UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CAROL BETH LITKOUHI,

Plaintiff,

v

Judge Susan K. DeClercq
Magistrate Judge David R. Grand
No. 26-10552

ROCHESTER COMMUNITY SCHOOLS DISTRICT, MICHELLE BUELTEL, JESSICA GUPTA, JULIE ALSPACH, JAYSON BLAKE, and BARB ANNESS,

Defendants.
_____/

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DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO REMAND

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STATEMENT OF ISSUES PRESENTED

1. Should this Court decline to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c) and remand Plaintiff's state-law claims, where this Court has original federal-question jurisdiction over Plaintiff's First Amendment claims, the state-law claims arise from the same bylaw and censure, and the state free-speech guarantee is coterminous with the First Amendment? **NO.**
2. Do abstention doctrines require or permit a federal court to abstain from, or remand, the state-law claims in this properly removed action? **NO.**
3. Even if remand were appropriate, would the remanded state-law claims be subject to summary disposition or a mandatory stay in state court under MCR 2.116(C)(6), because the federal action Plaintiff asks this Court to retain would remain pending between the same parties and involve the same claims? **YES.**

INTRODUCTION

Plaintiff filed a five-count complaint that places federal constitutional rights at the very center of this dispute in a Michigan district court. (ECF No. 1-1: Compl. at ¶¶ 11, 32, 38-44, and 85-89) ("This Complaint contains a civil rights action under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983"). Plaintiff seeks injunctive relief and a judicial writ of mandamus, even though Michigan district courts lack jurisdiction over these claims. (*Id.* at PageID.19) ("Plaintiff requests that this court provide her relief in the form of . . . injunction, mandamus. . . attorney fees under 42 U.S.C. §1988 . . . and nominal damages"). Plaintiff concedes that Defendants timely and properly removed this case to the U.S. District Court for the Eastern District of Michigan. (ECF No. 10: Motion to Remand at PageID.104). Ninety days later, Plaintiff filed the instant Motion to Remand.

Plaintiff nonetheless asks this Court to fracture her own lawsuit—to keep the federal claims here (whether stayed or litigated in parallel) while shipping the state-law theories back to the 52-3 District Court. That request should be denied. A federal court's obligation to exercise the jurisdiction Congress has conferred is "virtually unflagging," and the discretion to decline supplemental jurisdiction is reserved for the limited circumstances enumerated in § 1367(c). *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 358 (1989) (Federal courts have a

duty to hear federal questions and "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given"). None is present here. The state-law issues are not "novel or complex"—indeed, Plaintiff concedes that Michigan's free-speech guarantee is coterminous with the First Amendment, so this Court will apply the same body of law to the state and federal speech claims alike. The state claims do not "substantially predominate"; they share an identical factual nucleus with the federal claims (one bylaw, one censure) and seek the same relief. And the abstention doctrines Plaintiff invokes have no application to a removed civil-rights action in which the federal claims remain.

Plaintiff's requested relief is not merely unwarranted; it is self-defeating. Splitting the case would generate precisely the piecemeal litigation, duplicative discovery, and risk of inconsistent rulings that the supplemental-jurisdiction statute was designed to prevent. Worse for Plaintiff, remand would be futile. Because Plaintiff asks this Court to retain the federal claims, a federal action between the same parties arising from the same bylaw and censure would remain pending. Under MCR 2.116(C)(6), a Michigan court confronted with a parallel, previously filed action involving the same parties and the same claims must dismiss or stay the later proceeding—and Michigan courts apply that rule even when the prior action is pending outside Michigan. *Valeo Switches & Detection Sys., Inc. v. EMCom, Inc.*, 272 Mich. App. 309, 313, 319–20 (2006). Remand would thus accomplish nothing

but delay. The Court should deny the motion and keep this case whole.

