

**STATE OF MICHIGAN  
COURT OF CLAIMS**

DONALD J. TRUMP FOR PRESIDENT,  
INC., and  
ERIC OSTERGREN

Plaintiffs,

v.

Case No.: 20-000225-MZ

JOCELYN BENSON, in her official  
Capacity as SECRETARY OF STATE

Defendants.

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Stephen S. Davis (*pro hac* pending)  
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**RESPONSE IN OPPOSITION TO THE DEMOCRATIC NATIONAL COMMITTEE'S  
MOTION TO INTERVENE**

The Trump presidential campaign and Michigan voter and credentialed election challenger Eric Ostergren ask this Court to deny the Democratic National Committee's motion to intervene. The Democratic National Committee (DNC) has no standing or right to intervene. To the extent the DNC has any interest in the outcome of this litigation, the DNC's interest is adequately represented. This is an election case and the DNC's intervention will only serve to delay the resolution of this important election litigation and the Plaintiffs' interest in protecting the rights of Michigan voters to participate in a fair, just, and transparent election.

This Court should deny the DNC's motion to intervene under MCL 600.6419 and *Council of Organizations v. State*, 909 N.W.2d 449 (Mich. Ct. App. 2017). In *Council of Organizations*, the Michigan Court of Appeals held this Court does not have jurisdiction over a non-state-actor, and therefore, a non-state party could not intervene in litigation pending before this Court. *Id.* at 469-70. In *Council of Organizations*, the Court held that because "Plaintiffs are raising no claims against any of the state legislators for allegedly wrongful conduct during which they were acting, or reasonably believed that they were acting, within the scope of their 'authority while engaged in or discharging a government function in the course of [their] duties,'" this Court lacked jurisdiction over their claims, and the motion to intervene was properly denied. *Id.* at 470.

This Court recently followed *Council of Organizations* and denied the Republican National Committee's motion to intervene in an election-related lawsuit against Secretary Benson. *Michigan Alliance for Retired Americans v. Benson*, No. 20-000108-MM, Opinion and Order of July 14, 2020. In doing so, this Court stated that the Republican National Committee and the Michigan Republican Party "are non-state entities that seek to intervene as defendants in this matter..." *Id.* at 1. This Court held that the "Court is bound by this published decision...and therefore it must deny the motion to intervene." *Id.* (citing *Council of Organizations*, 909 N.W.2d at 449, and MCR 7.215(C)(2)). Likewise, the DNC's motion here should be concomitantly denied.

The DNC tries to sidestep the holding of *Council of Organizations* and this Court's decision in *Michigan Alliance* by attempting to intervene as a plaintiff instead of a defendant. But that is a distinction without a difference. The DNC cannot skirt Michigan statutes and the settled authority of this Court and Michigan's superior courts.

The DNC's motion is contrary to the Court of Appeals' decision in *Council of Organizations*. If the Court grants the DNC's motion to intervene on the basis that the DNC styled

themselves a “plaintiff” instead of a “defendant” it would render this Court’s and the Court of Appeals’ rulings meaningless because any private party could escape the rule set forth in *Council of Organizations* through artful pleading.

The Court should also deny the DNC’s motion to intervene because, in seeking to intervene as a co-plaintiff, the DNC’s motion improperly seeks to simply deny the relief the Trump campaign and an election challenger are seeking. The DNC is seeking the opposite relief of the plaintiffs in this case. See Exhibit A ¶19 to DNC’s motion to intervene (“Any order by Defendant to stop the counting of ballot [*sic.*], as the Trump Plaintiffs demand, would amount to a violation of Michigan’s Equal Protection guarantee.”). See also *id.* (prayer for relief). To intervene as a plaintiff the DNC would need to affirm the relief the Trump Campaign Plaintiffs have sought – *i.e.*, allowing credentialed challengers to meaningfully oversee the conduct of the election as provided by Michigan’s Election Code and Constitution. But that is not what the DNC seeks. The DNC wants this Court to deny the relief the Trump campaign and Michigan voter and challenger Eric Ostergren seek – to meaningfully monitor the conduct of this election.

The DNC claims “no current party adequately represents DNC’s interests.” DNC brief in support of motion, p. 3. But then the DNC claims the “Trump Campaign is indisputably opposed to DNC’s electoral performance in Michigan, while Defendant cannot be relied upon to safeguard DNC’s ability to observe the tabulation process on equal grounds as the Trump Campaign.” *Id.* The DNC cannot run with the fox and hunt with the hounds. The DNC cannot have it both ways.

First the DNC claims Defendant Democratic Secretary of State Jocelyn Benson “cannot be relied upon to safeguard DNC’s ability to observe the tabulation process on equal grounds.” DNC brief in support of motion, p. 3. But Secretary of State Benson is an elected *Democrat*. Who better than the Democratic Secretary of State to represent the interests of the Democratic Party? The

plaintiffs are asking this Court to order Secretary Benson to assure that *bipartisan* teams of election inspectors (both a Democrat and a Republican) are processing absent voter ballots and that challengers with the Trump campaign may meaningfully participate. Therefore, all parties, both the Trump campaign and defendant Secretary Benson, are asking for the relief the DNC seeks to intervene to obtain.

The Trump campaign and this Michigan voter and election challenger have asked this Court to order “a speedy hearing” of this action because time is of the essence. This Court should deny the DNC’s motion and require Secretary Benson to order all counting and processing of absentee votes stop until an election inspector from each party (both Democrat and Republican) is present at each absent voter counting board and to provide the Trump campaign an opportunity to allow Eric Ostergren and other certified challengers to meaningfully monitor the processing of the ballots. We also ask that Secretary Benson order the immediate segregation of all ballots that are not subject to meaningful monitoring by the challengers appointed by the Trump campaign and other qualified observers as provided by Michigan law.

Dated: November 4, 2020

Respectfully submitted,

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