APPEAL NO. 16-2690

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Jill Stein, et al.,
Plaintiffs-Appellees,

v.

Christopher M. Thomas, et al.,

Defendants-Appellants.

Bill Schuette, Attorney General
Intervenor-Defendant,

and

Michigan Republican Party,
Intervenor-Appellant.

On Appeal from the United States District Court
For the Eastern District of Michigan Southern Division
Case No. 2:16-cv-14233
Judge Mark A. Goldsmith

EMERGENCY MOTION FOR STAY ON BEHALF OF THE MICHIGAN REPUBLICAN PARTY

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Intervenor-Appellant Michigan Republican Party states as follows:

Michigan Republican Party is not a parent, subsidiary, or other affiliate of a publicly owned corporation, nor does a publicly owned corporation have any interest in the Michigan Republican Party.

Intervenor-Appellant Michigan Republican Party moves under Federal Rules of Appellate Procedure 8 and 27, and Circuit Rule 27(c), for an emergency stay of the district court's order requiring Michigan to immediately commence a recount of votes in the 2016 Presidential election.

INTRODUCTION

Invoking Plaintiffs' "fundamental right" to participate in elections that are both "conducted fairly" and also "perceived to be fairly conducted," Order at 6, the district court ordered Michigan immediately to begin recounting millions of ballots in the 2016 Presidential election. It did so at the request of Green Party presidential Candidate Dr. Jill Stein, who received barely 1 percent of the votes cast in that election, and who thus has understandably conceded that her recount is "not about flipping the vote" or "chang[ing] the result." Dr. Jill Stein on Twitter, TWITTER (Nov. 30, 2016), archived at https://perma.cc/4ZCH-YDPS ("… #Recount2016 is about election integrity, not about flipping the vote …"); Stein, *Why the recount matters: Jill Stein*, USA TODAY (Dec. 1, 2016), archived at https://perma.cc/VZK4-5BVF ("Our goal is not to change the result of the election."). Stein was joined in the action by Louis Novak, a Michigan resident.

Neither Stein nor Novak has evidence of wrongdoing in the Michigan presidential election. All they have are conspiracy theories—backed by wholesale speculation—that nameless actors may have interfered with the election. *See* D.Ct.

ECF No. 1 at ¶3. Nonetheless, the district court, believing that the "perceived integrity of the presidential election as it was conducted in Michigan [is] at stake," ordered federal intervention in, and control over, the state recount process: "the recount shall commence [in 12 hours] and must continue until further order of the Court." Order (attached as Exhibit 2) at 7 (instructing that state and local government officials "assemble necessary staff to work sufficient hours to assure that the recount is completed" in accordance with the Order).

Setting aside for a moment whether Stein and Novak enjoy the fundamental right to invoke immediate recount proceedings to ensure the "perceived integrity" of the presidential election, the district court should never have answered that question to begin with, given that both Stein and Novak lack Article III standing to seek that relief. As to Stein, she has not alleged an injury-in-fact likely to be redressed by any ruling related to the need for a recount. She does not contend that a Michigan recount will result in her securing Michigan's electoral votes, and in fact has conceded it will not. Novak has no better claim to standing. Even if Novak voted in the election (and there seemingly is no allegation or evidence confirming as much), there are not factual allegations or evidence that give rise to a plausible assumption that his vote was not properly counted.

Ignoring these threshold concerns, the court below turned to the merits of Plaintiffs' constitutional challenge. Concluding that—at least in certain circum-

stances inadequately defined by the order—voters and candidates have a constitutional right to demand a recount based on mere suspicion of electoral improprieties, the district court unleashed a statewide recount upon the people of Michigan. No one doubts the fundamental nature of the right to vote, *see* Order at 3. But no court, to our knowledge, has read that privilege to include not only the right to cast one's vote, but also the right to request a recount *after* the vote to ensure an election's integrity. If all Americans now enjoy that right, ballot counting could become year-round sport.

