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

Defendant.

No. 25-000131-MZ

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DEFENDANT GOVERNOR GRETCHEN WHITMER'S RESPONSE TO COMPLAINT AND BRIEF IN OPPOSITION TO 8/14/2025 MOTION FOR SUMMARY DISPOSITION

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   Governor's answer: Yes.

2. Whether Plaintiffs lack standing to raise a claim for declaratory relief where they have not demonstrated a special right or unique injury that is distinct from the citizenry at large?

   Plaintiffs' answer: No.

   Governor's answer: Yes.

3. Whether Plaintiffs are not entitled to any relief where neither the constitution nor statutes provide any particular time constraint on when the Governor should issue a writ of election to fill a vacancy in the office of state senator?

   Plaintiffs' answer: No.

   Governor's answer: Yes.

INTRODUCTION

Plaintiffs have failed to demonstrate any legal basis for their claims. They also lack standing. And even putting aside those fundamental flaws in Plaintiffs' case, this Court does not have the authority to compel the Governor to act.

The Michigan Constitution instructs the Governor to "issue writs of election to fill vacancies" in the Legislature and that "such election shall be held in a manner prescribed by law." Const 1963, art 5, § 13. But neither the Constitution nor the Michigan Election Law say anything about when such a writ must be issued, let alone prescribe any sort of deadline. To the contrary, the Michigan Election Law gives the Governor discretion to either "call a special election" to fill a legislative vacancy "or direct that the vacancy be filled at the next general election." MCL 168.634(1).

Governor Whitmer is currently deciding when to schedule the election to fill the vacancy in the 35th Senate District. She fully intends to issue the writ of election for that vacancy; she just has not done so yet. Apparently dissatisfied with the Governor's decision-making speed, Plaintiffs filed this suit asking the Court to enter unprecedented relief based upon the incorrect premises that not only must the Governor issue a writ of election *immediately* (despite no law setting forth such a requirement), but also that writ must call for a special election to occur "at the earliest practicable time" (despite the law stating the exact opposite, MCL 168.634(1)). (Complt ¶31(d).) As far as Defendant can tell, no court in Michigan has ever granted the sort of extraordinary relief against a Governor that Plaintiffs request here.

First, 150 years of Michigan Supreme Court doctrine prohibits courts from issuing mandamus or injunctive relief against the Governor. This well-established separation-of-powers principle is fatal to all of Plaintiffs' Count I, and everything but the request for declaratory relief in Count II.

Second, Plaintiffs lack the standing requisite to obtain the declaratory relief they seek. They have not alleged or shown any special injury or right that is unique to them or distinct from the citizenry at large, and there is no statutory scheme implying that the Legislature intended to grant individual citizens standing to compel the Governor to issue writs of election.

Third, Plaintiffs' claims fail on the merits. The law places no deadline by which the Governor must issue a writ of election to fill a legislative vacancy, and contrary to Plaintiffs' unsupported assertion, the law gives the Governor significant discretion over when that election should occur. Thus, even if this Court could issue mandamus, injunctive, or declaratory relief in this case (which it cannot), there is no legal basis for doing so.

In sum, because the Court lacks the authority to issue the relief requested by Plaintiffs, and because Plaintiffs' claims fail on their merits, the Court should deny Plaintiffs' motion for summary disposition and instead enter summary disposition in the Governor's favor.

COUNTER-STATEMENT OF FACTS

Earlier this year, Kristen MacDonald Rivet resigned from the Michigan Senate following her election to Congress. Article 5, § 13 of the Michigan

Constitution provides that "the governor shall issue writs of election to fill vacancies in the senate or house of representatives. *Any such election shall be held in a manner prescribed by law*." (Const 1963, art 5, § 13) (Emphasis added.) Section 634 of the Michigan Election Law provides that "when a vacancy occurs in the office of senator . . . in the state legislature, the governor *may* call a special election in that senatorial . . . district *or* direct that the vacancy be filled at the next general election." MCL 168.634(1) (Emphasis added.) See also MCL 168.178 (the Governor "*may* call a special election as provided in section 634 in any senatorial . . . district . . . whenever a vacancy occurs in the office of state senator . . . after the term of service has begun for which the state senator . . . was elected") (Emphasis added.) The next regularly scheduled general election in the 35th Senate District will occur in November 2026. Const 1963, art 4, § 2.

The process of calling for a special election includes a myriad of timing considerations. A special election, in fact, involves *two* elections. When a special election is called, a special primary election must be called and its date fixed for at least not less than 45 days before the special election. MCL 168.631. The date for submitting nominating petitions or filing fees for the special primary election must also be fixed. *Id.* Complicating matters further, the vacancy in the 35th District is the first to occur since Michigan adopted early voting. That is significant because the timing of the election might require local jurisdictions—including that portion of the 35th District falling within Saginaw County—to provide for early voting, or municipalities might voluntarily provide for it. See MCL 168.720b; MCL

168.720e(6). In either case, it is necessary to make allowances to provide jurisdictions with the ability to conduct early voting as required by law.

A call for a special primary and special election also triggers a series of deadlines and events that must occur leading up to those elections. Indeed, the list of pre-election requirements for the regular August/November 2025 election cycle is over 10 pages long.[1] A few specific examples may illustrate the breadth and variety of considerations involved. Jurisdictions using early voting must select the configuration sets for electronic tabulators 90 days before the election, and also any local board of election commissioners that establishes an Election Day vote center must inform their county clerk that the vote center will be established in the city or township. MCL 168.523b. Absent voter ballot drop boxes must be regularly inspected and video-monitored beginning 75 days before the elections. MCL 168.761d. Early voting sites must be finalized 60 days before the election. MCL 168.720i.

Clerks must transmit or mail absent voter ballots to uniformed services or overseas voters 45 days before the elections, and absent voter ballots must also be delivered to local clerks. MCL 168.759a; Const 1963, art 2, § 4; MCL 168.714. Also 45 days before the elections, county clerks must provide to local clerks in early voting jurisdictions the programming for electronic voting equipment to be used at early voting sites. MCL 168.720j(2)(a). And, because the 35th District is a multi-

[1] https://www.michigan.gov/sos/-/media/Project/Websites/sos/Election-Administrators/Election-Dates.pdf

county district, the canvass must be conducted by the Board of State Canvassers no later than 20 days after the elections. MCL 168.167; MCL 168.842.

