UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CAROL BETH LITKOUHI,

Plaintiff,

v.

ROCHESTER COMMUNITY SCHOOL DISTRICT, *et. al*,

Defendants.
_____/

Case No. 2:26-cv-10552-SKD-DRG

Honorable Susan K. DeClercq
Magistrate Judge David R. Grand

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PLAINTIFF'S MOTION TO REMAND STATE-COURT CLAIMS TO THE STATE COURTS INCLUDING BRIEF IN SUPPORT

I. INTRODUCTION

PLAINTIFF, CAROL BETH LITKOUHI, by and through her attorneys of record, hereby files her Motion to Remand State-Court Claims to the State Courts.

1. Plaintiff conferred with Defendants' attorney pursuant to LR 7.1(a). There was a conference between attorneys on the motion in which the movant explained the nature of the motion or request and its legal basis and requested but did not obtain concurrence in the relief sought.
2. Plaintiff originally filed her Complaint in the 52-3 District Court for the County of Oakland in the State of Michigan on February 4, 2026. It was assigned the Case Number 26-00795-GZ.
3. Per statute, Michigan's District Court is the appropriate state court for actions against school districts unless there is an amount in question greater than $25,000. "Courts of limited jurisdiction [Michigan District Courts] shall have jurisdiction in all civil actions at law against school districts, when the amount claimed or matter in controversy is within their respective jurisdictional limits." MCL § 600.6511. This is a civil matter against a school district and its officials, and the only money damages claimed here are nominal damages which total less than $25,000.
4. Plaintiff brought state causes of action for alleged violations of Michigan's free speech clause—Const. 1963, art 1, section 5 (Count 1, Complaint ¶¶ 30-37, PageID.11), for a subject school board bylaw being unconstitutionally vague and overly-broad under Michigan law (Count 2, ¶¶ 38-44, PageID.12), for the Defendants exceeding the powers granted to

a school board by the state in the Revised School Code—MCL § 380.1 *et seq*. (Count 3, ¶¶ 45-55, PageID.12-14), and for the subject bylaw being void as against Michigan's public policy under Michigan's statutory laws and judicial opinions (Count 4, ¶¶ 56-84, PageID.14-18).

5. Plaintiff also brought federal causes of action that overlap with Michigan's law: Alleging that the same violation of Michigan's free speech clause is also a violation of the United States' First Amendment (Count 1, ¶¶ 30-37, PageID.11). Plaintiff did not allege whether the unconstitutional vagueness and overbreadth was a state or federal violation, but it is both (Count 2, ¶¶ 38-44, PageID.11-12).
6. Plaintiff also brought a purely federal claim for First Amendment Retaliation under the First Amendment made applicable to the states under the Fourteenth Amendment and brought pursuant 42 U.S.C. § 1983. (Count 5, ¶¶ 85-89, PageID.18-19).
7. On February 17, 2026, Defendants, pursuant to 28 U.S.C. § 1441(a), filed a Notice of Removal to this Federal Court based on the federal questions raised by Plaintiff. (PageID.1-4).
8. Pursuant to 28 U.S.C § 1367(a), this Court is granted supplemental jurisdiction over Plaintiff's state law claims because these rise out of the same transaction and occurrence as Plaintiff's federal law claims.

9. Plaintiff does not challenge any defects in the removal process.

10. Plaintiff does not deny that this court has the jurisdiction and ability to hear and decide the state-law claims. Rather, Plaintiff respectfully asks this court to abstain from hearing the state-law claims out of comity with Michigan's state court system. Plaintiff will show that state-law questions should be decided in state court because the matter involves a subunit of state government and its duties and restrictions under state law in questions that have not been adjudicated yet in state court. This should be done, in part, because decisions from the lower federal courts are not binding on the state courts of Michigan. The Abstention Doctrine is a discretionary doctrine on the part of the federal courts which essentially holds that unsettled state-law matters should be heard in state court.

11. When a state legislature specifies that a specific state court has jurisdiction, the federal courts honor that direction.

