

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

CHERYL A. COSTANTINO and,  
EDWARD P. MCCALL, JR.,

COA Case No.: 355443

Plaintiffs/Appellants,

Cir. Ct. Case No. 20-014780-AW  
Hon. Timothy M. Kenny

vs.

CITY OF DETROIT; DETROIT ELECTION  
COMMISSION; JANICE WINFREY, in her official  
capacity as the CLERK OF THE CITY and the  
Chairperson of the DETROIT ELECTION COMMISSION;  
CATHY M. GARRETT, in her official capacity as the  
CLERK OF WAYNE COUNTY; and the WAYNE COUNTY  
BOARD OF CANVASSERS,

Defendants/Appellees.

and

MICHIGAN DEMOCRATIC PARTY,

Intervenor Defendant/Appellee,

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**CITY DEFENDANTS' RESPONSE TO  
MOTION FOR IMMEDIATE CONSIDERATION**

NOW COME City of Detroit, Detroit Elections Commission and Janice Winfrey, in her official capacity as the Clerk of the City of Detroit (“City Defendants”) and for their Response to Plaintiffs’ Motion for Immediate Consideration, state as follows:

- 1) City Defendants incorporate their responses to the Application for Leave to Appeal and any accompanying exhibits and affidavits.
- 2) Plaintiffs seek immediate consideration due to a claimed emergency of their own making. Plaintiffs are aware of the statutory schedule for vote certification and have been aware of their alleged concerns since before vote counting began. They chose to wait to bring these issues to court. Plaintiffs issued a press release on November 8, 2020, announcing the filing of a case in Wayne County Circuit Court. The case was filed on November 9, 2020.
  - a. The trial court moved expeditiously, issuing an Order to Show Cause on November 10, 2020, conducting a hearing the next day and issuing its detailed ruling on

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Friday, November 13, 2020, in the early afternoon. Judge Kenny advised all parties of his intended timing—that the court would be issuing a decision at approximately noon on November 13, 2020.

- b. Plaintiffs here should not have been surprised by the outcome at the trial court. Their claims were similar to the claims brought one week earlier in the matter of Stoddard, et al v. City Election Commission, et al; Wayne County Case Number 20-014604-CZ, and Judge Kenny had denied preliminary relief in Stoddard on November 6, 2020.
  - c. With a presidential election in the balance and the voting rights of millions of Michigan citizens at risk, Plaintiffs could have filed suit one week earlier (as the Stoddard Plaintiffs did). Or they could have been prepared to file an appeal on Friday. Instead, this matter is brought to the Court of Appeals at the eleventh hour.
  - d. The ballot review process began on Monday, November 2, 2020. This Court is now confronted with a last-second demand for relief, which should not be granted. In fact, the Plaintiffs waited until Monday, November 16, to file the pending Application, when the trial court issued its order in the early afternoon on Friday, November 13.
- 3) City Defendants neither admit nor deny this allegation.
  - 4) City Defendants deny any error by the trial court.
  - 5) City Defendants deny any error by the trial court.
  - 6) The risk to the administration of justice posed by granting the relief requested would be incalculable. Plaintiffs ask this Court to upend the established statutory processes for certification of the results of the November 3, 2020 General Election. The relief they

seek—enjoining the certification of election results by the Wayne County Board of Canvassers—would serve only one purpose, to delay the statewide certification process and possibly prevent the timely appointment of presidential electors. The harm from any such action could be catastrophic. Furthermore, City Defendants deny that the Plaintiffs “promptly [began] the appellate process.” Instead, Plaintiffs delayed in filing suit and did not file an adequately prompt appeal in light of the significance of this matter and notice from the trial court of when its ruling would issue.

- 7) City Defendants deny this allegation for reasons more fully set forth in the Response to the Application for Leave to Appeal.
- 8) Any relief granted prior to completion of the appellate process could effectively grant Plaintiffs the delay they seek and the dire consequences the City Defendants fear. An audit can be performed after the election is completed, as set forth by statute.
- 9) City Defendants neither admit nor deny this allegation.
- 10) City Defendants deny this allegation for reasons more fully set forth in the Response to the Application for Leave to Appeal.

November 16, 2020

Respectfully submitted,

**FINK BRESSACK**

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2020, I electronically filed the foregoing paper with the Clerk of the court using the MiFile system and e-mailed copies to all counsel of record.

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