These complex requirements must all be considered in determining when to call a special election.

STANDARD OF REVIEW

Plaintiffs have moved for summary disposition under MCR 2.116(C)(9) and (C)(10). The former seeks a determination whether the opposing party has failed to state a valid defense to the claim asserted against it. *County of Alcona v Wolverine Envtl Prod, Inc,* 233 Mich App 238, 245-246 (1998). A motion brought under this subrule is analogous to one brought pursuant to MCR 2.116(C)(8) in that both motions are tested by the pleadings alone, with the court accepting all well-pleaded allegations as true. *In re Smith Estate,* 226 Mich App 285, 288 (1998). Summary disposition under MCR 2.116(C)(9) is proper when the defendant's pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff's right to recovery. *Vayda v County of Lake*, 321 Mich App 686, 693 (2017), quoting *Abela v Gen Motors Corp,* 257 Mich App 513, 517 (2003).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Johnson v VanderKooi,* 502 Mich 751, 761 (2018), citing *Maiden v Rozwood*, 461 Mich 109, 120 (1999). In reviewing such a motion, "a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion." *Maiden*, 461 Mich at 120. A genuine issue of material fact remains where,

considering the record under this standard, reasonable minds might differ. *Johnson*, 502 Mich at 761.

If, after careful review of the evidence, it appears to the trial court that there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law, then summary disposition is properly granted under MCR 2.116(I)(2). *Lockwood v Twp of Ellington*, 323 Mich App 392, 401 (2018), citing *Holland v Consumers Energy Co*, 308 Mich App 675, 681-682 (2015).

ARGUMENT

I. Longstanding separation of powers doctrine prohibit Plaintiffs' requested relief.

Counts I and II of Plaintiffs' complaint raise claims of mandamus and mandatory injunctive relief, asking this Court to compel the Governor to issue a writ of election, or "otherwise direct the scheduling of a special election to fill the vacancy at the earliest practicable time." (Cmplt, ¶¶20-25, 26-30, 31.)

For 150 years, the Michigan Supreme Court and Court of Appeals have consistently affirmed that constitutional separation of powers prohibit courts from issuing this sort of relief against the Governor. *Taxpayers for Mich Constitutional Govt v State*, 345 Mich App 1, 23 n9 (2022); *Straus v Governor*, 459 Mich 526, 532 (1999); *Musselman v Governor*, 200 Mich App 656, 662 (1993), aff'd 448 Mich 503 (1995), on reh'g 450 Mich 574 (1996); *Born v Dillman*, 264 Mich 440, 447 (1933); *Germaine v Governor*, 176 Mich 585, 588 (1913); *People ex rel Sutherland v Governor*, 29 Mich 320, 331 (1874). As the Court reiterated in *Straus,* "It is clear that separation of powers principles . . . preclude mandatory injunctive relief,

mandamus, against the Governor." 459 Mich at 532. Yet these are precisely the claims Plaintiffs have raised in their complaint.

The prohibition against this type of relief against the Governor dates back to *People ex rel Sutherland*, in which Justice Cooley explained that, just as the separation of powers precludes the Legislature from dictating what judgments the courts should make, "It remains then to be seen on what grounds an intervention in the case of executive duties can be justified, when the other departments, acting within their respective spheres, are admitted to be so entirely independent." *Sutherland*, 29 Mich at 326. Significantly, Justice Cooley's reasoning expressly recognized that the Court's holding was directly addressed towards whether the Governor could be compelled to perform "ministerial" duties, and that the relators in that case did not even claim that the Court had jurisdiction to compel the Governor to perform "political duties, or duties devolved upon him as a component part of the Legislature," and that it was conceded that "where any executive act whatsoever is manifestly submitted to the governor's judgment or discretion," such judgment or discretion could not be coerced by judicial writ. *Id.* at 322-323.

The Supreme Court's decision in *Straus* echoed this reasoning, and quoted approvingly its earlier decision in *People ex rel Johnson v Coffey,* 237 Mich 591, 602 (1927), which recognized what the Court itself described as "the need for utmost delicacy on the part of the judiciary, and respect for the unique office of Governor":

> The governor holds an exalted office. To him, and to him alone, a sovereign people has committed the power and the right to determine the facts in the proceeding before us. His decision of disputed question of fact is final. His finding of fact, if it has evidence to support it, is

> conclusive on this court. It would be unbecoming in us to impugn his motives, and unseemly and unlawful to invade his discretion. [*Strauss,* 459 Mich at 533.]

In their motion for summary disposition, Plaintiffs mischaracterize *Straus* as merely expressing "some doubt" about the propriety of mandamus actions against the Governor and suggest that the Court stopped short of rejecting all mandamus claims against the Governor. (Pl's Brief, p 13.) That position defies the words of the opinion: "*it is clear* that that separation of powers principles, Const 1963, art 3, § 2, *preclude* mandatory injunctive relief, mandamus, against the Governor." *Straus*, 459 Mich at 532 (Emphasis added). Indeed, the Court went on to cast doubt—without expressly deciding—on whether even *prohibitory* injunctions were similarly barred. *Id*. If nothing else, *Straus* commands that any possible contemplation of compulsory action could only follow after attempts at declaratory relief: "Only when declaratory relief has failed should the courts even begin to consider additional forms of relief in these situations." *Id.* So, even under the most permissive reading of *Straus*, Plaintiffs' claims for mandatory relief are—at best—premature. Plaintiffs' unwillingness to candidly address the express language of the Supreme Court's opinion considerably undermines their argument. But more damaging is their failure to cite even one case in which a Michigan court has issued such a writ against the Governor, and the Defendant is aware of none.

Instead, Plaintiffs suggest that the adoption of a new constitution—in 1963—superseded *Sutherland,* and the signing of MCL 600.4401 into law constituted an "executive acquiescence" submitting the office to actions for mandamus. (Pl's Brief,

p 11-13.) Plaintiffs then suggest that the Supreme Court's holding in *Straus* was "dicta" that this Court should just ignore. None of these arguments have merit.