RELEVANT FACTS AND PROCEDURAL HISTORY

Plaintiff Carol Beth Litkouhi is an elected member of the Rochester Community Schools District Board of Education. (ECF No. 10, PageID.104). The Board adopted a bylaw providing that 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." (ECF No. 1-1 at PageID.8, ¶ 13; PageID.22). Plaintiff publicly discussed a proposed county-wide millage that, she alleges, the District had previously discussed only in confidential meetings. (*Id.* at PageId.9, ¶¶ 14, 27; PageID.38–40). The Board thereafter censured Plaintiff. (Id. at PageID.10, ¶ 24; PageID.41).

On February 4, 2026, Plaintiff filed a five-count Complaint in the 52-3 District Court for the County of Oakland, Case No. 26-00795-GZ. (ECF No. 10, PageID.102). The Complaint alleges: (I) free-speech violations under both the First Amendment and Const 1963, art 1, § 5; (II) unconstitutional vagueness and overbreadth, pleaded under both the federal and state constitutions; (III) violation of the Michigan Revised School Code, MCL 380.1 et seq.; (IV) violation of Michigan public policy as reflected in various state statutes; and (V) First Amendment retaliation under 42 U.S.C. § 1983.

On February 17, 2026, Defendants removed the action to this Court under 28

U.S.C. § 1441(a), invoking federal-question jurisdiction under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1367. (ECF No. 1, PageID.1–4). Defendants contemporaneously filed notice of removal in the state court under 28 U.S.C. § 1446(d), which divested the state court of authority to proceed.

On May 15, 2026, Plaintiff moved to remand the state-law claims. (ECF No. 10). Plaintiff does not contest the propriety of removal, and she concedes that this Court has supplemental jurisdiction over her state-law claims. (*Id.* at PageID.103–104). She instead asks the Court to decline supplemental jurisdiction under 28 U.S.C. § 1367(c) and to remand the state claims while staying the federal claims, or, in the alternative, while permitting the federal claims to proceed on a parallel track. (ECF No. 10, PageID.118).

STANDARD OF REVIEW

Where a complaint pleads at least one claim arising under federal law, the federal district court has original jurisdiction under 28 U.S.C. § 1331 and "shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a). A federal district court may decline to exercise supplemental jurisdiction only in the circumstances specified in § 1367(c): where the claim raises a novel or complex issue of state law; where the state claim substantially predominates; where the court has dismissed all claims over which it

had original jurisdiction; or where, in exceptional circumstances, there are other compelling reasons for declining jurisdiction. Even when a § 1367(c) category is satisfied, the decision remains discretionary and is guided by "the values of judicial economy, convenience, fairness, and comity." *Gamel v. City of Cincinnati*, 625 F.3d 949, 951 (6th Cir. 2010) (quotation omitted); *see Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350, 357 (1988). Abstention, separately, "is the exception, not the rule," and is justified only in "exceptional circumstances." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813, 817 (1976).

LEGAL ARGUMENT

I. THIS COURT HAS ORIGINAL AND SUPPLEMENTAL JURISDICTION, AND PLAINTIFF CONCEDES AS MUCH.

Counts I, II, and V of the Complaint allege violations of the First Amendment. (ECF No. 1-1 at ¶¶ 30–37, 38–44, 85–89). Count V is a freestanding federal claim under 42 U.S.C. § 1983. These claims "aris[e] under the Constitution [and] laws … of the United States" and confer original jurisdiction to this Court under 28 U.S.C. § 1331. Removal was therefore proper under 28 U.S.C. § 1441(a), and Plaintiff does not contend otherwise. (ECF No. 10, PageID.104).

Because the federal and state claims arise from the same bylaw and the same censure, they "form part of the same case or controversy" and fall within this Court's supplemental jurisdiction under § 1367(a). Plaintiff expressly concedes this point. (ECF No. 10, PageID.103) ("this Court 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"). The only question, then, is whether this Court should exercise the discretion conferred by § 1367(c) to decline jurisdiction it indisputably possesses. It should not.

