IN THE SUPREME COURT OF THE
STATE OF MICHIGAN

ANGELIC JOHNSON, et al. Petitioners, v. JOCELYN BENSON, et al., Respondents.	No. 162286 **PETITIONERS' OPPOSITION TO PROPOSED INTERVENOR CITY OF DETROIT'S MOTION TO INTERVENE**

Petitioners Angelic Johnson and Dr. Linda Lee Tarver (collectively, "Petitioners"), by counsel, file this opposition to the City of Detroit's ("Proposed Intervenor") motion to intervene. Similar to the motion to intervene filed by the Services Corporation/Democratic National Committee and Michigan Democratic Party, the Court should reject this latest attempt to mire these proceedings with excess lawyers, motions, and briefing. The Michigan Court Rule governing intervention is not an open invitation to a block party and for good reasons. Additional parties, lawyers, and briefing don't necessarily equate to more justice, but they certainly do equate to more burdens for the existing parties and the Court. Given the exigent nature of these proceedings, this extra burden will necessarily cause delay and thus prejudice Petitioners as time is of the essence, and justice delayed is justice denied. *Barcume v. City of Flint*, 132 F. Supp. 2d 549, 557 (E.D. Mich. 2001) ("Ever since King John of England submitted to the rule of law articulated in the Magna Carta in 1215, the general principle that 'justice delayed is justice denied' has been fundamental to our legal system and the legal systems from which ours descended.").

Petitioners legally voted in Michigan for Donald J. Trump for President of the United States and Johns James for the U.S. Senate. Petitioners object to having their lawful votes nullified by *illegal* votes. In their petition, Petitioners seek a fair, honest, and transparent election. Petitioners do not want to be disenfranchised by having *illegal* votes counted. Petitioners have submitted to

this Court many sworn affidavits setting forth *eyewitness* accounts of serious election law violations, irregularities, and malfeasance, and expert opinions that confirm these irregularities through statistical analysis. Proposed Intervenor invites this Court to ignore the *evidence* and simply rubberstamp this malfeasance by denying the Petition.

Petitioners believe that this Court has a paramount role in upholding the rule of law, requiring statutes to be followed as written, and protecting Petitioners' rights under the United States and Michigan Constitutions, including their "right to have the results of statewide elections audited, in such manner as prescribed by law, to *ensure the accuracy and integrity of elections*." Const 1963, art 2, § 4(1)(h) (emphasis added). And the fact that Proposed Intervenor opposes Petitioners' request that this Court exercise its broad authority to ensure "the accuracy and integrity" of the 2020 general election does not mean that the Court should grant its motion to intervene. And the main reason is essentially the same reason the Court should deny the motion filed by the Services Corporation/Democratic National Committee and Michigan Democratic Party: Respondents and Proposed Intervenor share the same interests and ultimate objective. Respondents and Proposed Intervenor want every governmental agency or body with any oversight authority, including this Court, to simply rubber stamp the 2020 general election with no independent or meaningful investigation into the election malfeasance set forth in the Petition and without a fair, honest, and transparent audit of the election (specifically including an audit of the unsolicited, and illicit, "vote by mail" ballots that flooded the election process and thus determined its current outcome).

In its motion, Proposed Intervenor boldly describes Petitioners' claims of election malfeasance as "frivolous." Indeed, Proposed Intervenor makes the following demonstrably false assertion: "As in the other lawsuits, Petitioners here do not—and cannot—provide any legitimate

evidence of voter fraud." (Proposed Intervenor's Br at 1). Yet as set forth in Proposed Intervenor's Exhibit 3, Justice Zahra, joined by Justice Markman, described similar allegations of election malfeasance as "troubling and serious allegations of fraud and irregularities." Per Justice Zahra:

> Plaintiffs' affidavits present evidence to substantiate their allegations, which include claims of ballots being counted from voters whose names are not contained in the appropriate poll books, instructions being given to disobey election laws and regulations, the questionable appearance of unsecured batches of absentee ballots after the deadline for receiving ballots, discriminatory conduct during the counting and observation process, and other violations of the law.

