

DC Wrap: One Wisconsin election lawsuit dismissed as others continue in state, federal court

Posted on Thursday, Dec 10, 2020

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Quotes of the week

"I would say it depends on what we found out. I need more information. The American people need more information. I'm not ready to just close and slam the book on this thing and go 'OK, let's walk away from it.'"

– U.S. Sen. Ron Johnson, R-Oshkosh, on continuing to challenge election results. Hearings in the state and federal suits challenging Wisconsin's election are scheduled for today.

"I feel sorry for Texans that their tax dollars are being wasted on such a genuinely embarrassing lawsuit. Texas is as likely to change the outcome of the Ice Bowl as it is to overturn the will of Wisconsin voters in the 2020 presidential election."

– State Attorney General Josh Kaul on the Texas AG lawsuit against Wisconsin and other states won by Joe Biden.

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This week's news

— A federal judge has ruled in the first of several cases challenging the results of Wisconsin's election, dismissing the lawsuit from former Trump attorney Sidney Powell seeking to overturn Wisconsin's election results.

The suit, filed on behalf of one of the president's GOP electors, sought to have President Trump declared the winner of Wisconsin's electoral votes.

But U.S. District Judge Pamela Pepper wrote last night the request was "far outside" the court's oath to uphold and defend the Constitution and amounted to "an extraordinary intrusion on state sovereignty from which a federal court should abstain."

"Federal judges do not appoint the president in this country. One wonders why the plaintiffs came to federal court and asked a federal judge to do so," Pepper wrote.

The suit Powell filed has been plagued by problems, including initially naming former 3rd CD GOP candidate Derrick Van Orden as one of the plaintiffs even though he didn't give permission to include him. The original complaint also sought video footage from an arena in Detroit where ballots were counted as part of its effort to overturn Wisconsin's results.

In her ruling, Pepper suggested the legal team made up a quote from a case it cited in a brief. Pepper wrote she read the page cited in the brief three times and couldn't find the passage the plaintiffs claimed had been written by one of her colleagues. What's more, she added the case cited didn't involve the challenge of a presidential election as claimed by plaintiffs, but of a statute requiring those involved in a referendum to file a registration statement and take other actions.

Pepper ruled Trump elector William Feehan didn't have standing to file the suit and that it was already moot because Dem Gov. Tony Evers had certified the results and transmitted them. The suit had suggested Evers could address the alleged injuries Feehan suffered by refusing to certify or transmit the results. But Pepper wrote the gov "cannot refuse to do that which he already has done."

Some Republicans have argued Evers prematurely certified the results. Dean Knudson, a GOP appointee to the state Elections Commission, filed a complaint against Evers earlier this week arguing he violated the law by not waiting until after Trump had exhausted his appeals to certify the results.

Pepper also rejected Feehan's argument that his vote was diluted by alleged fraud.

"The plaintiff wants Donald J. Trump to be certified as the winner of the Wisconsin election *as a result of the plaintiff's vote*. But what he asks is for Donald J. Trump to

be certified the winner *as a result of judicial fiat*,” she wrote.

— U.S. Judge Brett Ludwig is expressing frustration that President Trump has changed the relief he is seeking in his lawsuit trying to overturn the results of Wisconsin’s Nov. 3 election.

The lawsuit originally asked for an order nullifying the election and for the issue to be remanded to the GOP-controlled state Legislature to determine a remedy, including the possibility of appointing the state’s electors.

Ludwig suggested at a hearing Friday the request to “remand” the issue to the Legislature was “really bizarre.” Trump’s attorney’s suggested that was an inartful description of the president’s request.

In a new filing, Trump’s attorneys asked for an order directing Gov. Tony Evers to issue a certificate of results consistent with the appointment of electors designated by the Legislature.

Ludwig noted the case was on a compressed time schedule. Still, he was frustrated during a phone conference on Wednesday that Trump had changed the relief he’s seeking.

“That may not be less odd than the remand requested in the complaint,” Ludwig said on Wednesday of the new request.

The suit alleges the way absentee ballots were collected, processed and counted violated standards set by the state Legislature. That includes ballots cast by those who claimed they were indefinitely confined, the use of drop boxes to collect absentee ballots and clerks filling out missing address information from witnesses on the envelopes used to mail back absentee ballots. The suit accuses a string of Wisconsin officials of conducting “an unconstitutional and unlawful Presidential election.”

Trump originally asked for seven witnesses to testify at tomorrow’s hearing: Madison Clerk Maribeth Witzel-Behl, Milwaukee Mayor Tom Barrett, Milwaukee Election Commission Executive Director Claire Woodall-Vogg, and Meagan Wolfe, administrator for the Wisconsin Elections Commission.