II. NONE OF THE § 1367(C) FACTORS SUPPORTS DECLINING JURISDICTION.

Supplemental jurisdiction is the default. A district court "need not" decline it and may do so only within the four corners of § 1367(c). *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966). Plaintiff invokes § 1367(c)(1) (novelty) and § 1367(c)(4) (exceptional circumstances).[1] Neither applies, and the discretionary factors confirm that retention is the proper course.

A. The State-Law Issues Are Not "Novel or Complex."

Plaintiff argues that this case presents unsettled questions of Michigan law—whether a local governmental subunit may impose a prior restraint on an elected official, and how information may be deemed "confidential." But Plaintiff's own motion defeats the premise. Plaintiff concedes that "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

[1] It is worth noting that, throughout her Motion, Plaintiff conflates two separate concepts: (1) a court declining supplemental jurisdiction over state law claims, which is in a court's discretion; and (2) abstention, which is a narrow exception.

manner—they are coterminous." (ECF No. 10, PageID.116, n.4). Because the Michigan free-speech guarantee is coterminous with the First Amendment, the speech and prior-restraint questions in Counts I and II are governed by the same First Amendment jurisprudence that this Court applies as a matter of routine. There is nothing "novel" about applying settled First Amendment doctrine, and the state-constitutional theories rise and fall with their federal twins.

The remaining state-law theories—whether the bylaw exceeds the authority conferred by the Revised School Code (Count III) and whether it offends public policy embodied in various statutes (Count IV)—are ordinary questions of statutory interpretation. They do not implicate a comprehensive or specialized state administrative regime, and they are well within the competence of a federal court regularly called upon to construe state statutes. That an issue may be one of first impression does not make it "novel or complex" within the meaning of § 1367(c)(1); if it did, the supplemental-jurisdiction statute would be a dead letter whenever a plaintiff appended a state-law theory not yet addressed by an appellate court.

In all events, the existence of a discrete, genuinely unsettled, and outcome-determinative question of Michigan law would call for certification—not remand. Plaintiff herself catalogs the certification mechanisms available under E.D. Mich. LR 83.40 and MCR 7.308. (ECF No. 10, PageID.113–115). Certification keeps the action in this Court while obtaining an authoritative answer from the Michigan

Supreme Court. It is the opposite of remand, and its availability undercuts any argument that wholesale remand is necessary to respect the state courts' role.

B. The State-Law Claims Do Not "Substantially Predominate."

Although Plaintiff frames her motion in terms of predominance, she relies on § 1367(c)(1) rather than (c)(2)—for good reason. Predominance is not a head-count of state versus federal counts; it asks whether the state issues so predominate "in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought." *Gibbs*, 383 U.S. at 726–27. Here, the proof is identical for every count: a single bylaw and a single censure. The scope of the issues is shared, because Counts I and II are pleaded as both state and federal claims on the very same paragraphs of the Complaint. And the remedy is the same (declaratory and injunctive relief plus nominal damages) whether the theory is labeled state or federal. The federal First Amendment retaliation claim (Count V) is the gravamen of the case and will drive both liability and remedy. The state-law theories add no distinct, predominant body of proof or relief.

C. There Are No "Exceptional Circumstances" or "Compelling Reasons" to Decline Jurisdiction.

Plaintiff's principal "exceptional circumstances" argument rests on MCL 600.6511 and *Gregory v. Shelby County*, 220 F.3d 433 (6th Cir. 2000). (ECF No. 10, PageID.111). *Gregory* is distinguishable. There, the Tennessee Governmental Tort Liability Act provided that "[t]he circuit courts shall have exclusive original

jurisdiction" over claims brought under that Act, and the Sixth Circuit held that this "unequivocal" and exclusive legislative preference was an exceptional circumstance under § 1367(c)(4). *Id.* at 446. MCL 600.6511 is materially different. It does not confer exclusive jurisdiction on any court; it provides that Michigan's 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 respective jurisdictional limits." The statute says **nothing** that would, or constitutionally could, divest a federal court of the jurisdiction Congress conferred by 28 U.S.C. §§ 1331, 1367, and 1441. A state legislature cannot legislate federal courts out of cases Congress has made removable. *Gregory*'s exclusive-jurisdiction rationale simply does not transfer to a non-exclusive allocation statute.