First, the 1963 Constitution did not excise the separation of powers, and instead it remains in essentially the same form it existed when Justice Cooley wrote the *Sutherland* opinion. Const 1963, art 3, § 2; Const 1908, art 4, §§ 1-2; Const 1850, art 3, §§ 1-2. Plaintiffs offer no real explanation of why Justice Cooley's opinion would not apply just as aptly to our current Constitution and would not provide—if nothing else—persuasive authority. Since Plaintiffs have no authority of any kind rejecting Justice Cooley's reasoning, that alone ought to be sufficient basis to reject Plaintiffs' claims.

Next, Plaintiffs offer nothing substantive to support their argument for "executive acquiescence." They offer no evidence that Governor Swainson interpreted or understood MCL 600.4401 as applying to the office of Governor, and instead Plaintiffs are only assuming the signing of a general statute authorizing mandamus claims against "state officers" surrendered part of the Governor's executive powers to the legislature and judiciary—without any authority or scholarship to support that contention. It would be very curious that such an "acquiescence" of executive power went entirely unnoticed until Plaintiffs' complaint in 2025. Regardless, Plaintiffs cite no authority either that the office of Governor has forever acquiesced to mandamus, or even that it *could*. As the Supreme Court again recognized in *Mays v Governor,* 506 Mich 157, 188-189 (2020), the

Constitution cannot be so easily modified by ordinary acts of the three branches of government:

> In our constitutional form of government, the sovereign power is in the people, and "[a] Constitution is made for the people and by the people." *Michigan Farm Bureau v Secretary of State*, 379 Mich 387, 391 (1967) (quoting Cooley, Constitutional Limitations [6th ed], p 81). The Michigan Constitution is a limitation on the plenary power of government, and its provisions are paramount. See, generally, *Dearborn Twp v Dearborn Twp Clerk*, 334 Mich 673, 688 (1952). It is so basic as to require no citation that the constitution is the fundamental law to which all other laws must conform. . . .
>
> In light of the preeminence of the constitution, statutes which conflict with it must fall. . . .

So, even if MCL 600.4401 could otherwise be interpreted to apply to the Governor (and, again, there is scant support for doing so), Plaintiffs do not explain how the legislature would have the ability to reframe the separation of powers through ordinary legislation, or that a Governor could surrender the powers of the executive branch merely by signing it. The only authority Plaintiffs cite for this proposition is *Donajkowski v Alpena Power Co*, 460 Mich 243 (1996)—which itself only discussed *legislative* acquiescence, which Plaintiffs suggest "mirrors" executive acquiescence. (Pl's Brief, p 12.) This would be weak authority even if the Court in that case approved of legislative acquiescence, but instead the majority in *Donajkowski* flatly rejected it: "If it has not been clear in our previous decisions, we wish to make it clear now: 'legislative acquiescence' is a highly disfavored doctrine of statutory construction; sound principles of statutory construction require that Michigan courts determine the Legislature's intent from its words, not from its silence." 460 Mich at 261. The Court's open disapproval would seem to apply just

as aptly to so-called "executive acquiescence," and this Court should reject Plaintiffs' arguments.

Thirdly, Plaintiffs contention that the Supreme Court's discussion of mandamus and the separation of powers in *Straus* is "dicta" is also without support. Indeed, the sentence immediately preceding the reference to mandamus and injunctive relief against the Governor in the Supreme Court's opinion identifies the purpose of that line of discussion: "We would also note that, because a court at all times is required to question sua sponte its own jurisdiction (whether over a person, the subject matter of an action, or the limits on the relief it may afford), we have some doubt with respect to the propriety of injunctive relief against the Governor." So, Plaintiffs are asserting that the Supreme Court's consideration of its own jurisdiction and the relief it may afford is "dicta." In general, obiter dicta are, "statements that are unnecessary to determine the case at hand." *See e.g. Estate of Pearce, v Eaton County Rd Comm'n*, 507 Mich 183, 197 (2021). That description does not neatly fit the Supreme Court's consideration of its own jurisdiction. The statements in *Straus* are not dicta. But, even if *Straus* were not binding, the opinion would still be a sound review of prevailing constitutional principles that would still be instructive for this Court—especially where Plaintiffs have presented no authority supporting the availability of injunctive or mandamus relief against the Governor.

So, the same delicacy and respect previously espoused by the Supreme Court is no less appropriate here. Plaintiffs' claims for mandamus and mandatory

injunctive relief are contrary to the constitutional separation of powers and must be dismissed.

Lastly, even Plaintiffs' claim for declaratory relief might also be barred because it so closely mirrors their request for mandamus. As the Supreme Court has recognized, courts "look beyond the mere procedural labels to determine the exact nature of the claim." *Altobelli v Hartmann*, 499 Mich 284, 299 (2016). A court need not accept a plaintiff's choice of label for an action because courts do not "exalt form over substance." *Brendel v Morris*, 345 Mich App 138, 149 (2023) (quotation marks and citation omitted). Instead, a court must consider the plaintiff's entire claim to determine the gravamen of the action. *Id.*

As recently as this past May, the Court of Appeals applied this reasoning to reject an attempt to use declaratory relief to compel government officers to take action. *Charette v Sec'y of State*, unpublished opinion per curiam of the Court of Appeals, issued May 8, 2025 (Docket No. 371959, p 8 (copy attached as Exhibit A). There, the Court concluded that a claim for declaratory relief that did not seek to guide future conduct and instead "sought compel action by election officials, the gravamen of his claim sounded in mandamus and the Court of Claims did not err in considering his claim in that context." *Id.* at 8-9. Here, the Plaintiffs are similarly framing their request for declaratory relief in the context of compelling action rather than declaring legal right or guiding future conduct. Plaintiffs request a declaration that, "Governor Whitmer's failure to issue a writ of election violates Article V, §13 of the Michigan Constitution." Cmplt, ¶31(c). This is conspicuously

backwards-looking, seeks to compel the Governor to take an official act, and is legally indistinguishable from Plaintiffs' requests for mandamus. This Court should therefore consider the request for declaratory relief in that context and conclude that it is barred for the same reasons.

