

## Residency of Opposing Candidates

*McCormick v. Wayne County Election Commission*

(Arthur J. Tarnow, E.D. Mich. 2:14-cv-12016)

Two and one-half months in advance of an August 5, 2014, primary election, a candidate for the Wayne County Commission filed a pro se federal complaint in the Eastern District of Michigan seeking exclusion from the ballot of two other candidates, including the incumbent, for providing fraudulent voter registration addresses.<sup>1</sup> Although Judge Arthur J. Tarnow granted the plaintiff a fee waiver,<sup>2</sup> he declined her request to appoint counsel.<sup>3</sup> Three days after filing the complaint, the plaintiff moved for a temporary restraining order against the printing of the ballots.<sup>4</sup>

Five days later, the incumbent sought intervention,<sup>5</sup> which Judge Tarnow ultimately granted.<sup>6</sup> Judge Tarnow held a hearing that day, May 28, and continued the hearing until June 3.<sup>7</sup> Judge Tarnow determined that the only substantive issues immediately time sensitive were the residencies of the two candidates opposing the plaintiff.<sup>8</sup> On the day before the continued hearing, Judge Tarnow overruled the defendants' challenge to the court's jurisdiction:

Michigan law provides that candidates for Wayne County Commissioner must reside in the district they are running to represent for thirty days prior to seeking office and throughout the term of their office. If Defendant Wayne County Election Commission is refusing to enforce that law, it is violating Plaintiff's federal due process rights.<sup>9</sup>

At the evidentiary hearing, the plaintiff was represented by counsel,<sup>10</sup> and the plaintiff's pro se status otherwise did not present the court with difficulties.<sup>11</sup> Because the plaintiff was unable to show that her opposing candidates did not live at their voter-registration addresses,<sup>12</sup> Judge Tarnow denied the plaintiff a temporary restraining order.<sup>13</sup>

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1. [Complaint](#), *McCormick v. Wayne Cnty. Election Comm'n*, No. 2:14-cv-12016 (E.D. Mich. May 20, 2014), D.E. 1; see [Amendment](#), *id.* (May 22, 2014), D.E. 9; see *Opponent Challenges Leland's Residency in West-Side Detroit*, Detroit Free Press, Apr. 29, 2014, at A4.

2. [Order](#), *McCormick*, No. 2:14-cv-12016 (E.D. Mich. May 21, 2014), D.E. 5.

3. [Order](#), *id.* (May 22, 2014), D.E. 10.

Tim Reagan interviewed Judge Tarnow for this report by telephone on May 4, 2015.

4. [Motion](#), *McCormick*, No. 2:14-cv-12016 (E.D. Mich. May 23, 2014), D.E. 15.

5. [Intervention Motion](#), *id.* (May 28, 2014), D.E. 24.

6. [Injunction Denial](#) at 5, *id.* (June 5, 2014), D.E. 32, available at [2014 WL 2533168](#).

7. [Docket Sheet](#), *id.* (May 20, 2014).

8. [Order Narrowing Scope](#), *id.* (May 30, 2014), D.E. 26; see [Order](#), *id.* (June 2, 2014), D.E. 28 (quashing a subpoena for records irrelevant to the time period relating to the plaintiff's claims).

9. [Opinion](#) at 3, *id.* (June 2, 2014), D.E. 30, available at [2014 WL 2452955](#).

10. [Transcript](#) at 1, *id.* (June 3, 2014, filed June 9, 2014), D.E. 36.

11. Interview with Hon. Arthur J. Tarnow, May 4, 2015.

12. [Transcript](#), *supra* note 10, at 83–85.

13. [Injunction Denial](#), *supra* note 6; see [Order](#), *McCormick*, No. 2:14-cv-12016 (E.D. Mich. June 13, 2014), D.E. 38 (denying reconsideration); see also Tresa Baldas, *Wayne Commissioner Leland to Stay on August Primary Ballot, Judge Rules*, Detroit Free Press, June 3, 2014.

After the election, Judge Tarnow dismissed the action.<sup>14</sup>

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In election litigation initiated before an election, Judge Tarnow keeps in mind that voters will have a chance to weigh in on controversial issues. Interview with Hon. Arthur J. Tarnow, May 4, 2015.

14. [Order](#), *McCormick*, No. 2:14-cv-12016 (E.D. Mich. Nov. 5, 2014), D.E. 41.