The elephant in the room—which Plaintiff purposefully ignores—is that a Michigan district court cannot properly hear the claims presented. As the present Motion and Complaint makes clear, this case is primarily about injunctive relief and mandamus. (ECF No. 1-1, PageID.19) ("Plaintiff requests that this court provide her relief in the form of declaratory judgment, injunction, mandamus. . . attorney fees under 42 U.S.C. §1988 along with interest, costs, and nominal damages").

Michigan law—in the form of both court rules and statutes—provides that a Michigan district court cannot grant the relief sought. For example, Mich. Ct. R. 3.305 provides:

> (1) Unless the constitution, a statute, or court rule requires an action for mandamus against a state officer to be brought in the Supreme Court, the action must be brought in the Court of Appeals or the Court of Claims.
> (2) All other actions for mandamus ***must be brought in the circuit court*** unless a statute or rule requires or allows the action to be brought in another court.

The Michigan Supreme Court's adoption of the Michigan Court Rules makes clear that state district courts lack jurisdiction over mandamus claims. Michigan statutes say the same. Mich. Comp. Laws § 600.440 provides that "[a]n action for mandamus against a state officer shall be commenced in the court of appeals, or in the circuit court in the county in which venue is proper or in Ingham county, at the option of the party commencing the action." Accordingly, there is no serious argument that a Michigan district court is the proper forum for this action.

Plaintiff fares no better regarding her claims for injunctive relief. MCL 600.8302 provides that "[t]he district court ***shall not have jurisdiction in actions for injunctions***, divorce or actions which are historically equitable in nature, except as otherwise provided by law."

Plaintiff's reliance on *Hindelang v. City of Grosse Pointe*, 2020 WL 5411338 (E.D. Mich. Sept. 9, 2020), fares no better. The court there declined supplemental jurisdiction because the "vast majority" of the claims, and the "crux" of the dispute, concerned the Open Meetings Act, a municipal charter, and Michigan property

law—with no dominant federal claim. *Id.* at *2. Here, by contrast, a freestanding federal § 1983 retaliation claim sits at the center of the case, and the speech claims are concededly coterminous with federal law. The crux of this dispute is federal.

D. Judicial Economy, Convenience, Fairness, and Comity All Favor Retention.

The discretionary factors under 28 U.S.C. § 1367(c) confirm retention is appropriate. *Gamel* identifies the controlling considerations—"judicial economy, convenience, fairness, and comity"—and illustrates why they favor retention here. 625 F.3d at 951. In *Gamel*, the Sixth Circuit approved declination only because all federal claims had been eliminated within days of removal, before any judicial investment. *Id.* at 952; *accord Carnegie-Mellon*, 484 U.S. at 357 (discretion to remand pendent claims arises "when all federal-law claims are eliminated before trial"). Here the opposite is true: the federal claims remain the heart of the case, and Plaintiff asks this Court to keep them. Retaining the intertwined state claims avoids duplicative discovery and motion practice on identical facts, eliminates the risk of inconsistent rulings on whether the bylaw is a prior restraint and whether the censure was retaliatory, and serves comity by allowing a single court to resolve a unified controversy. Comity does not require a federal court to dismantle a properly removed case.