Instead, Stein's request for extraordinary relief should have been denied. As just explained, there is no chance for success on the merits of Stein's constitutional claim. And Stein's own actions undercut her claim of irreparable injury. Indeed, despite having suspicions about the 2016 presidential election's integrity as soon as it concluded on November 8, Stein waited until November 30 to file her recount request, less than an hour before the deadline for doing so. Anyone fearing an irreparable injury of the magnitude suggested here surely would have acted sooner. Stein did not, and she now has only herself to blame for much of the purported emergency she now asserts.

Stein's request similarly fails the remaining requirements for extraordinary relief, most notably because her request does not serve the public interest. To the contrary, the decision below upset the orderly recount process (1) codified in state

law, (2) administered by state and local officials, and (3) relied upon by candidates, parties, and election officials alike. Now, those state procedures are subject to "further order of the Court." The result is substantial harm. Harm to election officials, voters, and vote counters forced hastily to take up recounts, creating confusion and uncertainty in an already challenging environment. And harm to all Michiganders, who are now on the hook for the estimated $5 million recount tab, most of it unreimbursed by Stein, when Michigan's state courts have yet (but are poised) to determine whether state law even requires a recount in the setting of a 1% requestor.

For these reasons, the Court should stay the district court's order.

BACKGROUND

For most, the November 8, 2016 presidential election concluded early the next morning, when the major news outlets declared President-elect Donald Trump the winner and Secretary Hillary Clinton graciously conceded. But not for Dr. Jill Stein. Rather, minutes before the November 30 deadline for doing so, Stein, the Green Party Presidential candidate, filed with Michigan's Board of State Canvassers a half-page, four paragraph petition challenging the outcome of Michigan's presidential election. Without any specification, Stein asked that Michigan residents endure an expensive, time-consuming recount, and the scrutiny and hardship that comes with it.

Why would Stein make such a request? We know it has nothing to do with changing the election's outcome. Stein did not win the State of Michigan. Not by a longshot. She received barely 1 percent of the vote in the 2016 Michigan presidential election, finishing over 2.2 million votes behind the winner. Stein has thus understandably conceded that the "goal" of the recount "is not to change the result of the election." Stein, *Why the recount matters: Jill Stein*, USA Today (Dec. 1, 2016), *archived at* https://perma.cc/VZK4-5BVF.

Nor could her request have rested on ensuring the fairness and accuracy of Michigan's presidential election. All available evidence indicates 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.

So why is Stein seeking a recount? All we know for certain is that she is using it to line her pockets with funds donated from those she has scared into believ-

ing that Michigan's electoral process was hijacked by nameless foreign entities. It would be bad enough if she were wasting only her own time and resources as part of her electoral farce. But she is also wasting millions of dollars in taxpayer money: estimates suggest Michigan will spend $4 million of its own money to fund this unneeded recount. *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 top of its financial ramifications, Stein's request also casts upon the State a "logistical hell," according to election officials. *See* Livengood, Ingham Co. clerk calls recount $45k 'logistical hell', The Detroit News (Nov. 30, 2016), archived at https://perma.cc/44JE-H3LK; see also 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 (Oakland County election official stating he has "never had a recount of this magnitude," and described the task as a "monumental undertaking.").

And there is more on the line than dollars, cents, and the need for herculean individual efforts. Rather, it is Michigan's participation in the Electoral College. Having endured a lengthy, expensive, hard-fought presidential election, Michiganians surely expected their votes would matter when the Electoral College

meets this December. But Stein's recount request calls into doubt Michigan's ability to finish a recount before the deadline for certifying Michigan's electors in accordance with federal and state law. *See* 3 USC § 5 (requiring disputes over electors to be resolved by December 13). On this point, the parties and the district court are in agreement.[1]

And with Stein having made the same demands in neighboring states as well, she even puts at risk confirmation of the entire election's outcome when Congress meets in January 2017. Ultimately, Stein cannot change the outcome of the presidential election. She apparently has no qualms, however, with creating chaos in her effort to do so.