Even if the rule announced in *Sutherland* does not extend to declaratory judgments as a general matter, this Court should reject Plaintiffs' attempt to exalt form over substance. The decision to grant declaratory relief is a matter of the court's discretion. *PT Today, Inc. v Comm'r of Office of Fin & Ins Servs,* 270 Mich App 110, 126 (2006) ("The language of MCR 2.605 is permissive rather than mandatory"). The Court should exercise its discretion to deny declaratory relief here, where Plaintiffs request for such relief is effectively indistinguishable from mandamus and injunctive relief, which if granted would violate constitutional separation of powers.

II. Plaintiffs lack standing to seek declaratory relief because they do not have a sufficient interest that is distinguishable from that of the public at large.

Plaintiffs' complaint does not state any legal causes of action and instead Count II of the complaint seeks a declaration, "affirming that the Governor's ongoing inaction is unconstitutional." (Cmplt, ¶28.) Later, in their request for relief, Plaintiffs request that the Court, "Enter a declaratory judgment that Governor Gretchen Whitmer's failure to issue a writ of election violates Article V, § 13 of the Michigan Constitution." (Cmplt, ¶31(c).)

Where there is no legal cause of action, a plaintiff must meet the requirements of MCR 2.605, which 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.

Pursuant to MCR 2.605, "[t]he existence of an 'actual controversy' is a condition precedent to invocation of declaratory relief." *Lansing Sch Educ Ass'n v Lansing Bd of Educ* (*On Remand*), 293 Mich App 506, 515 (2011) (citation omitted). "An actual controversy exists when a declaratory judgment is needed to guide a party's future conduct in order to preserve that party's legal rights. Though 'a court is not precluded from reaching issues before actual injuries or losses have occurred,' there still must be 'a present legal controversy, not one that is merely hypothetical or anticipated in the future.' " *League of Women Voters of Michigan v Sec'y of State*, 506 Mich 561, 586 (2020) (internal footnotes and citations omitted). "The essential requirement of the term actual controversy under the rule is that plaintiffs plead and prove facts that demonstrate an adverse interest necessitating the sharpening of the issues raised." *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495 (2012) (citation and internal quotation marks omitted). A litigant may also have standing in this context if they have a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. *Lansing Sch Educ Ass'n v Lansing Bd Of Educ*, 487 Mich 349, 372 (2010).

Here, Plaintiffs have failed to demonstrate either a right or substantial interest that is different from the citizenry at large, or that the Legislature has anywhere intended to confer standing upon them regarding writs of election to fill a vacancy. The minimal allegations of the complaint assert only that the Plaintiffs live in the 35th District, and that they have been "left without representation" and "disenfranchised in ongoing legislative debates, policy decision, and votes." (Cmplt, ¶12.) Plaintiffs also allege that, "deprivation of representation undermines public trust, violates constitutional guarantees, and erodes the legitimacy of enacted laws." (Cmplt, ¶14.) But these allegations fail to articulate an interest or injury that is specific to them, and Plaintiffs make no other allegations explaining how they are detrimentally affected in a way that is different from every other person in the 35th District. Simply put, interests in legislative representation are not specific or unique to Plaintiffs—they are shared by every citizen. Because Plaintiffs here have failed to allege any right or injury that is distinct or specific to them, or that they require a declaration to guide their future conduct in order to preserve their legal rights, they do not have standing to bring these claims.

Further, Plaintiffs' complaint and motion fails to articulate any basis on which to conclude that the legislature has provided or intended to confer standing upon them to declare that their rights have been violated by the timing of when the Governor issues a writ of election to fill a vacancy. There is nothing either in article 5, § 13 or MCL 168.178 that provides for citizen standing to raise such claims—indeed, as discussed further below, the law does not make any reference at all to

when the Governor is required to issue writs of election to fill vacancies. So, in the absence of a particularized injury that is unique to them or any statutory scheme conferring standing upon them, these Plaintiffs simply lack standing to make a claim for declaratory relief, and so their claims must be dismissed.

III. Plaintiffs' claims lack merit.

Even if this Court had authority to issue any of the forms of relief Plaintiffs seek in this case (it does not), Plaintiffs' claims fail on the merits. The premise of Plaintiffs' suit is that the Governor has "decline[d]" to issue the writ of election called for in Article V, Section 13. (Pl's Brief at 9.) But that is not true—she just has not done so *yet*. The real question Plaintiffs' claim raises is *when* the Governor must issue the writ. Plaintiffs' assertion the Governor has somehow missed some unstated deadline to issue her writ finds no support in the law.

Plaintiffs do not cite—either in their complaint or their brief—any legal authority requiring the Governor to issue a writ of election to fill a senate vacancy within any specific time. In their request for mandamus relief, Plaintiffs seek to compel the Governor to issue a writ and schedule a special election "at the earliest practicable time." (Cmplt, ¶31(d).) But that language does not appear anywhere in law with respect to the Governor's duty to issue a writ to fill a vacancy—it is entirely an invention of the Plaintiffs' imagination.

To be clear, the Governor has not refused to issue a writ of election, and Plaintiffs have made no allegations that the Governor has stated anywhere that she does not ever intend to issue a writ of election. While it is apparent that Plaintiffs

would rather that the Governor had already done so, their expectations are not rooted in the language of the Constitution or statute, and they have failed to support their request for declaratory relief with legal authority.

Const 1963, art 5, § 13 provides only:

> The governor shall issue writs of election to fill vacancies in the senate or house of representatives. Any such election shall be held in a manner prescribed by law.

There is no time frame provided or suggested. Similarly, MCL 168.178 states only:

> The governor may call a special election as provided in section 634 in any senatorial or representative district of the state when the right of office of a person elected state senator or representative shall cease before the commencement of the term of service for which the state senator or representative was elected, or whenever a vacancy occurs in the office of state senator or representative after the term of service has begun for which the state senator or representative was elected.

MCL 168.634 likewise includes no timing component to calling an election; rather, it explains that the Governor enjoys discretion to choose an election date between the creation of the vacancy and the next general election. The legislature has not seen fit to include a time limit as to when the Governor must act.

As the Court of Appeals held in *Chelenyak v Veith,* courts may not add words to an unambiguous statute:

> It is not the role of the Court to judicially legislate by adding language to a statute, *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 421 (1997), and this Court may not engraft a limitation of a right, which is not included by the Legislature, "under the guise of statutory construction," see *Lakeland Neurocare Ctrs v State Farm Mut Auto Ins Co*, 250 Mich App 35, 39-40 (2002). [312 Mich App 706, 731 (2015).]