III. THE ABSTENTION DOCTRINES PLAINTIFF INVOKES DO NOT APPLY TO THIS REMOVED ACTION.

Federal courts have a duty to hear federal questions and "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 358 (1989) (quoting *Cohens v. Virginia*, 19 U.S. 264, 404 (1821)). Thus, abstention is "a limited carve-out to federal courts' 'virtually unflagging obligation' to exercise their jurisdiction." *Hill v. Snyder*, 878 F.3d 193, 205 (6th Cir. 2017) (quoting *Deakins v. Monaghan*, 484 U.S. 193, 203 (1988)). The goal of analyzing an abstention argument is "not to find some substantial reason for the *exercise* of federal jurisdiction by the district court; rather, the task is to ascertain whether there exist 'exceptional' circumstances, the 'clearest of justifications,' that can suffice ... to justify the *surrender* of that jurisdiction." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25–26 (1983). "Traditional abstention doctrines like *Pullman, Younger*, and others are extraordinary and narrow exceptions to the normal rule of mandatory jurisdiction." *Fire-Dex, LLC v. Admiral Ins. Co.*, 139 F.4th 519, 526 (6th Cir. 2025) (quoting *Allegheny County v. Frank Mashuda Co.*, 360 U.S. 185, 188 (1959)) (cleaned up). No abstention doctrines apply to this case.[2]

[2] Plaintiff only argues *Pullman* abstention should apply, so Defendants will not address other abstention doctrines.

A. *Pullman* Abstention Does Not Apply.

"Abstention under *Railroad Commission of Texas v. Pullman Co.,* 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941), is appropriate only where state law is unclear and a clarification of that law would preclude the need to adjudicate the federal question." *Hunter v. Hamilton Cnty. Bd. of Elections,* 635 F.3d 219, 233 (6th Cir. 2011). That is, "[t]he *Pullman* abstention doctrine requires that 'when a federal constitutional claim is premised on an ***unsettled question of state law***, the federal court should stay its hand in order to provide the state courts an opportunity to settle the underlying state law question and thus avoid the possibility of unnecessarily deciding a constitutional question.'" *Assoc. Gen. Contractors of Oh., Inc. v. Drabik,* 214 F.3d 730, 739 (6th Cir. 2000) (quoting *Harris Cnty. Comm'rs Court v. Moore,* 420 U.S. 77, 83 (1975)) (emphasis added). "[T]he purpose of abstention is not to afford state courts an opportunity to adjudicate an issue that is functionally identical to the federal question," but rather, "the purpose of *Pullman* abstention in such cases is to avoid resolving the federal question by encouraging a state-law determination that may moot the federal controversy." *San Remo Hotel, L.P. v. City and Cnty. of San Francisco,* 545 U.S. 323, 339 (2005).

Plaintiff's novel reading of *Pullman* and its progeny would essentially overrule 28 U.S.C. §§ 1332 and 1367. Every time a district court hears a case in diversity, state law is the basis of the action. Similarly, every time a district court has

supplemental jurisdiction, it applies state law. According to Plaintiff, however, if state law is involved, it should be remanded to state court. The result: an extraordinarily narrow abstention doctrine would consume diversity and supplemental jurisdiction; the exception would become the rule. *Pullman* abstention does not apply here for multiple reasons.

First, *Pullman* requires an unclear and novel issue of state law. Despite this requirement, Plaintiff fails to identify any such law. Rather, Plaintiff simply argues that "the 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." (ECF No. 10, PageID.116). Plaintiff has not explained—in any manner—how there is an unclear issue of state law. Rather, Plaintiff simply argues that a local unit of government acted, and that action allegedly violated her free speech rights.

At the risk of being hyperbolic, this argument would essentially make all First Amendment claims nonjusticiable under §1983. Every single §1983 First Amendment case involves a governmental entity or governmental employee taking some action pursuant to state law. In Plaintiff's worldview, federal courts should abstain from all of these cases because there will be a question about whether the state actor took lawful action under state law.

This case isn't novel, nor are the legal issues. Quite simply, the issue is whether Defendants took state action that violated Plaintiff's First Amendment rights. This Court should not cast aside its obligation to decide important federal issues when Plaintiff has not ever attempted to explain how *Pullman* abstention applies to this case.

