

STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN REPUBLICAN PARTY,
REPUBLICAN NATIONAL COMMITTEE,
CINDY BERRY, and EDWARD MCCALL,

Plaintiffs,

v

Case No. 26-000134-MZ

JOCELYN BENSON and JONATHAN BRATER,

Hon. Randy J. Wallace

Defendants.

**OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
DISPOSITION AND DENYING PLAINTIFFS' MOTION FOR SUMMARY
DISPOSITION**

In this election-related matter involving administrative rules promulgated by the Secretary of State (the Secretary), known as the Challenger Regulations, both parties move for summary disposition at the outset of the case. Plaintiffs—the Michigan Republican Party, the Republican National Committee (the RNC), Chesterfield Township Clerk Cindy Berry, and Edward McCall (a Wayne County resident and member of the Republican Party)—move for summary disposition under MCR 2.116(I)(1). Defendants—Secretary of State Jocelyn Benson (the Secretary) and Director of Elections Jonathan Brater—move for summary disposition under MCR 2.116(C)(8) and (10). The Court heard the motions on July 23, 2026. Because this matter is barred by laches, the Court GRANTS summary disposition in favor of defendants and DENIES plaintiffs' motion for summary disposition.

I. BACKGROUND

Plaintiffs challenge a series of administrative rules relating to election challengers. Historically, the Secretary of State issued a manual of instructional guidance entitled The Appointment, Rights, and Duties of Election Challengers and Poll Watchers (the Challenger Manual), which the Michigan Department of State (MDOS) updated in advance of elections.

In *O'Halloran v Secretary of State*, 515 Mich 606, 619; 29 NW3d 429 (2024), the plaintiffs challenged the 2022 version of the Challenger Manual and argued, in relevant part, that the Challenger Manual was required to be promulgated as a set of administrative rules under the Administrative Procedures Act (APA), MCL 24.201 *et seq.* The Michigan Supreme Court held, in relevant part, that the challenged provisions of the May 2022 version of the Challenger Manual were *not* required to be promulgated as rules under the APA. *Id.* at 658-659.

Following the 2024 elections, the Secretary decided that for future elections, she would promulgate the Challenger Manual as a series of administrative rules under her rulemaking authority outlined in MCL 168.31(1)(a), a provision of the Michigan Election Law, MCL 168.1 *et seq.* According to Brater, this decision was made on the basis that “administrative rules on challengers would still be appropriate and beneficial for the administration of elections in Michigan.”

On March 3, 2025, the MDOS submitted a request for rulemaking to codify the Challenger Manual. The Michigan Office of Administrative Hearings and Rules (MOAHR) approved the request on March 6, 2025. The MDOS then drafted administrative rules that it contends “largely mirrored” the existing Challenger Manual. The MDOS staff then consulted with the Department of Attorney General, reviewed the draft rules with subject-matter experts, and circulated the draft

rules to the Michigan Association of Municipal Clerks and the Municipal Association of County Clerks in August 2026. The MDOS gave a presentation on the draft rules at the Bureau of Elections Clerk Conference in early September 2025.

On October 7, 2025, the MDOS submitted the draft rules and a regulatory impact statement (RIS) to MOAHR. MOAHR approved the draft rules and the RIS on October 20, 2025. The MDOS set a public hearing date and issued a notice of hearing in the Michigan Register on December 1, 2025. The MDOS also published the hearing notice in three newspapers of general circulation, including one newspaper published in Michigan's Upper Peninsula, in November 2025. Links to the draft rules and the RIS were also made publicly available on the Bureau of Elections' website, and MDOS included information about the hearing in its newsletters.

The public hearing occurred on the morning of December 12, 2025. Twelve individuals made a public comment at the hearing. There were also 34 written public comments. However, there is no dispute that none of the plaintiffs made a public comment, either in person or in writing.

According to the Secretary, MDOS staff carefully reviewed each public comment and made 28 changes to the draft rules on the basis of those comments. MDOS staff included the hearing transcript and all written comments when it created its submission to the Joint Committee on Administrative Rules (JCAR).