See also *Council 23 American Federation of State, Co and Muni Employees, AFL-CIO v Civil Serv Comm of Wayne Co*, 32 Mich App 243, 247 (1971) ("As a general

rule the principles of statutory construction apply to construction of the Constitution.") Plaintiffs are asking this Court to add language to both the statute and to the Constitution, but the Court should decline their invitation.

A U.S. District Court reached a similar conclusion in 2018 when presented with a similar claim after then-Governor Richard Snyder announced a special election to be held eleven months after a vacancy created by the resignation of U.S. Representative John Conyers. *Rhodes v Snyder*, 302 F Supp 3d 905 (2018). In that case, the court was examining MCL 168.633, but the court's conclusion was apt: "This statute provides broad discretion to the governor. It does not contain any particular requirement regarding when the special election is to be held; it only mandates that the governor 'shall call a special election' when a vacancy occurs." *Rhodes*, 302 F Supp 3d at 910. Similarly here, the Constitution and the statutes provide the Governor with discretion on when to issue the writ of election, and do not contain any particular requirement as to when the writ must be issued.

In sum, the law mandates only that the Governor "shall issue a writ." The Governor will do so in due course. It is not for Plaintiffs to decide when the Governor will act. While Plaintiffs attempt to compare this case to *Midwest Inst of Health, PLLC v Governor of Mich (In re Certified Questions from the US Dist Ct)*, 506 Mich 332, 385 (2020), there simply is no "constitutional violation" where the Constitution is silent.

This foundational defect in Plaintiffs' legal theory dooms their requests for mandamus, injunctive, and declaratory relief. Mandamus is an extraordinary

remedy and can be issued only where: "(1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result." *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273, 284 (2008), aff'd in result, 482 Mich 960 (2008), citing *Tuggle v Dep't of State Police*, 269 Mich App 657, 668 (2005). "The burden of showing entitlement to the extraordinary remedy of a writ of mandamus is on the plaintiff." *White-Bey v Dept of Corrections*, 239 Mich App 221, 223 (1999); *Citizens Protecting Michigan's Constitution*, 324 Mich App at 584.

Plaintiffs' claims here fail to satisfy any of the required elements of their request for mandamus. They have not demonstrated that they—individually—have a clear legal right, or that the Governor has any duty to issue a writ of election "immediately," let alone at any particular time. For the same reason, the Governor's responsibility to issue the writ of election is not a "ministerial" act; instead, it requires her to exercise her judgment and discretion as to when the election should be held. This is confirmed by the Michigan Election Law, which gives the Governor express discretion to call a special election or wait for the vacancy to be filled at the next regularly schedule general election. MCL 168.634(1). As a discretionary act, the issuing of a writ of election is outside the scope of mandamus relief.

Plaintiffs' erroneous legal theory also dooms their requests for injunctive and declaratory relief. As Plaintiffs admit, entitlement to an injunction first requires them to be right on the law. (Plt's Brief 14.) But as explained, Plaintiffs have failed to identify any way in which the Governor has acted unlawfully. In any event, their request for injunctive relief is nothing more than a re-labeled request for mandamus. The Court must look to the gravamen of Plaintiffs' claim, rather than how the Plaintiffs label it. *Altobelli*, 499 Mich at 299; *Brendel*, 345 Mich App at 149. Plaintiffs openly state that they request an injunction "requiring Governor Gretchen Whitmer issue (sic) a writ of election and otherwise direct the scheduling of a special election to fill the vacancy at the earliest practicable time." This request clearly sounds in mandamus, and the Court should deny it for the same reasons. And as for Plaintiffs' request for declaratory relief, because the Governor has not acted unlawfully, there is no need to declare the "legal relations" between the parties in this case. MCR 2.605.

In sum, even putting aside the fact that jurisdictional defects preclude this suit, Plaintiffs are not entitled to any form of relief because their claim has no merit.

IV. The Governor is entitled to summary disposition in her favor under MCR 2.116(I).

When, as here, a moving party fails to demonstrate they are entitled to relief, and the non-moving party shows that they are entitled to judgment as a matter of law, the Court should grant summary disposition in the non-moving party's favor.

MCR 2.116(I)(2). As set forth above, Plaintiffs have failed in their burden under either MCR 2.116(C)(9) or (10) to show they are entitled to mandamus, injunctive, or declaratory judgment in their favor, or that the Governor has failed to state a valid defense. Instead, the Governor is entitled to summary disposition in her favor because Plaintiffs have failed entirely to show they are entitled to any relief.

Summary disposition should be granted in favor of Governor Whitmer.

CONCLUSION AND RELIEF REQUESTED

For these reasons, Defendant Governor Gretchen Whitmer respectfully requests that this Honorable Court enter an Order denying Plaintiffs' motion for summary disposition and granting summary disposition in favor of Defendant under MCR 2.116(I)(2).

Respectfully submitted,

/s/Erik A. Grill
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PROOF OF SERVICE

Erik A. Grill certifies that on August 28, 2025, he served a copy of the above document in this matter on all counsel of record and parties *in pro per* via MiFILE.

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EXHIBIT A

Charette v. Sec'y of State

Court of Appeals of Michigan

May 8, 2025, Decided

No. 371959

Reporter

2025 Mich. App. LEXIS 3603 *; 2025 LX 48067

CHRISTIAN G. CHARETTE, Plaintiff-Appellant, v SECRETARY OF STATE, Defendant-Appellee.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: **[*1]** Court of Claims. LC No. 24-000083-MZ.

Charette v. Sec'y of State, 2024 Mich. App. LEXIS 7342 (Sept. 19, 2024)

Counsel: For SECRETARY OF STATE, Defendant - Appellee: CASSANDRA ANN DRYSDALE-CROWN.

Judges: Before: MURRAY, P.J., and M. J. KELLY and N. P. HOOD, JJ.

Opinion

PER CURIAM.

