

STATE OF MICHIGAN
BOARD OF STATE CANVASSERS

In re Petition for Recount for the)
Office of President of the United)
States of America)
)

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DONALD J. TRUMP AND DONALD J. TRUMP FOR PRESIDENT, INC.'S
OBJECTIONS TO DR. JILL STEIN'S RECOUNT PETITION

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OBJECTIONS TO DR. JILL STEIN'S RECOUNT PETITION

NOW COMES Donald J. Trump and Donald J. Trump for President, Inc., by and through their attorneys, in support of these Objections to the Petition for Recount filed by Green Party presidential candidate Dr. Jill Stein, stating as follows:

INTRODUCTION

Green Party presidential Candidate Dr. Jill Stein received barely 1 percent of the vote in the 2016 Michigan presidential election, finishing over 2.2 million votes behind the winner. Stein, in fact, finished no higher than fourth in any state where she appeared on the ballot. Yet despite being just a blip on the electoral radar, Stein has now commandeered Michigan's electoral process.

Minutes before the deadline, Stein filed a half-page, four paragraph petition challenging the outcome of Michigan's presidential election. Despite the substantial nature of her filing, Stein offered no specificity, examples, or even a clear articulation of her theoretical concerns. Indeed, on the basis of nothing more than speculation, Stein asks that Michigan residents endure an expensive, time-consuming recount, and the scrutiny and hardship that comes with it. And not simply a tedious recount of the totals of thousands of individual election machines, but instead a painstaking recount by hand of each of the nearly 5 million ballots cast for President in Michigan. Even with heroic efforts by state and local elections officials, that process will undoubtedly last weeks, likely months, and certainly past the December 13 deadline for certifying Michigan's presidential electors. See 3 USC § 5 (requiring disputes over electors to be resolved by December 13).

Stein's request no doubt comes as shock to most Michiganders. Michigan voters—having endured a lengthy, expensive, hard-fought presidential election—surely expected their votes would matter when the Electoral College meets this December. Yet the election's fourth-

place finisher seeks to jeopardize the participation of *every voter in Michigan* with a lengthy recount. And she asks Michigan to spend \$4 million of its own money to fund the recount that creates this risk. See Livengood, *Mich. Recount to start Friday barring Trump challenge*, THE DETROIT NEWS (Dec. 1, 2016), archived at <https://perma.cc/LN4N-2SEE> (“Secretary of State Ruth Johnson said Wednesday the recount cost could total \$5 million,” and that “state and county governments on the hook for ... \$4 million.”)

On what basis does Stein seek to disenfranchise Michigan citizens? None really, save for speculation. All available evidence suggests that the 2016 general election was *not* tainted by fraud or mistake. Governor Snyder has said so. See Governor Rick Snyder on Twitter, TWITTER (Nov. 28, 2016) archived at <https://perma.cc/Q5X3-ACZV>. So too has the White House. See Geller, *White House insists hackers didn't sway election, even as recount begins*, POLITICO (Nov. 26, 2016), archived at <https://perma.cc/5Z5C-Z59S>. Even the chief counsel to second-place finisher Hillary Clinton concedes there is no evidence of any tampering that would warrant a recount or lawsuit. See Elias, *Listening and Responding To Calls for an Audit and Recount*, MEDIUM, archived at <https://perma.cc/S45U-MWZ4>.

Nonetheless, Stein insists that her accusation alone compels a statewide recount. That herculean effort is necessary, she says, because Michigan must “ensure the accuracy and integrity of the election.” In Stein’s mind, apparently, election results are deemed unreliable, and election officials are deemed corrupt or incompetent, until proven otherwise. Nonsense. Simply put, Michigan should not grant this lawless, insulting request, and its voters should not risk having the Electoral College door knocked off its hinges, all because a 1-percent candidate is dissatisfied with the election’s outcome.

Regrettably, Michigan is not the only victim of Stein’s electoral farce. Rather, it is the

nation as a whole. By “contesting” the clear choice of millions of voters in Michigan, Pennsylvania, and Wisconsin, Stein aims to sow doubts regarding the legitimacy of the presidential election while denying millions of people in three separate states a seat at the Electoral College table. And in bringing mayhem to the otherwise orderly, time-honored Electoral College process, Stein is meddling with confirmation of the election’s outcome when Congress meets in January 2017. Ultimately, Stein cannot change the outcome of the presidential election. But she apparently has no qualms over creating constitutional chaos in her effort to do so. All of this, moreover, while she continues to pluck money from others to support her frivolous requests and other frolics.

The law does not require the State to support this ruse, and it should not do so.

BACKGROUND

On November 9, 2016, Hillary Clinton conceded the presidential election to Donald J. Trump. Over the next several weeks, President-elect Trump worked to fill his Cabinet. In Michigan, the Boards of County Canvassers in each county canvassed the votes cast in their precincts, verifying provisional ballots and ensuring that every valid vote cast was included in the election totals. Stein, who never finished so high as third in any state Presidential election, nonetheless began raising funds to conduct recounts in various states.

On November 28, upon completion of the canvass, the Michigan Board of State Canvassers (the “Board”) certified the results of the election. The final vote tallies included 2,279,543 votes for President-elect Trump, 2,268,839 votes for Hillary Clinton, 172,136 votes for Libertarian candidate Gary Johnson, and 51,463 votes for Stein. See *2016 Presidential Election Results*, MICHIGAN SECRETARY OF STATE (last visited Nov. 30, 2016), http://www.michigan.gov/sos/0,4670,7-127-1633_8722_76444-397762--,00.html. That same day, despite the absence of a formal recount petition filed by Stein, the Board of State Canvassers indicated that the anticipated statewide recount would be conducted by hand. Two days later—at almost the last possible

moment—Stein filed a recount petition with the Board (the “Recount Petition”). She has filed similar requests in Pennsylvania and Wisconsin.

ARGUMENT

MCL 168.879(1) permits candidates “voted for at a primary or election for an office” to “petition for a recount,” if and only if they can meet certain requirements. (Although Stein filed affidavits of “electors,” only candidates have standing to request a recount.) Among other things, the petition must allege “that the candidate is *aggrieved* on account of fraud or mistake in the canvass of the votes by the inspectors of election or the returns made by the inspectors, or by a board of county canvassers or the board of state canvassers.” MCL 168.879(1)(b) (emphasis added).

