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.
_____ /

OPINION AND ORDER GRANTING PLAINTIFF'S 8/24/26 MOTION FOR RECONSIDERATION BUT DENYING THE 8/25/26 MOTION FOR RELIEF FROM JUDGMENT AND REAFFIRMING THE GRANT OF SUMMARY DISPOSITION IN DEFENDANT'S FAVOR

On July 30, 2026, two days after defendant, Secretary of State Jocelyn Benson (SOS), filed a motion for summary disposition, plaintiff, Robert Davis, filed an amended complaint, purportedly as of right pursuant to MCR 2.118(A)(1). The Court initially accepted the amended complaint and entered an amended scheduling order. On August 5, however, the Court vacated the amended scheduling order and struck the amended complaint. The Court denied Davis's motion for reconsideration and for leave to file an amended complaint later that day. And the Court denied Davis's successive motion for reconsideration based on the newly released opinion of *Barkley v Southfield*, ___ Mich App ___; ___ NW3d ___ (2026) (Docket Nos. 369608, 370050, 370112, 370580, 370583, 372060, 372076), on August 7, reasoning:

> 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.
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> 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.

Davis filed an interlocutory application for leave to appeal, which the Court of Appeals denied "for failure to persuade the Court of the need for immediate appellate review." The Court of Appeals indicated that its denial was "without prejudice to plaintiff seeking amendment under MCR 2.116(I)(5) should he remain aggrieved after the trial court's summary disposition ruling." *Davis v Secretary of State*, order of the Court of Appeals, entered August 10, 2026 (Docket No. 381934).

On August 21, the Court granted summary disposition in the SOS's favor and dismissed Davis's action. Davis did not seek amendment of his complaint following the Court's summary disposition resolution.

On the morning of August 24, 2026, the Court of Appeals released *Davis v Secretary of State*, unpublished opinion of the Court of Appeals, issued August 24, 2026 (Docket No. 382032), resolving Davis's appeal from Court of Claims Docket No. 26-000135-MB. In that case, the Court of Claims, Chief Judge MICHAEL F. GADOLA presiding, entered an opinion and order summarily dismissing Davis's complaint on August 14, 2026. Davis did not challenge the legal merits of that

decision on appeal, but instead challenged this Court's August 3, 2026 order striking his amended complaint filed after the SOS moved for summary disposition. Just as in this case, Davis moved for reconsideration of the order striking his amended complaint, relying on *Barkley*. And just as in this case, Judge GADOLA denied the motion for reconsideration, finding *Barkley* distinguishable.

In *Davis*, Docket No. 382032, pp 4-5, the Court of Appeals determined that the Court of Claims erred in striking Davis's amended complaint, reasoning as follows:

> In *Barkley*, *id*. at ___; slip op at 13, this Court set forth a straightforward rule: under MCR 2.118(A)(1), "a party may amend its complaint once by right at any point before, and then up to 14 days after, the adverse party serves its requisite responsive pleading." Davis's filing of his amended complaint fell comfortably within this rule. Davis filed his amended complaint on August 3, 2026. At that point, the [SOS] had filed a motion for summary disposition in lieu of an answer. The parties dispute whether that motion constituted a "responsive pleading" for purposes [of] MCR 2.118(A)(1). Compare, e.g., *Progress Mich v Attorney General*, 506 Mich 74, 95; 954 NW2d 475 (2020) (explaining that, "[u]nder MCR 2.118(A)(1), [the] plaintiff was entitled to amend its complaint, without seeking leave from the Court of Claims, within 14 days of [the] defendant filing its motion to dismiss") with *Dimondale v Grable*, 240 Mich App 553, 565; 618 NW2d 23 (2000) ("A motion for summary disposition is not a responsive pleading under MCR 2.110(A)."); see also *Barkley*, ___ Mich App at ___ n 12; slip op at 12 n 12 (noting the understanding of "responsive pleading" recognized in caselaw such as *Dimondale* but declining to follow unpublished decisions that have relied on it to foreclose amendment by right before such a "responsive pleading" has been served). Regardless of the answer to that question, Davis was within the timeframe provided by MCR 2.118(A)(1) for amending his complaint once by right. If the [SOS]'s motion was a "responsive pleading," then Davis filed his amended complaint well within 14 days of its service. MCR 2.118(A)(1). If it was not a "responsive pleading," then Davis filed his amended complaint before any such responsive pleading had been served. *Id*. As *Barkley* makes clear, "MCR 2.118(A)(1) sets an outer boundary on when an amended pleading may be filed by right but does not require the filing of a responsive pleading by an adverse party before that right is triggered." *Barkley*, ___ Mich App at ___ ; slip op at 11. Davis thus did not need to wait for the filing of a responsive pleading before amending his complaint once by right pursuant to MCR 2.118(A)(1).
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> The [SOS] argues on appeal that *Barkley* is not controlling because it concerned the amendment of a complaint before service of the original complaint had occurred, a fact pattern not at issue in this case. We disagree. While the fact patterns of this case and *Barkley* are distinct in this respect, *Barkley* did not purport

