UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER and DAREN WADE RUBINGH, Plaintiffs, v. GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State and the Michigan BOARD OF STATE CANVASSERS, Defendants.	No. 2:20-cv-13134 Hon. Linda V. Parker

CITY OF DETROIT'S MOTION TO INTERVENE AS A DEFENDANT

The City of Detroit (the "City"), by and through counsel, hereby seeks to intervene in this matter pursuant to Fed. R. Civ. P. 24(a) and Fed. R. Civ. P. 24(b). This Motion is supported by the accompanying Brief in Support.

On November 26, 2020, Counsel for the City sought concurrence in the relief requested herein, but Plaintiffs did not concur.

WHEREFORE, for the reasons specified in the attached Brief in Support, the City of Detroit respectfully requests that this Court enter an order allowing it to intervene in this matter.

Respectfully submitted,

November 27, 2020

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BRIEF IN SUPPORT OF CITY OF DETROIT'S MOTION TO INTERVENE AS A DEFENDANT

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STATEMENT OF ISSUES PRESENTED

1. Whether the City of Detroit should be permitted to intervene in this matter as of right where the City meets each requirement for intervention as of right.

   The City of Detroit answers: Yes.

2. Whether, in the alternative, the City of Detroit should be permitted to intervene in this matter by leave, where the City has met each requirement for permissive intervention.

   The City of Detroit answers: Yes.

MOST CONTROLLING AUTHORITIES

Michigan State AFL-CIO v. Miller, 103 F.3d 1240 (6th Cir. 1997)

U.S. v. City of Detroit, 712 F.3d 925 (6th Cir. 2013)

Fed. R. Civ. P. 24

INTRODUCTION

This is one of several lawsuits filed by the Donald J. Trump for President campaign and its allies, raising similar baseless claims. One by one, those lawsuits have been rejected by the courts or voluntarily dismissed. In the case at bar, most of the legal "theories" purport to rely on events at the TCF Center, where Detroit absentee ballots were counted in an operation managed by the Detroit City Clerk.[1] The City of Detroit is uniquely positioned to participate in the defense of this matter. The City of Detroit also has a compelling interest in defending against such allegations in order to guarantee that its citizens are not disenfranchised. Intervention should be granted as of right.

ARGUMENT

I. THE CITY IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

Intervention as of right is governed by Fed. R. Civ. P. 24(a). The Rule states:

[1] Inexplicably, the Complaint (consistent with most of the others Complaints which have been filed and withdrawn) makes numerous allegations relating to "Wayne County's" operation of the absent voter counting boards at the TCF Center (formerly Cobo Hall). See, e.g., Compl. at ¶¶ 63-79. ECF No. 1, PageID.20-26. This is despite clear guidance from Court of Claims Judge Cynthia Stephens, advising plaintiffs in the first of this series of lawsuits that "the day-to-day operation of an absent voter counting board is controlled by the pertinent city or township clerk." *Donald J. Trump for President, Inc. et al v Benson*, Mich. Court of Claims Case No. 20-000225-MZ, Opinion and Order (Nov 6, 2020) (Ex. 1). The absent voter counting boards at the TCF Center were operated under the authority of the Detroit City Clerk, not Wayne County.

> (a) **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:
>
> (1) is given an unconditional right to intervene by a federal statute; or
>
> (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Rule is to be broadly construed in favor of potential intervenors. *Purnell v. City of Akron*, 925 F.2d 941, 950 (6th Cir. 1991).

A party seeking to intervene as of right under Fed. R. Civ. P. 24(a) must establish four elements: (1) the timeliness of the application to intervene, (2) the applicant's substantial legal interest in the case, (3) the impairment of the applicant's ability to protect that interest in the absence of intervention, and (4) inadequate representation of that interest by parties already before the court." *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997). The City meets each of the required elements.

A. The City's Application is Timely

The timeliness of a motion to intervene is determined by the circumstances of the motion. *Grubbs v. Norris*, 870 F.2d 343, 345-46 (6th Cir. 1989). To determine whether the motion is timely, the reviewing court considers the following factors: "(1) the point to which the suit has progressed; (2) the purpose for which intervention

is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his or her interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure, after he or she knew or reasonably should have known of his or her interest in the case, to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention." *U.S. v. City of Detroit*, 712 F.3d 925, 930-31 (6th Cir. 2013) (citing to *Grubbs*, 870 F.2d at 345-46).

