

# Court of Appeals, State of Michigan

## ORDER

Lee Estes v Secretary of State

Docket No. 362168

Michael F. Gadola  
Presiding Judge

Kathleen Jansen

Michelle M. Rick  
Judges

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The complaint for mandamus is DENIED. We must deny plaintiff's complaint because plaintiff did not speedily request relief, where he commenced his complaint fewer than 28 days before the August 2, 2022 primary election. It thus is barred by laches. MCL 691.1031. See also, *Schwartz v Secretary of State*, 393 Mich 42, 50 n 5; 222 NW2d 517 (1974); *Kuhn v Secretary of State*, 228 Mich App 319, 335; 579 NW2d 101 (1998).

Additionally, plaintiff has failed to show that he is entitled to the extraordinary remedy of mandamus before it has been proven whether candidate Ryan Kelley violated the Insurrection Clause, US Const, Am XIV, §3. We express no opinion whether Kelly engaged in "insurrection or rebellion" or whether Kelley is qualified to serve as a gubernatorial candidate as a result. Our analysis is limited to the issue of whether plaintiff met his burden to show: "(1) a clear legal right to the act sought to be compelled; (2) a clear legal duty by the defendant to perform the act; (3) that the act is ministerial, leaving nothing to the judgment or discretion of the defendant; and (4) that no other adequate remedy exists." *Citizens Protecting Michigan's Constitution v Secretary of State*, 324 Mich App 561, 584; 922 NW2d 404 (2018) (citation and quotation marks omitted). As conceded by plaintiff, candidate Kelley has only been charged, and he has pleaded not guilty to those charges. Plaintiff has not made a case for the exercise of our discretion to grant a writ of mandamus absent a conviction—and here there has been no "finding of guilt, *People v Funk*, 321 Mich 617, 621; 33 NW2d 95 (1948)—much less the existence of undisputed facts.

This order constitutes a final judgment in this case, see MCR 7.215(E)(1), and shall have immediate effect pursuant to MCR 7.215(F)(2).



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

July 21, 2022

Date



Chief Clerk