(Proposed Intervenor's Ex. A [Zahra, J., joined by Markman, J.]). Consequently, Proposed Intervenor offers nothing but an effort to cover-up and obfuscate "troubling and serious allegations of fraud and irregularities" with hyperbolic arguments and assertions that are plainly false. This is a serious matter. It involves nothing less than the accuracy and integrity of our elections—the lifeblood of our republic. Yet, Proposed Intervenor refused to conduct any meaningful and transparent investigation into these "troubling and serious allegations," and it rejects all pleas for one to be conducted. Proposed Intervenor's response is "nothing to see here." Proposed Intervenor wants everyone, including this Court, to ignore the elephant in the room and to simply "move on." Apparently, in Proposed Intervenor's world, if you deny "troubling and serious allegations of fraud and irregularities" enough times, they disappear. All of this begs the following questions. *What does Proposed Intervenor have to hide*? *Why does Proposed Intervenor so strenuously reject any independent and meaningful investigation into the many "troubling and serious allegations" of election malfeasance*?

One would expect that if there was nothing to hide, then everyone involved in the election process (including Proposed Intervenor) would openly welcome the constitutionally mandated audit and would fully cooperate with conducting such an audit in a meaningful way. Unfortunately, that is not where we are today, requiring this Court to exercise its extraordinary

powers to remedy the situation. Indeed, absent such a meaningful and thorough audit, the results of the 2020 election will remain under a dark cloud, forever calling into question the legitimacy of those elected officials who exercise their authority as a result.

Petitioners, members of Black Voices for Trump, echo the sentiments of Martin Luther King, Jr., when he famously stated in a stirring speech given in Washington, D.C. in 1957, "Give us the ballots." *See* https://kinginstitute.stanford.edu/king-papers/documents/give-us-ballot-address-delivered-prayer-pilgrimage-freedom (last visited Dec. 2, 2020). Unfortunately, Respondents don't want to "Give us the ballots." Respondents and Proposed Intervenor don't want anyone to *see* the ballots, specifically including this Court and Petitioners, who are gravely concerned that their legal votes have been debased and diluted by illegal "ballots." *See Reynolds v Sims*, 377 US 533, 555 (1964) ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

Proposed Intervenor had a chance to follow the law during the election; it didn't. And Proposed Intervenor had a chance to protect the chain of custody of the ballots; it didn't. Moreover, Proposed Intervenor no longer has a property interest in the ballots, poll books, or computer logs. "We the people" do. In short, the (mis)deeds of Proposed Intervenor are done, which is why it is not a named respondent in this action. As set forth in Michigan law, "[t]he secretary of state [is] the chief election officer of the state and [has] supervisory control over local election officials in the performance of their duties under the provisions of this act." MCL § 168.21. In other words, the Secretary of State is the government official *ultimately* responsible for the operation of the election and not Proposed Intervenor, which is why the Secretary of State is a named respondent and Proposed Intervenor is not. Because Respondent Benson's interests and

objectives are completely aligned with those of Proposed Intervenor, permitting intervention adds nothing to this litigation except more parties, more attorneys, and redundant briefing. The motion should be denied.

MCR 2.209 permits intervention as of "right" and "permissive" intervention. As for "intervention of right," there is no "Michigan statute or court rule [that] confers an unconditional right to intervene" for these Proposed Intervenor. MCR 2.209(A)(1). And the parties have not stipulated to the intervention. *Id.* at (A)(2). As a result, Proposed Intervenor must show:

> an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, *unless the applicant's interest is adequately represented by existing parties.*

Id. at (A)(3) (emphasis added). Similar to the Services Corporation/Democratic National Committee and Michigan Democratic Party motion, Proposed Intervenor cannot make the required showing. Even assuming an "interest related to the . . . transaction which is the subject of the action," Proposed Intervenor is not "so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect that interest" precisely because its "interest is adequately represented by existing parties." *Id.* There is no legitimate argument that Respondents' interests (and thus the interests of Proposed Intervenor) are not adequately represented in this case.

