

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT DAVIS, VENIAS JORDAN
And LEIGH REED-PRATT,

Case No. 2:20-cv-12127
Hon. Nancy G. Edmunds

Plaintiff,

vs.

WAYNE COUNTY BOARD OF CANVASSERS,

Defendant,

and

KYM WORTHY,

Intervenor-Defendant.

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**WAYNE COUNTY'S ANSWER TO MOTION TO EXPEDITE
BRIEFING, SCHEDULING AND ADJUDICATION OF EMERGENCY
MOTION FOR SUMMARY JUDGMENT (ECF 35)**

Wayne County Board of Canvassers (“BOC”) asks this Court to deny the request to expedite a briefing schedule for summary disposition as to Count IX as this matter duplicates litigation currently pending in the Michigan state courts. Moreover, Wayne County has filed a Motion To Dismiss all counts. An expedited briefing schedule would not allow Wayne County to adequately advise the Court of the issues such that the Court may reach a reasoned decision. The BOC needs an opportunity to fully advise this court as this court lacks subject matter jurisdiction and the matter is subject to the following defenses:

1. This court does not have jurisdiction as the matter is now moot because the Board has already certified the August Primary Election results.
2. The claims are barred by *Rooker Feldman* as the case is an attempted appeal of state court judgments. Under the *Rooker Feldman* doctrine, lower federal courts lack subject matter jurisdiction to engage in appellate review of state court proceedings. *Rooker v Fid Trust Co*, 263 US 413; 44 S Ct 149 (1923); *D.C. Court of Appeals v Feldman*, 460 US 462; 103 S Ct 1303 (1983).
3. *Burford v. Sun Oil Co.*, 319 US 315 (1943) requires that this court abstain from exercising jurisdiction and dismiss this case because adequate state-court review is available. A federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are "difficult questions of state law bearing on policy problems of

substantial public import whose importance transcends the result in the case then at bar"; or (2) where the "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern. *New Orleans Pub Serv, Inc v Council of City of New Orleans*, 491 U.S. 350, 361; 109 S. Ct. 2506 (1989).

4. Because of pending matters *Colorado River* mandates abstention. Count IX is currently the subject of dispute in *In Re Anders*, Court of Appeals for the Sixth Circuit No. 20-1880.
5. There is no case or controversy and the BOC has not violated any of Plaintiffs' rights under 42 U.S.C. § 1983. Plaintiffs can not show that the BOC deprived them of a constitutional right.
6. Plaintiffs have no standing to bring this action as they have not alleged a concrete injury caused by the BOC.
7. Plaintiffs fail to state a Fifth Amendment due process claim because they do not have a constitutionally protected liberty interest.
8. Count IX is a state claim and this court should exercise its discretion and decline supplemental jurisdiction over the state claim.

CONCLUSION

WHEREFORE, Wayne County Board of Canvassers respectfully requests that the Court deny the Motion To Expedite Briefing, Scheduling And Adjudication Of Emergency Motion For Summary Judgment.

Respectfully submitted,

BY: /s/ Janet Anderson Davis
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CERTIFICATE OF SERVICE

I certify that on September 16, 2020, I filed a copy of the *foregoing* and this *Certificate of Service* with the Clerk of the Court using the electronic filing system, which will send electronic notification of this filing to all parties.

/s/ Janet Anderson Davis
JANET ANDERSON DAVIS (P29499)