Motions to quash have been filed for all four. Defendants have also filed a motion to bar testimony from the president's other three witnesses. They are a West Bend man who was an observer at Milwaukee's Central Count and two Milwaukee men who served as vote counters.

Attorney Jeffrey Mandell, who represents Evers, said Trump's attorneys want the Wisconsin officials to acknowledge their conduct in the election was unlawful, which he said was "not a serious request."

He also questioned the relevance of having the other three witnesses testify. Mandell said they are likely to testify that they raised objections to ballots at Milwaukee's Central Count and about what happened on election night.

He pointed out those ballots have since been recounted as part of a request by Trump.

"That has no relevance," Mandell said. "Those ballots have all been recounted in a proceeding that the Trump campaign had full access to, that was transparent with a full livestream."

Ludwig put off a ruling on whether the seven will testify during yesterday's hearing, saying he hoped attorneys could work out an agreement on whether the relevant information from all of them could be provided to the court in affidavits.

He added if they can work out an agreement, he intends to wrap up today's hearing by noon. That's key because a hearing in Trump's state lawsuit is scheduled to begin at 1:30 p.m. unless the federal hearing prevents that. The state hearing would then be Friday morning.

— Trump has also filed a motion to intervene in the Texas lawsuit that seeks to overturn the results of the election in Wisconsin, Pennsylvania, Michigan and Georgia.

The suit from GOP Texas AG Ken Paxton accuses the states of changing election procedures without the approval of lawmakers, a move he alleges violates the U.S. Constitution and thus those states shouldn't be allowed to appoint electors based on the results

The president's motion, filed yesterday, asks the U.S. Supreme Court to bar the states from using the results of the Nov. 3 elections to appoint their electors unless their GOP-controlled state legislatures pass a resolution approving the move.

The brief also falsely claims that “no candidate in history — Republican or Democrat — has ever lost the election after winning” Ohio and Florida. Republican Richard Nixon won both states in 1960 over John F. Kennedy as the Dem won the presidency.

Seventeen states with GOP attorneys general also filed an amicus brief yesterday supporting the Texas suit.

The Supreme Court has set an afternoon deadline today for a response to Paxton's suit.

Read the president's brief [here](#).

See the state-by-state results of the 1960 election [here](#).

— In the state case, the Department of Justice argued Trump waited too long to challenge the procedures used to conduct Wisconsin's election.

The agency, representing the Elections Commission, also argued the president's effort to throw out ballots in heavily Dem Dane and Milwaukee counties would violate voters' constitutional rights of due process and equal protection.

The arguments DOJ makes in its brief are similar to other defenses that have been raised against the president's state and federal suits.

Read DOJ's brief [here](#).

— Even as he has lobbied GOP officials in various states to take actions to overturn the election results, President Trump hasn't called Assembly Speaker Robin Vos, according to a Vos spokeswoman.

The speaker of Pennsylvania's House of Representatives confirmed to national

media the night of Dec. 7 that Trump called him twice in the past week asking for help to reverse his loss in that state. The president also met with Michigan's top GOP legislative leaders at the White House and has pressured Republicans in Georgia to take various steps.

Vos spokeswoman Kit Beyer said the president hasn't contacted the speaker.

— U.S. Sen. Tammy Baldwin says she hopes federal lawmakers can pass a funding bill before government funding expires at the end of the week.

"The good news is that we've made some significant headway on funding the government through the end of the next fiscal year and I hope that we can get that through on a bipartisan basis," the Madison Dem said at a Dec. 6 virtual event.

With government funding set to expire Friday, the House last night passed a one-week stopgap spending bill that pushed the funding deadline back to Dec. 18.

U.S. Rep. Mike Gallagher, R-Green Bay, was the only member of Wisconsin's House delegation to vote against the bill. He has regularly voiced opposition to short-term spending measures.

Baldwin also said another COVID-19 relief package is "overdue." Whether that measure is included in the government funding continuing resolution or passed as a stand-alone bill, she said lawmakers need to "create the certainty needed for people who have been so devastatingly impacted by COVID-19."

See more [here](#).

— A wide-ranging coalition of nearly three dozen groups is calling for Wisconsin's congressional delegation to provide "bold solutions" in an effort to mitigate "larger systemic economic damage" stemming from the COVID-19 pandemic.

The plea comes in a letter yesterday to each of the state's federal lawmakers. The coalition, including groups ranging from chambers of commerce to health systems to local governments, thanks lawmakers for previous relief efforts but warns of

“severe economic and public health impacts facing our members, economies, and the communities we support.”

“Without additional federal financial support, the immediate negative consequences will be significant, and will be compounded by severe long-lasting effects,” the letter says.