Stein’s recount petition fails this standard. She does not allege (let alone explain) how a fourth-place finisher could be “aggrieved” by the election canvas. And even if that could be overlooked, Stein’s request would have to be denied because no recount can be reliably completed in the time required by state and federal law. Finally, in addition to all that, Stein’s petition is not properly notarized as required by Michigan law.

1. As the fourth-place finisher, Dr. Jill Stein is not “aggrieved” by any alleged fraud or mistake, and is therefore not entitled to a recount.

Because Stein has not alleged an actual injury relating to the canvass of the votes in the Michigan presidential election, her petition does not allege that she is aggrieved.

1.1. Michigan law requires candidates seeking recounts to allege that they have been “*aggrieved* on account of fraud or mistake in the canvass of the votes by the inspectors of election or the returns made by the inspectors, or by ... the board of state canvassers.” MCL 168.879(1)(b) (emphasis added). If a “statute’s language is clear and unambiguous,” the government must “assume that the Legislature intended its plain meaning and ... enforce the statute

as written.” *People v Gardner*, 482 Mich 41, 50; 753 NW2d 78 (2008) (internal quotation marks omitted).

MCL 168.879 is unambiguous with respect to its use of the term “aggrieved.” That word, in this context, connotes the violation of a legal right that *causes harm* to the right’s holder. See *Maxwell v Dep’t of Environmental Quality*, 264 Mich App 567, 571; 692 NW2d 68, (2004) (“Black’s Law Dictionary (6th ed.) defines ‘aggrieved’ to mean ‘Having suffered loss or injury; damnified; injured.’”); see also *Black’s Law Dictionary* (10th ed) (“[H]aving legal rights that are adversely affected; *having been harmed by an infringement of legal rights*”) (emphasis added). In the election context, a candidate is harmed—and thus “aggrieved”—by losing an election she should have won.

Michigan officials have long understood “aggrieved” to bear its natural meaning. See That much is confirmed by the statements Chris Thomas, Michigan’s Director of Elections, made before a hearing of the Board of State Canvassers ten years ago. See Board of State Canvassers Hearing Transcript, November 27, 2006, pp. 1-2. attached as Exhibit 1. There, he reported that the Board “rejected” a recount petition “from a candidate for Secretary of State,” who challenged the results in “a number of precincts from Washtenaw County.” *Id.* Mr. Thomas explained that Michigan recount law “talks about an *aggrieved* candidate,” and added that the petitioning Secretary-of-State candidate did not qualify. *Id.* (emphasis added). Why? Because she did not challenge the vote in “enough precincts to actually affect the outcome of the election.” *Id.*

That natural understanding of “aggrieved” is consistent with the idea that legal redress is typically available only to those able to show that they have been harmed. Most torts, for example, require proof of injury. See, e.g., *Henry v Dow Chem Co*, 473 Mich 63, 72; 701 NW2d 684

(2005) (“Michigan law requires an actual injury to person or property as a precondition to recovery under a negligence theory.”). So too do most statutory rights of action. See, e.g., *Epps v 4 Quarters Restoration LLC*, 498 Mich 518, 534; 872 NW2d 412 (2015) (explaining that Michigan courts will infer a private right of action to exist only where necessary to, among other things, protect against “the kind of harm which has resulted”) (internal citations omitted).

Interpreting “aggrieved” to connote some degree of actual injury also comports with the way that word is used throughout Michigan law. Take, for example, the standing context, where the Michigan Supreme Court has held that “[a]n aggrieved party is not one who is merely disappointed over a certain result,” but rather a party who has “suffered a concrete and particularized injury.” *Federated Ins Co v Oakland County Rd Comm’n*, 475 Mich 286, 291; 715 NW2d 846 (2006). This statement reflects the longstanding rule that “[t]o be aggrieved, one must have some interest ... in the outcome of the case, and not a mere possibility arising from some unknown and future contingency.” *In re Miller’s Estate*, 274 Mich 190, 339-340; 264 NW 338 (1936). This harm-requiring reading of “aggrieved” finds more support in *Herman Brodsky Enterprises, Inc v State Tax Commission*, 204 Mich App 376, 383; 522 NW2d 126 (1994), which held that petitioners did not qualify as a “part[ies] aggrieved,” for purposes of MCL 207.570, where “no substantial rights of the petitioners were prejudiced.” *Herman*, 204 Mich App at 383. See also *Emerick v Saginaw Township*, 104 Mich App 243, 247; 304 NW2d 536 (1981) (explaining that an “aggrieved party” in a fraud case must “allege a causal link between the inequitable conduct and the resulting harm”).

In other words, Michigan courts have consistently read “aggrieved” to require actual injury. Michigan’s legislature must be assumed to have been aware of that settled meaning when it amended MCL 168.879 in 1999. And when “administrative and judicial interpretations have set-

tled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well.” *Bragdon v Abbott*, 524 US 624, 645; 118 S Ct 2196; 141 L Ed 2d 540 (1998).

For this reason, Michigan cases involving recounts unsurprisingly involve margins close enough to permit an inference that the alleged fraud or mistake caused the petitioning candidate to lose an election; harm that would render the losing candidate “aggrieved.” See, e.g., *Kennedy v Bd of State Canvassers*, 127 Mich App 493, 495; 339 NW2d 477 (1983) (difference of 17 votes between winning and losing candidate); *State v Bd of City Canvassers*, 70 Mich 147, 148-149; 38 NW 11 (1888) (“aggrieved” party, who claimed he would have won but for error in counting votes, was entitled to a recount). MCL 168.879 has never been understood to permit challenges by bottom-dwelling (and thus not aggrieved) candidates like Stein.

