

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

Plaintiffs-Appellants,

v.

CITY OF DETROIT; DETROIT ELECTION
COMMISSION; JANICE M. WINFREY, in
her official capacity as the CLERK OF THE
CITY OF DETROIT 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,

v.

MICHIGAN DEMOCRATIC PARTY,

Intervenor Defendant-
Appellee.

Court of Appeals No. 355443

Circuit Court No. 20-014780-AW

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*Admitted *pro hac vice*
***Pro hac vice* motion pending
****Pro hac vice* motion forthcoming

**INTERVENOR DEFENDANT-APPELLEE'S RESPONSE TO PLAINTIFFS-
APPELLANTS' MOTION FOR IMMEDIATE CONSIDERATION**

Intervenor-Defendant, the Michigan Democratic Party, hereby opposes Plaintiffs-Appellants' Motion for Immediate Consideration of its Emergency Application for Leave to Appeal and Motion for Peremptory Reversal.

Although Appellants assert that immediate consideration of their extraordinary and never-before-seen demands for relief "is necessary to prevent Defendants/Appellees from certifying the election results in Wayne County prior to a full results audit of the election being performed," no such immediate consideration is warranted in this case.

First, and for the reasons stated in Intervenor-Defendant's oppositions to Appellants' Emergency Application for Leave to Appeal and Motion for Peremptory Reversal, the record and law simply do not support Appellants' legal and factual allegations. Thus, this Court's consideration of the Appellants' legal claims is not warranted at all – let alone on an immediate, expedited basis.

Second, to the extent any immediate consideration is necessary, it is due to Appellants' own delay. Although their Complaint relies on asserted irregularities at the TCF Center on Election Day (November 3rd), Appellants waited six days thereafter, until November 9, 2020, to file their Complaint demanding immediate injunctive relief.

Finally, the Wayne County Circuit Court issued its Opinion and Order denying Appellants' demands for injunctive relief on Friday, November 13, 2020, and delivered it to counsel of record via email shortly after 1:00 p.m. The Circuit Court had told the parties during oral argument on November 12, 2020 that it would issue its decision at or around noon on Friday, November 13, giving Appellants ample advance notice of the timing of the court's ruling. Appellants, however, waited until approximately 10:30 a.m. – three days later – to notify the other parties and this Court of their application for leave to appeal and demand for immediate consideration.

Had Appellants filed their Complaint sooner, it is likely that this Court would not be asked *the day before* the County Board of Canvassers is statutorily obligated to certify the county election results to enter the extraordinary remedy of stopping the election certification.

CONCLUSION

For the reasons stated, Intervenor-Defendant, the Michigan Democratic Party, respectfully submits that this Court should deny Appellants' motion for immediate consideration under the circumstances.

Respectfully submitted,

Dated: November 16, 2020

s/Scott R. Eldridge
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PROOF OF SERVICE

Scott Eldridge certifies that on the 16th day of November 2020, he served a copy of the above document in this matter on all counsel of record via the Court's electronic filing system and via courtesy email.

s/Scott R. Eldridge

Scott Eldridge