

**STATE OF MICHIGAN
IN THE SUPREME COURT**
(On Appeal from Wayne County Circuit Court)

ARNEATA CHANTELL COBBS, *et al*,

Plaintiffs-Appellants,

vs.

WAYNE COUNTY, *et al*,

Defendants-Appellees.

MSC Case No 167262
Court of Appeals Case No. 362259
LCC No. 20-016367-CZ
Hon. Susan L. Hubbard

**PLAINTIFFS-APPELLANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF
APPLICATION FOR LEAVE TO APPEAL**

PROOF OF SERVICE

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STATEMENT OF THE QUESTIONS PRESENTED¹

- I. Whether dismissal of a claim based on failure to comply with the Prison Litigation Reform Act (PLRA), MCL § 600.5501 *et seq* must be with prejudice?
- II. Whether Plaintiff Krista Anson is a “prisoner” subject to the PLRA where she was not booked into Wayne County Jail until several hours after this lawsuit was filed?

¹ In its Order dated June 13, 2025, the Court directed the parties to file supplemental briefs as to these two questions presented.

ARGUMENT

I. A dismissal of a claim based on failure to comply with the Prison Litigation Reform Act (PLRA), MCL § 600.5501 et seq should be *without* prejudice.

It is universally understood and accepted by the federal courts that a dismissal based on non-compliance with the federal Prison Litigation Reform Act should be “without” prejudice. See Plaintiffs’ Application for Leave, pg. 20-21 (collecting cases holding that such a dismissal under the federal PLRA is to be “without” prejudice). While the myriad cases collected and cited in Plaintiffs’ Application do not discuss *why* a dismissal under the PLRA should be ‘without’ prejudice, the reasons are neither obtuse nor complex.

As Judge David Lawson from the United States District Court for the Eastern District of Michigan aptly explained in addressing this question:

First, the rule in the Sixth Circuit is that ‘[a] dismissal under § 1997e should be without prejudice.’ *Boyd v Corrs Corp of Am*, 380 F3d 989, 994 (CA6 2006)(citing *Knuckles El v Toombs*, 215 F3d 640 (CA6 2000)); *see also Bell v Konteh*, 450 F3d 651, 654 (CA6 2006); *Brown v Toombs*, 139 F3d 1102, 1104 (CA6 1998).

Second, failure to exhaust administrative remedies is an affirmative defense that the defendant must raise properly. *Jones v Bock*, 549 US 199 (2007). If a defendant fails to raise the defense at the proper time, it may be waived. Dismissing an unexhausted claim with prejudice would bar the claim in future cases and permit defendants to avoid the procedural requirements for raising that defense.

Third, dismissing claims with prejudice assumes that a prison would always enforce its procedural rules for late-filed grievances and never address the merits. The Sixth Circuit’s decision in *Reed-Bey v Pramstaller*, 603 F3d 322, 325-25 (CA6 2010), demonstrates the fallacy of that reasoning. If a prison did address the merits of a late-filed grievance, an earlier dismissal with prejudice of the claim by a court would countenance ‘undeserved insulation from federal judicial

review.’ *Id* at 326; *see also Roberson v Martens*, No 09-861, 2010 WL 3779544, at *7 (WD Mich 2010).

Finally, in order to conclude that a procedural defense would forever bar the plaintiff’s claim, the Court must foresee the context in which the claim might be raised again, for example, when the plaintiff files a second case based on the same set of facts. It is impossible for the Court to predict what will happen in a future case. Without the benefit of future factual development, the Court’s opinion would be advisory in nature. (citations omitted).

McCloy v Correctional Medical Serv, 794 F Supp 2d 743, 751-52 (ED Mich 2011). The federal court’s reasoning applies with equal force here.

For example, many of the dismissed-Plaintiffs in this case were released from prison and/or jail after the filing of the Complaint but before the statute of limitations ran on their claims. There is no reason why, once released from prison/jail, that these Plaintiffs should still be precluded from refileing their ELCRA claims, especially considering that, once released, the PLRA would have no application whatsoever to their claims (because they are no longer prisoners which thus exempts them, entirely, from the quagmire of PLRA requirements).

