

STATE OF MICHIGAN
BOARD OF CANVASSERS

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

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

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INTRODUCTION

Jill Stein, as did hundreds of candidates before her without objection, timely filed a recount petition on November 28, 2016. In a desperate attempt to avoid a hand recount of the votes in the presidential election which will assure all Michigan voters of the accuracy and integrity of the election, Donald Trump and Trump for President (hereinafter collectively “Trump”) have filed specious objections to the petition.

For the reasons set forth below, those frivolous objections should be denied.

ARGUMENT

I. Stein Need Only Allege That She Is Aggrieved Under the Clear Statutory Language.

In a prolix attempt to conjure up an objection based on whether Stein is “aggrieved” (Objections at 4-11), Trump ignores the statutory language of the recount laws and barely mentions the controlling case here, Kennedy v. State Board of Canvassers, 127 Mich App 493, 339 NW2d 477 (1983). This objection is meritless on several bases.

First, the statutory language governing the contents of a recount petition is clear beyond peradventure that Stein need only allege that she is “aggrieved” in her petition. The statute does not require that she meet any particular standard or provide any proof whatsoever: “The petition alleges that the candidate is aggrieved on account of fraud or mistake. . .” M.C.L. §168.879(1)(b) (emphasis added). Stein made such an allegation in her petition and need do nothing more under the plain language of the statute.

The Court in Kennedy rejected attempts to import substantive requirements into the contents of a recount petition regarding allegations of fraud or mistake:

Public 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. Lindstrom v. Board of Canvassers of Manistee County, 94 Mich 467, 469, 54 NW 280 (1893);

Groesbeck v. Board of State Canvassers, 251 Mich 286, 291-292, 232 NW 387 (1930). Therefore, we must not construe the statute to impose technical requirements preventing a recount unless such a construction is clearly required by the language the Legislature employed. The statute requires allegations, not proof, of fraud or mistake as a prerequisite for a recount.

Id. at 496-97.

As in Kennedy where the word “alleges” preceded and defined the phrase “fraud or mistake” so, too, here. “Alleges” precedes “aggrieved” in the statute meaning that an allegation of being aggrieved satisfies the statute. Nothing more is required.¹

The Michigan Legislature also has not authorized this Board to examine the substance of a recount petition. When the Michigan Legislature has authorized this Board to inquire into the substance of a petition it has done so expressly. See, e.g., M.C.L. §168.951a(3) (expressly requiring the Board to make a determination of the factuality and clarity of the reason for a recall stated in a petition). It has not done so here. Its review of a recount petition is restricted to its form, and the Stein recount petition meets all requirements as to form.

Finally, the controlling statutory language imposes a mandatory duty on the Board of Canvassers to conduct a recount upon filing of a petition and deposit:

The board of state canvassers, at as early a date as possible after the receipt of such petition and the deposit required, shall investigate the facts set forth in said petition and cause a recount of the votes cast in the several precincts included in the petition.

M.C.L. § 168.883 (emphasis added). The Court in Kennedy held that this “mandatory language” requires the Board to conduct a recount upon receipt of a petition and deposit. 127 Mich. App. at 498.

¹ Trump’s reliance on a 2006 decision by Director Thomas (at 5) is distinguishable on its facts (a few precincts sought to be recounted versus the entire state here) and is plainly contradicted by the decision of Director Thomas to accept the Stein petition when filed on November 30, 2016 and to continue preparations for a manual recount as unanimously authorized by this Board on November 28, 2016.

For all these reasons, Trump’s discursive attempt to read substantive content into the requirement that Stein need only allege being “aggrieved” fails.

II. The Board Has No Jurisdiction Over the Electoral College “Objection” Which Is Speculative In Any Event.

Based on pure speculation, Trump next objects to the petition based on a claimed inability to meet the deadline imposed by 3 U.S.C. § 5.

This objection also lacks merit.

The Board only has jurisdiction over objections “to the recount petition.” M.C.L. §168.882(3). Whether or not the recount can be completed by any deadline is not an objection to the petition; it is an argument relating to the ensuing recount process. Thus, this Board has no jurisdiction over this objection.

Even if the Board had jurisdiction – and it does not – this objection is purely speculative. There hasn’t been a statewide candidate recount in Michigan since the 1950s, and no one can accurately predict that the recount can’t be finished by December 12, 2016 or whatever the deadline may be.

III. The Objection Based on Notarization Lacks Merit.

A. Stein’s Signature Was Properly Sworn.

Trump proposes to deprive the State of Michigan and its citizens from confirming the accuracy and reliability of the presidential election vote based on an incorrect formality found nowhere in Michigan law.