The City's application to intervene is timely. The City filed its Motion only two days after the Complaint was filed. No hearings or proceedings have yet been held. The City is intervening to uphold the results of a lawfully conducted election, to preserve the right to vote for hundreds of thousands of Detroit residents, and to defend the conduct of City election officials against baseless allegations. There is no prejudice from intervention, because there was no delay in seeking intervention. Finally, the unconstitutionality and severity of Plaintiffs' requested relief militates in favor of granting intervention, and there are no unusual circumstances weighing against intervention.

B. The City has a Substantial Legal Interest in this Matter

The Sixth Circuit subscribes to "a rather expansive notion of the interest sufficient to invoke intervention of right." *Michigan State AFL-CIO*, 103 F.3d, 1245.

"The inquiry into the substantiality of the claimed interest is necessarily fact-specific." *Id.*

The City has a substantial interest in defending this lawsuit and in preserving the right to vote of its citizens, validating the integrity of local election results and defending the conduct of its election officials. While the City was not named in the Complaint as a defendant, a substantial amount—if not a majority—of the allegations relate to the purported actions or inactions of the City and its election officials. Plaintiffs repeatedly refer to alleged fraud regarding the processing and tabulation of absentee ballots. Under Michigan election law, the initial processing and tabulation of absentee ballots is done at the City level. The processing and tabulation of absentee ballots at Hall E of the TCF Center was controlled by the City, not any of the named Defendants. At other times in their Complaint, Plaintiffs make direct (false) allegations against election officials at the Detroit Department of Elections and against City Election Inspectors. *See, e.g.*, Compl., ¶¶ 101-102, ECF No. 1, PageID.34-35. Indeed, most of the allegations are against City of Detroit inspectors or officials. The City has a right to defend against these frivolous allegations.

Finally, the City has an undeniable interest in protecting the voting rights of its citizens. Plaintiffs seek the extraordinary and unprecedented remedy of de-certifying the results of a duly conducted election. Essentially, Plaintiffs are asking

the Court to disenfranchise all Detroit voters based on preposterous legal theories and false allegations. Plaintiffs' proposed remedy would unequivocally result in the disenfranchisement all of Detroit voters. That is, of course, the most anti-democratic measure imaginable. There is no conceivable way that any of Plaintiffs' frivolous allegations should result in a single voter being disenfranchised, let alone hundreds of thousands from the State's largest city (or indeed, every single voter in the State). It is hard to conceive of a situation where a proposed intervenor would have a stronger interest than is present here.[2]

C. The City's Interests Will be Impaired without Intervention

"To satisfy [the third] element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest **is possible** if intervention is denied." *Mich. State AFL–CIO*, 103 F.3d at 1247 (*citing Purnell*, 925 F.2d at 948. (emphasis added). "This burden is minimal." *Id.* Rule 24(a) does not require the intervenor to show that the interest will be impaired, only that impairment is possible. *Purnell*, 925 F.3d at 948.

[2] A significant portion of Plaintiffs' allegations and supporting affidavits have been copied directly from the complaint in *Donald J. Trump Campaign, Inc. et al v. Benson et al*, a lawsuit filed in the federal court for the Western District of Michigan. WDMI Case No. 1:20-cv-1083. As here, the City was not originally named as a defendant in *DJT v. Benson*, but the district court granted the City's (unopposed) Motion to Intervene as a Defendant. See Ex. 2, Opinion and Order (Nov. 17, 2020). The campaign and the other plaintiffs voluntarily dismissed their Complaint on November 19, 2020.

