

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

ROBERT DAVIS and,  
SHANE ANDERS

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

Plaintiffs,

vs.

WAYNE COUNTY BOARD OF CANVASSERS,

Defendant,

and

KYM WORTHY,

Proposed Intervenor-Defendant.

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**WAYNE COUNTY BOARD OF CANVASSERS RESPONSE TO MOTION  
FOR AN ORDER STAYING THE DESTRUCTION OF ABSENTEE  
BALLOTS CAST AND USED IN AV VOTING PRECINCT #23 IN THE  
CITY OF DEARBORN PURSUANT TO MICH COMP LAWS §168.811  
(ECF 42) AND MOTION TO EXPEDITE BRIEFING SCHEDULE (ECF 43)**

Wayne County Board of Canvassers through its attorneys Janet Anderson-Davis, Lead Attorney, asks this Court to deny the motion for stay and motion to expedite briefing schedule for the following reasons:

1. MCL §168.875 provides that after a recount the ballots are returned to the local clerk.
2. Per the attached affidavit of Gregory Mahar, Director of Elections, Wayne County returned the absent voter ballots for Dearborn Precinct 23 to the City of Dearborn on September 4, 2020. Exhibit 1.
3. Wayne County no longer has the absent voter ballots for Dearborn Precinct 23.
4. 52 USC §20701 provides that:

Every **officer of election shall retain** and preserve, **for a period of twenty-two months** from the date of any general, special, or primary election **of which candidates for the office of** President, Vice President, presidential elector, **Member of the Senate**, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, **all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election**, except that, when required by law, such records and papers may be delivered

to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

5. The Secretary of State is the chief elections director for the state of Michigan. The Secretary of State issued the attached Memorandum dated August 26, 2020, in which she directed that ballots with federal offices must be retained for 22 months. Exhibit 2.
6. The absent voter ballots for Dearborn Precinct 23 include the office of United States Senator. Those ballots should be retained by the City of Dearborn for 22 months.
7. It is not necessary for this court to issue a stay of the destruction of the absent voter ballots for Dearborn Precinct 23.

Wherefore, the Wayne County Board of Canvassers requests that this Honorable Court deny both the Motion For An Order Staying The Destruction Of Absentee Ballots Cast And Used In AV Voting Precinct #23 In The City Of Dearborn Pursuant To Mich Comp Laws §168.811 and the Motion To Expedite, Briefing, Scheduling, And Adjudication Of Plaintiffs' Emergency Motion For An

Order Staying The Destruction Of absentee Ballots Cast And Used In AV Voting  
Precinct #23 In The City Of Dearborn Pursuant To Mich Comp Laws §168.811.

Respectfully submitted,

BY: /s/Janet Anderson Davis  
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Dated: September 18, 2020

**CERTIFICATE OF SERVICE**

I certify that on September 18, 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)