

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM**

WILLIAM BAILEY

Plaintiff

Case No. 20-9238-CZ

v.

ANTRIM COUNTY, SECRETARY OF STATE JOCELYN BENSON, in her official and individual capacity, JONATHAN BRATER, in his official and individual capacity, SHERYL GUY, in her official and individual capacity, and MILLER CONSULTATIONS & ELECTIONS, INC., d/b/a ELECTION SOURCE, a Michigan corporation

HON. KEVIN A. ELSENHEIMER

Defendants.

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**PLAINTIFF'S MOTION TO AMEND COMPLAINT**

1. On November 22, 2020, Plaintiff filed his complaint, alleging that Defendant Antrim County violated Michigan law while conducting the November 3, 2020 election and engaged in fraud, statutory violation and misconduct.

2. During discovery, Plaintiff learned that in the opinion of defense expert witness, J. Alex Halderman, harm which Plaintiff attributed to the acts and/or omissions of the Defendant was in actuality contributed by the acts of a third-party vendor and agent of Defendant, Election Source, and Defendant Sheryl Guy. Plaintiff does not concede the truth or accuracy of J. Alex Halderman's opinion, but his statements opened the door for Plaintiff to uncover new evidence.

3. The expert report of J. Alex Halderman led Plaintiff to investigate Election Source's role and conduct in the events which are the subject of the original complaint, which in turn uncovered new evidence forming the basis of the amendments in the proffered Amended Complaint attached hereto.

4. Further, Defendants have filed a motion for summary disposition. The amended complaint corrects any alleged defects raised in Defendants' motion.

5. MCR 2.118(a)(2) provides that where a party requests leave to amend, such "[l]eave shall be freely given when justice so requires." Plaintiff asserts that in the context of this case, justice requires that leave to amend his complaint be granted.

6. "A motion to amend ordinarily should be granted in the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of amendment." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 9-10, 614 NW2d 169, 174 (2000) (citing *Ben P. Pyke & Sons, Inc v Gunter Co*, 390 Mich 649, 656, 213 NW2d 134 (1973)). None of the bases for denial of Plaintiff's motion exist under the facts of this case.

7. As to undue delay, Plaintiff only learned of Election Source's alleged role in the Defendant's conduct of the 2020 general election on March 26, 2021. Since that time, Plaintiff

has diligently investigated the matters raised by J. Alex Halderman's disclosure. Plaintiff could not have presented this amended petition any earlier than now.

8. As to bad faith, Plaintiff asserts that this amendment is proffered in good faith, for the purpose of ensuring the just and full disposition of the underlying issues giving rise to Plaintiff's action against Defendant.

9. The requested amendment is not being sought with any dilatory motive. To the contrary, Plaintiff desires to secure ultimate disposition of his action as rapidly as justice may permit, to prevent the potential for the errors and misconduct of the 2020 general election to be repeated in future elections.

10. Plaintiff has not previously sought leave to amend his petition, and is not aware of any deficiencies which are left unabated by this proffered amendment.

11. Amendment will not unduly prejudice the Defendant. "Prejudice to a defendant that will justify denial of leave to amend arises when the amendment would prevent the defendant from having a fair trial. . . . The prejudice must stem from the fact that the new allegations are offered late and not from the fact that they might cause the defendant to lose on the merits. *Knauff v Oscoda Co Drain Com'r*, 240 Mich App 485, 493; 618 NW2d 1, 6 (2000) (citing *Ben F Pyke & Sons*, 390 Mich at 657-58). It was Defendant's expert witness who raised the issues addressed by this amendment, in an attempt to exculpate Defendant from responsibility from the manifold deficiencies in Defendant's conduct of the election. Plaintiff has not delayed in seeking to amend his complaint to account for the revelations triggered by Defendant's expert witness. In order to ensure the full and just disposition of the issues raised by this action, it is necessary to allow Plaintiff to include the proffered amendments to his complaint, to enable the Court to rule with all the facts and evidence before it.

12. Amendment in this case would not be futile. "An amendment would be futile if it is legally insufficient on its face, and the addition of allegations that merely restate those allegations already made is futile." *Wormsbacher v Seaver Title Co*, 284 Mich App 1, 8–9; 772 NW2d 827, 832 (2009) (citing *P T Today, Inc v Comm'r of Financial & Ins Services Office*, 270 Mich App 110, 143, 715 NW2d 398 (2006)). The allegations included in Plaintiff's proffered amended complaint contains genuinely new allegations which are legally sufficient, once proven, to justify relief. Accordingly, futility is not implicated in this case.

WHEREFORE, Plaintiff respectfully requests that this Court grant it leave to amend his complaint by substituting the attached Amended Complaint for his original complaint.

Respectfully submitted

DePERNO LAW OFFICE, PLLC

Dated: May 3, 2021

/s/ Matthew S. DePerno

Matthew S. DePerno (P52622)

Attorney for Plaintiff

**PROOF OF SERVICE**

On the date set forth below, I caused a copy of the following documents to be served on all attorneys of record at the addresses listed above

1. Plaintiff's Motion for Leave to Amend Complaint

Service was electronically using the MiFile system which will send notification of such filing of the foregoing document to all attorneys of record.

Dated: May 3, 2021

*/s/ Matthew S. DePerno*

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Matthew S. DePerno (P52622)