These objections and more were raised by the President-elect to the Board of State Canvassers, the entity authorized by Michigan law to rule on such objections in the first instance. Mich. Comp. Laws § 168.882(3). Chief among those objections: because Michigan law permits a candidate for office to "petition for a recount" only if her petition alleges "that the candidate is aggrieved on account of fraud or mistake in the canvass of the votes", MCL 168.879(1)(b), Stein's petition

[1] *See* Order at 2 (citing the December 13 "'safe harbor' date for the selection of presidential electors" and the risk that the state's electors "might ultimately be decided by Congress" if not resolve by December 13); D.Ct. ECF No. 1 (Plaintiffs' Complaint) at ¶2 ("For Michiganders' votes to be counted in the Electoral College, Michigan must complete a recount of votes by December 13, the federally imposed deadline for the selection of electors to the Electoral College.").

failed the "aggrieved" requirement. After all, Stein—a fourth-place finisher who trailed the President-elect by over 2 million votes—has conceded that a recount will not catapult her to victory in the state election. And absent any claim of harm resulting from the fraud she alleges, Stein has not alleged she was "aggrieved" by the election canvass.

On Friday, December 2, the Board's members split 2-2 whether to allow the recount, which meant it was allowed to move forward. That afternoon, however, the President-elect appealed the Board's decision, as authorized by Michigan's recall statute. The Michigan Court of Appeals in turn ordered responses by the Board and Stein (who intervened in the appeal) to be filed by December 5, and argument has been set for December 6. As a result, whether the Board erred in permitting the recount to go forward is now being litigated in state court.

Michigan's recount law accounts for appeals of his nature. It provides that the "board of state canvassers shall not begin a recount unless 2 or more business days have elapsed since the board rule on the objections," allowing time for an expedited, emergency appeal. *Id*. Thus, the recount was scheduled to begin no earlier than the evening of December 6.

Dissatisfied with this, Stein—along with Michigan resident Louis Novak—lodged another last-minute complaint, this time in federal court. They raised an array of barely developed constitutional arguments, insisting that the 2-day delay

imposed by Michigan law is unconstitutional. Following a hearing on Sunday, December 4, the district court ultimately agreed with Stein and Novak, and entered a temporary restraining order requiring Michigan to "commence" with the recount.

The court found that each of the four factors relevant to the question whether to grant such an order was satisfied. Perhaps most noteworthy was the court's holding with respect to the likelihood-of-success factor: Stein and Navaro would likely succeed in showing that anything other than an immediate recount would violate their constitutional rights (the full nature of which the court did not specify). The district court thus created a precedent under which—at least in certain, undefined situations—losing candidates who do not claim a recount will change the election result, as well as any voter, may compel a recount based on speculation about possible-but-unproven allegations of electoral improprieties.

ARGUMENT

In deciding whether to stay a temporary restraining order, this Court applies "the same factors considered in determining whether to issue a TRO or preliminary injunction." *Ohio Republican Party v. Brunner*, 543 F.3d 357, 361 (6th Cir. 2008) (quoting *Ne. Ohio Coal. for Homeless & Serv. Employees Int'l Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006)). There are four such factors: (1) whether the movant is likely to succeed on the merits, (2) whether the movant would suffer irreparable injury without a stay, (3) whether a stay would cause sub-

stantial harm to others, and (4) whether a stay would serve the public interest. *Id*. The Party meets each one of these.

I. STEIN HAS NOT ESTABLISHED ANY LIKELIHOOD OF SUCCESS ON HER CONSTITUTIONAL CLAIMS.

1. Before getting to the merits, an antecedent problem requires attention: neither Stein nor Navaro has Article III standing to bring this suit.

"A party has standing only if he shows that he has suffered an 'injury in fact,' that the injury is 'fairly traceable' to the conduct being challenged, and that the injury will likely be 'redressed' by a favorable decision." *Wittman v. Personhuballah*, 136 S. Ct. 1732, 1736 (2016) Stein fails this requirement. She has not alleged an injury-in-fact likely to be redressed by any ruling related to the need for a recount. She does not contend that she will (or even might) win Michigan's electoral votes after a recount. Nor, in any event, would a victory in Michigan send Stein to the White House. After all, Stein gained no more than 3 percent of the vote in any state where she appeared on the ballot. *See* America's Election Headquarters, FOX NEWS, http://www.foxnews.com/politics/elections/2016/presidential-election-headquarters (last visited Nov. 29, 2016). Accordingly, she has failed to allege facts showing that she has suffered a constitutionally cognizable injury.