On February 10, 2026, MOAHR requested a formal review and certification from the Legislature. The rules were transmitted to JCAR for consideration on February 11, 2026. As discussed later, JCAR then had 15 session days to consider the proposed rules and take certain

actions. The time for JCAR to act elapsed on April 21, 2026. The Challenger Regulations took effect on May 6, 2026.¹

Plaintiffs argue in their briefing that the Secretary has not yet issued an updated Challenger Manual before the August 4, 2026 primary election. However, the Court takes judicial notice of the fact that, as of the date of this Opinion and Order, an updated Challenger Manual, dated July 2026, is publicly available on the MDOS's website.²

Plaintiffs filed this lawsuit on June 23, 2026. After this Court granted expedited consideration and issued an expedited scheduling order, both parties moved for summary disposition. Plaintiffs argue in their motion for summary disposition that several provisions of the Challenger Regulations violate the Michigan Election Law. Defendants argue in their motion for summary disposition that plaintiffs' challenge to the validity of the Challenger Regulations is barred by laches considering that plaintiffs had ample time to participate in the rulemaking process and file this lawsuit in early 2026, yet inexplicably delayed filing their complaint until the end of June 2026. Defendants note that the Challenger Regulations will have equal impact on the August 4, 2026 primary election, but plaintiffs maintain that they are *not* seeking relief for that election. Defendants argue they have been prejudiced by having to respond to the lawsuit on an expedited basis and note that the timeframe for appellate consideration of this matter will be curtailed because of the impending general election. Alternatively, defendants argue that none of

¹ According to the Secretary, upon her request, the Challenger Regulations did not take effect until May 6, 2026, which was the day after the May 5, 2026 election.

² See Michigan Department of State, *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers*, July 2026, <https://www.michigan.gov/sos/-/media/Project/Websites/sos/01vanderroest/SOS_ED_2_CHALLENGERS.pdf> (accessed July 28, 2026).

the Challenger Regulations conflict with the Michigan Election Law. The parties have filed response and reply briefing. The Court has also accepted amicus briefing from the Michigan Democratic Party and the Democratic National Committee, as well as certain Local Election Officials. The Court heard arguments on the motion on July 23, 2026.

II. ANALYSIS

Defendants argue that plaintiffs' claims in this matter should be barred by the equitable doctrine of laches.³ The Michigan Court of Appeals has explained the doctrine of laches as follows:

Estoppel by laches is the failure to do something which should be done under the circumstances or the failure to claim or enforce a right at a proper time. To successfully assert laches as an affirmative defense, a defendant must demonstrate prejudice occasioned by the delay. Typically, [l]aches 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. A party guilty of laches is estopped from asserting a right it could have and should have asserted earlier. [*Home-Owners Ins Co v Perkins*, 328 Mich App 570, 589; 939 NW2d 705 (2019) (quotation marks and citations omitted; alteration in original).]

³ Plaintiffs move for summary disposition under MCR 2.116(I)(1), while defendants move for summary disposition under MCR 2.116(C)(8) and (10). Because the Court will consider the documents submitted with both motions in determining whether the claims are barred by laches, the Court will decide the motions under MCR 2.116(C)(10).

A motion under MCR 2.116(C)(10) . . . 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 omitted).]

“This doctrine applies to cases in which there is an unexcused or unexplained delay in commencing an action and a corresponding change of material condition that results in prejudice to a party. The doctrine of laches applies in actions in which equitable relief is sought. MCL 600.5815.” *Nykoriak v Napoleon*, 334 Mich App 370, 382-383; 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).]

Plaintiffs argue that the presumption of laches does not apply to this matter because the instant civil action was filed more than 45 days before the general election.

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. [MCL 691.1031.]

Indeed, plaintiffs’ complaint was filed on June 23, 2026, which was 133 days prior to the general election on November 3, 2026. However, the primary election is scheduled to take place on August 4, 2026, meaning that plaintiffs’ complaint was actually filed 42 days prior to the next election that would be affected by the relief requested. As such, there is a presumption of laches in this matter. See *id.*

Plaintiffs argued in their brief and at oral argument that the primary election is not affected by the relief requested because plaintiffs seek only declarations pertaining to the November 3,

2026 election and thereafter. First, this Court notes that plaintiffs have failed to brief the issue of how this Court could find that certain administrative rules violate Michigan's elections laws, yet still hold that the rules remain in place during the primary election, but not during the general election (when pressed for caselaw addressing this issue, plaintiffs were unable to cite to any published authority).

Second, the prayer for relief in plaintiffs' complaint does not request declaratory relief pertaining solely to the general election; instead, the prayer for relief asks for the following:

A. Declare that the following provisions of the Challenger Regulations conflict with the Michigan Election:

- a. Rule 168.205
- b. Rule 168.206(4)
- c. Rule 168.206(5)
- d. Rule 168.206(6)
- e. Rule 168.214(3)(g)
- f. Rule 168.214(3)(n)-(o)
- g. Rule 168.214(4)(c) and (h)
- h. Rule 168.214(4)(m) and Rule 168.214(5);

B. Declare the Challenger Regulations are unlawful and *ultra vires* to the extent they conflict with the Michigan Election Law, MCL 168.730-734; MCL 168.765a;

C. Declare the Challenger Regulations are unconstitutional to the extent they conflict with or go beyond the scope of the Michigan Election Law, thus violating the Separation of Powers Clause and the Purity of Elections Clause;

