

Withdrawn Efforts to Enjoin Certification of 2020 Presidential Election Results in Michigan

*Donald J. Trump for President v. Benson (1:20-cv-1083),
Bally v. Whitmer (1:20-cv-1088), and Johnson v. Benson
(1:20-cv-1098) (Janet T. Neff, W.D. Mich.)*

Three federal lawsuits filed to enjoin certification of 2020 presidential election results in Michigan were withdrawn soon after they were filed. In one, the district judge ruled on intervention motions and a motion to strike a false statement in the voluntary-dismissal notice.

Subject: Voting irregularities. *Topics:* Enjoining certification; intervention; election errors; special master.

Three federal lawsuits challenging the 2020 presidential-election results in Michigan were withdrawn days after they were filed.

Wayne County

President Trump’s reelection campaign and seven voters filed a federal complaint in the Western District of Michigan on Wednesday, November 11, 2020, against Michigan and Wayne County election officials alleging various improprieties in the casting of ballots in Wayne County in the 2020 general election.¹ On the next day, the court assigned the case to Judge Janet T. Neff.²

On Monday, Judge Neff ordered responses filed that afternoon³ to intervention motions by Detroit that day,⁴ by the Democratic Party on Saturday,⁵ and by a collection of other proposed litigants on Friday.⁶ The plaintiffs filed a notice that they did not oppose any of the intervention motions,⁷ and Judge Neff granted the motions on Tuesday.⁸ She ordered briefing on the Democratic Party’s motion to dismiss the case completed by November 20.⁹

1. Complaint, *Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-1083 (W.D. Mich. Nov. 11, 2020), D.E. 1; see Emily Bazelon, *The Trump Campaign Has Filed 16 Lawsuits Contesting the Election*, N.Y. Times, Nov. 16, 2020, at A16 (reporting that attached affidavits from poll challengers “described isolated grievances and perceived irregularities, not systematic fraud”); Beth LeBlanc, *Trump Campaign Has Yet to Serve Benson with Suit*, Detroit News, Nov. 18, 2020, at A6 (reporting that the “initial filing in federal court last week was filed accidentally in the U.S. Court of Federal Claims instead of Michigan’s Western U.S. District Court”).

2. Notice, *Donald J. Trump for President, Inc.*, No. 1:20-cv-1083 (W.D. Mich. Nov. 12, 2020), D.E. 4.

3. Orders, *id.* (Nov. 16, 2020), D.E. 13, 18.

4. Intervention Motion, *id.* (Nov. 16, 2020), D.E. 14.

5. Intervention Motion, *id.* (Nov. 13, 2020), D.E. 6.

6. Intervention Motion, *id.* (Nov. 14, 2020), D.E. 10; see Paul Egan & Clara Hendrickson, *Trump Legal Efforts Failing at Election Challenges*, Detroit Free Press, Nov. 15, 2020, at A18.

7. Notice, *Donald J. Trump for President, Inc.*, No. 1:20-cv-1083 (W.D. Mich. Nov. 16, 2020), D.E. 19.

8. Opinion, *id.* (Nov. 17, 2020), D.E. 20, 2020 WL 857863.

9. *Id.* at 6; see Motion, *id.* (Nov. 17, 2020), D.E. 21; see also Concurrences, *id.* (Nov. 18, 2020), D.E. 29 to 31.

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The plaintiffs dismissed their case voluntarily on November 19, stating, “The Wayne County board of county canvassers met and declined to certify the results of the presidential election.”¹⁰ Detroit moved to strike the dismissal as containing “immaterial, impertinent and false language” respecting the certification: “The affidavits and the impertinent text in the Notice were submitted for an improper purpose: to make a gratuitous, public statement about their purported reason for voluntary dismissal, before the Court could reject their baseless claims of election fraud.”¹¹ The plaintiffs responded six days later that the motion “is not proper and is [a] nullity that requires no further action by this Court.”¹² Judge Neff denied the motion:

This unique case, while dismissed only eight days after it started, arises from a national election of great public interest and has been rife with “public statements” since its inception, both gratuitous and otherwise. With the filing of its motion, the City of Detroit’s factual position is part of the court record, and the Court, in its discretion, declines to impose the requested sanction.¹³