12. Plaintiff therefore respectfully requests that the state-court questions be remanded to the state courts of Michigan for determination.

II. SUMMARY OF THE CASE

Plaintiff is an elected school board member. The defendant School District recently enacted a bylaw restricting what school board members could discuss with the public. This restriction was not confined to confidential or privileged matters,

as it stated: "Board members 'will not share any document or information ***that has not already been shared by the District, including but not limited to*** confidential or privileged information.'" (Complaint ¶13 and Exhibit A, PageID.8, 22) (emphasis added). Plaintiff contends that this a prior restraint of her free speech under Michigan's Constitution and the federal Constitution (Complaint ¶¶31-37, PageID.11). Further, she alleges that this Bylaw is unconstitutionally vague (Complaint ¶¶38-44, PageID.12) and violates Michigan's public policy (Complaint ¶¶56-84, PageID.14-18), and that the prior-restraint Bylaw exceeds the authority granted to Michigan's school boards by statute (Complaint ¶¶45-55, PageID.12-14).

Plaintiff publicly discussed a proposed Oakland County-wide millage increase that the District had previously only discussed behind closed doors—although other districts in Oakland County discussed it in public. (Complaint ¶14, ¶27 and Exhibit C, PageID.9, 38-40). The defendant school board censured Plaintiff—explicitly for her public discussion. (Complaint ¶24 and Exhibit D, PageID.10, 41). She has alleged that this censure was an illegal retaliation against her for exercising her free speech rights and brought this action under 42 U.S.C. § 1983. (Complaint ¶¶85-89, PageID.18-19).

The question of whether or to what extent local subunits of government can demand prior restraint that controls what elected officials say to their constituents is a novel question of law that has not been determined by Michigan's courts.

Similarly, the question of how information can be determined by a district to be confidential has not been specifically decided by Michigan's courts.

III. RELEVANT AUTHORITIES

A. Abstention doctrines direct federal courts to exercise discretion and caution regarding deciding novel questions of state law.

Federal law provides that this court may decline to exercise supplemental jurisdiction over state law claims. In relevant part, 28 U.S.C. § 1367(c)(4) states: "The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—(1) the claim raises a novel or complex issue of state law, … (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction."

As this Court recently summarized:

> However, the district court "need not exercise its authority to invoke supplemental jurisdiction in every case in which it is possible to do so." *Estate of Johnson v. City of Detroit*, 2022 WL 5102019, at *5 (E.D. Mich. 2022) (citing [*United Mine Workers of America v. Gibbs*, 383 U.S. 715, at 726]). "The question of whether a court may assert supplemental jurisdiction over state claims remains open throughout the litigation." *Hussain Alfatlawy v. City of Detroit et al*., 2024 WL 4678138, at *5 (E.D. Mich. 2024); *Kubala v. Smith*, 984 F.3d 1132, 1137 (6th Cir. 2021).
>
> Supplemental jurisdiction is a doctrine of discretion, not of plaintiff's right. *Gibbs*, 383 U.S. at 726. Justification for this doctrine "lies in considerations of judicial economy, convenience, and fairness to litigants." *Johnson*, 2022 WL 5102019, at *5.

White Lake Caddis, LLC v Charter Township of White Lake, 2025 WL 1710229, at *2 (E.D. Mich. June 18, 2025).

One of the primary reasons that a federal court should abstain from hearing a state court matter is the principle of comity. The U.S. Supreme Court has characterized the "comity doctrine" as:

> The comity doctrine counsels lower federal courts to resist engagement in certain cases falling within their jurisdiction. The doctrine reflects
>
> > "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways." *Fair Assessment*, 454 U.S., at 112, 102 S.Ct. 177 (quoting *Younger v. Harris*, 401 U.S. 37, 44, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971)).

Levin v. Commerce Energy, Inc., 560 U.S. 413, at 421 (2010).

