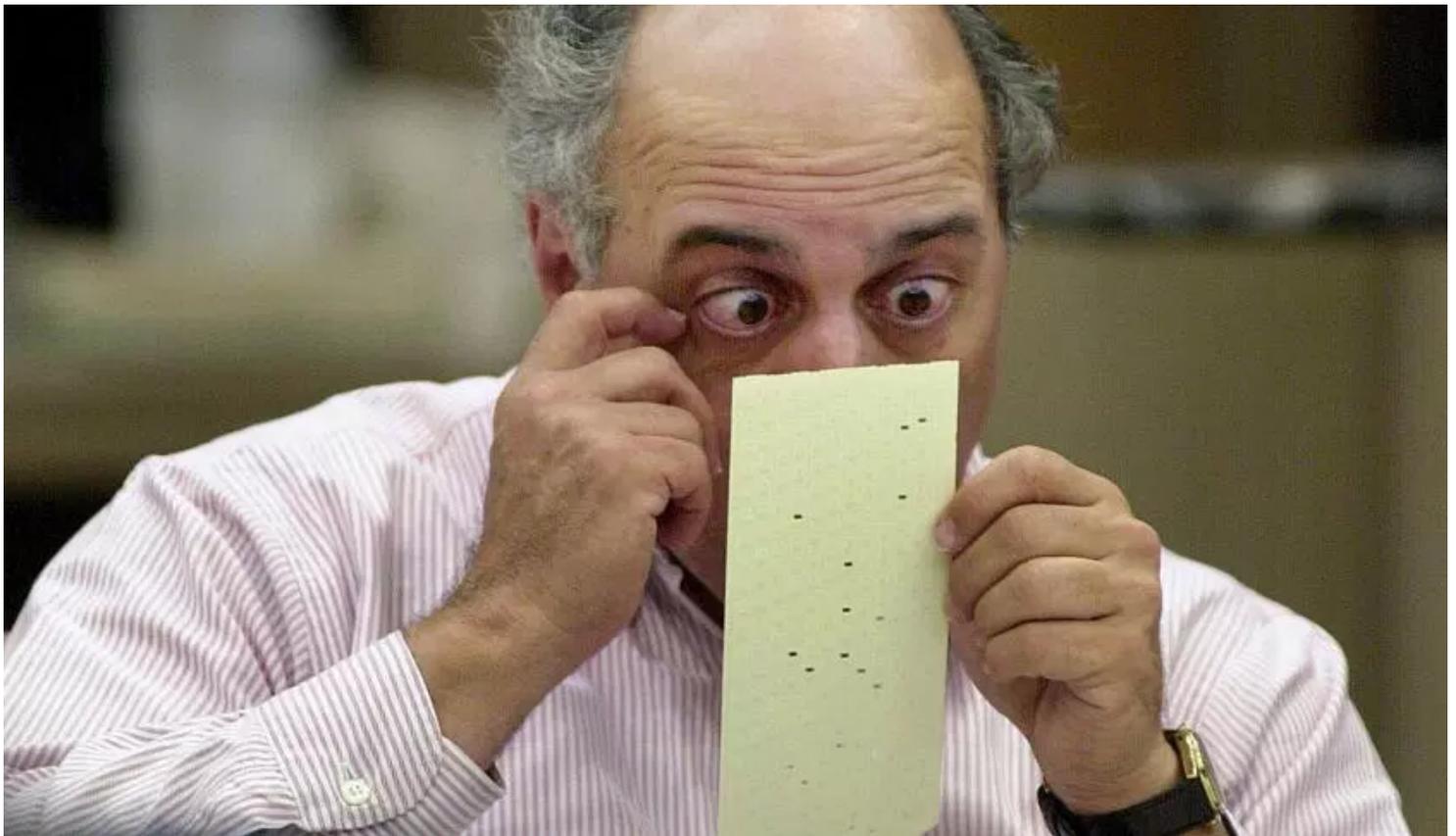




LEADERSHIP ELECTIONS 2016

Hillary Clinton and Donald Trump Are Getting Ready In Case of Recount Fight

by Roger Parloff @rparloff NOVEMBER 8, 2016, 4:40 PM EST



A Broward County, Fla., official looks over a questionable ballot on November 25, 2000.

Rhona Wise — AFP/Getty Images



Let's all pray this article is unnecessary.

But in case this uniquely nasty presidential campaign culminates in a contested vote tally in a crucial battleground state Tuesday—or, God forbid, in multiple battleground states—each side has its litigators already revving their engines.

