

Appeal Nos. 10-4481, 11-3059, and 11-3060

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

TRACIE HUNTER, Committee to Elect Tracie M. Hunter for Judge,
Plaintiff – Appellee

**NORTHEAST OHIO COALITION FOR THE HOMELESS; OHIO
DEMOCRATIC PARTY,**
Intervenors – Appellees

v.

HAMILTON COUNTY BOARD OF ELECTIONS, et al.,
Defendants

and

JOHN WILLIAMS,
Intervenor – Appellant.

**INTERVENOR-APPELLANT JOHN WILLIAMS’
RESPONSE IN OPPOSITION TO
PLAINTIFF’S MOTION TO SHORTEN TIME TO ISSUE MANDATE**

Intervenor-Appellant John Williams respectfully requests that this Court deny Plaintiff’s motion to shorten time to issue mandate. Plaintiff has failed to show good cause as to why this Court should deviate from the Federal Rules of Appellate Procedure and its IOP that provide for issuance of the mandate in due course 21 days from judgment on the appeal. Fed. R. App. Proc. 41 (b); Sixth Cir. IOP R. 41(a). The trial court’s original stay of the date for final certification of the

election results in this case is still in effect and was not and has not been contested by any party. (Doc. 47 Order Enjoining Board from Complying with Statutory Deadline). As this Court indicated, the court seat at issue is currently being filled by a temporary judge and this Court noted in its opinion that the controversy in this case only directly implicates the judicial race at issue, not any additional races. *Hunter v. Hamilton Cty. Bd. Of Elections*, No. 10-4481; 11-3059/3060, slip op. at 31, 36 (6th Cir. January 27, 2011).

Moreover, Intervenor John Williams is considering whether to request panel rehearing and/or rehearing en banc. The rules contemplate that such a petition be filed within 14 days of judgment—giving any potential applicant ample time to consider whether such a request is warranted given the strict criteria that must be met. Fed. R. App. Proc. 40(a). Plaintiff's request to shorten the time to issue the mandate was filed less than 24 hours after the opinion was issued.

If Mr. Williams decides to file such a request for panel rehearing and/or en banc review, that request would automatically stay the mandate until the request is ruled upon by this Court. Fed. R. App. Proc. 41(d)(1); Sixth Cir. IOP R. 41(b). If this Court were to grant Plaintiff's motion and issue the mandate and if Mr. Williams were to file a rehearing request, presumably this Court would need to recall the mandate in order to comply with Rule 41. A different result would put at risk Mr. Williams' (and the Defendant's for that matter) rights to request rehearing.

Respectfully submitted,

/s/ John B. Nalbandian

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed on January 31, 2011 using the Court's CM/ECF system, which will transmit notice of the filing to all counsel of record in this case.

/s/ John B. Nalbandian

John B. Nalbandian