The City's interests would be affected and could be impaired by this lawsuit. The City has an interest in protecting the voting rights of its citizens, affirming the integrity of election results and defending the conduct of local election officials. Plaintiffs have not hidden the fact that their ultimate goal is to have hundreds of thousands of Detroit votes removed from Michigan's official tally. Moreover, this action may significantly undermine the faith and public confidence in the City's election results. For months, various groups have alleged widespread election fraud across the country without proof. In the weeks following the election, much of the focus has been on certain cities in "battleground" states—with a strong emphasis on Detroit and Philadelphia. In the past three weeks, plaintiffs have filed multiple, similar lawsuits both in Michigan and across the country.

D. Existing Parties Cannot Fully Protect the City's Interests

A party seeking to intervene is required to show that its interests will not be adequately protected by existing parties to the litigation. *Michigan State AFL-CIO*, 103 F.3d at 1247. This is a minimal burden; a movant need only show that representation "**may** be inadequate." *Id*. (emphasis added) (quoting *Linton by Arnold v. Commissioner of Health and Environment, State of Tenn*., 973 F.2d 1311, 1319 (6th Cir. 1992).

While the current defendants certainly have an interest in defending against frivolous lawsuits and upholding the integrity of the State's elections, most of the

key underlying factual allegations relate to the City of Detroit. The election in question was conducted by the City of Detroit. The City is best suited to respond to these attacks.

II. IN THE ALTERNATIVE, PERMISSIVE INTERVENTION SHOULD BE GRANTED

In the alternative, this Court should permit the City to intervene pursuant to Fed. R. Civ. P. 24(b). The Rule specifies that "[o]n timely motion, the court may permit anyone to intervene who … has a claim or defense that shares with the main action a common question of law or fact." The proposed intervenor should "establish that the motion for intervention is timely and alleges at least one common question of law or fact." *United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005) (citing *Michigan State AFL–CIO*, 103 F.3d at 1248). "Once these two requirements are established, the district court must then balance undue delay and prejudice to the original parties, if any, and any other relevant factors to determine whether, in the court's discretion, intervention should be allowed." *U.S. v. Michigan*, 424 F.3d at 445.

The City should be permitted to intervene. This application to intervene is timely filed and the City has defenses to these frivolous claims that share common questions of law and fact.

III. THIS COURT SHOULD GRANT THE CITY LEAVE TO FILE A RESPONSIVE PLEADING ON THE SAME SCHEDULE AS NAMED DEFENDANTS

The City moves for leave to file a responsive pleading on the same date that the named defendants are required to file a pleading in response to the Complaint. While Fed. R. Civ. P. 24(c) states that a motion to intervene should be accompanied by a pleading setting out the "claims or defenses for which intervention is sought," the Sixth Circuit has held that the failure to satisfy this Rule is not a valid basis to deny a motion to intervene. *Public Interest Legal Foundation, Inc. v. Winfrey*, 463 F.Supp.3d 795, 802 (E.D. Mich. 2020) (quoting *League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 580 (6th Cir. 2018)). Instead, the Sixth Circuit takes a "lenient approach to the requirements of Rule 24(c)," especially where there is no showing that prejudice will result from granting intervention where the motion to intervene did not include a proposed pleading. *League of Women Voters*, 902 F.3d at 580. Because this litigation is still in its infancy, and because the City has not delayed in filing its Motion to Intervene, Plaintiffs cannot show that any harm will result from the Court granting the City's motion without an accompanying pleading.

This Court should exercise its discretion and permit the City to file a responsive pleading on a schedule consistent with that of the named defendants.[3]

CONCLUSION

WHEREFORE, for the foregoing reasons, the City of Detroit respectfully requests that this Court enter an order allowing it to intervene as a Defendant and to file a responsive pleading on the same schedule as the named defendants.

Respectfully submitted,

November 27, 2020

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[3] In the *DJT v. Benson* case, the NAACP similarly asked that it be allowed to intervene without submitting a proposed pleading. The district court granted that request for the same reasons stated in this brief. Ex. 2.

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2020, I electronically filed the foregoing paper with the Clerk of the court using the electronic filing system, which sends notice to all counsel of record.