1.2 Cases from Michigan’s sister states confirm that parties claiming to have been “aggrieved” by vote-counting errors must allege that the errors made a difference. One court, interpreting another recount statute, explained that “the ‘person aggrieved’ must have sustained a direct injury that somehow differentiates him or her from other members of the community.” *Babiarz v Town of Grafton*, 155 NH 757, 761; 930 A2d 395 (2007). Another held that a candidate is not “aggrieved” by a recount unless “the ultimate consequence of the recount” goes against him. *Carville v Allen*, 13 AD2d 866, 867; 214 NYS2d 985 (1961). Likewise, when the candidate “does not claim or demonstrate entitlement to th[at] nomination or contend that he would have received it were it not for alleged irregularities in the [election process],” he is not an “aggrieved candidate.” *Nicolai v Kelleher*, 45 AD3d 960, 962; 844 NYS2d 504 (2007).

Similarly, the Wisconsin Court of Appeals held that a candidate was not “aggrieved” where she was “not directly injured by [a] recount because the result was in her favor.” *Roth v*

La Farge Sch Dist Bd of Canvassers, 247 Wis 2d 708, 719; 634 NW2d 882 (2001). And the same court has held “that a person running for office could not be aggrieved by any election irregularities if he or she was not eligible to run for or hold that office in the first place.” *Willan v. Brereton*, 238 Wis 2d 446 at *5; 617 NW2d 907 (2000) (per curiam) (unpublished table disposition). Each of these cases illustrates that one cannot be aggrieved, in the relevant sense, without having suffered an injury. And each is in addition to the cases from other states holding that, without regard to any statutory requirement of aggrievement, recounts are unavailable unless the alleged “irregularities” are “such that they would change the result.” *Wood v. Lydick*, 1974 OK 75, 523 P.2d 1082, 1084 (1974). There is no good reason for Michigan to do things differently.

1.3 It is true that “[p]ublic policy requires that statutes controlling the manner in which elections are conducted be construed as far as possible in a way which prevents the disenfranchisement of voters through the fraud or mistake of others.” *Kennedy*, 127 Mich App at 496. But there is also “a strong public policy favoring stability and finality of election results.” *Buonanno v DiStefano*, 430 A2d 765, 770 (1981); see also *Sumner v New Hampshire Sec’y of State*, 168 NH 667, 670; 136 A3d 101 (2016) (same); *Donaghey v Attorney Gen*, 120 Ariz 93, 95; 584 P2d 557 (1978) (“The rationale for requiring strict compliance with the time provisions for initiating a contest is the strong public policy favoring stability and finality of election results.”). And the interest in finality outweighs the competing interest where the party seeking a recount cannot allege even a slim possibility that voter “disenfranchisement” cost her the election. Such is the case here. Further, the principle of liberal construction comes into play only when the statute is otherwise ambiguous. Here, the text and context are *unambiguous*, and so that principle has no role to play.

No doubt, the Michigan Legislature could have passed a recount law permitting *all* losing

candidates to demand a recount. Some states do exactly that. See, e.g., § 102.168(1), Fla Stat (allowing a challenge “by any unsuccessful candidate for [the particular] office”). But Michigan’s legislature authorized only those “aggrieved” by the outcome to seek a recount, and so that word cannot be read as mere “surplusage.” *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). To avoid giving “aggrieved” no meaning—to avoid treating it as surplusage—it should be read to require allegations of actual injury. See *Babiarz*, 155 NH at 759 (applying identical logic to a New Hampshire statute’s use of “aggrieved”).

To be sure, the legislature may create legal rights enforceable without any showing of harm. See *Lansing Sch Educ Ass’n v Lansing Bd of Educ*, 7487 Mich 349; 92 NW2d 686 (2010) (explaining Michigan’s standing doctrine). But it would be stunning if the legislature did so here: What could justify giving candidates the right to force an expensive, time-consuming recount when they are “aggrieved” only in the sense of being “troubled or distressed in spirit”? See *Webster’s Ninth New Collegiate Dictionary* (1987). Nothing at all, which bolsters the conclusion that MCL 168.879 was not intended, and has never been understood, to permit recounts at the request of a candidate who does not even purport to be the potential winner.

We are aware of just one case that supports the contrary meaning—an unpublished Report and Recommendation from a magistrate judge that addressed the issue in dicta. See *Bormuth v. Johnson*, 16-cv-13166, Dk. No. 13, slip op. 13–15 (E.D. Mich. Oct. 24, 2016). Its analysis is not binding, both because it occurs in dicta, *Auto-Owners Ins. Co. v. All Star Lawn Specialists Plus, Inc.*, 497 Mich. 13, 21, 857 N.W.2d 520, 523 (2014), and because Michigan courts and agencies are “not bound to follow a federal court’s interpretation of state law,” *Doe v. Young Marines of The Marine Corps League*, 277 Mich. App. 391, 399, 745 N.W.2d 168, 172 (Mich. 2007). Neither is it persuasive. *Borsuch* relied primarily on the principle of liberal construction

addressed above, which it believed militated for reading “aggrieved” to mean “having legal rights that are adversely affected.” *Borsuch*, slip op. at 14 & n.8. And, it concluded, a candidate’s legal rights are adversely affected whenever the vote total is not “accurately tabulated.” *Id.*

This analysis is flawed. For one thing, the liberal principle of interpretation has no application here, for the reasons discussed above. Even if it did, the definition of “aggrieved” on which *Borsuch* relies does not support its conclusion. It is true that “aggrieved” may refer to “having legal rights that are adversely affected.” But that is only because people are usually injured when their rights are affected, and so that sense of the word *assumes* actual harm. Indeed, the very definition *Borsuch* cites makes this clear: “having legal rights that are adversely affected; *having been harmed by an infringement of legal rights.*” Black’s Law Dictionary 80 (10th ed.) (quoted in part by *Borsuch*, slip op. at 14 n.8) (emphasis added). *Borsuch* reached its conclusion by simply ignoring, and by *failing to quote*, the second half of that definition. Far from justifying a harm-free reading of “aggrieved,” this definition underscores the obviousness of the link between injury and aggrievement.

One final flaw plagues the *Borsuch* decision: it made no attempt to grapple with its interpretation’s problems. It did not explain, for example, why its reading of “aggrieved” did not treat the word as surplusage. Nor could it have: If a candidate is “aggrieved” whenever votes are not “accurately tabulated,” then a candidate would allege aggrievement simply by alleging mistake or fraud. Why, then, did Michigan’s legislature require allegations of *both* (1) aggrievement, and (2) mistake or fraud? *Borsuch* has no answer.