Nor does Plaintiff Novak satisfy Article III standing requirements. Novak describes himself as a "Michigan voter" (although he never alleges or proves he

voted in the election). Assuming Novak did vote, he still has not alleged any facts giving rise to a plausible assumption that his vote was not properly counted. He is left with only a "merely speculative" injury, one that does not meet Article III's injury-in-fact requirement for establishing standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

Insofar as Navaro seeks to defend the interest in a free and fair election, he has no standing to assert that grievance either. It is a "generally available grievance," one for which relief benefits Navaro no more "than it does the public at large." *Id.* at 573–74 ("We have consistently held that a plaintiff raising only a generally available grievance,"—"claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.") That generalized grievance too "does not state an Article III case or controversy." And even if Novaro could seek relief for a generalized grievance, he failed to allege any facts plausibly suggesting that fraud or mistake tainted the election results.

2. On to the merits. The district court's opinion is based on the assumption that Stein has the right to a recount under Michigan law. Order at 5. Whether she does indeed have that right is now being litigated in state court, but this brief accepts the district court's assumption for the sake of argument. Under Michigan

law, objections to the recount can be filed with the State Board of Canvassers. Mich. Comp. Laws § 168.882(3). Once those objections are resolved, Michigan imposes a two-business-day waiting period before the recount begins, to allow for an expedited appeal and to afford election officials time to ensure recount procedures are universally (and uniformly) understood. *Id*. According to the district court, there is a "credible threat that the recount, if delayed, would not be completed by the 'safe harbor' day," Order at 5—the "safe harbor day" being December 13, the date by which states must resolve election contests to be assured participation in the Electoral College, 3 U.S.C. § 5. Therefore, the court concluded, the delay violates the First and Fourteenth Amendment.

The trouble with this argument is that the conclusion does not follow from the premises. It is true that December 13 is the date by which Michigan must resolve any dispute over the presidential election to be guaranteed an opportunity to participate in the Electoral College. *See* 3 U.S.C. § 5. But there is no reason to think this statutory end-date gives rise to a *constitutionally* based start date by which all recounts must begin.

It is also true that the First Amendment does indeed give a right to political association, and that the Fourteenth Amendment requires that, if states permit voters to vote for president, they must fairly tabulate the votes. But the delay does not jeopardize either right, because the votes *already have been* fairly and accurately

tabulated. The district court cites no evidence to the contrary, no surprise given that Plaintiffs did not present anything worthy of a court's consideration.

At best, Plaintiffs presented evidence of how some have speculated that the election results *could have* been inaccurate, something that can only be disproven by a recount. By that logic, however, every person, in every state, has the constitutional right to a recount anytime one thinks votes might have been inaccurately counted, without regard to whether that person has evidence suggesting as much. And the tab for those recounts would be the state's alone, despite the ubiquity of state laws requiring recount requestors to pay some or all of the recount fee. After all, just as the right to cast a ballot cannot be infringed by a poll tax, *see generally Harper v. Bd. of Educ.*, 383 U.S. 663 (1966), the recount right similarly could not encumbered by state fees.

In addition, the district court relied on a misapplication of *Burdick v. Takushi*, 504 U.S. 428 (1992). Under *Burdick*, a "court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights." *Burdick*, 504 U.S. at 434. The district court, however, made little effort to consider Michi-

gan's interest in ensuring an orderly and accurate recount by giving the relevant actors two business days to prepare for that recount. It simply asserted that the State's administrative and financial interests—not to mention its interest in ensuring the recount is perceived as proceeding in a reliable manner—"pale in comparison" to the Plaintiff's interests in assuring "the perceived integrity of the presidential election." Order at 4. But if that were how *Burdick* worked, the balance would *always* tip to the plaintiff in any election law case; a result completely at odds with *Burdick*'s express refusal to assess election laws under a strict-scrutiny standard. 504 U.S. at 432.