Stein’s petition complies with the clear and undisputable requirements of Michigan Election Law. The law requires that a petition for a recount be “signed and sworn to by the candidate.” M.C.L. § 168.879(1)(e). There is not even a requirement that the petition be notarized—and certainly not one that it be notarized pursuant to Massachusetts law. Stein

submitted a petition that bears her signature and is “subscribed and sworn to” by a notary public. Moreover, according to the Michigan Secretary of State website, a jurat notarization like the one Stein provided constitutes “a certification on an affidavit declaring when, where, and before whom *it was sworn*.” See http://www.michigan.gov/sos/0,4670,7-127-1638_8736_85780--,00.html (emphasis added). There is no reading of the law under which Stein has failed to meet this requirement.

Trump cites no authority for the argument that Massachusetts notary law applies. Yet, even if it did, the Affidavit of Kobie Evans, who notarized the Stein’s petition, demonstrates that all of the Massachusetts legal requirements were met. Mr. Evans affirms that Jill Stein personally appeared before him, that she proved her identification to him, and that she affirmed to him that the contents of her petition are truthful and accurate to the best of her knowledge. Evans Aff. For this reason too, Trump’s objection fails.

B. Alternatively, the Presidential Electors Have Standing to File the Petition.

Stein is not the only candidate allegedly aggrieved here who is eligible to file a recount petition. Members of her slate of electors, many of whom joined her petition, are “candidates” eligible to file a recount petition as well.

Under Michigan law a vote for a presidential candidate is not a “direct vote” for that candidate but is deemed “a vote for the entire list or set of presidential electors” chosen by that candidate’s political party. M.C.L. § 168.45. Indeed, the members of this Board, as they have after every presidential election, signed certificates of election for Trump’s slate of electors on November 28, 2016 as required by M.C.L. § 168.46.

Plainly then, the electors who support Stein were candidates for election as well, making them eligible to file a recount petition as several have done here under M.C.L. § 168.879.

Thus, even if Stein's signature was not properly sworn to – and it was – the recount petition was also filed by other eligible candidates, members of her slate of electors.

CONCLUSION AND RELIEF SOUGHT

Trump's objections to Stein's recount petition are utterly lacking in merit and should be denied.



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December 1, 2016

STATE OF MICHIGAN
BOARD OF STATE CANVASSERS

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President of the United States of America

AFFIDAVIT

KOBIE EVANS, being duly sworn, deposes and says that:

1. I am a certified Notary Public employed by Boston Mobile Notary.
2. On Tuesday, November 29 at 9:15 a.m., Jill Stein personally and voluntarily appeared before me at 495 Western Avenue, Brighton, MA 02135.
3. Jill Stein proved to me through satisfactory evidence of identification, her driver's license, that she is the person who signed the Petition attached as Exhibit A to this Affidavit.
4. Jill Stein affirmed to me that the contents of the Petition attached as Exhibit A to this Affidavit are truthful and accurate to the best of her belief.


Kobie Evans

Commonwealth of Massachusetts County of Suffolk

On this 1st day of December, 2016, before me, the undersigned notary public, personally appeared Kobie Evans (name of document signer), proved to me through satisfactory evidence of identification, which were Driver's license, 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.

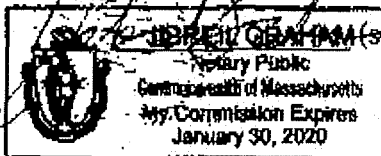


EXHIBIT A

PETITION FOR A RECOUNT

I, Jill Stein, a candidate for the office of the President of the United States in an election held on November 8, 2016, petition the Board of State Canvassers for a recount of the votes cast for this office. The undersigned members of my slate of electors join me in this Petition.

I and the undersigned members of my slate of electors, individually and collectively, are aggrieved on account of fraud or mistake in the canvass of the votes by the inspectors of election, and/or the returns made by the inspectors, and/or by the Board of County Canvassers, and/or by the Board of State Canvassers.

I request that all of the precincts and absent voter counting board (AVCB) precincts within the State of Michigan be recounted by hand count. A list of those precincts is attached as Exhibit 1.

My deposit of \$125 per precinct is enclosed.

Signature: Jill Stein
Petitioner Jill Stein

RECEIVED/FILED
MICHIGAN DEPT OF STATE
ELECTIONS/GREAT SEAL
2016 NOV 30 PM 1:17

Subscribed and sworn to before me this
29 day of November 2016
[Signature]
(Signature of Notary Public)

Name of Notary: Kobie Evans
County: Suffolk
Commission Expires: 11/25/2022