1.4 In light of all this, the recount cannot go forward. On November 28, 2016, the Board certified the results of this year’s general election. Trump won the state, with 2,279,543 votes.

Stein came in fourth, with just 51,463 votes. For perspective, third-place finisher Gary Johnson more than tripled Stein’s performance, receiving 172,136 votes. See 2016 Michigan Election Results, http://miboecfr.nictusa.com/election/results/2016GEN_CENR.html (last visited Nov. 29, 2016). Given her tiny vote total, Stein does not, and could not possibly, allege a good-faith belief that she may have won the state of Michigan. Assuming for the sake of argument that there were errors in counting the votes, it is ludicrous to suggest that her votes were undercounted by over 2 million. That is especially so because Stein’s support in Michigan is roughly consistent with the support she earned around the country; she won just over 1 percent of the votes in Michigan, and between .4 and 3 percent in other states where she appeared on the ballot. America’s Election Headquarters, <http://www.foxnews.com/politics/elections/2016/presidential-election-headquarters> (last visited Nov. 29, 2016).

In sum, Stein fails to allege that any improprieties harmed her, and thus fails to allege that she is “aggrieved” for purposes of MCL 168.879. She therefore fails to satisfy the requirements for a recount, and her petition should be denied.

2. A recount cannot be completed in time for Michigan to have its Electoral College votes counted.

Even if Stein satisfied the requirements of MCL 168.879, her request would have to be denied, as it interferes with Michigan and federal law governing the certification of electors.

Federal law’s safe-harbor statute requires that a state’s determination of electors be “made at least six days before the time fixed for the meeting of the electors.” 3 USC § 5. Michigan, by requiring its electors to convene and vote within the time-frame required by that statute, see MCL 168.47, has evinced its intent to come within its safe harbor. This year, the “meeting of the electors” will occur on December 19, 2016. 3 USC § 5. Therefore, because Michigan has indicated its intent to participate in the electoral process described by 3 USC § 5, “any controver-

sy or contest that is designed to lead to a conclusive selection of electors [must] be completed by” December 13. *Bush v. Gore*, 531 US 98, 110; 121 S Ct 525; 148 L Ed 2d 388 (2000).

That is no longer possible, particularly if the recount is to occur by hand. Stein waited until the last possible hour to file her recount petition—this despite having all she needed to seek a recount long beforehand. While Michigan law mandates that recount petitions be filed no later than “48 hours following the competition of the canvass of votes,” MCL 168.879(c), it puts no limitations on filing earlier, including *before* the canvass of votes, *Santia v Bd of State Canvassers*, 152 Mich App 1; 391 NW2d 504 (1986).

It may well be possible to finish a recount in short order in a local race. But anyone seeking a recount in a statewide race, in particular the presidential election, must be conscious of time constraints, and must file in a manner that will enable election officials to comply with the request. Yet Stein waited until minutes before the deadline, making a recount impossible under state and federal deadlines. Given Stein’s 11th-hour recount request, the State could not start a recount before Friday, December 2, 2016, giving vote counters just eleven days to recount nearly 5 million votes. The result is a “logistical hell,” says one election official, no doubt aware of the frenzy caused by a late-stage recount. See Livengood, *Ingham Co. clerk calls recount \$45k ‘logistical hell’*, DETROIT NEWS (Nov. 30, 2016), archived at <https://perma.cc/44JE-H3LK>. Another explained that Oakland County has “never had a recount of this magnitude,” and described the task as a “monumental undertaking.” See Wisely, Guillen, & Hall, *Here’s What Michigan Will need for ‘monumental’ presidential recount*, Detroit Free Press (Nov. 29, 2016), archived at <https://perma.cc/HM3F-DY8R>. And lest there be any doubt about the deadline, note that the Wisconsin Elections Commission ordered another Stein-led recount to be completed by December 12. See *In re: A Recount of the General Election for President of the United States held on*

November 8, 2016, Recount EL 16-03 (Nov. 29, 2016). Attached as Exhibit 2.

To count that many votes by hand is not feasible. See Affidavits of John Pirich and Jason Hanselman attached as Exhibits 3 and 4, respectively. And any attempt to finish the process in time will no doubt lead to errors; poll workers will need to work with tremendous speed for long hours, and mistakes are inevitable. Indeed, one election-law expert has opined that “it is doubtful that *any* state could fairly complete its procedures on” the current federal safe harbor timetable. Tokaji, *An Unsafe Harbor*, 106 Mich L Rev 84, 86 (2008). And this is so even though many of these states would typically be able to begin recounting ballots much earlier than Michigan would be able to here. Reading MCL 168.879 to permit a recount in the present circumstances thus contradicts the principle that “statutes controlling the manner in which elections are conducted be construed as far as possible in a way which prevents the disenfranchisement of voters through the fraud *or mistake* of others.” 152 Mich App at 6 (emphasis added). Here, holding a frantic, around-the-clock recount all but assures mistakes.

Reading MCL 168.879 to allow a recount would also contradict the principle that laws governing related subject matter should, “so far as reasonably possible, be construed in harmony with each other, so as to give force and effect to each.” *Int’l Bus Machines Corp v Dep’t of Treasury*, 496 Mich 642, 652; 852 NW2d 865 (2014). That principle matters here because, again, Michigan has opted to avail itself of 3 USC § 5’s safe-harbor provision. See MCL 168.47. Reading Michigan recount law to require recounts that cannot be completed during the safe-harbor period would thus bring it into conflict with MCL 168.47. That conflict is easily avoided, however, by reading Michigan’s recount provisions as implicitly prohibiting recounts initiated so late in the process that they cannot be reliably completed before the 3 USC § 5 deadline expires. That harmonizes all the relevant provisions. See *Int’l Bus. Machines*, 496 Mich at 651-652.

