

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' EMERGENCY
MOTION FOR PEREMPTORY
REVERSAL, BRIEF IN
SUPPORT, AND PROOF
OF SERVICE**

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

HON. TIMOTHY M. KENNY

GREAT LAKES JUSTICE CENTER

**David A. Kallman (P34200)
Erin E. Mersino (P70886)
Jack C. Jordan (P46551)
Stephen P. Kallman (P75622)
GREAT LAKES JUSTICE CENTER
Attorneys for Plaintiff
5600 W. Mount Hope Hwy.
Lansing, MI 48917
(517) 322-3207/Fax: (517) 322-3208**

**James W. Heath (P65419)
Janet Anderson-Davis (P29499)
Attorneys for Wayne County Defendants
500 Griswold, 21st Floor
Detroit, MI 48226
(313) 347-5813/Fax: (313) 967-3532**

**Lawrence T. Garcia (P54890)
Charles N. Raimi (P29746)
James D. Noseda (P52563)
CITY OF DETROIT LAW DEPT.
Attorneys for Detroit Defendants
2 Woodward Ave., 5th Floor
Detroit, MI 48226
(313) 237-5037**

**Marc E. Elias (DC #442007)
John M. Devaney (DC #375465)
Jyoti Jasrasaria (DC #1671527)
PERKINS COIE LLP
Attorneys for Intervenor Def.
700 Thirteenth Street NW, Ste. 800
Washington, DC 20005
(202) 654-6200**

David H. Fink (P28235)
Darryl Bressack (P67820)
FINK BRESSACK
Attorneys for Detroit Defendants
38500 Woodward Ave., Suite 350
Bloomfield Hills, MI 48304
(248) 971-2500

Kevin J. Hamilton (WA #15648)
Jonathan P. Hawley (WA #56297)
PERKINS COIE LLP
Attorneys for Intervenor Def.
1201 Third Avenue, Suite 4900
Seattle, Washington 98101
(206-359-8000)

Scott R. Eldridge (P66452)
MILLER CANFIELD
Attorneys for Intervenor Defendant
One Michigan Avenue, Suite 900
Lansing, MI 48933
(517) 483-4918

Mary Ellen Gurewitz (P25724)
CUMMINGS & CUMMINGS
Attorneys for Intervenor Def.
423 N. Main St., Suite 200
Royal Oak, MI 48067
(248) 733-3405

PLAINTIFF/APPELLANTS' EMERGENCY MOTION FOR PEREMPTORY REVERSAL TO GRANT AN AUDIT AND INJUNCTIVE RELIEF

NOW COME the Plaintiffs/Appellants, by and through their attorneys, and respectfully ask this court to grant their emergency motion for preemptory reversal and to grant an election audit and the injunctive relief requested, pursuant to MCR 7.211(C)(4), and state in support as follows:

1. Plaintiffs/Appellants incorporate herein all the allegations, statements, and brief, contained in their companion Application for Leave to Appeal including all exhibits and affidavits.
2. A preemptory reversal and order for an audit and injunctive 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. The trial court's failure to enforce the Michigan Constitution and state election laws is reversible error that is so manifest that an immediate reversal of the judgment or order appealed from should be granted without formal argument or submission (MCR 7.211(C)(4)).

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 (both legal, 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. Pursuant to MCR 7.211(C), Plaintiffs/Appellants requested that the trial court record be transferred to the Court of Appeals (Exhibit H).

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, 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 7.211(C)(4) allows Plaintiffs/Appellants to file this emergency motion for peremptory reversal to grant an audit and injunctive order. 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, this same date pursuant to MCR 2.107(C)(1) and MCR 1.109(G)(6)(a). Therefore, this motion may be submitted to the Court immediately on filing.

11. The interests of justice, fairness, and due process require that Plaintiffs/Appellants' emergency motion for peremptory reversal be granted immediately and without delay.

WHEREFORE, for all the reasons stated above, Plaintiffs/Appellants respectfully ask this Honorable Court to immediately consider and grant their emergency motion for peremptory reversal and to order an 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

BRIEF IN SUPPORT

Plaintiffs/Appellants hereby incorporate all of the reasons, analysis, and allegations of error contained in their Application for Leave to Appeal as fully stated for their brief herein. Based upon the analysis contained in the Application for Leave to Appeal, Plaintiffs/Appellants believe that reversible error is so manifest that an immediate reversal of the judgment or order appealed from should be granted without formal argument or submission.

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' Emergency Motion for Peremptory Reversal and brief in support 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
David A. Kallman (P34200)
Attorney for Plaintiffs/Appellants