

Courts halt presidential election recount in Michigan

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The recount of the presidential election in the state of Michigan halted Wednesday, after three days of ballot-counting, when a federal judge announced he would defer to a state court ruling against it.

The Michigan Court of Appeals decided Tuesday that Green Party presidential candidate Jill Stein did not have standing to seek a recount. By a 3-0 vote, the Republican-dominated court accepted the claim of Republican state Attorney General Bill Schuette and the state Republican Party that since Stein trailed Donald Trump by more than two million votes in Michigan, she could not reasonably expect to win the state in a recount, and therefore was not an “aggrieved party” under state law.

In effect, the state court found that only the campaign of Democrat Hillary Clinton was entitled to seek a recount, since she lost Michigan to Trump by only 10,704 votes, the narrowest margin of victory for Trump in any state. The Clinton campaign was an observer to the recount once it began, but it has not initiated any request of its own for the ballots to be scrutinized and re-tabulated.

Federal District Judge Mark Goldsmith, who rejected the legal arguments of the Republicans opposed to the recount at a weekend hearing, issued a temporary restraining order Tuesday night after the state court ruling, compelling the state Board of Elections and local county clerks to continue the recount.

On Wednesday night, however, he dissolved that order, declaring that he would defer to the state court in interpreting Michigan state law. “Because there is no basis for this court to ignore the Michigan court’s ruling and make an independent judgment regarding what the Michigan Legislature intended by the term ‘aggrieved,’ plaintiffs have not shown an entitlement to a recount under Michigan’s statutory scheme,” he

wrote.

Attorneys for Jill Stein said they would appeal both court decisions. The state Court of Appeals ruling will be appealed to the Michigan Supreme Court, while Judge Goldsmith’s ruling will be appealed to the U.S. Sixth Circuit Court of Appeals in Cincinnati.

Stein’s lead attorney, Mark Brewer, a past chairman of the Michigan Democratic Party, filed a separate motion to disqualify two state Supreme Court justices, Robert Young Jr. and Joan Larsen, from hearing the case, because Trump has named both of them as potential nominees to the U.S. Supreme Court to fill the vacancy left by the death of Antonin Scalia.

Neither court is likely to look favorably on Stein’s appeal. The Michigan Supreme Court has a 5-2 Republican majority, and would still have a Republican majority if Young and Larsen were to recuse themselves.

A three-member panel of the Sixth Circuit upheld Goldsmith’s initial order for the recount, ruling Tuesday that he had not abused his discretion. But the panel effectively required him to accede to state court decisions, writing, “If subsequently, the Michigan courts determine the ... recount is improper under Michigan state law for any reason, we expect the district court to entertain any properly filed motions to dissolve or modify this order in this case.”

Significantly, the panel added that it had made no decision yet on such questions as whether “there is a freestanding constitutional right to a recount or that plaintiffs validly invoked a recount under Michigan law, or that plaintiffs should necessarily prevail on the merits of this suit.”

The three days of recounting the nearly 5 million ballots cast in Michigan have not produced any reports of significant changes in the vote count because no

county has filed any results. But there is already massive evidence of a dysfunctional and antiquated electoral system which is at its worst in the poorest areas of the state, particularly inner-city neighborhoods of Detroit and Flint.

Many precincts have been barred from recounting ballots under a state law which permits recounts only when the total number of ballots cast coincides exactly with the roster of voters recorded in pollbooks. If these two counts do not match—frequently because of a voter who tore up his or her ballot and walked out without requesting a replacement—the initial precinct count stands. Discrepancies arise from other causes, including human errors like misfiling of spoiled, challenged or blank ballots or transposing numbers.

Stein issued a statement denouncing the legal claims of the Republicans and the Trump campaign. “Donald Trump and his cronies are doing everything possible to try to stop this exercise in our democracy, this effort to validate our vote,” she said, adding, “it suggests that Donald Trump is very afraid that his vote is not valid, that he's very afraid of this process of democracy.”

Stein also noted the indifference of the Clinton campaign and the Democrats. “When the Clinton team weighed in, which was, shall we say, minimalist and a day late,” she said, it was “about as passive an expression of interest as one could imagine.”

One of the major legal issues in the Michigan case is the same as that involved in the notorious 2000 U.S. Supreme Court decision in *Bush v. Gore*: whether state courts are the final authorities in interpreting state laws.

In *Bush v. Gore*, the 5-4 majority of the Supreme Court overruled the Florida state Supreme Court in its interpretation of Florida state election laws, in order to achieve its desired result, shutting down the Florida recount and awarding the White House to Bush.

This was a gross violation of federalism, which the right-wing majority ordinarily claimed to support in countless rulings upholding Republican-led state governments opposing federal policies. To cover up the contradiction, the court majority simply declared that *Bush v. Gore* should not be used as a precedent.

And in the Michigan case, Judge Goldsmith has taken the diametric opposite position from *Bush v. Gore*, deciding that he is bound to accept a state court interpretation of state law, no matter how much he may disagree with it, on the grounds of federalism.

The anti-democratic character of these legal maneuvers is demonstrated by the fact that both “federalism” and anti-federalism have been asserted as overriding principles in order to achieve the same practical end: shutting down a recount and preserving a Republican victory in the presidential election.

A recount of the presidential election is continuing in Wisconsin, one of the three states narrowly won by Trump where attorneys for Jill Stein have filed legal challenges. Trump led by 22,557 votes in the state, and with about 70 percent of the votes recounted, Clinton has gained only 82 votes. The Wisconsin Elections Commission reported Wednesday that half the counties had completed recounts and the others would finish before a December 12 deadline.

No recount has yet begun in Pennsylvania, although Trump’s margin of victory has been slashed substantially, to just over 44,000 votes, after county clerks completed tabulation of overseas and challenged ballots. This is down sharply from the 126,000-vote margin reported in initial returns, and the 69,000-vote margin at the time Stein filed for a recount.

The 44,000 figure is still slightly above the state’s automatic trigger for a statewide recount, which is 0.5 percent of the vote, about 30,000 votes in the case of the presidential contest.

Federal District Judge Paul Diamond in Philadelphia has scheduled a hearing for Friday, December 9, on Stein’s request for a recount, only four days before the federal deadline for states to certify their election results. State Republican Party officials and the Trump campaign have deliberately dragged out the legal proceedings so that they can then argue that there is not enough time to conduct a recount before the deadline, which is six days before the formal meeting of the Electoral College on December 19.



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