

STATE OF MICHIGAN
IN THE COURT OF APPEALS

**CHERYL A. COSTANTINO and EDWARD P.
McCALL, JR.,**

Plaintiffs/Appellants,

-vs-

**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,

-vs-

MICHIGAN DEMOCRATIC PARTY,

Intervenor Defendant/Appellee.

**PLAINTIFFS' MOTION FOR
IMMEDIATE CONSIDERATION
AND PROOF OF SERVICE**

**COA NO.:
CIRCUIT CT. NO: 20-014780-AW**

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PLAINTIFF/APPELLANTS' MOTION FOR IMMEDIATE CONSIDERATION OF
THEIR APPLICATION FOR LEAVE TO APPEAL AND MOTION FOR
PEREMPTORY REVERSAL

NOW COME the Plaintiffs/Appellants, by and through their attorneys, and respectfully ask this court to grant their motion for immediate consideration of their Application for Leave to Appeal and Emergency Motion for Peremptory Reversal and to grant the injunctive and audit relief requested, pursuant to MCR 7.211(C)(6), and state in support as follows:

1. Plaintiffs/Appellants incorporate herein all the allegations and statements contained in their companion Application for Leave to Appeal and all exhibits and affidavits.
2. Immediate consideration 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.
3. Upon information and belief, the Wayne County Board of Canvassers will be meeting to vote on certifying the election results no later than 5:00 p.m. on Tuesday, November 17, 2020.

4. In this case, with all due respect to the lower court, Plaintiffs/Appellants' complaint raises significant and substantial constitutional, statutory, legal, and factual issues of merit. There were numerous procedural and legal errors committed in the trial court as delineated in the attached Application that must be addressed.

5. There are significant issues of merit (constitutional, statutory, and factual) in this appeal, including, but not limited to, Plaintiffs/Appellants' constitutional right to have an audit of the election results, the many statutory violations of Michigan election laws, and the denial to Plaintiffs/Appellants of their rights as poll challengers.

6. There would be no risk to the administration of justice posed by granting Plaintiffs/Appellants requests in this matter, and it is apparent that the relief they are seeking and their appeal are not simply for delay, as can be seen by the fact that they have promptly begun the appellate process.

7. If Plaintiffs/Appellants are not granted the relief requested, they stand to suffer irreparable harm as spelled out in the attached Application for Leave to Appeal and because the audit required by the Michigan Constitution (Article 2, Section 4(1)(h)) cannot be performed

8. If Plaintiffs/Appellants are not granted speedy relief, until the appellate process is completed, after any necessary motions, full briefing, hearings, and decisions on all appellate issues, the critical issue of having the election results audit performed will have been rendered moot. An irreparable injustice/harm will then have occurred because of the denial of their constitutional and statutory rights and protections.

9. MCR 7.211(C)(6) allows Plaintiffs/Appellants to file this motion for immediate consideration to expedite hearing on his companion motion for entry of an injunctive order and audit, and to grant their Application for Leave to Appeal. A copy of both motions and the

Application for leave to Appeal will be served on Defendants/Appellees attorneys Scott Eldredge, James Heath, David Fink, and Lawrence Garcia via the MiFile System, and have been served by email to all attorneys stated above in the caption, this same date pursuant to MCR 2.107(C)(1) and MCR 1.109(G)(6)(a). Therefore, both motions may be submitted to the Court immediately on filing.

10. The interests of justice, fairness, and due process require that Plaintiffs/Appellants' motion be granted immediately and without delay.

WHEREFORE, for all the reasons stated above, Plaintiffs/Appellants respectfully ask this Honorable Court to immediately consider their Application for Leave to Appeal and emergency motion for preemptory reversal and for audit and injunctive relief; grant an injunction to stay certification of the Wayne County Board of Canvassers pending certification of election results and order a results audit of said election; and grant such other and further relief as appropriate.

Respectfully submitted,

Dated: November 16, 2020.

/s/ David A. Kallman
David A. Kallman (P34200)
Attorney for Plaintiffs/Appellants

PROOF OF SERVICE

I, David A. Kallman, hereby affirm that on the date stated below I delivered a copy of the above Plaintiffs' Motion for Immediate Consideration upon all the above-named counsel via the MiFile System, and by e-mail to counsel. I hereby declare that this statement is true to the best of my information, knowledge, and belief.

DATED: November 16, 2020.

/s/ David A. Kallman
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Attorney for Plaintiffs/Appellants