Levin goes on to warn that "Statutes conferring federal jurisdiction, we have repeatedly cautioned, should be read with sensitivity to "'federal-state relations' and 'wise judicial administration.' *Quackenbush v. Allstate Ins. Co*., 517 U.S. 706, 716 (1996)" (cleaned up) *Levin*, 560 U.S., at 423.

B. The state courts should decide state precedent—*Pullman* abstention.

The abstention doctrine has several varieties, the most relevant of which to this matter is *Pullman* abstention. *Pullman* abstention recognizes that the decisions

of lower federal courts are not binding on the state courts, and therefore a state court should make the decision:

> Although state courts are bound by United States Supreme Court decisions construing federal law, they are not similarly bound by the decisions of the lower federal courts, and when there is a conflict of authority among the lower federal courts, this Court is free to follow the authority it deems the most appropriate. *Abela v. Gen. Motors Corp*., 469 Mich. 603, 606, 677; N.W.2d 325 (2004). Indeed, even when there is no conflict among the lower federal courts, we are free to follow or reject their authority. *Id*., at 607, 677 N.W.2d 325.

People v. Gilliam, 479 Mich. 253, 261 (2007). For this reason, the importance of allowing the state courts to decide state questions has been recognized by the U.S. Supreme Court. The concern is:

> that a federal court will be forced to interpret state law without the benefit of state-court consideration and therefore under circumstances where ***a constitutional determination is predicated on a reading of the statute that is not binding on state courts and may be discredited at any time—thus essentially rendering the federal-court decision advisory*** and the litigation underlying it meaningless. *Watson v. Buck*, 313 U.S. 387, 401–402 (1941); and *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 459–461 (1945).

Moore v Sims, 442 U.S. 415, 428 (1979) (cleaned up) (emphasis added).

"*Pullman* abstention" grew out of the Supreme Court's decision in *Railroad Commissioner v. Pullman Co*., 312 U.S. 496 (1941), and held that federal constitutional questions that hinge on state law should be decided in the state courts first. The *Pullman* doctrine has been justified on both the basis of comity and on the preference to avoid deciding a constitutional issue unnecessarily when construction

of a state law can be dispositive. "Thus evolved the doctrine of Pullman abstention: that a federal action should be stayed pending determination in state court of state-law issues central to the constitutional dispute." *Moore*, 442 U.S. at 428.

> State courts are the principal expositors of state law. Almost every constitutional challenge—and particularly one as far ranging as that involved in this case—offers the opportunity for narrowing constructions that might obviate the constitutional problem and intelligently mediate federal constitutional concerns and state interests. When federal courts disrupt that process of mediation while interjecting themselves in such disputes, they prevent the informed evolution of state policy by state tribunals. *Trainor v. Hernandez*, [431 U.S. 434, 445 (1977)].

Moore, 442 U.S. at 429-430.

Abstention-based remands are proper when plaintiffs are requesting discretionary relief such as a declaratory judgment or injunctive relief—which are sought here. See *Quakenbush v. Allstate Insurance Company*, 517 US 706, 730-31 (1995). Such remands are generally not appropriate where the relief sought is monetary damages based on actions at law such as tort or contract. *Id*.[1]

[1] The high court did leave open the possibility of applying abstention principles in a suit for damages:

"[W]e have not held that abstention principles are completely inapplicable in damages actions. *Burford* [*v. Sun Oil Co*., 319 U.S. 315 (1943)] might support a federal court's decision to postpone adjudication of a damages action pending the resolution by the state courts of a disputed question of state law." *Quakenbush*, 517 U.S., at 730-31.

C. Abstention is proper when the crux of the matter involves state and local laws or charters.

When the matter involves, at its core, interpretation of state laws or municipal charters, abstention is appropriate.

