STATE OF MICHIGAN
IN THE COURT OF APPEALS

DONALD J. TRUMP, **Plaintiff,** **V** **MICHIGAN BOARD OF STATE CANVASSERS and CHRISTOPHER THOMAS, Director of Elections, in his official capacity,** **Defendants.**	**Court of Appeals No. _____** **MOTION FOR IMMEDIATE CONSIDERATION, TO EXPEDITE PROCEEDINGS, TO STAY THE RECOUNT, AND TO WAIVE REQUIREMENTS OF MCR 7.209(A)(2) AND MCR 7.209(A)(3)**

Gary P. Gordon (P26290)
Jason T. Hanselman (P61813)
Dykema Gossett, PLLC
Attorneys for Donald J. Trump
201 Townsend Street, Suite 900
Lansing, MI 48933
(517) 374-9100

Denise Barton (P41535)
Assistant Attorney General
Michigan Department of Attorney General
525 W. Ottawa Avenue
G. Mennen Williams Bldg.
Lansing, MI 48933
(517) 373-6434

Mark Brewer (P35661)
Goodman Acker PC
Attorneys for Jill Stein for President
17000 W 10 Mile Rd Fl 2
Southfield, MI 48075-2923

Donald F. McGahn II
Counsel
Donald J. Trump for President, Inc.
51 Louisiana Ave., N.W.
Washington, D.C. 200001-2113
(202) 879-3939

Chad A. Readler
Jones Day
Attorney for Donald J. Trump
325 John H. McConnell Blvd., Suite 600
Columbus, OH, 43221
(614) 469-3939
Pro hac vice application pending

Eric E. Doster (P41782)
Doster Law Offices, PLLC
Attorney for Donald J. Trump
2145 Commons Parkway
Okemos, MI 48864
(517) 483-2296

John D. Pirich (P23204)
Honigman Miller Schwartz and Cohn LLP
Attorneys for Donald J. Trump
222 North Washington Square, Suite 400
Lansing, Michigan 48933
(517) 377-0712

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•CAPITOL VIEW, 201 TOWNSEND STREET, SUITE 900•LANSING, MICHIGAN 48933

RECEIVED by MCOA 12/2/2016 3:36:35 PM

MOTION FOR IMMEDIATE CONSIDERATION TO EXPEDITE PROCEEDINGS, TO STAY THE RECOUNT, AND TO WAIVE REQUIREMENTS OF MCR 7.209(A)(2) AND MCR 7.209(A)(3)

President-Elect Donald J. Trump ("Trump"), through his attorneys, moves this Court for immediate consideration of Trump's Complaint for Mandamus, filed simultaneously with this Motion, to expedite proceedings on the Complaint for Mandamus, and to stay the statewide recount of all 4,799,284 presidential votes cast in Michigan (the "Recount"). In support of this Motion, Trump states as follows:

1. On November 28, 2016, the Michigan Board of State Canvassers (the "Board") certified the results of the presidential election in Michigan. The final vote tallies included 2,279,543 votes for Trump; 2,268,839 votes for Democratic Party candidate Hillary Clinton; 172,136 votes for Libertarian Party candidate Gary Johnson; and 51,463 votes for Green Party candidate Dr. Jill Stein ("Stein").

2. That same day, despite no recount petition having been submitted to the Secretary of State, the Board preemptively authorized Michigan's Director of Elections Christopher Thomas (the "Director") to represent the Board in any recount of votes cast at the November 8, 2016 general election. The Bureau of Elections subsequently announced that any statewide presidential recount would be conducted by hand count.

3. Pursuant to that directive, the Director notified all 83 Michigan county clerks to begin preparing for a recount.

4. On November 30, 2016, Stein filed a petition for recount (the "Recount Petition") with the Secretary of State pursuant to MCL 168.879(1), requesting that "all of the precincts and absent voter counting board (AVCB) precincts within the State of Michigan be recounted by hand count."

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•CAPITOL VIEW, 201 TOWNSEND STREET, SUITE 900•LANSING, MICHIGAN 48933

RECEIVED by MCOA 12/2/2016 3:36:35 PM

5. The Recount Petition alleges only that Stein was "aggrieved on account of fraud or mistake in the canvass of the votes by the inspectors of election, and/or the returns made by the inspectors, and/or by the Board of County Canvassers, and/or by the Board of State Canvassers."