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EXHIBIT 1

STATE OF MICHIGAN

COURT OF CLAIMS

DONALD J. TRUMP FOR PRESIDENT, INC. and ERIC OSTEGREN,

Plaintiffs,

v

JOCELYN BENSON, in her official capacity as Secretary of State,

Defendants.
_____/

OPINION AND ORDER

Case No. 20-000225-MZ

Hon. Cynthia Diane Stephens

Pending before the Court are two motions. The first is plaintiffs' November 4, 2020 emergency motion for declaratory relief under MCR 2.605(D). For the reasons stated on the record and incorporated herein, the motion is DENIED. Also pending before the Court is the motion to intervene as a plaintiff filed by the Democratic National Committee. Because the relief requested by plaintiffs in this case will not issue, the Court DENIES as moot the motion to intervene.

According to the allegations in plaintiffs' complaint, plaintiff Eric Ostegren is a credentialed election challenger under MCL 168.730. Paragraph 2 of the complaint alleges that plaintiff Ostegren was "excluded from the counting board during the absent voter ballot review process." The complaint does not specify when, where, or by whom plaintiff was excluded. Nor does the complaint provide any details about why the alleged exclusion occurred.

The complaint contains allegations concerning absent voter ballot drop-boxes. Plaintiffs allege that state law requires that ballot containers must be monitored by video surveillance. Plaintiff contends that election challengers must be given an opportunity to observe video of ballot drop-boxes with referencing the provision(s) of the statute that purportedly grant such access, . See MCL 168.761d(4)(c).

Plaintiffs' emergency motion asks the Court to order all counting and processing of absentee ballots to cease until an "election inspector" from each political party is allowed to be present at every absent voter counting board, and asks that this court require the Secretary of State to order the immediate segregation of all ballots that are not being inspected and monitored as required by law. Plaintiffs argue that the Secretary of State's failure to act has undermined the rights of all Michigan voters. While the advocate at oral argument posited the prayer for relief as one to order "meaningful access" to the ballot tabulation process, plaintiffs have asked the Court to enter a preliminary injunction to enjoin the counting of ballots. A party requesting this "extraordinary and drastic use of judicial power" must convince the Court of the necessity of the relief based on the following factors:

> (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012).]

As stated on the record at the November 5, 2020 hearing, plaintiffs are not entitled to the extraordinary form of emergency relief they have requested.

I. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

A. OSTEGREN CLAIM

Plaintiff Ostegren avers that he was removed from an absent voter counting board. It is true that the Secretary of State has general supervisory control over the conduct of elections. See MCL 168.21; MCL 168.31. However, the day-to-day operation of an absent voter counting board is controlled by the pertinent city or township clerk. See MCL 168.764d. The complaint does not allege that the Secretary of State was a party to or had knowledge of, the alleged exclusion of plaintiff Ostegren from the unnamed absent voter counting board. Moreover, the Court notes that recent guidance from the Secretary of State, as was detailed in matter before this Court in *Carra et al v Benson et al*, Docket No. 20-000211-MZ, expressly advised local election officials to admit credentialed election challengers, provided that the challengers adhered to face-covering and social-distancing requirements. Thus, allegations regarding the purported conduct of an unknown local election official do not lend themselves to the issuance of a remedy against the Secretary of State.

B. CONNARN AFFIDAVIT

Plaintiffs have submitted what they refer to as "supplemental evidence" in support of their request for relief. The evidence consists of: (1) an affidavit from Jessica Connarn, a designated poll watcher; and (2) a photograph of a handwritten yellow sticky note. In her affidavit, Connarn avers that, when she was working as a poll watcher, she was contacted by an unnamed poll worker who was allegedly "being told by other hired poll workers at her table to change the date the ballot was received when entering ballots into the computer." She avers that this unnamed poll worker later handed her a sticky note that says "entered receive date as 11/2/20 on 11/4/20." Plaintiffs contend that this documentary evidence confirms that some unnamed persons engaged in

fraudulent activity in order to count invalid absent voter ballots that were received after election day.