D. Enjoin application of the unlawful portions of the Challenger Regulations;

E. Enjoin Defendants from promulgating similarly unlawful rules, guidance, or instructions[;]

F. Award Plaintiffs their costs, expenses, and attorney fees incurred in this action; and

G. Award any other relief this Honorable Court deems just and equitable.⁴

That said, the Michigan Court Rules address such a situation. “Except as provided in subrule (B), every final judgment may grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded that relief in his or her pleadings.” MCR 2.601. Thus, in this matter, plaintiffs would be required to prove that they are entitled to entry of a judgment declaring that some or all of the rules are inconsistent with Michigan’s elections statutes, but that the rules nonetheless remain in effect for the 2026 primary election.

As the parties acknowledged at oral argument, the United States Supreme Court has recognized that court orders affecting elections can result in voter confusion and consequent incentive to remain away from the polls and that, “[a]s an election draws closer, that risk will increase.” *Purcell v Gonzalez*, 549 US 1, 4-5, 127 S Ct 5, 166 L Ed 2d 1 (2006). Logically, the same can be said for elections challengers, i.e., court orders affecting elections can result in confusion regarding the procedures for elections challengers and consequent incentive to refuse to serve in that capacity. There is no question that, if this Court granted any of the relief requested by plaintiffs, it would affect the primary election on August 4, 2026, which will take place a mere 12 days after the hearing on the parties’ competing motions for summary disposition. Assuming that this Court could declare the new rules to conflict with Michigan’s existing election laws as it

⁴ Paragraph 31 of plaintiff’s complaint does state, “To be clear, Plaintiffs seek declaratory relief regarding the November 3, 2026, general election, and all future elections.” However, the preceding paragraph also says, “The unlawful Challenger Regulations are currently in force and will govern the conduct and procedures relating to challengers credentialed for the upcoming primary and general elections.” As noted above, the relief requested in the complaint’s prayer for relief is not limited to the general election.

pertains to the general election and thereafter, there would be no rebuttable statutory presumption of laches; however, that would not mean that laches does not apply as a matter of law, i.e., the doctrine could still apply. See *Nykoriak*, 334 Mich App at 383.

To address whether laches would apply here, this Court first reviews whether plaintiffs delayed in filing the instant action. A draft of the new rules was created in October 2025, and a public hearing was scheduled for December 12, 2025. According to defendants, 34 individuals submitted written public comment, and 12 people presented public comment at the hearing. Defendants have indicated that they made 28 changes to the draft rules as a result of the public comments. Plaintiffs do not dispute that they did not make a public comment. On February 11, 2026, the rules were transmitted to JCAR, after which JCAR had 15 session days in which to consider the rules and do one of the following:

(a) Object to the rule by approving a notice of objection under subsection (2) and filing the notice with the office.

(b) Propose that the rule be changed. If the committee proposes that a rule be changed under this subdivision, section 45c [MCL 24.245c] applies.

(c) Decide to introduce bills under subsection (5) to enact the subject of the rule into law.

(d) Waive any remaining session days. If the committee waives the remaining session days, the clerk of the committee shall promptly notify the office of the waiver by electronic transmission. [MCL 24.245a(1)(a)-(d)].⁵

⁵ The same statute adds:

If the committee does not approve a notice of objection, propose that the rule be changed, or decide to introduce bills under subsection (5) within the time period prescribed in subsection (1), or if the committee waives the remaining session days under subsection (1), the office may immediately file the rule, with the certificate of approval required under section 45(1), with the secretary of state. The rule takes effect immediately on being filed with the secretary of state unless a later date is indicated in the rule. [MCL 24.245a(3).]

The rules ultimately went into effect on May 6, 2026.

Plaintiffs argue that they were not able to begin addressing the new rules until after those rules went into effect, at which time they had to study the rules, retain counsel, and file a complaint. This Court finds that argument unconvincing. Again, the public hearing on the new rules occurred in December 2025. Plaintiffs provide no reason as to why they did not even offer public comment on the proposed rules. Regardless, if the rules transmitted to JCAR on February 11, 2026 violated Michigan law in the manner argued by plaintiffs, then certainly plaintiffs should have begun preparing their response in February, as opposed to waiting until May, and then ultimately filing a lawsuit 48 days after the rules went into effect and a mere 42 days before the primary election. Such actions do not demonstrate the type of diligence needed to successfully defeat the equitable defense of laches in this case. The simple fact is time would be needed to train both election challengers and poll workers if this Court changed the rules by striking one or more of them down. Plaintiffs conceded as much at oral argument when they said at least 21 days are necessary for training poll workers, based upon prior testimony in another election-related case. Thus, based on plaintiffs' own admission, there is not time to adequately train poll workers before the primary election. Under these facts, plaintiffs certainly have not rebutted the presumption of laches that would be applicable to the primary election.⁶