The coalition does not call for specific proposals but instead encourages lawmakers to work toward bipartisan solutions and suggests “reasonable guardrails” to enhance fiscal responsibility.

See more [here](#).

— A bipartisan group of three members of Wisconsin’s House delegation was among the 78 federal lawmakers to vote against the National Defense Authorization Act as the chamber overwhelmingly passed the legislation.

Dem U.S. Reps. Mark Pocan, of Town of Vermont, and Gwen Moore, of Milwaukee, were joined by Republican U.S. Rep. Tom Tiffany, of Minocqua, in opposing the bill.

Pocan tweeted after the vote congressional lawmakers “should be cutting down the Pentagon’s budget-not increasing it...again.”

“Let’s put the priorities of the American people above the profits of defense contractors,” he said.

Meanwhile, Dem U.S. Rep. Ron Kind, of La Crosse, joined Republican U.S. Reps. Mike Gallagher, of Green Bay, Bryan Steil, of Janesville, Glenn Grothman, of Glenbeulah, and Jim Sensenbrenner, of Menomonee Falls, in backing the legislation.

See more [here](#).

— U.S. Sen. Ron Johnson is scheduling a hearing next week to examine “apparent irregularities” from last month’s election that have “not been fully examined.”

The Oshkosh Republican said in a statement accompanying the meeting notice he is “mindful that many of the issues that have been raised have been, and will continue to be, appropriately resolved in the courts.”

“But the fact remains that a large percentage of the American public does not view the 2020 election result as legitimate because of apparent irregularities that have not been fully examined,” he said. “That is not a sustainable state of affairs for our country.”

The hearing comes as a number of parties — ranging from the Trump campaign to the Texas attorney general — have filed lawsuits in state and federal courts challenging the legitimacy of the outcome of Wisconsin’s election.

Similar suits have been filed in a number of battleground states across the country. But according to a tally kept by Dem attorney Marc Elias, who is litigating several of those cases, the Trump campaign and its allies have been successful in just one of 53 post-election lawsuits.

Johnson said in his statement “the only way to resolve suspicions is with full transparency and public awareness.” Further details on next Wednesday’s meeting will be released next week, including information on witnesses who will testify.

See more [here](#).

— American democracy is in a “dangerous” place, according to UW-Madison professors speaking on a Wisconsin Alumni Research Foundation panel.

“We’re in a really dangerous spot,” UW-Madison political science Prof. Kathy Cramer said during the virtual panel. She called political leaders’ divisions and disposal of democratic norms “frightening.”

“Without that, we can’t expect members of the public to do any different,” Cramer said of the need for politicians to accept democratic norms. “We need our leaders to step up.”

Democrats and Republicans currently fail to agree on fundamental facts, a critical normative practice, in part due identity politics and conservatives’ reluctance to

accept 2020 election results, according to UW-Madison journalism Prof. Lew Friedland.

See more [here](#).

— U.S. Rep. Ron Kind still had \$953,553 in the bank after narrowly fending off a challenge from former Navy SEAL Derrick Van Orden, according to his post-election report.

The filing showed the La Crosse Dem raised more than \$2.9 million for the cycle and spent nearly \$4.1 million in his closest race since he first won the seat in 1996.

Van Orden, meanwhile, raised nearly \$1.9 million after getting into the race in early 2020 and spent almost all of it. He had \$25,600 left in his campaign account with \$8,010 in debts.

*U.S. Rep. Bryan Steil, R-Janesville, listed \$3.2 million in receipts for the cycle, spent \$3.1 million and had \$394,736 left in his campaign account.

*U.S. Rep. Mark Pocan, D-Town of Vermont, raised \$1.2 million for the cycle, spent \$630,980 and had \$825,411 cash on hand.

*U.S. Rep. Gwen Moore, D-Milwaukee, raised nearly \$1.2 million for the cycle, spent \$968,954 and had \$59,359 left in the bank.

*U.S. Rep.-elect Scott Fitzgerald, R-Juneau, raised \$1.1 million for the cycle, spent \$885,406 and had \$197,693 cash on hand.

*U.S. Rep. Glenn Grothman, R-Glenbeulah, raised nearly \$1.7 million for the cycle, spent just more than \$1.7 million and had \$293,404 in the bank. He also listed \$139,110 in debts.

*U.S. Rep. Tom Tiffany, R-Minocqua, raised nearly \$2.6 million for the cycle, spent more than \$2.4 million and had \$121,842 in the bank.

*U.S. Rep. Mike Gallagher, R-Green Bay, raised nearly \$3 million for the cycle, spent more than \$2.4 million and had \$1.2 million cash on hand

Posts of the week

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