> The Court now exercises its broad discretion to decline to exercise supplemental jurisdiction over Plaintiffs' state-law claims. The crux of this dispute is one that arises under Michigan law. Indeed, the vast majority of the claims in the Hindelangs' First Amended Complaint raise issues related to the interpretation and enforcement of Michigan's Open Meetings Act, the City of Grosse Pointe's municipal charter, and Michigan property law with respect to lot splits.
> ***
> Moreover, the value of comity – of allowing the Michigan state courts to rule in the first instance on issues of Michigan statutory and property law – weighs against the exercise of supplemental jurisdiction here.

Hindelang v. City of Grosse Pointe, 2020 WL 5411338, at *2 (E.D. Mich. Sept. 9, 2020).

This matter involves Michigan's Revised School Code, M.C.L. § 380.1 *et seq*. (Count 3, ¶¶ 45-55, PageID.12-14), and public policy as embodied by Michigan's Freedom of Information Act, M.C.L. § 15.231 *et seq*. (Count 4, ¶¶ 62-67, PageID. 15-16), Open Meetings Act, M.C.L. § 15.261 *et seq*. (Count 4, ¶¶ 68-74, PageID. 16-17), Management and Budget Act, M.C.L. § 18.1101, *et seq*. (Count 4, ¶¶ 75-79 and Exhibit E, PageID. 17 and 42-43), and Michigan court opinions (Count 4, ¶ 80-83, PageID. 17-18).

D. Federal courts give deference to state statutes' choice of courts.

The Sixth Circuit has held that where there is a state statute granting subject matter jurisdiction over certain claims against a state-government unit, and that statute expresses a preference for which state court has jurisdiction, that preference constitutes a compelling reason for declining jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(c)(4).

When a tort action was brought against Tennessee in federal court in *Gregory v. Shelby County*, 220 F.3d 433 (6th Cir. 2000), the court of appeals held that the Tennessee legislature's preference that such an action be brought in the state's circuit court was an exceptional circumstance providing a compelling reason to decline supplemental jurisdiction:

> Title 28 U.S.C. § 1367(c) provides that district courts may decline to exercise supplemental jurisdiction over a claim "... if ... in exceptional circumstances, there are other compelling reasons for declining jurisdiction." 28 U.S.C. § 1367(c).
>
> The Tennessee Governmental Tort Liability Act ("TGTLA"), T.C.A. § 29–20–101 *et seq*., provides in pertinent part: "[t]he circuit courts shall have exclusive original jurisdiction over any action brought under this chapter...." Tenn. Code Ann. § 29–20–307.
>
> In this instance, the Tennessee legislature expressed a clear preference that TGTLA claims be handled by its own state courts. This unequivocal preference of the Tennessee legislature is an exceptional circumstance for declining jurisdiction.

Gregory, 220 F.3d at 446.[2]

In Michigan, the district courts of the state are given explicit subject matter jurisdiction over matters involving school districts unless damages are greater than $25,000. M.C.L. § 600.6511 states: "Courts of limited jurisdiction shall have jurisdiction in all civil actions at law against school districts, when the amount claimed or matter in controversy is within their limited respective jurisdictional limits." This is found in Subchapter 65 of Michigan's Revised Judicature Act of 1961which grants jurisdiction to the district courts of Michigan. See generally, MCL § 600.6501 *et seq*. "The provisions of this chapter [65] apply to the district court, to municipal courts and to the common pleas court of Detroit, except as otherwise provided in statutes and supreme court rules specifically applicable to these courts." M.C.L. § 600.6501, (titled "Jurisdiction in civil actions at law against school districts.").

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[2] This reasoning and analysis has been followed in subsequent federal district court cases in the Sixth Circuit. See *Askew v. City of Memphis*, 2014 WL 12515247, at *2-3 (W.D. Tenn. May 20, 2014), and particularly footnote 11 which lists similar holdings:

> See *Jenkins v. Hardeman Cnty., Tenn*., 13-2054, 2013 WL 5593048, at *8 (W.D. Tenn. Oct. 10, 2013) (declining to exercise supplemental jurisdiction and dismissing state law claims without prejudice); *Hullett v. DeKalb Cnty., Tenn*., 2:11-0016, 2012 WL 398288 (M.D. Tenn. Feb. 7, 2012) (rejecting the defendants' argument that the district court lacked subject matter jurisdiction over TGTLA claims but declining to exercise supplemental jurisdiction any way); *King v. Anderson Cnty., Tenn.,* 3:10-CV-420, 2010 WL 4791889, at *3 (E.D. Tenn. Nov. 18, 2010) (granting the plaintiff's motion to remand and declining to exercise supplemental jurisdiction over TGTLA claims).

