

## Denied Temporary Restraining Order Prohibiting Destruction of Election Evidence Without a Complaint or Evidence

*Leaf v. Whitmer (Robert J. Jonker, W.D. Mich. 1:20-cv-1169)*

A district judge denied an application for a temporary restraining order against Michigan election officials' destruction of election evidence after the 2020 general election. On the one hand, it was not clear that a valid case had been filed, because there was no complaint. On the other hand, the application asked the court to make speculative inferences without foundations.

*Subject:* Voting irregularities. *Topics:* Election errors; absentee ballots.

In the Western District of Michigan on December 6, 2020, seven Republican-nominated 2020 presidential electors for Michigan and Barry County's sheriff filed an application for a temporary restraining order requiring Michigan's election officials not to "destroy or delete . . . election data, instruments, machines, and materials."<sup>1</sup> The plaintiffs filed two additional slightly altered copies of their motion on the same and next days.<sup>2</sup> On December 7, the court filed a notice that the case had been assigned to Judge Robert J. Jonker and the filing fee was still due.<sup>3</sup>

Judge Jonker denied the plaintiffs relief on the case's second day: "For one thing, it is not clear to the Court whether Plaintiffs have even commenced an action" because the record did not include a complaint.<sup>4</sup> In addition,

Plaintiffs' Applications invite the Court to make speculative leaps towards a hazy and nebulous inference that there has been numerous instances of election fraud and that Defendants are destroying the evidence. There is simply nothing of record to infer as much, much less conclude that irreparable injury will occur before the defendants can be heard.<sup>5</sup>

Judge Jonker issued an order on January 22, 2021, that the plaintiffs show cause why the matter should not be dismissed for failure to prosecute it,<sup>6</sup> and the plaintiffs filed a notice of voluntary dismissal on February 6.<sup>7</sup>

---

1. Temporary-Restraining-Order Motion at 10, *Leaf v. Whitmer*, No 1:20-cv-1169 (W.D. Mich. Dec. 6, 2020), D.E. 1.

2. Temporary-Restraining-Order Motions, *id.* (Dec. 6 and 7, 2020), D.E. 2, 3.

3. Notice, *id.* (Dec. 7, 2020), D.E. 4.

4. Opinion at 2, *id.* (Dec. 7, 2020), D.E. 5, 2020 WL 12698016.

5. *Id.* at 2-3; see Dave Boucher, Paul Egan & Clara Hendrickson, *Courts Reject Claims of Fraud, Misconduct in Legal Challenges*, Detroit Free Press, Dec. 13, 2020, at A11; Paul Egan, *Federal Judge Rips Court Filing from Sheriff*, Detroit Free Press, Dec. 9, 2020, at A6; Craig Mauger, *Michigan Sheriff's Conspiracy-Laden Election Suit Stalls*, Detroit News, Dec. 9, 2020, at A5.

6. Order, *Leaf*, No. 1:20-cv-1169 (W.D. Mich. Jan. 22, 2021), D.E. 6.

7. Dismissal Notice, *id.* (Feb. 6, 2021), D.E. 8.