Plaintiff, Christian G. Charette, appeals by right the order of the Court of Claims granting summary disposition under MCR 2.116(C)(8) (failure to state a claim on which relief can be granted) to defendant, Secretary of State, on Charette's claims that defendant wrongfully failed to remove Adam Stathakis, a competing candidate for state representative in the 22nd District, from the ballot for the August 2024 primary election. We affirm because the Court of Claims did not err when it determined that Charette's complaint sounded in mandamus and that he was not entitled to mandamus relief.

I. BACKGROUND[1]

This case arises out of Charette's attempt to remove Stathakis from the August 2024 ballot. Charette and Stathakis were candidates for state representative for the 22nd District, which covers part of Wayne County. In March 2024, Stathakis filed an affidavit of identity in which he stated that he was running for the office of State Representative in the 22nd District in

[1] On appeal, Charette has attached numerous documents that are not part of the lower court record. The lower court record consists of the documents and exhibits filed in the Court of Claims. See MCR 7.210(A)(1). A party may not attempt to expand the lower court record on appeal to support an argument. *Dep't of Environmental Quality v Morley*, 314 Mich App 306, 318; 885 NW2d 892 (2015). Therefore, we decline to consider these documents.

the primary election on August 6, 2024, and the general election **[*2]** on November 5, 2024. As part of the affidavit of identity, Stathakis certified that he had filed all statements and reports required by the Michigan Campaign Finance Act (MCFA), MCL 169.201 *et seq.*

Charette filed a complaint in the Court of Claims, alleging that Stathakis had submitted an affidavit of identity that did not comply with election law. Specifically, Charette alleged that he had heard from "a reliable source" that Stathakis had failed to document campaign contributions as required. Charette asserted that Stathakis had reported accepting $500 from the Macomb Families and Business Coalition, which was not a state-registered political-action committee. He further alleged that Stathakis was required to return the money but had not done so. Charette also asserted that, during meetings, Stathakis claimed that his campaign had raised $100,000 but his campaign filing statements identified the amount as a personal loan. On the basis of Charette's estimations of Stathakis's likely income and debt-to-income ratio, Charette did not believe the loan to be valid.

Charette alleged that Stathakis had likely perjured himself by signing his affidavit of identity and might be ineligible to appear on the primary ballot. He asserted that defendant **[*3]** had a clear obligation to halt Stathakis's certification or remove his name from the August 2024 primary ballot.

Charette sought a "declaratory judgment." But as part of his request for relief, he asked the Court of Claims to order defendant to remove Stathakis from the primary ballot and to "turn this matter over to the Michigan Department of Attorney General for further inquiry."

Defendant moved for summary disposition under MCR 2.116(C)(8), arguing that Charette's claim for declaratory relief actually sounded in mandamus and that his complaint provided no factual or legal support for the proposition that defendant had the duty to strike Stathakis's name from the primary ballot. Defendant also argued that mandamus relief was unavailable because Charette had other legal remedies available to him. In response to defendant's motion, Charette argued that the Court of Claims was required to accept his allegations as true for the purposes of a motion for summary disposition under MCR 2.116(C)(8) and that defendant had the duty to enforce election law, including by requiring a candidate's affidavit of identity to comply with the MCFA. Charette also argued that there was no other relief available to him because of time **[*4]** constraints and procedural limitations.

The Court of Claims granted defendant's motion for summary disposition under MCR 2.116(C)(8). In its written opinion, the Court of Claims concluded that Charette's claim for declaratory relief actually sounded in

mandamus because Charette had sought an order directing defendant to strike Stathakis's name from the ballot. It then determined that Charette's complaint was deficient because it was based on inferences, and there was no indication that Charette had personal knowledge of the evidence or that he could provide it in an admissible format. The Court of Claims further determined that Charette had not established that he had a clear legal right to have Stathakis's name stricken from the ballot and, absent Charette's establishing a clear legal right on his part or a clear legal duty on defendant's, he had not stated a claim on which relief could be granted.

This appeal followed.

II. MOOTNESS

First, defendant argues that this Court should not hear Charette's appeal because the appeal is moot. We disagree in part. Although the case is moot, we exercise our discretion to address the merits of the underlying issue. See *Davis v Secretary of State*, 346 Mich App 445, 460-461; 12 NW3d 653 (2023) (addressing a moot issue of public significance **[*5]** on the basis of its likelihood to recur but evade judicial review).

This Court reviews de novo whether an issue is moot. *In re Tchakarova*, 328 Mich App 172, 178; 936 NW2d 863 (2019). Under de novo review, this Court reviews legal issues without deference to the lower court. *Wright v Genesee Co*, 504 Mich 410, 417; 934 NW2d 805 (2019).

"An element of the authority granted to courts under Article VI of the Michigan Constitution is that courts will not reach moot issues." *K2 Retail Constr Servs v West Lansing Retail Dev, LLC*, __ Mich App __, __; __ NW3d __ (2025) (Docket No. 367762); 2025 Mich. App. LEXIS 1355, *25. "One of the most critical aspects of judicial authority, as opposed to legislative or executive authority, is the requirement that there be a real controversy between the parties, as opposed to a hypothetical one." *In re Detmer/Beaudry*, 321 Mich App 49, 55-56; 910 NW2d 318 (2017) (quotation marks and citation omitted). "An issue is moot when this Court's decision can have no practical effect on a controversy or it is impossible for this Court to fashion a remedy." *K2 Retail Constr Servs*, __ Mich App at __; 2025 Mich. App. LEXIS 1355, *25.

However, even if moot as a practical matter, this Court may consider a legal issue that is one of public significance that is likely to recur but evade judicial review. *Gleason v Kincaid*, 323 Mich App 308, 315; 917 NW2d 685 (2018). An issue is likely to recur yet evade judicial review when "the transitory nature of a particular controversy would render **[*6]** the issue moot before a party could obtain appellate review." *People v Richmond*, 486 Mich 29, 40; 782 NW2d 187 (2010). "[L]egal questions affecting election ballots, such as [affidavit of identity]

requirements, are the classic example of issues that the courts will nevertheless review because they are matters of public significance that are likely to recur yet evade judicial review." *Davis*, 346 Mich App at 460-461.