It is noteworthy that no other unit of local government or subunit of state government in Michigan has a statutory provision in the Revised Judicature Act of 1961 explicitly granting subject matter jurisdiction to the district court. The fact that only lawsuits against school districts are singled out for original jurisdiction in Michigan's district courts strongly suggests that the legislature had preferred that actions against school districts be brought in the state courts of Michigan and, specifically, Michigan's district courts exclusively.

E. The certified question process shows this District's preference for state courts deciding state questions.

The Eastern District of Michigan has codified a procedure for allowing the highest court in a state to decide unsettled issues of state law that come before this federal district court via certification—LR 83.40. This Local Rule states in full:

> **LR 83.40 Certification of Issues to State Courts**
>
> (a) Upon motion or after a hearing ordered by the Judge *sua sponte*, the Judge may certify an issue for decision to the highest Court of the State whose law governs its disposition. An order of certification shall be accompanied by written findings that:
>
> (1) the issue certified is an unsettled issue of State law, and
>
> (2) the issue certified will likely control the outcome of the federal suit, and
>
> (3) certification of the issue will not cause undue delay or prejudice.

> Such order shall also include citation to precedent, statutory or court rule authority authorizing the State Court involved to resolve certified questions.
>
> (b) In all such cases, the order of certification shall stay federal proceedings for a fixed time which shall be subsequently enlarged only upon a showing that such additional time is required to obtain a State Court decision and is not the result of dilatory actions on the part of the litigants.
>
> (c) In cases certified to the Michigan Supreme Court, in addition to the findings required by this Rule, the United States District Court shall approve an agreed statement of facts which shall be subsequently transmitted to the Michigan Supreme Court by the parties as an appendix to briefs filed therein.

Michigan's state courts have corresponding Michigan Court Rules allowing its Supreme Court to hear certified matters and creating a process for such certifications.

> **Rule 7.303 Jurisdiction of the Supreme Court**
> ***
> (B)Discretionary Review. The Supreme Court may
> (4) respond to a certified question (see MCR 7.308(A));

MCR 7.303(B)(4).

> **Rule 7.308 Certified Questions and Advisory Opinions**
>
> **(A) Certified Questions**
> ***
> (2)From Other Courts.
>
> (a)When a federal court, another state's appellate court, or a tribal court considers a question that Michigan law may resolve and that is not controlled by Michigan Supreme Court precedent, the court may on its own initiative or that of an interested party certify the question to the Court.

MCR 7.308(A)(2)(a).

The Eastern District of Michigan has used this certification process several times. The standards for certification were recently discussed in *AFT Michigan v Project Veritas*, 2020 WL 5761032 (E.D. Mich. Sept. 28, 2020):

> Submitting uncertain questions of state law to a state's highest court "acknowledges that court's status as the final arbiter on matters of state law and avoids the potential for 'friction-generating error' which exists whenever a federal court construes a state law in the absence of any direction from the state courts." *Planned Parenthood of Cincinnati Region v. Strickland*, 531 F.3d 406, 410 (6th Cir. 2008) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 79 (1997)).

AFT Michigan, *Id*. at *2.[3]

This process is in accord with the policy that federal courts should allow the state courts to decide state governance issues and that subjecting state statutes to federal constitutional scrutiny should be avoided if the state courts can decide the matter based on state law.