> to base its holding or analysis regarding MCR 2.118(A)(1) on that distinction. The amended complaint was properly filed in *Barkley* not because it was filed before service of the original complaint, but because it was filed before any responsive pleading had been served—and thus necessarily before 14 days had elapsed since service of any such responsive pleading. Under *Barkley*'s interpretation of MCR 2.118(A)(1), that same conclusion holds true as to the facts presented here, and we see no basis for distinguishing *Barkley* with respect to it.
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> The [SOS] also contends that, even if *Barkley* applies in this case, the Court of Claims had the inherent authority to control its own docket. According to the [SOS], the Court of Claims' rejection of the amended complaint was a permissible exercise of that authority, given the nature of this case and Davis's actions in response to the scheduling order. A trial court undoubtedly has the general, inherent authority to control its own docket in order to achieve the orderly disposition of the case before it. *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006). But a trial court must also comply with the court rules. See MCR 1.103 ("The Michigan Court Rules govern practice and procedure in all [Michigan] courts . . . ."). And as explained, the court rules, as interpreted by this Court in *Barkley*, permitted Davis to amend his complaint by right. The [SOS] has identified no colorable legal or factual basis for concluding that Davis could not exercise that right in this case.
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> Accordingly, and as *Barkley* makes clear, the amended complaint was timely filed under MCR 2.118(A)(1) and should have been accepted, as it was Davis's right to amend his complaint once under that rule.

On the afternoon of August 24, 2026, Davis filed an emergency motion for reconsideration of the Court's dismissal of his action. Then, on the morning of August 25, 2026, Davis filed an emergency motion for relief from the Court's final order.

In his amended complaint, Davis sought relief based in part on the unpublished Court of Appeals' decision in *Barkley*. However, the Court's analysis cannot end solely on the conclusion reached in that case and Davis is not automatically entitled to relief based on the decision in *Barkley*.

As noted in *Davis*, Docket No. 382032, p 5, the harmless error rule of MCR 2.613(A) must be considered:

> Harmless Error. An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

In Count I of his initial complaint, Davis sought a declaratory judgment that the SOS did not properly promulgate amendments to Mich Admin Code, Rules 168.1, 168.5, and 168.6 under the Administrative Procedures Act (APA) and, therefore, the amended Rules were invalid and void.[1] In the amended complaint, Davis sought to interject a new challenge to the promulgation of the amended Rules: that the Regulatory Impact Statement (RIS) for the proposed amendments did not comply with MCL 24.245(3) and the SOS failed to comply with MCL 24.245(4).[2]

Davis contended that the RIS submitted by the SOS did not include required information from the following provisions of MCL 24.245(3):

> Except as provided in subsection (6), an agency shall prepare and include with a notice of transmittal under subsection (2) the request for rule-making and the response from the office, a small business impact statement prepared under section 40, and a [RIS]. The [RIS] must contain all of the following information:
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> * * *
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> (c) An identification of the behavior and frequency of behavior that the rule is designed to alter.