Second, Plaintiff is facially challenging a board of education bylaw. That—in and of itself—makes abstention improper. As the Supreme Court has held, when a case involves a First Amendment facial challenge, abstention is generally inappropriate. *See City of Houston, Tex. v. Hill*, 482 U.S. 451, 467 n.17 (1987) (collecting cases). In other words, facial First Amendment challenges involve no question of state law that would avoid or modify the constitutional question before the federal court by definition. *See also Ronan v. Larose*, No. 2:26-CV-343, 2026 WL 926053, at *4 (S.D. Ohio Apr. 6, 2026); *Los Angeles Press Club v. City of Los Angeles*, 799 F. Supp. 3d 1007, 1023 (C.D. Cal. 2025) ("The Ninth Circuit has further cautioned that abstention is generally inappropriate in First Amendment cases. . . .").

B. *Quackenbush* Independently Forecloses an Abstention-Based Remand of the Damages Claims.

Even if some abstention principle could be stretched to fit, the remedy Plaintiff seeks would be improper. The Supreme Court held in *Quackenbush v. Allstate Insurance Co.* that a federal court may dismiss or remand on abstention

grounds only where the relief sought is equitable or otherwise discretionary; in an action seeking damages, abstention permits at most a stay, not a dismissal or remand. 517 U.S. 706, 721, 730–31 (1996); *see id.* at 716 (reaffirming the "virtually unflagging" duty to exercise jurisdiction). Plaintiff seeks nominal damages. (ECF No. 10, PageID.102). Abstention could not justify remanding those legal claims, and a stay of claims already pending before this Court would serve no purpose. Plaintiff's reliance on *Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010), is misplaced for the same reason: *Levin*'s comity holding is rooted in the uniquely sensitive area of state tax administration and does not authorize the abstention-based remand of a removed civil-rights action.

IV. EVEN IF THIS COURT WERE INCLINED TO REMAND, THE STATE LAW CLAIMS WOULD BE SUBJECT TO DISMISSAL UNDER MCR 2.116(C)(6).

Remand should be denied for the independent reason that it would be an empty exercise. If this Court remanded the state-law claims while retaining the federal claims, the remanded claims would be immediately vulnerable to summary disposition, or a mandatory stay, in the 52-3 District Court under MCR 2.116(C)(6).

MCR 2.116(C)(6) authorizes summary disposition where "[a]nother action has been initiated between the same parties involving the same claim." The rule is a codification of the common-law plea of abatement by prior action, and its purpose is "to prevent endless litigation of the same claim by the same parties" and to protect

litigants "from the harassment of new suits." *Valeo Switches & Detection Sys., Inc. v. EMCom, Inc.*, 272 Mich. App. 309, 313, 319–20 (2006). Each element would be satisfied here.

A. Another Action Would Be Pending.

MCR 2.116(C)(6) applies when there is a first-filed case pending in Michigan or a foreign jurisdiction. *Valeo,* 272 Mich. App. at 319*; Farm Bureau Mutual Insurance Co. v. Graphic House Sports, Inc.,* No. 277659, 2008 WL 2439997 at *1 (Mich. Ct. App. June 17, 2008). In *Valeo*, the prior action was pending in a New York state court, and the Court of Appeals held that the rule applied. 272 Mich. App. at 319. If a sister-state action qualifies as "another action," a federal action similarly qualifies. And here the "another action" would not be merely similar—it would be this very case, retained by this Court at Plaintiff's own request, whether stayed or proceeding in parallel. (ECF No. 10, PageID.118).

