

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

GREAT AMERICA PAC,
STOP HILLARY PAC, and
RONALD R. JOHNSON,

Plaintiffs,

-against-

WISCONSIN ELECTIONS COMMISSION,
and MICHAEL HAAS, in his official capacity
as ADMINISTRATOR OF THE WISCONSIN
ELECTION COMMISSION,

Defendant.

No. 16 Civ. 00795

JILL STEIN’S MOTION TO INTERVENE

Jill Stein, by her undersigned counsel and pursuant to Federal Rule of Civil Procedure 24, respectfully moves to intervene in this action, filed on December 1, 2016 by Great America PAC, Stop Hillary PAC, and Ronald R. Johnson, challenging the legality of the statewide recount of ballots cast in the 2016 presidential election that is currently underway across Wisconsin. In support of her motion to intervene, Dr. Stein states as follows:

1. Dr. Stein was the Green Party nominee for President in the November 8, 2016 general election.
2. Dr. Stein’s petition to the Wisconsin Elections Commission (“WEC”) on November 25, 2016 initiated the recount challenged in this action. *See* Complaint, ECF No. 12, ¶ 12. A copy of Dr. Stein’s petition, which has been found sufficient by the WEC, is attached hereto as Exhibit A.

3. Dr. Stein has paid approximately \$3.5 million to the WEC to pay for the recount, pursuant to Wis. Stat. § 9.01(ag) and the WEC ordered a recount based on Dr. Stein's petition. The November 29, 2016 order from the WEC is attached as Exhibit B.

4. Dr. Stein is entitled to intervene in this action as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2), which provides that on a "timely motion, the court must permit anyone to intervene" so as long as the movant "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

5. Dr. Stein's motion is timely because it is being filed the day after the underlying action was commenced. Accordingly, the motion presents no risk of "a tardy intervenor . . . derailing a lawsuit within sight of the terminal." *Reid L. v. Ill. State Bd. of Educ.*, 289 F.3d 1009, 1018 (7th Cir. 2002) (internal quotation marks omitted). There will be no prejudice to the parties if Dr. Stein is permitted to participate. *See id.*

6. Dr. Stein has a protectable interest in the recount proceeding. She is the petitioner who initiated it, and has raised nearly \$7 million from members of the public to fund recounts in Wisconsin and other states. Dr. Stein has statutory rights to participate in the recount and in any appeal of the result. *See* Wis. Stat. §§ 9.01(3), 9.01(6). Dr. Stein's interest in this proceeding is clearly sufficient to support intervention as of right. *See Roth v. La Farge Sch. Dist. Bd. of Canvassers*, 2001 WI App. 221 ¶¶ 9-25, 247 Wis. 2d 708, 717-25, 634 N.W.2d 882, 885-89; *Hoblock v. Albany Cnty. Bd. of Elections*, 233 F.R.D. 95, 99-100 (N.D.N.Y. 2005); *Marshall v. Meadows*, 921 F. Supp. 1490, 1492 (E.D. Va. 1996); *Smith v. Bd. of Election Comm'rs for City of Chi.*, 586 F. Supp. 309, 312 (N.D. Ill. 1984).

7. The interests of the other parties to this action may diverge from Dr. Stein's interests. The Wisconsin Elections Commission—which was Dr. Stein's adversary in another litigation concerning this recount, *see Stein v. Wisconsin Elections Comm'n*, No. 2016-cv-3060 (Wis. Cir. Ct., Dane Cnty. 2016)—may have different interests in ensuring that the recount proceeds, given its competing administrative priorities. The Wisconsin Elections Commission is also unlikely to present to the Court the evidence of Wisconsin's voting machines' vulnerabilities and the unprecedented nature of cyberattacks in this election cycle, which prompt the need for a recount. The Wisconsin Elections Commission's position in this case is yet unknown, and given the time-sensitive nature of the relief sought, full participation by Dr. Stein is necessary to ensure that her interest in the recount proceeding is adequately represented. Dr. Stein therefore handily satisfies the "minimal" burden of showing inadequate representation. *See Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972).

8. In the alternative to intervention as a matter of right, Dr. Stein respectfully requests that she be permitted to intervene pursuant to Federal Rule of Civil Procedure 24(b). Under Rule 24(b)(1)(B), the court has discretion to permit intervention by anyone who "has a claim or defense that shares with the main action a common question of law or fact." Dr. Stein's grounds of participation in this case clearly satisfy that low hurdle, as her interest in the recount proceeding relate to the core factual and legal issues raised in Plaintiffs' complaint.

9. For the foregoing reasons, Dr. Stein respectfully requests that the Court grant her motion to intervene. Pursuant to the Court's order of today, Dr. Stein will file a response to Plaintiffs' motion for temporary relief on or before Wednesday, December 7, 2016, which will satisfy the requirements of Federal Rule of Civil Procedure 24(c).

Dated: December 2, 2016

Respectfully submitted,

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