⁶ At the hearing, plaintiffs' counsel noted that in *Michigan Republican Party v Benson*, Court of Claims Case No. 24-000041-MZ, Judge YATES granted in part the relief requested by the plaintiffs in an election-related matter in a late July judgment preceding a November general election. That matter is distinguishable from the instant case. To start, the complaint in Case No. 24-000041-MZ was filed much earlier in the year than the complaint in this matter. The complaint in that case was filed in late March 2024 and requested relief in advance of the August 6, 2024 primary election and the November 5, 2024 general election. And while the final judgment in that matter was entered on July 30, 2024, the Court issued a dispositive opinion and order on June 12, 2024.

Even accepting plaintiffs' argument that this Court can declare some or all of the rules to be inconsistent with existing elections statutes, but that such a declaration would not apply to the primary election, it would not mean that laches does not apply as a matter of law. In other words, although there would be no rebuttable presumption of laches in that scenario, the doctrine of laches may still apply. See *Nykoriak*, 334 Mich App at 383.

Defendants argue that, even as it relates to the general election, the nonprevailing party in this case will need to exhaust all appellate relief and that there is insufficient time for this case to be decided in time to properly train election challengers and poll workers if any of the new rules are ultimately struck. This Court agrees and finds that plaintiffs' delay in filing suit has prejudiced defendants in that regard. Had plaintiffs started this process in February, they would have had nine months to exhaust all potential appeals. Instead, they inexplicably waited until June 23, 2026, to file the instant case. It strikes this Court as ironic that it took plaintiffs 132 days to draft a lawsuit in this case following the transmission of the rules to JCAR, but defendants nonetheless claimed at the hearing that the 103 days left between the date of the hearing and the date of the general election provided more than enough time for all of the appeals in this matter to be exhausted and for poll workers to then be trained before November 3, 2026. Put another way, plaintiffs' argument as to why they waited so long to file the complaint in this matter contradicts their argument for why there is sufficient time to grant the declaratory relief they seek.⁷

Plaintiffs in this lawsuit did not file the complaint until June 23, 2026. Most importantly, in Case No. 24-000041-MZ, the defendants did *not* raise a laches defense, so the Court did not need to address laches.

⁷ This Court notes that plaintiffs offer no reasoning as to why they are apparently unconcerned about how the new rules will affect the primary election. Plaintiffs were undoubtedly aware that

Defendants also argue that plaintiffs' delay in filing suit has prejudiced their ability to thoroughly defend this action. Again, this Court agrees. As defendants argue, due to the expedited schedule requested by plaintiffs, defendants had only nine days from the date of the scheduling order and 15 days from the date of the complaint to respond to the complaint in this matter. With there being only 103 days between the date of the July 23, 2026 hearing and the date of the general election, it is far from certain defendants will have the benefit of oral argument in subsequent proceedings, and they will likely be faced with expedited briefing schedules, as they were in this Court. Plaintiffs could have significantly lessened those issues by simply filing this case earlier this year.

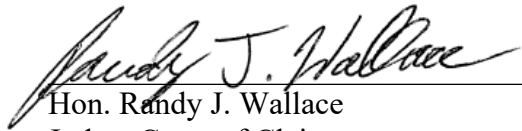
This Court finds that because of plaintiffs' unreasonable delay in filing their complaint in this matter, there is not a reasonable amount of time after the exhaustion of appeals, for election officials to comply with the mechanics and complexities that the relief requested would create. See *Davis*, 346 Mich App at 462. Plaintiffs have failed to rebut the presumption of laches, as it applies to the primary election. See MCL 691.1031. Further, even if this Court accepts plaintiffs' argument about declaratory relief pertaining to the general election and thereafter, plaintiffs failed to bring this case at a proper time, as explained in this opinion. See *Home-Owners Ins Co*, 328 Mich App at 589. Finally, defendants have demonstrated that they would be prejudiced as a result of plaintiffs' delay in filing the complaint. Thus, plaintiffs' complaint is barred by laches.

the statutory presumption of laches would apply to such an argument, meaning that it may have been a strategic decision to omit any argument as it pertained to the primary. But, the fact that plaintiffs waited to file their case until after they would have a viable argument pertaining to the primary bolsters the argument that plaintiffs unnecessarily delayed filing their complaint in this matter.

For all of the reasons stated in this opinion, it is hereby ordered that defendants' motion for summary disposition is GRANTED. Plaintiffs' motion for summary disposition is DENIED.

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

Date: July 29, 2026


Hon. Randy J. Wallace
Judge, Court of Claims



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