B. The "Same Parties" and "Same Claim" Requirements Would Be Met.

The "same parties" requirement "does not require complete identity as to all parties"; it requires only that the moving and opposing parties be the same in both actions. *Dairyland Ins. Co. v. Mews*, 347 Mich. App. 568, 586–87 (2023). The parties in any remanded state proceeding would be identical to the parties here. As for the 'same claim,' the rule requires only that the suits be "based on the same or substantially the same cause of action"; the issues need not be identical. *J.D. Candler*

Roofing Co., Inc. v. Dickson, 149 Mich. App. 593, 598 (1986). That standard would be easily met: the state and federal theories arise from the same bylaw and the same censure, seek the same relief, and—in the case of Counts I and II—are literally pleaded together on the same paragraphs of the Complaint. The two proceedings would be the same controversy in all but caption.

C. The Result Would Be Dismissal or a Stay—Either Way, Remand Is Futile.

On that record, the state court would be required either to dismiss the remanded claims under MCR 2.116(C)(6) or, at minimum, to stay them pending resolution of the federal action. *Fast Air, Inc. v. Knight*, 235 Mich. App. 549 (1999) (where a question is raised whether the prior action will continue, "a stay of the second action … should be granted"). The state claim could not be pursued until the completion of the federal lawsuit. With that being the case, all outcome determinative issues in the state court action will already have been decided by the federal court before the state court action even begins. Thus, splitting the claims is pointless.

Either outcome confirms that remand would not advance Plaintiff's stated goals of economy and comity. It would instead spawn a second proceeding that Michigan's own court rules are designed to extinguish, producing only delay and expense. The rational course—and the one the discretionary factors require—is to keep all claims in this single federal forum.

V. THE PRESENT MOTION IS UNTIMELY.

28 U.S.C. § 1447(c) provides that "[a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a)."

This lawsuit was properly removed to this Court on February 17, 2026. (ECF No. 1). Following removal, Plaintiff participated in this action for three months before filing this Motion. Plaintiff provided initial disclosures, Plaintiff cooperated in creating a discovery plan, and Plaintiff appeared at the scheduling conference. Then, on May 15, 2026, Plaintiff filed a Motion to Remand. (ECF No. 10). Plaintiff waited **87 days** to file this Motion.

Initially, Defendants recognize that there is a split in authority as to whether the 30-day remand period applies when abstention is the stated reason. *See Comm'r of Ins. of Michigan v. DMB Kyoto Plaza Shopping Ctr., L.L.C.,* 42 F. Supp. 2d 726, 734 (W.D. Mich. 1998). However, the legislative history to the 1996 amendment to 28 U.S.C. § 1447(c) supports the proposition that all motions for removal, other than those that challenge subject matter jurisdiction, must be made within the 30–day limit. This history indicates that Congress enacted the amendment to "clarify that the 30 day limit for remanding a case from federal court to state court applies to *all* motions to remand, except in cases in which the federal court lacks subject matter jurisdiction." H.R.Rep. No. 799 (1996), reprinted in, 1996 U.S.C.C.A.N.

3417 (emphasis added).

Here, all of the allegations upon which Plaintiffs rely to seek remand were evident on or before the date of removal. That delay is unreasonable. Plaintiff only sought remand after participating in this action and after learning that Defendants were filing a 12(c) Motion.

CONCLUSION

It is clear that Plaintiff does not want to be in federal court. If that is the case, there is a simple answer: Plaintiff should not have filed a lawsuit against Defendants that is largely based upon §1983 and the First Amendment. No one made Plaintiff file this lawsuit or assert federal claims. Defendants have a right to have this Court decide the issues before it. For the foregoing reasons, Defendants respectfully request that the Court DENY Plaintiff's Motion to Remand, retain supplemental jurisdiction over all of Plaintiff's claims under 28 U.S.C. § 1367, and adjudicate this action in a single proceeding.

Respectfully submitted,

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DATED: May 29, 2026

CERTIFICATE OF ELECTRONIC SERVICE

LINDSAY P. HAZEN states that on May 29, 2026, she did serve a copy of **Defendants' Response to Plaintiff's Motion to Remand** via the United States District Court electronic transmission on the aforementioned date.

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