Burdick adds that "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Id*. at 434. Here, there is no evidence that Plaintiffs' rights were burdened *at all*, tilting the balance even more heavily toward the State. (It is perhaps for these reasons that one election-law scholar—Derek Muller, of Pepperdine University Law School—characterized "[t]he Michigan federal court's analysis of the *Burdick* balancing test" as "about the worst I've read." *See* Derek T. Muller, TWITTER (Dec. 5, 2016), archived at https://twitter.com/derektmuller/status/805784844659662848).)

3. There is another problem with Stein and Novak's request: it comes much too late in the day. As the State argued before the district court, Stein's suit should

have been barred by the doctrine of laches. A party asserting the defense of laches must show: "(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting it." *Herman Miller, Inc. v. Palazzetti Imports and Exports, Inc.*, 270 F.3d 298, 320 (6th Cir. 2001). As the district court noted, there is a strong presumption that a delay in filing is reasonable when the filing complies with the statute of limitations. *Chirco v. Crosswinds Cmtys. Inc.*, 474 F.3d 227, 233 (6th Cir. 2007). But this presumption is not absolute. Indeed, "just as various tolling doctrines can be used to lengthen the period for suit specified in a statute of limitations, so laches can be used to contract it." *Id.* at 234 (citation omitted). "[A] flat proscription . . . against the doctrine of laches in cases involving a . . . statutory claim is both unnecessary and unwise." *Id.* at 233-34.

This case is a perfect example of why that is so. *First*, Stein demonstrated a "lack of diligence" in this matter. The premise of Stein's claim is that Michigan's election machinery is vulnerable to attack. The machinery has not changed in years. Nor is the evidence that Stein relies upon in an attempt to support this theory new. *See* Exhibits attached to Pls.' Mot. for TRO (citing studies and research from 2000, 2004, 2005, 2007, 2008, and 2011).

Stein herself contends that "the vulnerability of American voting machines have been known for some time[.]" *See* Pls.' Br. In Support of TRO, D.Ct. ECF No. 2 at 12. If Stein's motivation for this recount was truly to ensure election in-

tegrity, she could have raised these issues *before* the election. For example, several of Stein's experts before the district court touted "risk-limiting audits" as "the gold standard" for reliably ensuring the correctness of elections. But she made no effort to proactively fix the alleged problems with Michigan's election procedures and implement risk-limiting audits. If Stein's motivation for the recount were truly to ensure election integrity, and if she had specific concerns about what had occurred during Michigan's election on November 8, she could have raised these concerns on *November 9*, immediately following the election. Michigan law allows for such a challenge. *See Santia v. Bd. of State Canvassers*, 391 N.W.2d 504 (Mich. Ct. App. 1986). And if Stein's motivation for the recount was truly to ensure election integrity and, as she now contends, she was concerned with the State meeting the December 13 safe harbor deadline, she could have filed her petition for recount immediately following the Board of Canvassers' certification of the election results on November 28.

But Stein did not do so. She did not raise these concerns prior to the election, as she could have done. She did not raise these concerns immediately following the election, as she could have done. And she did not raise these concerns immediately following Michigan's certification of the election results, as she could have done. Instead, she waited until November 30, 2016—less than an hour before the deadline—to file her conclusory petition for recount. She now has the audacity to

argue that it is an unconstitutional Michigan law, and the effect of the President-elect's objections to her petition for recount (filed less than 24 hours after the petition itself), that endanger Michigan's Electoral College votes. It is not. It is Stein's own unjustified delay that has caused the concerns she now raises. If ever there were a case of "lack of diligence" by a party, *Herman Miller*, 270 F.3d at 320, this is it.

The district court also erred in finding that the second factor, prejudice to a party asserting the defense of laches, was not satisfied. The court noted that there is "no reason to believe that [the State or Michigan Republican Party] have been prejudiced" by Stein's lack of diligence. This is wrong. As argued before the district court, the changes to the recount schedule—which means starting the recount before the statutory start time—has the enormous financial impact of causing Michigan's taxpayers to shoulder massive expenses to undertake a recount likely to be ceased under Michigan's recount statute. The changes to the schedule have also caused a logistical nightmare, making it difficult to train and recruit volunteers to assist in conducting an accurate recount. These harms have only been compounded by the district court's failure to honor Michigan law. The State, county clerks, and the Michigan Republican Party are now left scrambling to implement a statewide recount with less than twelve hours' notice, when it was thought that the recount would not begin until Tuesday evening or Wednesday morning pursuant to

Michigan's recount statute.