The federal court’s reasoning finds further support in similar contexts involving the failure to exhaust administrative remedies. For instance, in *Teal v Potter*, 559 F3d 687, 693 (CA7 2009), the federal Court of Appeals for the Seventh Circuit considered whether a dismissal under the Rehabilitation Act for failure to exhaust administrative remedies should be with or without prejudice. Ultimately, the court held that a dismissal for failure to exhaust must be *without* prejudice. *Id* at 693 (citing *McGuinness v United States Postal Serv*, 744 F2d 1318, 1321 (CA7 1984)(holding that in postal worker suit for discrimination,

“it is not certain that it is too late for [plaintiff] to obtain administrative consideration of his claim, [such that] the suit must be dismissed not as untimely but as premature, without prejudice to his bringing a new suit if and when he exhausts his administrative remedies.”); *see also Boos v Runyon*, 201 F3d 178, 184 (2d Cir 2000)(same).

In *Greene v Meese*, 875 F2d 639, 643 (CA7 1989), the court similarly held that the proper resolution for failing to exhaust administrative remedies is a dismissal without prejudice. In reaching this conclusion, the court reasoned a dismissal without prejudice leaves “the plaintiff free to refile his suit when and if he exhausts all of his administrative remedies or drops the unexhausted claims.” *Id* at 643 (citations omitted).

The court further supported its conclusion by citing to Fed R Civ P 41(b) which provides, generally, that a dismissal is without prejudice except in certain circumstances (i.e., a dismissal for lack of jurisdiction, improper venue, or failure to join a party under Rule 19). The court went on to note that. “[a] dismissal for failure to exhaust administrative remedies is not, as it might appear to be, jurisdictional.” *Id*; *see also Costello v United States*, 365 US 265, 285 (1961)(relying on Fed R Civ P 41(b) and highlighting that, “dismissals which are based on a plaintiff’s failure to comply with a precondition requisite to the Court’s going forward to determine the merits of his substantive claim’ are to be dismissed without prejudice.”). The same reasoning applies here.

Similar to the *Greene* Court’s analysis, our Michigan Court Rules provide that, generally, a dismissal – other than a dismissal for lack of jurisdiction or for failure to join a party – is without prejudice. MCR 2.504(B)(3). And it is well-settled law that, “the PLRA exhaustion requirement is not jurisdictional[.]” *Woodford v Ngo*, 548 US 81, 101 (2006).

Thus, for the same reasons articulated by the *Greene* Court and recognized by the US Supreme Court in *Costello*, a dismissal for failure to exhaust under Michigan's PLRA should also be without prejudice.

Nor should the Court find persuasive the Court of Appeals reasoning that, "[i]f a party may not amend their complaint because dismissal is mandatory, then it follows that the dismissal must be with prejudice." This is wrong. To the contrary, the federal courts have noted that, a prisoner whose claims are subject to mandatory dismissal for failure to exhaust under the PLRA, may later refile his claims upon complete exhaustion. *Saunders v Kummer*, 2023 WL 2025420, at * 4 (SD WV 2023)(noting that even though plaintiff was not permitted to amend his suit to cure a PLRA exhaustion issue and thus subject to dismissal, "this dismissal was without prejudice entitl[ing] [plaintiff] to cure the deficiencies in his complaint and bring a new civil action."

For these reasons, the Court should conclude that if the PLRA applies at all,² a dismissal under the statute for non-compliance, including failure to exhaust, must be without prejudice.

I. Plaintiff Krista Anson was not a "prisoner" subject to the PLRA where she was not booked into Wayne County Jail until several hours after this lawsuit was filed.