It is also consistent with the rule that “[c]ourts should be reluctant to apply the literal terms of a statute to mandate pointless expenditures of effort.” *Alabama Power Co v Costle*, 204 US App DC 51, 62; 636 F.2d 323 (1979). That rule suggests that Michigan’s recount provisions should be read as implicitly disallowing recounts that cannot be finished in time to have any effect. And the rule has particular force where, as here, the party demanding the pointless expenditure suffered no harm from the wrongs that expenditure is supposed to right.

At the very least, there is no way of reliably counting the ballots by hand. Nor is there any reason to, as machines are more reliable, and *less* likely to create opportunities for fraud than the use of human counters. To be clear, there is no reason to believe that even a machine recount could be carried out by December 13. But if the State is to have any chance at doing so, that is its only option.

3. The petition must also be rejected because it is not properly signed and sworn to by the candidate.

There is yet another insurmountable problem for Stein. Michigan law requires that all recount petitions be signed and sworn to by the candidate. MCL 168.879(1)(e). Stein’s Recount Petition was notarized in Massachusetts, but was not validly notarized. Under Massachusetts law, a jurat (the statement a notary public must affix to make the notarization valid) must take substantially the following form:

On this _____ day of _____, 20____, before me, the undersigned Notary Public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

(official signature and seal of Notary). See Apostilles and Certificates of Appointment, Exhibit 5.

The jurat on Stein’s petition leaves out critical requirements. For example, it does not say that Stein “personally appeared.” Nor does the Recount Petition list the forms of identification she used. The notarization is therefore invalid and the Recount Petition must be rejected because Stein has failed to sign and swear to the Recount Petition as the candidate.

CONCLUSION

The costs of going forward with this recount must not be underestimated. Most obvious, perhaps, are the expenditures of time and money that any recount will entail. Then there are the less-measurable but no-less-real costs that come with questioning the validity of the State’s electoral processes. See *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197, 128 S. Ct. 181, 170 L.Ed.2d 574 (2008) (plurality) (explaining that states have an interest in ensuring “public confidence in the integrity and legitimacy of representative government.”) (internal quotation marks omitted). Finally, the manner in which the recount is carried out is likely to provoke numerous legal challenges. For example, any inequity or inadequacy in the vote-counting will spur lawsuits alleging violations of the Michigan Constitution’s Fair and Just Treatment Clause, Mich Const 1963, art I, § 17, or of the federal and state Due Process clauses, *id.* & U.S. Const., Am. 14. And if the Board’s decision to conduct a hand recount is indeed a “rule,” as Chris Thomas has said, then its informal promulgation likely violated Michigan’s Administrative Procedure Act. MCL 24.207.

Many of these costs would be acceptable if Michigan law really did entitle Stein to a recount. But it does not. And there is no reason to rewrite Michigan election law to accommodate the conspiracy-minded requests of an acknowledged loser. The Board should therefore deny Stein’s recount petition.

Respectfully submitted,

Dated: December 1, 2016

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EXHIBIT 1

2 STATE OF MICHIGAN

3 DEPARTMENT OF STATE
4 TERRI LYNN LAND, SECRETARY OF STATE

5 BOARD OF STATE CANVASSERS HEARING

6 525 West Ottawa, Lansing, Michigan

7 Monday, November 27, 2006, at 10:00 a.m.

8
9 BOARD:

KATHERINE DeGROW - Chairman
LYN R. BANKES
ERANE C. WASHINGTON-KENDRICK
JAMES L. WATERS
CHRISTOPHER THOMAS - Elections

10
11
12 Director

BRADLEY WITTMAN - Elections Staff

13
14 APPEARANCES:

15 For the State:

PATRICK J. O'BRIEN (P27306)
HEATHER MEINGAST (P55439)
Assistant Attorneys General
525 W. Ottawa Street
Lansing, Michigan 48909

16
17

Excerpts:

MR. THOMAS: Yes. The recount clock began at

24 roughly 10:22 when you -- was it the end of the meeting --
25 yes -- at 10:22 when you certified the November 7th

0010

1 election. Candidates or electors for ballot proposal have
2 48 hours to file a recount petition. So we would ask for a
3 motion from the board for staff to represent the board
4 should there be a recount requested. And again, we're
5 aware -- we received one recount petition for a circuit
6 court. It's a two-county circuit court. And that one came
7 in, I believe, last week sometime. So we do have a 48-hour
8 window now where we'll see if there are any additional
9 recount petitions coming in.

10 We have received a tender of a recount petition,
11 which I believe these folks will want to address this board
12 on. We have rejected that. The Secretary of State is the
13 filing official for you for recount petitions. And we
14 rejected it on this basis. A recount under law talks about
15 an aggrieved candidate. And it talks about the assertion
16 of fraud or error in a petition which asserts, in essence,
17 that the outcome of the election was in error. And that is
18 what gives the contest, if you will, to have a recount.
19 The petition we received was from a candidate for Secretary
20 of State with a number of precincts from Washtenaw County,
21 certainly not enough precincts to actually affect the
22 outcome of the election. Even if all the votes were to go

3 installed by vendors on the equipment. That equipment and
4 any programming is then thoroughly tested before each and
5 every election. So I really have no issues with the
6 conspiracy theories that are put forward.

p. 21 (aggrieved candidate)

MR. THOMAS: This board under recounts under the
4 supervision under the Board of State Canvassers have been
5 hand counts. And I would note on the funding issue, the
6 \$10, if they change the outcome of the election, they then
7 are refunded that money.
8 And that's another factor involved here again.
9 The case in controversy is error or fraud by an aggrieved
10 candidate that changes the outcome of the election. That's
11 the assertion. It's then set up to issue a new certificate
12 of election if the outcome changes, and it's also -- the
13 law is set up to refund the recount fee for the aggrieved
14 candidate if that candidate prevails in the recount.

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MR. THOMAS: We have done before that, yes. In
2 2004, there was a congressional primary. And I don't know
3 the district offhand. But they asked for one or two
4 precincts to be recounted, again could not theoretically
5 affect the outcome of that election, and that petition was
6 denied.

EXHIBIT 2

WISCONSIN ELECTIONS COMMISSION

In the matter of:)	
)	ORDER FOR RECOUNT
A Recount of the General Election)	
For President of the United States)	
held on November 8, 2016)	RECOUNT EL 16-03
)	

On Friday, November 25, 2016, a recount petition was filed by Jill Stein, a candidate for the office of President of the United States at the General Election held on November 8, 2016.

