

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
(Riordan, Stephens, and Letica)

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/APPELLANTS’
MOTION FOR IMMEDIATE
CONSIDERATION AND
PROOF OF SERVICE**

**SC NO:
COA NO.: 355443
CIRCUIT CT. NO: 20-014780-AW**

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

NOW COME Plaintiffs/Appellants, by and through their attorneys, and respectfully ask this Honorable Court to grant their Motion for Immediate Consideration of their Application for Leave to Appeal and to grant the injunctive and audit relief requested, pursuant to MCR 7.311(E), 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 at 3:00 p.m. today, November 17, 2020, to vote on certifying the election results.
4. In this case, with all due respect to the lower courts, 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 is a significant public interest for all Michigan citizens, including Plaintiffs/Appellants, to a free and honest election, that ensures the "accuracy and integrity of the process" pursuant to the Const 1963, art 2, sec 4, par 1(h) and MCR 7.305(B).

7. 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.

8. If Plaintiffs/Appellants are not granted the relief requested, then 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 II, Section 4(1)(h)) cannot be performed.

9. 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, then 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.

10. MCR 7.311(E) allows Plaintiffs/Appellants to file this Motion for Immediate Consideration to review the lower courts' orders, grant injunctive relief, 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 this Honorable Court immediately on filing.

11. 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 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 17, 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/Appellants' 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 17, 2020.

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