This "supplemental evidence" is inadmissible as hearsay. The assertion that Connarn was informed by an unknown individual what "other hired poll workers at her table" had been told is inadmissible hearsay within hearsay, and plaintiffs have provided no hearsay exception for either level of hearsay that would warrant consideration of the evidence. See MRE 801(c). The note—which is vague and equivocal—is likewise hearsay. And again, plaintiffs have not presented an argument as to why the Court could consider the same, given the general prohibitions against hearsay evidence. See *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 105; 776 NW2d 114 (2009). Moreover, even overlooking the evidentiary issues, the Court notes that there are still no allegations implicating the Secretary of State's general supervisory control over the conduct of elections. Rather, any alleged action would have been taken by some unknown individual at a polling location.

C. BALLOT BOX VIDEOS

It should be noted at the outset that the statute providing for video surveillance of drop boxes only applies to those boxes that were installed after October 1, 2020. See MCL 168.761d(2). There is no evidence in the record whether there are any boxes subject to this requirement, how many there are, or where they are. The plaintiffs have not cited any statutory authority that requires any video to be subject to review by election challengers. They have not presented this Court with any statute making the Secretary of State responsible for maintaining a database of such boxes. The clear language of the statute directs that "[t]he city or township clerk must use video monitoring of that drop box to ensure effective monitoring of that drop box." MCL 168.761d(4)(c) Additionally, plaintiffs have not directed the Court's attention to any authority directing the

Secretary of State to segregate the ballots that come from such drop-boxes, thereby undermining plaintiffs' request to have such ballots segregated from other ballots, and rendering it impossible for the Court to grant the requested relief against this defendant. Not only can the relief requested not issue against the Secretary of State, who is the only named defendant in this action, but the factual record does not support the relief requested. As a result, plaintiffs are unable to show a likelihood of success on the merits.

II. MOOTNESS

Moreover, even if the requested relief could issue against the Secretary of State, the Court notes that the complaint and emergency motion were not filed until approximately 4:00 p.m. on November 4, 2020—despite being announced to various media outlets much earlier in the day. By the time this action was filed, the votes had largely been counted, and the counting is now complete. Accordingly, and even assuming the requested relief were available against the Secretary of State—and overlooking the problems with the factual and evidentiary record noted above—the matter is now moot, as it is impossible to issue the requested relief. See *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018)

IT IS HEREBY ORDERED that plaintiff's November 4, 2020 emergency motion for declaratory judgment is DENIED.

IT IS HEREBY FURTHER ORDERED that proposed intervenor's motion to intervene is DENIED as MOOT.

This is not a final order and it does not resolve the last pending claim or close the case.

November 6, 2020

Cynthia Diane Stephens
Judge, Court of Claims

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD J. TRUMP FOR PRESIDENT, INC., et al.,

Plaintiffs,

v.

JOCELYN BENSON, et al.,

Defendants.
_____/

Case No. 1:20-cv-1083

HON. JANET T. NEFF

MEMORANDUM OPINION AND ORDER

Pending before the Court are three unopposed motions to intervene filed by the Michigan State Conference NAACP, Wendell Anthony, Yvonne White, and Andre Wilkes (ECF No. 6); the Democratic National Committee and the Michigan Democratic Party (ECF No. 10); and the City of Detroit (ECF No. 14). The proposed intervenors received concurrence in their motions from counsel anticipated to make appearances for Defendants, but the proposed intervenors did not receive concurrences from Plaintiffs (ECF Nos. 8, 11 & 16). Plaintiffs have since filed a joint response, indicating that they also do not oppose the motions (ECF No. 19). For the following reasons, the Court grants the unopposed motions to intervene.

I

Eight Plaintiffs initiated this action on November 11, 2020. Plaintiff "Donald J. Trump for President, Inc." is the campaign committee for the reelection of President Donald J. Trump and Vice President Michael R. Pence (Compl. ¶ 6). The remaining seven Plaintiffs—Matthew and Alexandra Seely, Philip O'Halloran, Eric Ostergren, Marian Sheridan, Mercedes Wirsing, and Cameron Tarsa—are Michigan citizens and registered voters (*id.* ¶ 7). With the exception of

Cameron Tarsa, the individual Plaintiffs voted in the November 3, 2020 presidential election and served as credentialed election challengers in that election (*id.*).