IV. DISCUSSION

State law matters predominate this case, which would be best served by the Court exercising its discretion to remand it to 52-3 District Court of Michigan. The

[3] At issue in *AFT Michigan* was Michigan's law regarding surreptitious conversation recordings. See also *Novak v. Federspeil*, 644 F.Supp. 3d 378, at 381 (E.D. Mich. 2022) concerning the seizure of firearms, *In re Dow Corning Corp. v. DCC Litigation Facility, Inc*., 2014 WL 13149730 at *4, (E.D. Mich. Sept. 9, 2014) concerning products liability and general causation, *Beaubien v Trivedi*, 2024 WL 4751578 at *3 (E.D. Mich. Nov. 8, 2024) concerning a noneconomic damages cap, and *Midwest Institute of Health, PLLC v. Whitmer*, 2020 WL 3248785 at *1-2 (W.D. Mich. June 16, 2020) concerning the Governor's use of emergency powers.

matters at issue squarely implicate the interpretation of the Revised School Code—MCL § 380.1 *et seq*. and the authority it grants to school boards to make bylaws that can silence a board member—a question that should be settled in the state court so as to create a binding precedent on an exclusively state-law issue. This case predominately presents novel questions of state law that have not been directly addressed before by Michigan courts, which are best suited to handle those issues. The same holds true for any interpretation of Michigan's public policy with respect to whether a unit of Michigan government can demand the withholding of information from the public under the various state statutes cited in Plaintiff LITKOUHI's Complaint.

Published opinions of Michigan's courts have held repeatedly that the protections offered for free speech by the Michigan and United States Constitutions are interpreted in the same manner—they are coterminous.[4] Nevertheless, this court should exercise its discretion and let the application of Michigan's constitution, as it applies to its units of local government, be decided first by the state courts. Such an abstention would avoid the inherent issues that arise when a federal court decides a constitutional question when state law questions can render determination of a

[4] See *People v. Burkman*, 341 Mich. App. 734, 758; 992 N.W.2d 341 (2022); *Truckor v. Erie Twp*, 283 Mich. App. 154, 162 n 3; 771 N.W.2d 1 (2009); *In re Contempt of Dudzinski*, 257 Mich. App. 96, 100; 667 N.W.2d 68 (2003); *Owosso v. Pouillon*, 254 Mich. App. 210, 213-214; 657 N.W.2d 538 (2002); *Burns v. Detroit* (On Remand), 253 Mich. App. 608, 620-621; 660 N.W.2d 85 (2002).

federal constitutional issue unnecessary. It is likely that a state court adjudication would make it unnecessary for this Court to address Plaintiff LITKOUHI's federal claims against a unit of state government.

This court should exercise its discretion and decline to take supplemental jurisdiction over the state-law claims and stay the federal questions unless it becomes necessary to determine them. The state courts can and should be allowed make the determination for the reasons discussed above—comity and benefit of the state courts making binding state precedent. Beyond comity, the factors of judicial economy, convenience, and fairness to the parties would all be met if the state court were to decide state law matters first. Defendants will receive their full spectrum of defenses and due process rights in state courts. The state court is just as convenient, if not more convenient, as the federal court for this district as a forum for the parties. And economy is met as this federal court will not have to rule on a state's local government's unconstitutional actions, which will only be necessary in the unlikely event that the state courts cannot dispose of the matter on state law grounds.

Plaintiff has requested the discretionary relief of a declaratory judgment or injunctive relief, which fits in squarely with the propriety of abstaining.

Michigan statutory law has given primary jurisdiction over matters involving school districts to state district courts. This choice should be respected.

The parties would not be harmed by allowing the state courts to make the decision. There will be no undue delay or prejudice to the parties.

V. CONCLUSION

For the reasons set forth herein, Plaintiff LITKOUHI respectfully requests that this Court remand the state-law claims to the state courts of Michigan and stay the federal claims pending the state-law determination. Or, in the alternative, Plaintiff LITKOUHI asks this Court to remand the state-law claims and allow the federal claims to proceed on a parallel track with a joint discovery plan in place to cover both the state actions and the federal actions.

Dated: May 15, 2026,

Respectfully Submitted,

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