Three Michigan Counties

A second federal complaint filed in the Western District on November 11 sought exclusion of presidential-election results from “key counties”—Ingham, Washtenaw, and Wayne—because of “sufficient evidence to place in doubt [their] November 3 presidential-election results.”¹⁴ The plaintiffs were four voters, and the defendants were state and county election officials.¹⁵ On the following day, the plaintiffs filed a motion for “an expedited schedule, expedited discovery, and an expedited hearing on the merits of the Verified Complaint.”¹⁶ On the case’s third day, the plaintiffs filed a notice that the case was related to the other case before Judge Neff,¹⁷ to whom the court assigned the second case.¹⁸

10. Notice, *id.* (Nov. 19, 2020), D.E. 33; see Dave Boucher, *Trump Campaign Withdraws Federal Lawsuit in Michigan*, Detroit Free Press, Nov. 20, 2020, at A7 (reporting that the Trump campaign “incorrectly characteriz[ed] the actions of the Wayne County Board of Canvassers as its rationale for the decision”).

Regarding the statement about Wayne County as incorrect, the *Detroit Free Press* reported, “The board did certify results, but two commissioners filed affidavits with this lawsuit indicating they wanted to flip their votes.” Dave Boucher, Paul Egan & Clara Hendrickson, *Courts Reject Claims of Fraud, Misconduct in Legal Challenges*, Detroit Free Press, Dec. 13, 2020, at A11; see Paul Egan, *GOP Members: Rescind Wayne Certification*, Detroit Free Press, Nov. 20, 2020, at A7; see also Beth LeBlanc, Francis X. Donnelly & Craig Mauger, *Wayne Co. Votes OK’d After Initial Deadlock*, Detroit News, Nov. 18, 2020, at A11.

11. Motion, *Donald J. Trump for President, Inc.*, No. 1:20-cv-1083 (W.D. Mich. Nov. 19, 2020), D.E. 34.

12. Response, *id.* (Nov. 25, 2020), D.E. 38.

13. Opinion, *id.* (Dec. 1, 2020), D.E. 40.

14. Complaint at 9, *Bally v. Whitmer*, No. 1:20-cv-1088 (W.D. Mich. Nov. 11, 2020), D.E. 1 [hereinafter *Bally* Complaint]; see Egan & Hendrickson, *supra* note 6.

15. *Bally* Complaint, *supra* note 14.

16. Motion, *Bally*, No. 1:20-cv-1088 (W.D. Mich. Nov. 12, 2020), D.E. 3.

17. Notice, *id.* (Nov. 13, 2020), D.E. 6.

18. Notice, *id.* (Nov. 13, 2020), D.E. 7.

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The third set of intervenors in the first case moved to intervene in the second case on Friday, November 14.¹⁹ On Monday, Judge Neff ordered plaintiffs to respond to the motion that day.²⁰ The plaintiffs voluntarily dismissed their case instead.²¹

Special Master

Four days after the other cases were filed, a third case was filed in the Western District by two voters against Michigan’s secretary of state and the chair of Michigan’s board of state canvassers.²² Among the requested relief was an injunction against Michigan’s “certifying the election results and declaring winners of the 2020 general election until a special master can be appointed to review and certify the legality of all absentee ballots ordered through the Secretary of State’s absentee ballot scheme.”²³ Two days later, the court assigned the case to Judge Neff.²⁴

On the day after that, the Democratic Party²⁵ and the set of intervenors who had sought intervention in the first two cases²⁶ sought intervention in this case. The plaintiffs voluntarily dismissed the complaint that day.²⁷

19. Intervention Motion, *id.* (Nov. 14, 2020), D.E. 10.

20. Order, *id.* (Nov. 16, 2020), D.E. 13.

21. Voluntary-Dismissal Notice, *id.* (Nov. 16, 2020), D.E. 14; *see* Boucher, *supra* note 10.

22. Complaint, Johnson v. Benson, No. 1:20-cv-1098 (W.D. Mich. Nov. 15, 2020), D.E. 1.

23. *Id.* at 25.

24. Notice, *id.* (Nov. 17, 2020), D.E. 4.

25. Intervention Motion, *id.* (Nov. 18, 2020), D.E. 6.

26. Intervention Motion, *id.* (Nov. 18, 2020), D.E. 9.

27. Voluntary-Dismissal Notice, *id.* (Nov. 18, 2020), D.E. 12; *see* Boucher, *supra* note 10.