In *Davis*, 346 Mich App at 450-452, this Court considered a case in which the plaintiff alleged that several challenged candidates failed to accurately complete affidavits of identity. At the time of the appeal, the general election had taken place, and the candidates either had or had not been elected. *Id.* at 459. This Court ultimately considered the issues because issues concerning affidavits of identity were likely to recur yet evade judicial review. *Id.* at 461. When doing so, this Court considered how the arguments applied to the unelected judicial candidate, including an issue concerning that candidate alone. *Id.* at 466-467.

This case is similar to *Davis* in two respects. First, as in *Davis*, this case is moot. The relief Charette seeks (or sought) relates to an election that has already occurred. See *id.* at 459-461. We therefore cannot grant relief. See *id.* See also *Ziegler v Brown*, 339 Mich 390, 395; 63 NW2d 677 (1954) (explaining that mandamus will be denied when the issue is moot and the **[*7]** writ serves no purpose). Second, like *Davis*, the issue is likely to reoccur without redress. *Davis*, 346 Mich App at 461. On the basis of this case's similarity with *Davis*, we conclude that it is appropriate to consider the merits of the underlying issue, even though it is moot as a practical matter.

III. MANDAMUS

Charette raises several arguments regarding the Court of Claims's grant of summary disposition to defendant under MCR 2.116(C)(8). We conclude that the Court of Claims correctly identified Charette's claim as sounding in mandamus and correctly concluded that he was not entitled to mandamus relief.

"While we review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(8), we review for an abuse of discretion the trial court's decision whether to issue a writ of mandamus." *Committee for Marshall-Not the Megasite v City of Marshall*, __ Mich App __, __; __ NW3d __ (2024) (Docket No. 369603); 2024 Mich. App. LEXIS 4716, *16 (citations omitted). "A court abuses its discretion when its decision is outside of the range of reasonable and principled outcomes." *CB v Livingston County Comm Mental Health*, __ Mich App __, __; __ NW3d __ (2023) (Docket No. 363697); 2023 Mich. App. LEXIS 8919, *9, quoting *Citizens for Higgins Lake Legal Levels v Roscommon Co Bd of Comm'rs*, 341 Mich App 161, 177-178; 988 NW2d 841 (2022). "A trial court necessarily abuses its discretion when **[*8]** it makes an error of law." *CB*, __ Mich App at __; 2023 Mich. App. LEXIS 8919, *9 (quotation marks and citation omitted).

A. THE CLAIM SOUNDED IN

MANDAMUS, NOT DECLARATORY RELIEF

First, Charette argues that the Court of Claims improperly treated his complaint as if he were seeking mandamus rather than a declaratory judgment. This argument lacks merit because the court properly considered the substance of Charette's claim, which sounded in mandamus.

This Court "look[s] beyond the mere procedural labels to determine the exact nature of the claim." *Altobelli v Hartmann*, 499 Mich 284, 299; 884 NW2d 537 (2016). A court need not accept a plaintiff's choice of label for an action because courts do not "exalt form over substance." *Brendel v Morris*, 345 Mich App 138, 149; 4 NW3d 776 (2023) (quotation marks and citation omitted). Instead, a court must consider the plaintiff's entire claim to determine the gravamen of the action. *Id.*

A trial court may grant a declaratory judgment to establish the rights and legal relations of an interested party if there is an actual controversy. See MCR 2.605(A)(1). A declaratory judgment "direct[s] a plaintiff's future conduct in order to preserve his or her legal rights." *AFSCME Council 25 v State Employees Retirement Sys*, 294 Mich App 1, 7; 818 NW2d 337 (2011). In contrast, "[m]andamus is the appropriate remedy for a party seeking to compel action by election officials." *Attorney General v Bd of State Canvassers*, 318 Mich App 242, 248; 896 NW2d 485 (2016).

Here, although Charette **[*9]** labeled his action as a request for declaratory judgment, it was essentially a claim for mandamus. Charette requested that the Court of Claims declare that defendant had not lawfully certified Stathakis. But there was no indication that he made this request to guide the parties' future conduct. Instead, Charette asked the court to order defendant to remove Stathakis from the primary ballot and to compel defendant's office "to turn this matter over to the Michigan Department of Attorney General for further inquiry." Because Charette's action sought to compel action by election officials, the gravamen of his claim sounded in mandamus, and the Court of Claims did not err by considering his claim in that context despite the label that he chose to give it.

B. THE COURT OF CLAIMS PROPERLY DENIED THE REQUEST FOR MANDAMUS

Having concluded that the Court of Claims properly held that Charette's claim sounded in mandamus, we also conclude that it properly denied his requested relief for at least two reasons: (1) the lack of a legal right to remove Stathakis from the ballot, and (2) the lack of a clear legal duty on the behalf of defendant to do the same.

"The writ of mandamus is an extraordinary **[*10]** form of relief." *Committee for Marshall*, __ Mich App at __; 2024 Mich. App. LEXIS 4716, *19.

"Its purpose is to enforce duties the law created under circumstances in which the law has not created a specific remedy, and justice requires one." *Id.* As observed by our Supreme Court, mandamus has four elements:

> To obtain this extraordinary remedy, the plaintiff bears the burden of showing 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. [*Taxpayers for Mich Constitutional Gov't v Dep't of Technology, Management and Budget*, 508 Mich 48, 81-82; 972 NW2d 738 (2021) (quotation marks and citation omitted).]

"A clear legal right is a right 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." *Bd of State Canvassers*, 318 Mich App at 249. A clear legal duty is one that may be inferred as a matter of law from the uncontroverted facts. *Adams v Parole Bd*, 340 Mich App 251, 260; 985 NW2d 881 (2022). A clear legal duty may be created by a statutory provision. *Berry v Garrett*, 316 Mich App 37, 43-44; 890 NW2d 882 (2016).