Respondents are represented by the Michigan Department of the Attorney General and its small army of lawyers. There is no separation between Respondents' interests and objectives and the interests and objectives of Proposed Intervenor. The interests and *ultimate* objective of Proposed Intervenor and Respondents are *precisely* the same. Proposed Intervenor will present no

separate arguments (or evidence) unique to them.[1] Thus, Proposed Intervenor is adequately represented by existing parties. *See generally United States v. Mich.*, 424 F.3d 438, 443-44 (6th Cir. 2005) (affirming denial of request to intervene under similar federal rule and stating that "[a]pplicants for intervention bear the burden of proving that they are inadequately represented by a party to the suit. . . . This burden has been described as 'minimal' because it need only be shown that there is a *potential* for inadequate representation. . . . Nevertheless, applicants for intervention must overcome the presumption of adequate representation that arises when they share the same *ultimate* objective as a party to the suit. . . .") (internal quotations and citations omitted) (emphasis added). Here, because Proposed Intervenor and Respondents "share the same ultimate objective," it is Proposed Intervenor's burden to "overcome the presumption of adequate representation," which it cannot do here.

The Court should likewise exercise its discretion and reject "permissive intervention." There is no "Michigan Statute or court rule [that] confers a conditional right to intervene" in this case. MCR 2.209(B)(1). And no matter if Proposed Intervenor's "claim or defense and the main action have a question of law or fact in common," those questions of law and fact are precisely the same as those currently at issue with the existing parties. Moreover, under MCR 2.209, permitting Proposed Intervenor to intervene "will unduly delay or prejudice the adjudication of the rights of the original parties" by simply adding more parties, more lawyers, and redundant briefing, thereby delaying the proceedings and placing extra burdens on Petitioners and this Court. Because this case presents exceedingly important issues under exigent circumstances, the Court should dedicate

[1] Any evidence available to Proposed Intervenor is also available to Respondent Benson as the "chief election officer." *See, e.g.*, MCL § 168.31 (setting forth the duties of the Secretary of State, including her duty to "[i]nvestigate, or cause to be investigated by local authorities, the administration of election laws").

its finite resources on the substantive claims and not on motions to intervene and the extra strain on resources these distractions create. The motion should be summarily denied.

On this 2nd Day of December, 2020,

Respectfully submitted,

AS SPECIAL COUNSEL FOR THOMAS MORE SOCIETY —AMISTAD PROJECT

/s/ *Ian A. Northon*
Ian A. Northon, Esq. (P65082)
Gregory G. Timmer (P39396)
RHOADES MCKEE, PC*
55 Campau Avenue NW #300
Grand Rapids, Michigan 49503
Tel.: (616) 233-5125
Fax: (616) 233-5269
ian@rhoadesmckee.com
ggtimmer@rhoadesmckee.com

/s/ *Robert J. Muise*
Robert J. Muise, Esq. (P62849)
AMERICAN FREEDOM LAW CENTER*
PO Box 131098
Ann Arbor, Michigan 48113
Tel: (734) 635-3756
Fax: (801) 760-3901
rmuise@americanfreedomlawcenter.org

/s/ *Erin Elizabeth Mersino*
Erin Elizabeth Mersino, Esq. (P70886)
GREAT LAKES JUSTICE CENTER*
5600 W. Mt. Hope Highway
Lansing, Michigan 48917
Tel: (517) 322-3207
Fax: (517) 322-3208
erin@greatlakesjc.org
**for identification purposes only*
COUNSEL FOR PETITIONERS

PROOF OF SERVICE

I, Ian Northon, hereby affirm that on the date stated below I delivered a copy of the above Petitioners' Response to Proposed Intervenors' Motion to Intervene upon the State of Michigan, Attorney General's Office and specifically to Assistant Attorney General Heath Meingast, and all attorneys of record, by electronic mail via the MiFile electronic filing system. I hereby declare that this statement is true to the best of my information, knowledge, and belief.

Dated: December 2, 2020.

/s/ Ian A. Northon
Ian A. Northon (P65082)
COUNSEL FOR PETITIONERS