II. THE ORDER BELOW IRREPARABLY HARMS THE MICHIGAN REPUBLICAN PARTY.

Stein and Novak faced no fear of irreparable injury absent emergency relief. But the same cannot be said for the Michigan Republican Party, which now faces irreparable harm from the district court's order. The Party is responsible for advising candidates on election laws, for helping monitor elections, and for helping ensure an orderly, predictable election process in Michigan. Without clear rules, it cannot accomplish these tasks. Yet the decision below muddies constitutional waters so thoroughly that the Party can hardly carry out its election-related duties. And the Party is subject to further order from the district court, both now and in the future. Absent a stay of the decision below, confusion will persist through this election and beyond.

III. NEITHER PLAINTIFF NOR ANYONE ELSE WILL BE HARMED IF THE ORDER IS STAYED.

There is no evidence that Stein, Novak, or anyone else has been harmed by the way in which Michigan records a voter's vote. There is, therefore, no reason to think that anyone will be deprived of any constitutional right by a stay of the district court's judgment. The third standard for staying a district court judgment is therefore satisfied.

IV. GRANTING A STAY WOULD SERVE THE PUBLIC INTEREST.

Entering a stay will materially *advance* the public interest. The recount in

question needlessly undermines confidence in Michigan's elections, and forces the State to pay $4 million for a recount admittedly undertaken for completely academic reasons. Perhaps Michigan's courts will determine that Michigan's laws require those costs really do need to be borne. But if not, entering a stay of the district court's order will save the State from wasting millions of dollars of taxpayer money, and thousands of hours of manpower.

Indeed, it is difficult to emphasize enough the disruption this order cause to state election proceedings already underway. The Board of State Canvassers' decision permitting the recount to go forward is now being appealed in the Michigan state courts. Preemptively thwarting that process in the federal courts runs counter to our federal system, which respects state sovereignty—especially so in setting the "times, places and manner of holding elections," U.S. Const., art. I, section 4—and depends on them to help defend and enforce the Constitution. *See* The Federalist No. 32, at 200–03 (Hamilton) (Cooke ed. 1961); The Federalist No. 82, at 554–55 (Hamilton), The order in this case upsets that balance. Indeed, even should the Michigan courts determine that Michigan law does *not* entitle Stein to a recount, the courts of the United States have already sprung that recount on the State, state law notwithstanding.

At a minimum, the ongoing state-court proceedings should have directed the district court to abstain from deciding this matter. It could have done so under the

Pullman abstention doctrine, which applies in cases where a litigant asks a federal court to reach a constitutional question predicated on the federal court's own, non-binding interpretation of state law. *Moore v. Sims*, 442 U.S. 415, 423 (1979). Alternatively, it could have done so under the *Burford* abstention doctrine, which applies "where timely and adequate state-court review is available and (1) a case presents difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar, or (2) the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Caudill v. Eubanks Farms, Inc*., 301 F.3d 658, 660 (6th Cir. 2002) (internal quotation marks omitted). Yet the district court invoked neither. At the very least, the spirit of these doctrines—that federal courts not needlessly interfere with states' prerogatives—indicates that staying the district court's order would advance the public interest.

CONCLUSION

For the foregoing reasons, this Court should stay the district court's order.

Dated: December 5, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies that this motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2). The motion contains 4,838 words (excluding those parts of the brief exempted by Federal Rule 32(f)), and was prepared using Microsoft Word 2007.

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s/ Chad A. Readler
Counsel for Michigan Republican Party

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December, 2016, I submitted to the Clerk of Courts and Deputy Clerk of Courts for the United States Court of Appeals for the Sixth Circuit this Emergency Motion For Stay via e-mail pursuant to instructions from the Clerk's Office for emergency filings, and further certify that counsel for all other parties were copied on that e-mail.

s/ Chad A. Readler
Counsel for Michigan Republican Party