

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT DAVIS,

Plaintiff,

Case No. 20-cv-12130

Hon. Robert H. Cleland

v.

JOCELYN BENSON, in her official
and individual capacities as the Secretary of State,
CATHY M. GARRETT, in her official
and individual capacities as the Wayne County Clerk,

Defendant.

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|--|--|
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|--|--|

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**CATHY M. GARRETT'S MOTION TO FILE LATE MOTION
TO DISMISS AMENDED COMPLAINT AND BRIEF IN SUPPORT**

TABLE OF CONTENTS

| | |
|---|-----|
| INDEX OF AUTHORITIES | iii |
| STATEMENT OF CONCURRENCE | iv |
| QUESTION PRESENTED | v |
| ARGUMENT | |
| Defense counsel’s press of business and bereavement leave are reasons to permit Cathy Garrett to file a late motion to dismiss | 1 |
| CONCLUSION | 2 |

INDEX OF AUTHORITIES

| CASE | PAGE |
|---|------|
| <i>In re Fuller</i> 111 B.R. 660 (SD Ohio 1989)..... | 2 |
| <i>United States v. Swedan</i> 2010 U.S. Dist. LEXIS 136575, (ED Mich) | 2 |
| OTHER | |
| Fed R Civ P 12(a)(1)(A)(i) | 1 |
| Fed R Civ P 6(a)(1)(C)..... | 1 |

STATEMENT OF CONCURRENCE

Counsel for Cathy M. Garrett sought concurrence for this motion from all counsel. No concurrence was provided by plaintiff.

QUESTION PRESENTED

Whether press of business and defense counsel's bereavement leave are reasons to permit Cathy Garrett to file a late motion to dismiss?

Plaintiff answers "No".

Cathy M. Garrett answers "Yes".

ARGUMENT

Defense counsel's press of business and bereavement leave are reasons to permit Cathy Garrett to file a late motion to dismiss.

This Court ordered that Robert Davis show cause by August 27, 2020, why the entire case should not be stayed or dismissed without prejudice pursuant to issues of comity, federalism and abstention. (ECF 11). The Court further ordered Robert Davis to show cause why the court should not decline to exercise supplemental jurisdiction over Counts III and IV and dismiss them without prejudice.

On August 17, 2020, Robert Davis filed an amended complaint alleging that the Secretary of State violated due process by mailing absentee voter applications; that the Clerk violated due process by not being open on August 4, 2020, and two similar state counts. (ECF 9).

By order dated September 14, 2020, this Court dismissed the due process claim against the Secretary of State and the two state counts. (ECF 19). The Clerk now desires to file the attached motion to dismiss the remaining due process claim.

Fed R Civ P 12(a)(1)(A)(i) states that a defendant must serve an answer within 21 days after being served with the summons and complaint. Per Fed R Civ P 6(a)(1)(C), twenty-one days after August 17, 2020, was September 9, 2020.

This Court did not issue its determination on the show cause issue until September 14, 2020. Reasonably, the defendant counsel awaited that determination prior to filing a dispositive motion.

Because of the press of business and because defendant counsel was on extended bereavement leave due to the death of her spouse, this is the first opportunity for the attached motion to dismiss to be filed. (Exhibit 1).

This court may accept the motion to dismiss if there is good cause shown for its filing. *In re Fuller*, 111 B.R. 660 (SD Ohio 1989). Acceptance of the motion to dismiss is within the discretion of this court. *United States v. Swedan*, 2010 U.S. Dist. LEXIS 136575, (ED Mich). Plaintiff is not prejudiced by this motion as he will have an opportunity to respond.

CONCLUSION

Cathy M. Garrett requests that this Honorable Court grant the motion to file the late motion to dismiss this matter.

Respectfully submitted,

BY: /s/Janet Anderson Davis
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Dated: September 29, 2020

CERTIFICATE OF SERVICE

I certify that on SEPTEMBER 29, 2020, I electronically filed a copy of the foregoing with the clerk of the court using the electronic filing system which will send electronic notification of this filing to all parties.

/s/ Heather Cranston

Heather Cranston

Wayne county corporation counsel

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