[1] In Counts II and III, Davis sought the removal of candidate Kahlilia Davis's name from the General Election ballot.

[2] As noted in the Court's August 21, 2026 Opinion and Order, the SOS began the rulemaking process on October 21, 2025. Davis failed to attend the March 6, 2026 public hearing and submitted no public comments. The amended Rules subsequently took effect on June 8, 2026. Davis waited more than a month, until July 13, 2026, to file his emergency action challenging the adequacy of the rulemaking procedures and another 17 days, until July 30, to expand his challenge.

> (d) An identification of the harm resulting from the behavior that the rule is designed to alter and the likelihood that the harm will occur in the absence of the rule.
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> (e) An estimate of the change in the frequency of the targeted behavior expected from the rule.
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> * * *
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> (i) An estimate of the cost of rule imposition on the agency promulgating the rule.
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> (j) An estimate of the actual statewide compliance costs of the proposed rule on individuals.
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> (k) A demonstration that the proposed rule is necessary and suitable to achieve its purpose in proportion to the burdens it places on individuals.
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> * * *
>
> (bb) Any other information required by the office.

And Davis alleged that the SOS did not comply with MCL 24.245(4), which states:

> An agency shall electronically transmit the [RIS] required under subsection (3) to the office not less than 28 days before the public hearing required under section 41. The agency shall not hold the public hearing until the [RIS] has been reviewed and approved by the office. The agency shall also electronically transmit a copy of the [RIS] to the committee before the public hearing and the agency shall make copies available to the public at the public hearing. The agency shall publish the [RIS] on its website not less than 10 days before the date of the public hearing.

Davis's amended complaint directed the Court to exhibits that he failed to attach. Davis's July 29, 2026 Expedited Request for Declaratory Ruling was filed separately and this Court was able to review that document. However, Davis did not attach or separately file the SOS's RIS for the amendments to Rules 168.1 and 168.5, or the SOS's March 26, 2026 Agency Report submitted to the Joint Committee on Administrative Rules (JCAR).

MCL 24.264 of the APA provides that an individual may not seek a declaratory judgment in a court of this State, including a challenge to the adequacy of the RIS produced during the rule-

promulgation process, "unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously." Davis filed a request for an expedited declaratory ruling to challenge the adequacy of the RIS at 7:07 a.m. on July 29, 2026, and demanded a ruling by 2 p.m. that day. Given that the business day generally does not begin until 9 a.m., this gave the SOS only five hours to reach a decision. In the normal course, the SOS must make a request for a declaratory ruling public and allow time for public inspection and for interested persons to submit written comments. The SOS is given 60 days after receipt to issue the declaratory ruling. MCL 169.215(2). It is not surprising that the SOS was unable to resolve Davis's expedited request by the unilaterally designated time for response. Given this extremely truncated timeline dictated by Davis, the Court does not find the SOS's lack of response to be a failure "to act upon it expeditiously."

Davis then filed his amended complaint seeking a declaratory judgment with this Court at 3:33 p.m. on July 30, 2026. Because the SOS had yet to deny or fail to expeditiously reach a decision as required by MCL 24.264, Davis was not permitted to raise a claim in this Court for a declaratory judgment on this ground. Accordingly, the amendment to the complaint would have been futile and this Court would have struck it and denied Davis's motion to file an amended complaint in any event.

As such, although the Court GRANTS Davis's motion for reconsideration, the Court DENIES Davis's motion for relief from judgment and REAFFIRMS the grant of summary disposition in the SOS's favor and dismissal of Davis's action with prejudice. This is a final order resolving all issues in this matter.

Date: 08/26/2026

Michael J. Riordan
Judge, Court of Claims