Plaintiffs filed this action in this Court against Jocelyn Benson, Michigan's Secretary of State; the Michigan Board of State Canvassers; Wayne County; and the Wayne County Board of County Canvassers. In their "Complaint for Declaratory, Emergency and Permanent Injunctive Relief," Plaintiffs allege the following three claims:

I. Secretary of State Benson and Wayne County violated the Equal Protection Clause of the United States Constitution and the corollary clause of Michigan's Constitution

II. Secretary of State Benson and Wayne County violated the rights of these Michigan voters under the federal Elections and Electors Clauses

III. Secretary of State Benson and Wayne County violated Michigan's Election Code

Plaintiffs seek the following relief:

A. An order directing Secretary Benson and the Michigan Board of State Canvassers to not certify the election results until they have verified and confirmed that all ballots that were tabulated and included in the final reported election results were cast in compliance with the provisions of the Michigan Election Code as set forth herein.

B. An order prohibiting the Wayne County board of county canvassers and the board of state canvassers from certifying any vote tally that includes:

(1) fraudulently or unlawfully cast ballots;

(2) ballots tabulated using the Dominion tabulating equipment or software without the accuracy of individual tabulators having first been determined;

(3) any ballots that were received after Election Day (November 3, 2020) where the postmark or date of receipt was altered to be an earlier date before Election Day; and

(4) any ballots that were verified or counted when challengers were excluded from the room or denied a meaningful opportunity to observe the handling of the ballot and poll book as provided in MCL 168.733.

C. An order directing the Wayne County board of county canvassers to summon and open the ballot boxes and other election material, as provided in MCL 168.823, and, in the presence of challengers who can meaningfully monitor the process, to review the poll lists, absent voter ballot envelopes bearing the statement required by MCL 168.761, and other material provided in MCL 168.811.

D. An order directing that challengers be allowed to be physically present with a meaningful opportunity to observe when the accuracy of each piece of tabulating equipment is determined, and if the accuracy of each piece of tabulation equipment used by Wayne County is not confirmed to be accurate, an order directing a special election be held in the affected precincts as provided by MCL 168.831-168.839.

E. An order directing the board of county canvassers and the board of state canvassers, with challengers present and meaningfully able to observe, to obtain and review the video of unattended remote ballot drop boxes.

(ECF No. 1 at PageID.30-31).

Regarding the timing of their requested relief, Plaintiffs allege that consistent with MICH. COMP. LAWS § 168.822(1), the county board of canvassers shall conclude its canvass not later than November 17, 2020 (Compl. ¶ 71). Plaintiffs allege that consistent with MICH. COMP. LAWS § 168.842, the Michigan Board of State Canvassers will announce its determination of the canvass not later than December 3, 2020 (*id.* ¶ 72). Plaintiffs allege that the federal provisions governing the appointment of electors to the Electoral College, 3 U.S.C. § 1-18, "require Michigan Governor Whitmer to prepare a Certificate of Ascertainment by December 14, [2020,] the date the Electoral College meets" (*id.* ¶ 73). Last, Plaintiffs point out that the United States Code, 3 U.S.C. § 5, provides that if election results are contested in any state, and if the state, prior to election day, has enacted procedures to settle controversies or contests over electors and electoral votes, and if these procedures have been applied, and the results have been determined six days before the electors' meetings, then these results are considered to be conclusive and will apply in the counting of the electoral votes (*id.* ¶ 74). Plaintiffs represent that this date—the "Safe Harbor" deadline—falls on December 8, 2020 (*id.*). However, despite setting forth these looming deadlines and despite having

characterized their pleading as one requiring "emergency" relief, Plaintiffs have, to date, neither served their Complaint on Defendants nor filed any motions for immediate injunctive relief.

On Saturday, November 14, 2020, the Michigan State Conference NAACP (NAACP–MI), Wendell Anthony, Yvonne White, and Andre Wilkes filed their Motion to Intervene (ECF No. 6). That same day, the Democratic National Committee (DNC) and the Michigan Democratic Party (MDP) filed their Motion to Intervene (ECF No. 10), attaching, in pertinent part, a proposed Pre-Motion Conference Request (ECF No. 10-1) and a proposed Motion to Dismiss pursuant to FED. R. CIV. P. 12(b)(1) and (6) (ECF No. 10-3). On Monday, November 16, 2020, the City of Detroit filed a Motion to Intervene (ECF No. 14), indicating that it also intends to move to dismiss Plaintiffs' Complaint if intervention is granted (*id.* at PageID.656). As noted, Plaintiffs have not opposed the motions to intervene.