The Court should conclude, based on the record evidence, that Plaintiff Krista Anson

² In their Application, Plaintiffs ask the Court to hold that the PLRA should not apply, at all, to their ELCRA claims as the PLRA places an undue burden on their right to seek redress under ELCRA. See Plaintiffs' Application, pg 18-19. The burden on their right is demonstrated by, *inter alia*, the fact that a grievance must be filed within 10 days of the event giving rise to the complaint, damage caps, and other restrictions. To allow such overly burdensome restrictions on a current or former detainee's right to seek redress under ELCRA makes nearly all ELCRA claims illusory to an entire class of claimants (i.e., prisoners and/or detainees).

was not a “prisoner” subject to the PLRA where she was not detained/housed/booked into the Wayne County Jail (“WCJ”) until 9:43 p.m., but filed her instant Complaint at 1:25 p.m. earlier that day. See Plaintiffs’ Application, pg 15-16. A plain reading of the statute dictates that the PLRA does not apply to Anson, at all, because she was not a “prisoner” at the time she “filed” the instant Complaint.

Specifically, MCL § 600.5503(1) provides that, “[a] prisoner shall not file an action concerning prison conditions until the prisoner has exhausted all available administrative remedies.” (emphasis added). Here, the record reflects that the instant action was “filed” at 1:25 p.m. which was about eight hours before Anson was booked into the jail. Based on the express terms of the statute, Anson was not yet a “prisoner” within the meaning of MCL § 600.5531(e). On this question, the Court’s analysis should end here.

To the extent that Wayne County asserts that Anson may still have been a prisoner if she was arrested and detained in another jurisdiction before being booked into the WCJ, the Court should reject such an assertion. It is Plaintiffs’ position, as set out in detail in their Application, the PLRA applies, if at all, to a prisoner who is complaining about her current prison conditions where she is currently housed or detained. Defendants’ interpretation, that an individual is a prisoner no matter where they are located, leads to absurd (and unconstitutional) results.

The best illustration of this point is as follows: an individual is currently in a jail in Memphis, but she was detained in WCJ three months ago, and now she wants to file an ELCRA claim for actions that arose during her detention in WCJ months earlier. There is no rational basis whatsoever to deem her a “prisoner” where she is currently detained in an

out-of-state jail but complaining about actions that occurred months earlier in a different jail (WCJ). This is exactly what Wayne County is asserting, an assertion that has no rational basis in the law. The only rational interpretation of the term “prisoner” would be to impose a temporal limitation on the term “prisoner” to mean that the prisoner must be complaining about the jail where she is currently confined.

Thus, even if Anson had been arrested earlier that day in another jurisdiction and had not yet been conveyed to WCJ, she still wouldn’t be a “prisoner” of WCJ which is the subject of her Complaint. To the extent that Wayne County further suggests that perhaps Anson was “at” the jail at 1:25 p.m., but not “booked” into the jail until 9:43 p.m. (which seems far-fetched and problematic in and of itself), the record is not clear as to when she actually “entered” WCJ versus when she was “booked” into the jail. At a minimum, there is a fact question on this point which would nonetheless require vacating the lower courts’ opinions and remanding to the circuit court for further proceedings on this point.

For these reasons, the Court should conclude that Anson was not a “prisoner” within the meaning of the PLRA at the time she filed her Complaint. Alternatively, the Court should find that a question of fact remains as to whether she was actually “in” the jail at 1:25 p.m. when she “filed” her instant Complaint.

CONCLUSION AND RELIEF REQUESTED

For these reasons, Plaintiffs respectfully request that the Court peremptorily reverse the lower courts’ opinions denying class certification and granting of Defendants’ motion for summary disposition by application of the PLRA.

Respectfully submitted,

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Dated: July 25, 2025

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PROOF OF SERVICE

I hereby certify that on this 25th day of July 2025, a copy of Plaintiffs-Appellants' Supplemental Brief in Support of Application for Leave to Appeal, along with this Proof of Service were filed with the Clerk of the Court and served upon all counsel of record via the Court's ECF system to their respective email addresses on file.

/s/ Michael R. Dezsi
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