For Democrat Hillary Clinton, the top guy is campaign general counsel Marc Elias, an election law heavyweight in the Washington, D.C., office of the Perkins Coie law firm.

This isn't his first rodeo. Elias is a veteran of major election recount battles, including those of Sen. Harry Reid (D-Nev.) in 1998; Sen. Maria Cantwell (D-Wash.) in 2000; Sen. Jim Webb (D-Va.) in 2006; Sen. Al Franken in 2008 (D-Minn.); Minnesota Gov. Mark Dayton in 2010; and Virginia Attorney General Mark Herring in 2013. Elias's clients won in all six battles.

That's an impressive list, though it omits the most famous recount contest of all: the battle now known as *Bush v. Gore* in 2000. Elias was not involved in that one, which he'd probably be proud to admit. (He declined comment for this article.) But several lawyers from Boies Schiller & Flexner—the firm whose co-founder, David Boies, argued Gore's case before the Supreme Court—have been serving as Elias' co-counsel in seven suits Democrats filed in the past two weeks. In those suits, the Democratic Party sought to bar Trump-conscripted poll-watchers from intimidating voters in minority neighborhoods. The suits have failed to win court orders but, some observers say, may force the poll-watchers to watch their step. (Read an overview of that litigation [here](#).)

For Trump, the field general is Donald McGahn II, who is another election heavyweight. Currently a partner in the D.C. office of Jones Day, a mega-law firm, he previously served on the Federal Election Commission for five years, including a stint as chairman. He also served as general counsel to the National Republican Congressional Committee for 10 years.

McGahn is the nephew of Patrick McGahn, who was Trump's lawyer/power-broker in Atlantic City when he was breaking into the casino business. Trump named Paddy's Saloon in the Trump Taj Mahal after that McGahn, according to the *Washington Post*. Patrick McGahn, also once a [Democratic Party leader](#), died in 2000 at age 72.

A source close to the campaign tells *Fortune* that he's doubtful that Trump's fondness for Patrick could have influenced his choice of Don for the general counsel position, but he's not positive. (Don was still in



McGahn's partner at Jones Day, Ben Ginsberg, was also a lead player on the Republican side during the Bush-Gore recount litigation, but it's unclear if he would make an appearance if push came to shove this time around. (Ginsberg did not return an email seeking comment.) He was national counsel for the Bush-Cheney campaigns in 2000 and 2004, and for Mitt Romney in 2008 and 2012, and worked for Gov. Scott Walker of Wisconsin during the primary season.

In the voter-intimidation litigation that has already been taking place, McGahn's Jones Day firm and Elias's Perkins Coie—aided by lawyers at Boies Schiller & Flexner—have pulled the lead oars, but have been aided by local counsel in each city: Cleveland, Detroit, Las Vegas, Newark, Philadelphia, Phoenix, and Raleigh.

One of Trump's local counsel has some personal experience with voter fraud. Twenty-three years ago, Bruce Marks, of Philadelphia's Marks & Sokolov, lost a special election for state senate due to a large-scale absentee ballot fraud engineered by his Democratic opponent. Marks went to court and got the result reversed, and was awarded the seat (though he was voted out of office in 1994).

His story got a lot of press at the time. And, in an interview with *Fortune*, Marks said that he met Donald Trump and then-wife Marla Maples at a political fundraiser in 1994.

Not surprisingly, Marks has maintained a strong interest in voter fraud, and last month he published a commentary in [Philly.com](#) arguing that fears of voter fraud in Philadelphia remain “well-founded” today.

When he heard that the Democratic Party had sued the Trump campaign to block its efforts to enlist poll-watchers, he says, he reached out to the campaign to offer his services in defense. McGahn took him up on the offer.

Oddly enough, Marks happens to specialize in litigation relating to commercial transactions between the West and Russia and Ukraine, raising eyebrows given Trump's praise for Vladimir Putin's strength as a leader; former Trump campaign manager Paul Manafort's work for the ousted, pro-Putin Ukrainian president Viktor Yanukovich; and Trump's reluctance to credit the intelligence community's assessment of Russia's role in hacking the DNC.

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But Marks says that, other than his recent work for the Trump campaign, Marks has had no attorney-client relationship with Trump “or his interests anywhere.” He also notes that his firm, while not anti-Putin, currently represents the business interests of Igor Kolomoisky, a Ukrainian billionaire who has angered Putin by, among other things, funding militia brigades to defend the eastern Ukraine against pro-Russian rebel forces.

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