

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

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

Plaintiffs,

v.

JOCELYN BENSON, in her official
capacity as the Michigan Secretary of State,

Defendant,

DNC,

Proposed Intervenor.

Court of Appeals No. _____

Court of Claims No. 20-000225-MZ

HON. CYNTHIA STEPHENS

**THIS APPEAL INVOLVES A
DISPUTE AS TO THE
VALIDITY OF PROVISIONS
OF MICHIGAN ELECTION
LAW AND ACTIONS OF THE
SECRETARY OF STATE**

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**PROPOSED INTERVENOR'S MOTION FOR IMMEDIATE CONSIDERATION OF ITS
EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

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Pursuant to MCR 7.205(F)(2), the DNC respectfully moves for immediate and expedited consideration of its emergency application for leave to appeal. In support of the requested relief, the DNC states as follows:

1. On November 4, 2020, at 4:00 p.m., after Election Day was over and after most of the ballots had been counted, Plaintiffs Donald J. Trump for President, Inc. and Eric Ostergren (together, the “Trump Campaign”) filed this lawsuit seeking to segregate lawfully cast and counted ballots and to stop any further counting of absentee ballots. App’x 8-18.¹

2. Within hours, the DNC filed a motion to intervene on the basis that any challenge or change to the State’s policy for public observation of the ballot tabulation process will unquestionably impact the DNC’s operations and impair its constitutional rights, as well as those of its members, voters, and candidates. App’x 29-43.

3. On November 5, citing “the grave importance of the issues in this matter,” the Court of Claims allowed the DNC to file an amicus brief and participate in oral argument as Proposed Intervenor or, in the alternative, as amicus, pending a decision on intervention. App’x 7.

4. On November 6, the Court of Claims denied the Trump Campaign’s request for relief because its claims lack legal and factual support, its suit was brought against the wrong party, and ultimately the count was complete and therefore the claims were moot. App’x 1-6.

5. In the same November 6 order, the Court of Claims denied the DNC’s motion as moot “[b]ecause the relief requested by plaintiffs in this case will not issue.” App’x 1.

¹ All Appendix citations are to the Appendix to Proposed Intervenor’s Emergency Application for Leave to Appeal.

6. The Court of Claims abused its discretion in denying the DNC’s intervention. The DNC readily satisfies the requirements for intervention of right under MCR 2.209(A) and, in the alternative, is entitled to permissive intervention under MCR 2.209(B).

7. Nevertheless, the Court of Claims disposed of its motion in a single sentence, failing to consider the DNC’s interests or conduct any analysis of whether the DNC meets the requirements of MCR 2.209.

8. Furthermore, the Court of Claims erroneously assumed that its denial of the Trump Campaign’s emergency motion would moot the DNC’s motion—despite the Court of Claims’ clear statement that its November 6 order was “not a final order and it [did] not resolve the last pending claim or close the case.” App’x 5.

9. The Trump Campaign’s lawsuit continues despite denial of its emergency motion, and, in fact, that very denial is now on appeal to this Court. App’x 103-107.

10. On November 9, the DNC timely filed with this Court an emergency application for leave to appeal the denial of its intervention.

11. The Trump Campaign’s requested relief threatens to disrupt the State’s election results at this late date—when voting concluded almost a week ago, counting is complete, and major news outlets have called the election for Vice President Joe Biden in not only Michigan, but nationally.

12. Delaying adjudication of the DNC’s emergency application for leave to appeal would thus “cause substantial harm” to the DNC, its candidates, and its members. MCR 7.305(B)(4)(a); see also Mich Appellate Handbook, § 7.7 (ICLE, January 2018 update) (“Election controversies are resolved on an expedited basis because they are usually of great public significance and the election date is set by statute and cannot be moved.”).

13. This Court should immediately consider and decide the DNC's emergency application regarding the urgent and critical question of whether the DNC can intervene to protect its substantial interests.

WHEREFORE, the Court should immediately consider and decide the DNC's emergency application for leave to appeal before November 12 and before it issues a scheduling order in the Trump Campaign's separate appeal of the denial of its emergency motion.

Dated this 10th day of November, 2020.

Respectfully submitted,

/s/ Scott R. Eldridge

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