Here, Charette relied on the provisions of the MCFA to satisfy the legal right and legal duty elements of mandamus. But that reliance was misplaced. **[*11]** The MCFA provides that defendant has statutory duties to:

> (a) Make available through his or her offices, and furnish to county clerks, appropriate forms, instructions, and manuals required by this act.
> (b) Develop a filing, coding, and cross-indexing system for the filing of required reports and statements consistent with this act, and supervise the implementation of the filing systems by the clerks of the counties.
> (c) Receive all statements and reports required by this act to be filed with the secretary of state.
> (d) Prepare forms, instructions, and manuals required under this act.
> (e) Promulgate rules and issue declaratory rulings to implement this act in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
> (f) Upon receipt of a written request and the required filing, waive payment of a late filing fee if the request for the waiver is based on good cause and accompanied by adequate documentation. One or more of the following reasons constitute good cause for a late filing fee waiver:
>
> > (*i*) The incapacitating physical illness, hospitalization, accident involvement, death, or incapacitation for medical reasons of a person required to

> file, a person whose participation **[*12]** is essential to the preparation of the statement or report, or a member of the immediate family of these persons.
>
> (*ii*) Other unique, unintentional factors beyond the filer's control not stemming from a negligent act or nonaction so that a reasonably prudent person would excuse the filing on a temporary basis. These factors include the loss or unavailability of records due to a fire, flood, theft, or similar reason and difficulties related to the transmission of the filing to the filing official, such as exceptionally bad weather or strikes involving transportation systems. [MCL 169.215(1).]

MCL 168.558(1) provides that a person filing a petition or affidavit of candidacy shall file "2 copies of an affidavit of identity." MCL 168.558(2), in turn, provides the requirements for an affidavit of identity. An affidavit of identity must include, in pertinent part, "a signed and notarized statement that as of the date of the affidavit, all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the Michigan campaign finance act . . . have been filed or paid[.]" MCL 168.552(4).

Following the filing of an affidavit of identity, the affidavit must be forwarded **[*13]** to the county clerk:

> If a candidate files the affidavit of identity with an officer other than the county clerk or secretary of state, the officer shall immediately forward to the county clerk 1 copy of the affidavit of identity by first-class mail, facsimile, or electronic transmission. The county clerk shall immediately forward 1 copy of the affidavit of identity for state and federal candidates to the secretary of state by first-class mail, facsimile, or electronic transmission. [MCL 168.558(4).]

The candidate may not be certified if the candidate has "execute[d] an affidavit of identity that contains a false statement with regard to any information or statement required under this section." MCL 168.558(4). MCL 168.552(1) provides that the county or city clerk has the duty to certify candidates for election:

> The county or city clerk, after the last day specified in this act for receiving and filing nominating petitions, shall immediately certify to the proper board or boards of election commissioners in the city, county, district, or state the name and post office address of each party candidate whose petitions meet the requirements of this act, together with the name of the political party and the office for which he or she **[*14]** is a candidate.

These statutes create a clear legal duty that a county must not certify the name

of a candidate who has failed to submit a sufficient affidavit of identity. *Berry*, 316 Mich App at 43-44.

However, Charette has not established that these statutes establish a clear legal duty on the part of *defendant* regarding the certification of candidates. Defendant has only the statutory duty to issue declaratory rulings to implement the MCFA, see MCL 169.215(1)(e), and the Bureau of Elections responded to Charette's complaint. Because *defendant* does not have a clear legal duty to remove Stathakis from the ballot on the basis of his allegedly deficient affidavit of identity, Charette's claim against defendant is clearly unenforceable as a matter of law. The court based its decision in part on the absence of "a legal or factual basis for finding a clear legal right or enforcing a clear legal duty," and it did not err by doing so.

Relatedly, Charette argues that the Court of Claims violated his right to due process of law by imposing unreasonable time lines on him for his response and by granting defendant's motion for summary disposition with prejudice on the basis of a mandamus issue to which Charette had no opportunity to respond. **[*15]** "The essential purpose of due process is to ensure fundamental fairness." *K2 Retail Constr Servs*, __ Mich App at __; 2025 Mich. App. LEXIS 1355, *41. "Due process requires that a party receive notice of the proceedings against it and a meaningful opportunity to be heard." *Id.* at __; slip op at 19. Provided that a party has had grievances heard in a meaningful manner, the party "is not deprived of procedural due process because of an unsuccessful outcome in the proceedings." *Hanlon v Civil Serv Comm*, 253 Mich App 710, 724-725; 660 NW2d 74 (2002). The record in this case establishes that Charette *did* respond to defendant's mandamus argument and extensively argued that, even were his claim treated as one for mandamus, he would be entitled to relief. The record does not support his assertion that he was denied due process.

Regarding Charette's related assertion that he was not granted enough time to respond to defendant's argument, Charette has not provided any law to support his assertion that the court erred by shortening the time requirements to respond to defendant's motion. "When a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned." *Traverse City Record-Eagle v Traverse City Area Pub Sch Bd of Ed*, 337 Mich App 281, 296; 975 NW2d 104 (2021) (quotation marks and citation omitted). Regardless, an error is harmless if it was not decisive to the outcome **[*16]** of the case. *Ellison v Dep't of State*, 320 Mich App 169, 179; 906 NW2d 221 (2017). Charette cannot establish that the shortened time frame prejudiced him because he did, in fact, respond to defendant's arguments

within the time he was provided.[2]

We affirm.

/s/ Christopher M. Murray

/s/ Michael J. Kelly

/s/ Noah P. Hood

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[2] To the extent that Charette also argues that the Court of Claims erred when it based its decision under MCR 2.116(C)(8) on the lack of factual support for his claims, which failed to treat his allegations as true and functionally denied him discovery, we conclude that any such error was harmless under the circumstances. This Court will not modify a decision of the trial court on the basis of a harmless error. See MCR 2.613(A). "An error is harmless if it was not decisive to the outcome of the case." *K2 Retail Constr Servs*, __ Mich App at __; 2025 Mich. App. LEXIS 1355, *39. Here, the Court of Claims also ruled that there was no legal basis for determining that Charette had established a clear legal right to have defendant remove Stathakis's name from the ballot or that defendant had a clear legal duty to do so. The court's ruling was not erroneous.

Charette's other assertions regarding complaints he sent to other agencies, whether the case should have been referred to the Attorney General, the accuracy of statements made by the Bureau of Elections, or whether Stathakis committed perjury do not address the basis of the Court of Claims's opinion. This Court need not consider granting a party relief when the party's argument does not address the basis of the trial court's ruling. *Denhof v Challa*, 311 Mich App 499, 521; 876 NW2d 266 (2015). We therefore decline to address Charette's additional arguments.