

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CAROL BETH LITKOUHI,  
Plaintiff,

v.

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

Honorable Susan K. DeClercq  
Magistrate Judge David R. Grand

ROCHESTER COMMUNITY SCHOOL  
DISTRICT, *et. al*,

Defendants.

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**PLAINTIFF’S REPLY TO  
DEFENDANTS’ RESPONSE TO PLAINTIFF’S MOTION TO REMAND**

At the outset, Plaintiff notes that Defendants mischaracterize Plaintiff’s allegation. “Plaintiff publicly discussed a proposed county-wide millage that, she alleges, the District had previously discussed only in confidential meetings.” (ECF No. 11 at PageID. 128). Plaintiff has not alleged this. What Plaintiff has alleged is that the Superintendent invited Plaintiff to a meeting to discuss matters of public concern that public officials are not allowed to keep secret and confidential from the public. (ECF No. 1-1 at PageID.9, ¶¶14-20). The information she shared with the public was all information that is required to be open and available to the public

through Michigan's various open government laws such as the Freedom of Information Act, Open Meetings Act, and Management and Budget Act. See Plaintiff's Count 4, "Bylaw 1001 is Void Because it Contradicts the Public Policy of the State" (ECF No. 1-1 at PageID.14-18, ¶¶ 56-84).

A. **The state-law issues are novel.** Defendants assert that because public officials in Michigan have been held to account for violations of the Michigan and United States Constitutions, that there can be nothing novel about this case. (ECF No. 11, PageID. 131-32). Yet they do not, and cannot, point to a precedent where the Michigan courts have dealt with (much less allowed) a public body that prevents an elected official from speaking with the public unless the board majority pre-approves the substance of her communications. This silencing of a minority voice by the majority via bylaws or ordinance has not been addressed, perhaps because it is so brazenly unconstitutional that no public body has thought to attempt it. Merits of this novel question will be addressed fully in this court or in state court in motions for judgment on the pleadings.

The remaining objections raised by Defendants regarding the questions of state law argue that this federal court is capable of interpreting Michigan's laws and Constitution. Plaintiff has never denied this. Yet Defendants do not address the fact that, as argued by Plaintiff, this court's decision would not be binding on Michigan's

courts. (ECF No. 10, PageID.107-109). As this is a matter of substantial concern in the state,<sup>1</sup> it should be addressed by the state courts as a matter of comity.

Defendants allege that “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.” (ECF No. 11, PageID. 131, n. 1.) The two are not separate. The various abstention doctrines predate the codification of 28 U.S.C. § 1367(c). *R.R. Comm’r of Texas v. Pullman Co.*, 312 U.S. 496 (1941), relied upon by Plaintiff, was decided in 1941. Yet the statute codifying the discretion of federal courts to decline to exercise supplemental jurisdiction over novel state law claims was enacted in 1990. (Pub.L. 101-650, Title III, § 310(a), Dec. 1, 1990, 104 Stat. 5113.) Abstaining from deciding state-law issues, per *Pullman*, had a long history before such codification. 28 U.S.C. § 1367(c) provides the current authority this court needs to decline to exercise supplemental jurisdiction over state-law claims—while *Pullman* Abstention provides the historic reason why this court should exercise that authority. The federal courts and other authorities have stated that abstention doctrines fit within the codification of remanding state law matters.

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<sup>1</sup> Michigan State University, a public university, has recently enacted a code of ethics that has been characterized as a restriction similar to the Bylaw at issue here: “The trustees argue that several provisions improperly limit board members’ ability to speak openly about university affairs, criticize institutional decisions and communicate candidly with Michigan residents who elected them.” <https://www.wilx.com/2026/06/03/msu-trustees-defend-refusal-sign-ethics-code-press-conference/>

As these and similar attempts to silence board minorities become more commonplace, Michigan courts will need to address and curtail or set the parameters of appropriate restrictions.

See, for example, *Graphic Commc'n Local 1B v. CVS Caremark Corp.*, 636 F.3d 971, 973-75 (8th Cir. 2011) for an application of the removal/remand statutes to abstention matters.

**B. Michigan's courts can provide Plaintiff her requested relief.**

Defendants allege that Michigan district court, where this action was originally filed, “cannot properly hear the claims presented [as]...this case is primarily about injunctive relief and mandamus.” (ECF No. 11, PageID. 134).

Michigan Court Rule 3.305, cited by Defendants, states:

(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.***

Mich. Ct. R. 3.305(A)(2) (emphasis added). This general rule does not apply, however, when there is a specific statute that governs—which is present here.