The petition requests a recount of all ballots in all wards in Wisconsin where votes were cast in this election for the office of President of the United States.

The Wisconsin Elections Commission staff has reviewed the petition. The petition is sufficient. A fee of \$3,499,689 is required by Wis. Stat. §9.01.

On November, 29, 2016, the Wisconsin Elections Commission received confirmation that \$3,499,689 was received from Jill Stein in payment of the estimate provided on November 28, 2016.

Pursuant to Wis. Stat. §9.01 of the Wisconsin Statutes:

IT IS ORDERED THAT:

1. A recount be conducted of all the votes cast for the office of President of the United States at the General Election held on November 8, 2016, in all counties in Wisconsin.
2. The Board of Canvassers of each County shall convene at 9:00 a.m. on Thursday, December 1, 2016 to begin the recount.
3. The Board of Canvassers of each County shall conduct the recount using the ballot count method selected per Wis. Stat. § 5.90(1) unless otherwise ordered by a court per Wis. Stat. § 5.90(2).
4. The recount shall be conducted using the procedures established by the Wisconsin Elections Commission's Recount Manual (November 2016) and the November 30, 2016 webinar presentation, which are incorporated into this Order by reference herein. If necessary, the Wisconsin Elections Commission will issue supplemental directions regarding the procedures to be used by the county canvassing boards and communicate those directions to County Clerks via its website.
5. Each County Clerk shall post a notice of the Board of Canvassers' public meeting, pursuant to the Open Meetings Law, including any dates or times that the Board adjourns or reconvenes. Each County Clerk shall immediately notify the WEC of the location of its Board of Canvassers meeting, if the Clerk has not already provided that information and the WEC shall publish the location of each county's Board meeting on its website.
6. The recount shall be completed by the county boards of canvassers immediately, but no later than 8:00 p.m. on December 12, 2016. Each County Clerk shall transmit an email

communication to the WEC, at the end of each day of the Board of Canvasser's meeting, listing the reporting units completed that day and a tally of the votes cast for each candidate and the scattering votes which were counted that day. The email communication shall be in a form prescribed by the WEC.

7. Each county clerk shall transmit a certified canvass report of the result of the recount and a copy of the minutes of the recount proceedings to the Wisconsin Elections Commission immediately after the completion of the county's recount in the manner specified by the WEC.

Dated: November 29, 2016.

WISCONSIN ELECTIONS COMMISSION



Michael Haas
Administrator

EXHIBIT 3

STATE OF MICHIGAN
BOARD OF STATE CANVASSERS

In re Petition for Recount for the)
Office of President of the United)
States of America)
)

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Lansing, Michigan 48933
(517) 377-0712

AFFIDAVIT OF JOHN D. PIRICH

AFFIDAVIT OF JOHN D. PIRICH

I, John D. Pirich, being duly sworn and advised, make the following statement:

1. I am a member of the State Bar of Michigan, being admitted on December 3, 1973.
2. I am a former Assistant Attorney General for the State of Michigan having been assigned to the then State Affairs Division where I represented the State Board of Canvassers and handled election-related matters until May, 1976.
3. I then joined Tom Downs who had a national election practice as a partner and focused my private practice over the next four years handling election law matters, including recounts, (Michigan and Washington State) recalls, ballot initiative and other election related matters.
4. From 1980 to 1989, I was a partner at Miller Canfield where I regularly practiced election law, campaign finance issues and related matters, such as ballot issues, referendums, Constitutional amendments, recalls and recounts.
5. Since February of 1989, I have been a partner at the law firm of Honigman Miller Schwartz and Cohn LLP. I have continued with an extensive election law and campaign finance practice.
6. I represented Mayor David Bing, Mayor Mike Duggan in 2010 and 2014 in City of Detroit recounts. Each recount for the City of Detroit exceeded 15 days. Each of these recounts required huge staffing commitments and resources. Neither recount changed the total vote to any degree but resulted in substantial unreimbursed costs to the City and the candidates we represented.
7. I represented Congressman-Elect Mike Rogers in 2000 in a congressional recount involving parts of five counties, with approximately a 170 vote difference. The recount was

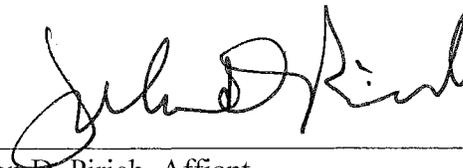
withdrawn on the last day without any change to the outcome of the election. Again, the recount resulted in substantial unreimbursed costs to the governmental entities and the client.

8. In my 43 years in the practice of law involving recounts, I have been involved in only four recounts where the election night results changed: in a Monroe County Michigan District Court race, our client lost by one vote and was declared the winner by one vote after a recount; in a Michigan House of Representatives election, our client lost by one vote in the primary and won by one vote after the recount; in 2016, one of our clients lost by six votes on election night for Township Treasurer in Redford Township and won by three after the recount; in the last case, a Kalamazoo County Township Treasurer, our client, tied on election night, lost when required to and won by three votes after the recount.

9. In all of the other 50 plus recounts that I have been involved in since 1973, the election night victor prevailed at or about the exact vote difference after a recount.

10. The complexity, confusion and level of understanding after the recent procedures, as well as the logistical, mechanical and operational activities to conduct a recount in all 83 counties in Michigan involving 7,786 precincts is highly unlikely to have any impact on the certified results for office of President of the United States. Additionally, the pressure, fatigue and attention involved in such a prolonged recount will surely result in man-made errors, omissions and mistakes caused by the December 13, 2016 deadline to complete a recount and permit the State of Michigan to comply with MCL 168.46 Certification of Presidential Electors statutory deadline.

Further, affiant sayeth not.

A handwritten signature in black ink, appearing to read "John D. Pirich", written over a horizontal line.

John D. Pirich, Affiant

Subscribed and sworn to before me this 1st day of December, 2016, by
John D Pirich.



