

Residency of Opposing Candidates

McCormick v. Wayne County Election Commission (Arthur J. Tarnow, E.D. Mich. 2:14-cv-12016)

Two and one-half months before a primary election for a county commission, a candidate filed a pro se federal complaint seeking exclusion from the ballot of two other candidates for failure to actually live in the district. At an evidentiary hearing, during which the plaintiff was represented by counsel, the plaintiff was not able to establish fraudulent residency, so the court denied her a preliminary injunction.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; registration challenges; primary election; pro se party; intervention.

Two and one-half months before an August 5, 2014, primary election, a candidate for Wayne County's commission filed a pro se federal complaint in the Eastern District of Michigan seeking exclusion from the ballot of two other candidates, including the incumbent, for providing fraudulent voter-registration addresses¹ Although Judge Arthur J. Tarnow granted the plaintiff a fee waiver,² he declined her request to appoint counsel.³ Three days after filing the complaint, the plaintiff moved for a temporary restraining order against the printing of the ballots.⁴

Five days later, the incumbent sought intervention,⁵ which Judge Tarnow ultimately granted.⁶ Judge Tarnow held a hearing that day, May 28, and continued the hearing until June 3.⁷ He determined that the only substantive issues immediately time sensitive were the residencies of the two candidates opposing the plaintiff.⁸ On the day before the continued hearing, Judge Tarnow overruled the defendants' challenge to the court's jurisdiction:

Michigan law provides that candidates for Wayne County Commissioner must reside in the district they are running to represent for thirty days prior to seeking office and throughout the term of their office. If Defendant

1. Complaint, *McCormick v. Wayne Cty. Election Comm'n*, No. 2:14-cv-12016 (E.D. Mich. May 20, 2014), D.E. 1; *see* Amendment, *id.* (May 22, 2014), D.E. 9; *see also* *Opponent Challenges Leland's Residency in West-Side Detroit*, Detroit Free Press, Apr. 29, 2014, at A4.

2. Order, *McCormick*, No. 2:14-cv-12016 (E.D. Mich. May 21, 2014), D.E. 5.

3. Order, *id.* (May 22, 2014), D.E. 10.

Tim Reagan interviewed Judge Tarnow for this report by telephone on May 4, 2015. Judge Tarnow died on January 21, 2022. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

4. Motion, *McCormick*, No. 2:14-cv-12016 (E.D. Mich. May 23, 2014), D.E. 15.

5. Intervention Motion, *id.* (May 28, 2014), D.E. 24.

6. Injunction Denial at 5, *id.* (June 5, 2014), D.E. 32, 2014 WL 2533168.

7. Docket Sheet, *id.* (May 20, 2014).

8. Order Narrowing Scope, *id.* (May 30, 2014), D.E. 26; *see* Order, *id.* (June 2, 2014), D.E. 28 (quashing a subpoena for records irrelevant to the time period relating to the plaintiff's claims).

Wayne County Election Commission is refusing to enforce that law, it is violating Plaintiff's federal due process rights.⁹

At the evidentiary hearing, the plaintiff was represented by counsel,¹⁰ and the plaintiff's pro se status otherwise did not present the court with difficulties.¹¹ Because the plaintiff was unable to show that her opposing candidates did not live at their voter-registration addresses,¹² Judge Tarnow denied the plaintiff a temporary restraining order.¹³

After the election, Judge Tarnow dismissed the action.¹⁴

9. Opinion at 3, *id.* (June 2, 2014), D.E. 30, 2014 WL 2452955.

10. Transcript at 1, *id.* (June 3, 2014, filed June 9, 2014), D.E. 36.

11. Interview with Hon. Arthur J. Tarnow, May 4, 2015.

12. Transcript, *supra* note 10, at 83–85.

13. Injunction Denial, *supra* note 6; *see* Order, *McCormick*, No. 2:14-cv-12016 (E.D. Mich. June 13, 2014), D.E. 38 (denying reconsideration); *see also* Tresa Baldas, *Wayne Commissioner Leland to Stay on August Primary Ballot, Judge Rules*, Detroit Free Press, June 3, 2014.

In election litigation initiated before an election, Judge Tarnow kept in mind that voters would have a chance to weigh in on controversial issues. Interview with Hon. Arthur J. Tarnow, May 4, 2015.

14. Order, *McCormick*, No. 2:14-cv-12016 (E.D. Mich. Nov. 5, 2014), D.E. 41.