STATE OF MICHIGAN

COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

v

Case No. 26-000147-MB

JOCELYN BENSON, in her official capacity as the duly elected Secretary of State,

Hon. Michael J. Riordan

Defendant.
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OPINION AND ORDER DENYING PLAINTIFF'S 8/5/26 EMERGENCY MOTIONS FOR RECONSIDERATION AND TO FILE AN AMENDED COMPLAINT

At 8:30 a.m. on August 5, 2026, the Court entered an order vacating its July 31, 2026 amended scheduling order and striking plaintiff's July 30, 2026 amended complaint, which was not filed on leave of the Court. Approximately 40 minutes later, plaintiff filed emergency motions for reconsideration of the Court's order and for leave to file an amended complaint. The Court DENIES both motions.

I. RECONSIDERATION

Plaintiff has not demonstrated palpable error by which the Court and the parties have been misled to support reconsideration under MCR 2.118(F)(3). Plaintiff relies on *Progress Mich v Attorney General*, 506 Mich 74; 954 NW2d 475 (2020), for the proposition that a plaintiff may file an amended complaint as of right in response to a motion for summary disposition that is filed in response to an earlier complaint. The Court finds the holding of *Progress Mich* to be more

limited than suggested by plaintiff. In that matter, the defendant responded to the plaintiff's initial complaint with a motion for summary disposition because the complaint was not properly verified under MCL 600.6431 of the Court of Claims Act. The plaintiff filed an amended complaint in response, and the defendant repeatedly stated throughout the litigation that the first amended complaint was properly verified. The defendant ultimately realized its error and filed a second motion for summary disposition. The plaintiff then filed a second amended complaint without seeking leave of the Court and the Court accepted it for filing. *Id*. at 82, 92. There was no substantive difference between the plaintiff's initial complaint and either amended complaint; only the verification was amended. The Court acknowledges that the Supreme Court stated:

> Under MCR 2.118(A)(1), plaintiff was entitled to amend its complaint, without seeking leave from the Court of Claims, within 14 days of defendant filing its motion to dismiss. See also MCL 600.2301. Plaintiff did so: defendant's motion to dismiss the complaint was filed on May 16, 2017, and the amended complaint was filed on May 26, 2017. Under MCR 2.118(A)(4), "[u]nless otherwise indicated, an amended pleading supersedes the former pleading." Accordingly, the amended complaint, timely filed under MCR 2.118(A)(1), superseded the original complaint. [*Progress Mich*, 506 Mich at 95.]

However, in *Progress Mich* our Supreme Court did not preclude this Court from exercising discretion pursuant to MCL 600.2301, which permits courts to exercise discretion in allowing amended pleadings. The Supreme Court implicitly recognized in *Progress Mich* that the trial court indeed exercised its discretion by allowing the plaintiff to file a second amended complaint to rectify the verification deficiency without seeking leave to file an amended complaint.

Likewise, this Court has exercised its discretion and, accordingly, DENIES plaintiff's motion for reconsideration of the order striking his amended complaint.

II. MOTION TO FILE AMENDED COMPLAINT

Plaintiff has also filed an emergency motion to file an amended complaint. MCR 2.118(A)(2) provides that leave to file an amended complaint "shall be freely given when justice so requires." Permission to file an amended complaint "should be denied only for . . . particularized reasons," including:

> "[1] undue delay, [2] bad faith or dilatory motive on the part of the movant, [3] repeated failure to cure deficiencies by amendments previously allowed, [4] undue prejudice to the opposing party by virtue of allowance of the amendment, [and 5] futility . . . ." [*Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 646 (1997), quoting *Ben P Fyke & Sons v Gunter Co*, 390 Mich 649, 656; 213 NW2d 134 (1973).]

Plaintiff seeks to add additional facts and an additional claim to his complaint. These facts and this legal theory were known to or could have been discovered by plaintiff before filing his initial complaint, and certainly before defendant filed its motion for summary disposition. Yet plaintiff waited until defendant filed a motion for summary disposition before filing his amended complaint and a separate summary disposition motion response declaring that defendant's motion had been rendered moot. Plaintiff unduly delayed in seeking to amend his complaint at extreme prejudice to defendant, who would have been required to prepare a new motion for summary disposition during the busy election season. Further, allowing plaintiff to amend his complaint at this late date in an emergency election matter would effectively prevent considered appellate review of this Court's ultimate decision.

Accordingly, the Court DENIES plaintiff's motion to file its proposed amended complaint.

Date: August 5, 2026

Michael J. Riordan
Judge, Court of Claims