Notary Public, County of _____, State of Michigan

My commission expires: _____

JAMY A. STAFFELD
NOTARY PUBLIC, STATE OF MI
COUNTY OF INGHAM
MY COMMISSION EXPIRES Nov 6, 2019
ACTING IN COUNTY OF Ingham

EXHIBIT 4

STATE OF MICHIGAN
BOARD OF STATE CANVASSERS

**In re Petition for Recount for the
Office of President of the United
States of America**)
)
)
)

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(517) 377-0712

AFFIDAVIT OF JASON T. HANSELMAN

Now comes Affiant Jason T. Hanselman who, being duly sworn, says:

1. The information contained in this affidavit is based on my own personal knowledge, except where stated it is based upon information and belief, and if sworn, I could competently testify to the contents of the affidavit.

2. On November 28, 2016, the Michigan Board of State Canvassers certified President-elect Donald J. Trump as the winner of Michigan's Presidential race.

3. On November 30, 2016, Green Party candidate Jill Stein filed a recount petition requesting that a recount of all votes be conducted by hand. Michigan Election Law allows a candidate to object to a recount petition within seven days. Appellant Donald J. Trump for President, Inc. ("Trump") filed an objection on December 1, 2016.

4. Under federal law, in order to guarantee that Michigan's electors' votes will be counted, the State must settle any controversy or contest at least six days before the Electoral College meets. 3 U.S.C. § 5. This year, the presidential electors are scheduled to meet on December 19, 2016. Accordingly, to guarantee that Michigan's electors' votes are recognized, the recount must be completed by December 13, 2016.

5. I have been a licensed attorney in Michigan for over 16 years. I am a partner at Dykema Gossett PLLC and am one of the counsel for Appellant Trump. In my years of practice, I have gained extensive experience relating to election law and recounts in Michigan. I have been recognized as a Leading Lawyer in areas relating to Michigan election law, including Governmental, Municipal, Lobbying, and Administrative Law.

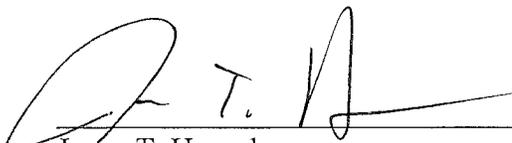
6. In my election law practice, I have represented candidates for President, United States Congress, Governor, Attorney General, Secretary of State, state legislature, local candidates, and ballot question committees with regard to election day legal issues, including

ballot access, poll challengers, opening and closing polling locations, and other issues. I have also represented many clients in conducting recounts, recalls, and other election-related matters.

7. In 2005, I represented Detroit's incumbent mayor in one of the largest recounts in Michigan's history. That recount, conducted by hand in only one city, lasted approximately twenty-two (22) days. The total vote count in that nonpartisan election was approximately 231,000 votes and ultimately concluded after one month with the challenger withdrawing his recount petition and the county board of canvassers certifying the original canvass results.

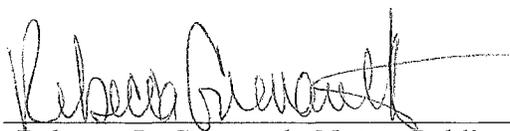
8. Based upon this experience, it is my belief that a statewide recount, if conducted by hand, cannot and will not be completed by December 13, 2016, the date that a controversy must be settled to guarantee that Michigan's electoral votes will be recognized, or by December 19, 2016, the date that the Electoral College meets.

Further Affiant sayeth not.



Jason T. Hanselman

Subscribed and sworn before
me this 1st day of December, 2016.



Rebecca L. Grenawalt, Notary Public
Ingham County, Acting in Ingham
My Commission Expires: 7/12/20

REBECCA GRENAWALT
NOTARY PUBLIC, STATE OF MI
COUNTY OF INGHAM
MY COMMISSION EXPIRES Jul 12, 2020
ACTING IN COUNTY OF *Ingham*

EXHIBIT 5

The four types of Notarial Acts

1. **Acknowledgment** shall mean a notarial act in which an individual, at a single time and place:

- appears in person before the Notary Public and presents a document;
- is identified by the Notary Public through satisfactory evidence of identity; and
- indicates to the Notary Public that the signature on the document was voluntarily affixed by the individual for the purposes stated within the document and, if applicable, that the individual had authority to sign in a particular representative capacity.

A Notary shall take the **acknowledgment** of the signature or mark of persons acknowledging for themselves or in any representative capacity by using substantially the following form:

On this _____ day of _____, 20____,
before me, the undersigned Notary Public, personally
appeared _____ (name of document signer),
proved to me through satisfactory evidence of
identification, which were _____, to be the
person whose name is signed on the preceding or attached
document, and acknowledged to me that (he) (she) signed
it voluntarily for its stated purpose.
(as partner for _____, a partnership)
(as _____ for _____, a corporation)
(as attorney in fact for _____, the principal)
(as _____ for _____, (a) (the) _____
_____ (official signature and seal of Notary)

2. **Jurat** means a notarial act in which an individual,
at a single time and place:

- appears in person before the Notary Public and presents a document;
- is identified by the Notary Public through satisfactory evidence of identity;
- signs the document in the presence of the Notary Public; and

d. takes an oath or affirmation before the Notary vouching for the truthfulness or accuracy of the signed document.

A Notary shall use a **jurat** certificate in substantially the following form in notarizing a signature or mark on an affidavit or other sworn or affirmed written declaration:

On this _____ day of _____, 20____,
before me, the undersigned Notary Public, personally
appeared _____ (name of document signer),
proved to me through satisfactory evidence of
identification, which were _____, to be the
person who signed the preceding or attached document
in my presence, and who swore or affirmed to me that the
contents of the document are truthful and accurate to the
best of (his) (her) knowledge and belief.
_____ (official signature and seal of Notary)

3. **Signature witnessing** shall mean a notarial act in which an individual, at a single time and place:

- appears in person before the Notary Public and presents a document;
- is identified by the Notary Public through satisfactory evidence of identity; and
- signs the document in the presence of the Notary Public.

