# 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.
_____ /

**ORDER DENYING PLAINTIFF'S 8/7/26 SECOND EMERGENCY MOTION FOR RECONSIDERATION AND MOTION FOR EXTENDED TIME TO RESPOND TO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION**

On August 6, 2026, the Court of Appeals issued a published opinion in consolidated cases in *Barkley v Southfield*, ___ Mich App ___; ___ NW3d ___ (2026) (Docket Nos. 369608, 370050, 370112, 370580, 370583, 372060, 372076). News of that release was more broadly communicated to the public this morning. After learning of this opinion, plaintiff filed a second motion for reconsideration of the August 5, 2026 order striking the amended complaint he filed in the current action. The factual and procedural background of *Barkley* is distinguishable from the current matter and the Court DENIES plaintiff's motion.

At issue in *Barkley* was whether a plaintiff could file an amended complaint as of right under MCR 2.118(A)(1) before the plaintiff served the initial complaint on the defendant given the Court Rule's language that "[a] party may amend a pleading once as a matter of course *within* 14 days after being served with a responsive pleading by an adverse party. . . ." *Barkley*, slip op

at 6-7, 9 (emphasis added). The key question before the Court of Appeals was the definition of the phrase "within 14 days" and whether this language prohibited the filing and service of an amended complaint as of right before a responsive pleading is filed or served.

In the current case, plaintiff attempted to file an amended complaint as of right two days *after* defendant moved for summary disposition pursuant to the Court's expedited briefing schedule that was entered in response to plaintiff's request for expedited consideration of his emergency motion in this time-sensitive election matter. He did not attempt to file an amended complaint before the initial complaint was served on defendant. The Court struck plaintiff's amended complaint because a motion for summary disposition is not a responsive pleading as defined in MCR 2.110(A), and not because of the timing of the amended complaint. Accordingly, *Barkley* is inapposite and not controlling.

The Court's August 5, 2026 order vacating the July 31, 2026 amended scheduling order and striking the July 30, 2026 amended complaint allowed plaintiff additional time to respond to defendant's motion for summary disposition. Plaintiff's response is due by 4:00 p.m. today, Friday, August 7, 2026. Plaintiff seeks to extend the time for his response until tomorrow morning to allow the Court time to consider the emergency motion he filed today raising *Barkley*. The Court has already considered the *Barkley* issue and plaintiff's response to defendant's motion for summary disposition will require no revision based on *Barkley*.

Accordingly, the Court DENIES plaintiff's second emergency motion for reconsideration and emergency motion for an extension to file his response to defendant's summary disposition motion. This is not a final order.

Date: August 7, 2026

Michael J. Riordan
Judge, Court of Claims