6. On December 1, 2016, Trump, through legal counsel, filed objections to the Recount Petition with the Board pursuant to MCL 168.882(3). The objections explained that, having lost to Trump by more than 2 million votes, Stein was not "aggrieved" under MCL 168.879(1), and that a statewide recount could not be completed in time for Michigan to have its Electoral College votes counted in accordance with 3 USC 5.

7. Also on December 1, 2016, Stein's counsel filed a response to Trump's objections.

8. On December 2, 2016, the Board deadlocked, voting 2-2, on approving the Recount Petition. As a result, the Recount Petition was deemed approved and preparations have begun around the State for the Recount, which will commence on December 6, 2016.

9. At that hearing, Trump's counsel requested a stay of proceedings pending appeal, however that request was neither approved nor denied. *See* Gary Gordon Affidavit attached as Exhibit 1.

10. Hours after the Board approved the Recount Petition, Trump filed the instant appeal.

11. Given the compressed time line involved in this case, Trump respectfully requests that this Court immediately consider his Emergency Complaint for Mandamus for Leave to Appeal, to expedite proceedings on his Emergency Complaint for Mandamus for Leave to Appeal, and to stay the statewide presidential recount. If the Bureau of Elections moves forward

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•CAPITOL VIEW, 201 TOWNSEND STREET, SUITE 900•LANSING, MICHIGAN 48933

RECEIVED by MCOA 12/2/2016 3:36:35 PM

with the recount, it will waste the State's scarce resources, create a logistical nightmare for counties across the State, and assure that Michigan's Electoral College voters will not be counted.

12. Trump will serve this motion by personal service and file a proof of service showing the same. Accordingly, and pursuant to MCR 7.311(E), this motion may be submitted to the Court immediately upon filing.

13. Trump also moves this Court to waive the requirements of MCR 7.209(A)(2) and 7.209(A)(3). MCR 7.209(A)(2) and (A)(3) require a motion to have been decided by the trial court (and for the decision and transcript to be attached to the motion) before such a motion may be made to this Court. For a number of reasons, this requirement should be waived in this instance. First, Trump filed an original action before the Court of Appeals for a writ of mandamus; there is no trial court in this case. And even if the Court of Appeals would be considered the trial court, the unique and time-sensitive nature of this case demands that no time be wasted. Trump has filed a bypass application with this Court, asking this Court to take this case up before the Court of Appeals' decision; it only makes sense that this Court also address this Motion. As a result, Trump respectfully requests that this Court waive the requirements of MCR 7.209(A)(2) and 7.209(A)(3) and immediately consider this Motion.

WHEREFORE, for the reasons stated above, Trump requests that the Court grant this Motion for Immediate Consideration of his Emergency Complaint for Mandamus, to Expedite Proceedings related to the Emergency Complaint for Mandamus, to Stay the Recount, and waive the requirements of MCR 7.209(A)(2) and MCR 7.209(A)(3), and immediately consider this Motion.

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•CAPITOL VIEW, 201 TOWNSEND STREET, SUITE 900•LANSING, MICHIGAN 48933

RECEIVED by MCOA 12/2/2016 3:36:35 PM

Respectfully submitted,

Dated: December 2, 2016

/s/Gary G. Gordon
Gary P. Gordon (P26290)
Jason T. Hanselman (P61813)
DYKEMA GOSSETT PLLC
Attorneys for Donald J. Trump
201 Townsend Street, Suite 900
Lansing, MI 48933
Telephone: (517) 374-9133

Eric E. Doster (P41782)
DOSTER LAW OFFICES, PLLC
Attorney for Donald J. Trump
2145 Commons Parkway
Okemos, MI 48864
Telephone: (517) 977-0147

Donald F. McGahn II
Counsel
Donald J. Trump for President, Inc.
51 Louisiana Ave., N.W.
Washington, D.C. 200001-2113
(202) 879-3939

Chad A. Readler
JONES DAY
Attorney for Donald J. Trump
325 John H. McConnell Blvd., Suite 600
Columbus, OH, 43221
(614) 469-3939
Pro hac vice application pending

John D. Pirich (P23204)
HONIGMAN MILLER SCHWARTZ COHN
Attorney for Donald J. Trump
222 North Washington Square Suite 400
Lansing, MI 48933
Telephone: (517) 377-0712

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•CAPITOL VIEW, 201 TOWNSEND STREET, SUITE 900•LANSING, MICHIGAN 48933

RECEIVED by MCOA 12/2/2016 3:36:35 PM