Defendants incorrectly cite M.C.L. § 600.8302 for the proposition that district courts lack jurisdiction over traditionally equitable causes of action. The language Defendants attribute to § 600.8302 (ECF No. 11, PageID. 135) is actually M.C.L. § 600.8315: “The 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.” But Defendants only cite the first sentence of the statute and omit the crucial second sentence of that statute: “However, the district court has

jurisdiction and *power to make any order proper to fully effectuate the district court's jurisdiction and judgments.*” M.C.L. § 600.8315 (emphasis added).

As noted by Plaintiff (ECF No. 10, PageID. 102, ¶ 3), Michigan assigns jurisdiction over matters involving school districts to the district courts unless the amount in controversy is greater than \$25,000. “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.” M.C.L. § 600.6511 (emphasis added). And coupled with M.C.L. § 600.8315, which gives the district court the “power to make any order proper to fully effectuate the district court's jurisdiction and judgments,” *Id*, the statute indicates that although district courts *generally* do not have equitable powers, in the *specific* instance of school districts, the district court has such powers.

In any event, assuming *arguendo* that Defendants are correct, and this matter would be more appropriate in the Michigan circuit courts rather than district court, the Michigan court system has a rule for the district court to make that determination and transfer the matter in a timely fashion: “Except as otherwise provided in this rule, when the court in which a civil action is pending determines that it lacks jurisdiction of the subject matter of the action, but that some other Michigan court would have jurisdiction of the action, the court may order the action transferred to the other court in a place where venue would be proper.” Mich. Ct. R. 2.227(A).

C. **Plaintiff’s remand motion was timely.** Defendants rely on a 30-day time limit found in 28 U.S.C. § 1447(c) to argue that Plaintiff’s motion was untimely. (ECF No. 11, PageID. 144-145). However, by its plain language, that time limit only applies to motions to remand based on a “defect” in the removal process. Plaintiff has not alleged any defects in the process. (ECF No. 10, PageID. 104, ¶ 9). This limitation is true despite the language cited by Defendants from the Congressional record. (ECF No. 11, PageID. 144). “Despite the broad language, courts construed the statute ‘to mean removals that were defective in terms of the statutory conditions that Congress had placed on removal,’ *whereas removals based on abstention*, among other doctrines, were held to be outside the scope of the statute [§ 1447].” *Graphic Commc’n*, 636 F.3d at 974 (emphasis added). “[T]he text of the statute provides a reasonable meaning for the term ‘defect,’ a meaning that refers to the failure to comply with the various requirements for a successful removal, as set forth in § 1446(a) and (b).” *Autoridad v. Ericsson, Inc.*, 201 F.3d 15, 17 (1st Cir. 2000). “Congress could have changed § 1447(c) to cover a motion to remand the case on ‘any basis’ or ‘any ground,’ but instead kept the narrower term ‘defect.’” *Kamm v. ITEX Corp.*, 568 F.3d 752, 755 (9th Cir. 2009). See also *Watson v. City of Allen*, 821 F.3d 634, 639-640 (5th Cir. 2016), and *Snapper, Inc. v. Redan*, 171 F.3d 1249, 1256-57 (8th Cir. 1999).

Absent a hard deadline, the standard timeline for filing a remand motion is reasonableness. “The district court seemingly found the fifty-two days it took to file the motion unreasonable because the basis for ‘remand [was] generally apparent from the time of removal.’ We cannot agree.” *Watson*, 821 F.3d at 640.

The mere fact that the statutory [30-day] time limitation on raising motions to remand does not apply does not mean that non-1447(c) remands are necessarily authorized at any time. Prior to the enactment of the statutory limitation, motions for remand were required to be brought within a reasonable time frame. See, e.g., *Ayers v. Watson*, 113 U.S. 594, 596–99 (1885) (refusing to remand a case that had clearly been untimely removed because the objecting party did not move for remand until after the Supreme Court had issued its writ of error); see also *Rothner*, 879 F.2d at 1411 n. 7 (citing *Ayers* for the proposition that non-1447(c) remands still must be raised in a reasonable time frame). This rule continues for remands not covered by § 1447(c).

*Snapper*, 171 F.3d at 1255, n. 18.

Plaintiff notified Defendants of her intention to file a remand motion in the Joint Discovery plan of April 2, 2026 (ECF No. 8, PageID. 98) and filed her motion by May 18, 2026—the date set by this Court (ECF No. 9, PageID. 100). That should be considered reasonable.

Respectfully submitted,

Dated: June 5, 2026

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