A Notary shall **witness a signature** in substantially the following form in notarizing a signature or mark to confirm that it was affixed in the notary's presence without administration of an oath or affirmation:

On this _____ day of _____, 20____,
before me, the undersigned Notary Public, personally
appeared _____ (name of document signer),
proved to me through satisfactory evidence of
identification, which were _____, to be the
person whose name is signed on the preceding or attached
document in my presence.
_____ (official signature and seal of Notary)

4. **Copy certification** shall mean a notarial act in which a Notary Public:

- is presented with a document;
- copies or supervises the copying of the document using a photographic or electronic copying process;
- compares the document to the copy; and
- determines that the copy is accurate and complete.

A Notary shall **certify a copy** by using substantially the following form:

On this _____ day of _____, 20____,
I certify that the (preceding) (following) (attached)
document is a true, exact, complete, and unaltered copy
made by me of _____ (description of the document),
presented to me by _____.
_____ (official signature and seal of Notary)

FOR MORE INFORMATION CONTACT:

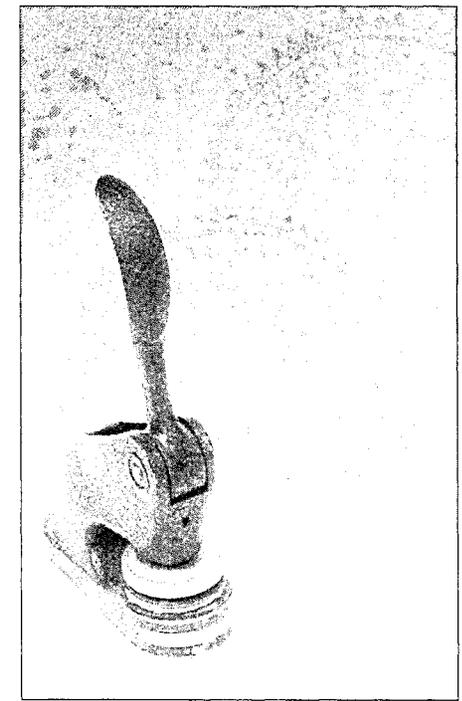


WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH
PUBLIC RECORDS DIVISION
COMMISSIONS SECTION
ONE ASHBURTON PLACE, ROOM 1719
BOSTON, MA 02108
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WWW.SEC.STATE.MA.US/PRE

updated 9/9/08

Information

Apostilles and Certificates of Appointment



William Francis Galvin
Secretary of the Commonwealth
Public Records Division - Commissions Section

The Secretary of the Commonwealth's office is the only office in Massachusetts that is authorized to issue an Apostille or Certification for a notarized document going to a foreign country. Massachusetts does not certify out-of-state documents. They must be certified by the state of origin.

What is an Apostille?

An Apostille is a document issued only by the Massachusetts Secretary of the Commonwealth that verifies the authenticity of the signature on the document; the capacity in which the person signing the document acted; and the identity of any stamp or seal affixed to the document. The Apostille is a specific form of authentication for countries that participate in the Hague Convention of 1961.

What is a Certification of Appointment?

A Certification of Appointment certifies that the individual who performed the notarization was appointed to a Notary Public commission at the time of notarization and is a qualified Notary Public in the State of Massachusetts.

What do I need to check before I present my documents for authentication?

1. That the Notary Public has signed his/her name exactly as he/she was commissioned.
2. That the notarial certificate has been completed.
3. That the Notary Public's expiration date is on the document correctly, clearly and completely.
4. The Notary Public has affixed the notary seal on the document and the imprint is legible.

Where may I get a copy of my marriage certificate?

The city or town clerk where you applied and filed your marriage license will provide you with a certified copy.

Where may I get a copy of my divorce decree?

Contact the district court clerk in the district where your divorce decree was filed and request a certified copy.

Where may I get a copy of my birth certificate?

Contact the Office of Vital Records, 617-740-2600, or your local city or town clerk where the birth was recorded.

Apostille walk-in:

You may bring in your request to any of our three offices. The addresses are as follows:

Secretary of the Commonwealth
Commissions Section
One Ashburton Place, Room 1719
Boston, MA 02108
617-727-2836 • www.sec.state.ma.us/prc

Secretary of the Commonwealth
436 Dwight Street, Room 102
Springfield, MA 01103
413-784-1376 • www.sec.state.ma.us/wso

Secretary of the Commonwealth
218 South Main Street
Suite 206, Fall River, MA 02721
508-646-1374 • www.sec.state.ma.us/wso

Fees

The fee for an Apostille is \$6.00 per document. Checks or money orders should be made payable to the Commonwealth of Massachusetts for the correct amount. Cash is not recommended because the office cannot refund cash lost in transit.

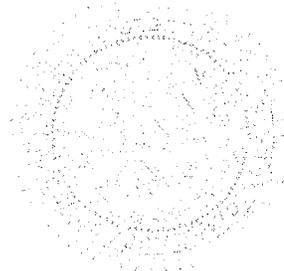
The Secretary of the Commonwealth always recommends that you verify the information needed with the officials from the country of destination. In most cases we have found that the steps below are generally accepted. We however do not guarantee they will be accepted in every situation.

In-state schools steps to Certifying a Transcript or Diploma

1. Have your school registrar certify to the record in the presence of a Notary.
2. The Notary Public will then notarize the signature of the school registrar.

The notarized school transcript or diploma is then sent to the Secretary of the Commonwealth for the Apostille or Certification.

Out-of-state school transcripts and diplomas, cannot be certified in Massachusetts. They must be certified by the state of origin.



Additional information

- Should you need to obtain a police background check or a "Police Certificate of Good Standing" contact the Criminal History Systems Board, 617-660-4600, www.mass.gov/chsb.
- For individuals needing a photograph notarized, a Notary Public may not certify nor authenticate a photograph. However, a Notary Public may notarize a statement by the principal regarding the photograph. That notarization does not authenticate or certify the photograph, it only verifies that the individual making the statement signed the statement.
- Should you need to contact other State Authentication Authorities we suggest you visit the National Association of Secretaries of State web site at www.nass.org.
- To obtain birth certificates from other vital statistics offices in the United States visit www.vitalrec.com.
- For countries that are members of the Hague Legalization Convention visit the Hague Conference on Private International Law web site at www.hcch.net.