II

Intervention is governed by Federal Rule of Civil Procedure 24. Rule 24(a) provides in pertinent part that on timely motion, the court "must permit" anyone to intervene who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." FED. R. CIV. P. 24(a)(2). Under Rule 24(b), the court "may" permit anyone to intervene who files a timely motion and "has a claim or defense that shares with the main action a common question of law or fact," provided "the court ... consider[s] whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." FED. R. CIV. P. 24(b).

There is no question that the proposed intervenors' motions, filed within a matter of only a few days after Plaintiffs initiated this case, are timely. Further, as set forth in their motions and

which are unopposed by Plaintiffs, the proposed intervenors have substantial legal interests in the subject matter of this case. The Court determines that the distinct interests of these proposed intervenors may be impaired absent intervention and that these interests may not be adequately represented by the parties already before the Court.

Even assuming arguendo that granting intervention as of right under Rule 24(a) is not appropriate, the Court, in its discretion, grants the proposed intervenors' motions under Rule 24(b). Granting permissive intervention to these movants will certainly not delay or prejudice the adjudication of the original parties' rights, particularly where Plaintiffs have yet to serve the named Defendants. Additionally, as set forth more fully in their respective motions to intervene, the proposed intervenors seek to assert defenses that squarely address the factual and legal premise of Plaintiffs' claims. In sum, the motions to intervene are properly granted. Further, the Court will issue a briefing schedule on the motion to dismiss proposed by the Democratic National Committee and the Michigan Democratic Party, without the usual in-chambers conference, and will require service of Plaintiffs' Complaint on Defendants.

Therefore:

IT IS HEREBY ORDERED that the Motions to Intervene (ECF Nos. 6, 10 & 14) are GRANTED, and the movants may file responsive pleadings, motions and briefs on the same schedule as Defendants.

IT IS FURTHER ORDERED that Plaintiffs shall serve a copy of the Complaint and summons upon Defendants not later than 5:00 p.m. on Tuesday, November 17, 2020, and timely file proof of service of the same. Failure to timely serve Plaintiffs may provide the Court justification to dismiss their "Complaint for Declaratory, Emergency and Permanent Injunctive Relief" for failure to diligently prosecute this case.

IT IS FURTHER ORDERED that the Clerk of the Court shall ACCEPT the proposed Motion to Dismiss of the Democratic National Committee and the Michigan Democratic Party (ECF No. 10-3) ("the Motion to Dismiss") for docketing.

IT IS FURTHER ORDERED that any concurrences in the Motion to Dismiss shall be filed not later than 12:00 noon on Wednesday, November 18, 2020.

IT IS FURTHER ORDERED that Plaintiffs' response to the Motion to Dismiss shall be filed not later than 5:00 p.m. on Thursday, November 19, 2020.

IT IS FURTHER ORDERED that replies, if any, to Plaintiffs' Response shall be filed not later than 5:00 p.m. on Friday, November 20, 2020.

IT IS FURTHER ORDERED that the parties shall adhere to this Court's Local Civil Rule 10.9 when referencing a page of the record. *See* W.D. Mich. LCivR 10.9.

IT IS FURTHER ORDERED that Intervenors-Defendants Democratic National Committee and Michigan Democratic Party shall provide chambers with one three-ring binder containing single-sided paper courtesy copies of the respective dispositive motion papers, including their Motion to Dismiss, any concurrences, the response, any replies, and any exhibits, after electronic filing (i.e., with the CM-ECF PageID header), and properly tabbed. The binder shall be submitted to the Clerk's Office.

IT IS FURTHER ORDERED that the time for Defendants to file their answers/responsive pleadings to the Complaint is extended until fourteen days after the Court's decision on the Motion to Dismiss, or further Order of the Court.

Dated: November 17, 2020

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge