

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,

ATTORNEYS FOR INTERVENOR JILL STEIN

By: s/Christopher M. Meuler
Christopher M. Meuler (SBN: 1037971)
FRIEBERT, FINERTY & ST. JOHN, S.C.
330 East Kilbourn Avenue, Suite 1250
Milwaukee, WI 53202
414-271-0130

and

Matthew D. Brinckerhoff*
Debra L. Greenberger*
David A. Lebowitz*
EMERY CELLI BRINCKERHOFF &
ABADY, LLP
Rockefeller Center
600 Fifth Avenue, 10th Floor
New York, New York 10020
212-763-5000

**Admitted pro hac vice*

In Re: The Election for
President of the United States

Verified Petition
for Recount

Petitioner Jill Stein alleges and shows to the Wisconsin Elections Commission:

1. That Petitioner was a candidate for the office of the President of the United States in an election held on November 8, 2016;
2. That Petitioner is informed and believes that an irregularity has occurred affecting all wards in Wisconsin in the counting and return of votes cast for the office of President;
3. The Petitioner is informed and believes that:
 - a. In August 2016, it was widely reported that foreign operators breached voter registration databases in at least two states and stole hundreds of thousands of voter records.
 - b. Around that time, hackers infiltrated the e-mail systems of the Democratic National Committee and a campaign official for Democratic presidential candidate Hillary Clinton. These e-mails were then published online.
 - c. On October 7, 2016, the Department of Homeland Security (DHS) and the Office of the Director of National Intelligence on Election Security issued a joint statement regarding these breaches. The statement reads, in pertinent part, as follows: “The U.S. Intelligence Community (USIC) is confident” that there have been “recent compromises of e-mails from US persons and institutions, including from US political organizations.” It also states that “[t]hese thefts and disclosures are intended to interfere with the US election process” and that “similar tactics and techniques [have been used] across Europe and Eurasia . . . to influence public opinion there.” In the statement, DHS urges state election officials “to be vigilant and seek cybersecurity assistance” from that agency in preparation for the presidential election.
 - d. Wisconsin uses two forms of electronic voting machines—optical scan and direct-recording electronic (DRE)—both of which are susceptible to compromise. For the last decade, computer scientists have warned about the vulnerabilities of these machines, including that they can be breached without detection and even after certain security measures are put in place.

- e. In Wisconsin, there is evidence of voting irregularities in the 2016 presidential election that indicate potential tampering with electronic voting systems. Specifically, there was a significant increase in the number of absentee voters as compared to the last general election. This significant increase could be attributed to a breach of the state's electronic voter database.
 - f. The well-documented and conclusive evidence of foreign interference in the presidential race before the election, along with the irregularities observed in Wisconsin, call into question the results and indicate the possibility that widespread breach occurred.
 - g. A hand count of paper ballots, including those used in optical scan machines, and a review of the paper record from DRE machines are necessary to make this determination. Without utilizing these methods, a recount would not exclude the possibility of a breach that resulted in a miscounting of votes; and
4. Attached as Exhibit 1, and incorporated fully herein, is the affidavit of J. Alex Halderman, Ph.D., a Professor of Computer Science and Engineering and the Director of the Center for Computer Security and Society at the University of Michigan in Ann Arbor, Michigan, that details the basis for of my belief for the statements set forth in paragraph 3 above.

Wherefore: Petitioner requests a hand recount of all ballots in all wards in the State of Wisconsin pursuant to Wis. Stat. § 9.01.

Dated this 25th day of November, 2016.



Petitioner Jill Stein

I, Jill Stein, being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

Jill Stein
Petitioner Jill Stein

Subscribed and sworn to before me this 25th day of November, 2016.

[Signature]
Notary Public

My Commission Expires 09/10/2021

On this 25 day of November, 2016, before me, the undersigned notary public, personally appeared Jill Stein (name of document signer), proved to me through satisfactory evidence of identification, which were MA Drivers License, to be the person whose name is signed above, 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.

[Signature] (signature of notary public) Michael J. Damon (printed name of notary public)
09 10 2021 (my commission expires)



WISCONSIN ELECTIONS COMMISSION

In the matter of:)	
)	ORDER FOR RECOUNT
A Recount of the General Election)	
For President of the United States)	
held on November 8, 2016)	RECOUNT EL 16-03
)	

On Friday, November 25, 2016, a recount petition was filed by Jill Stein, a candidate for the office of President of the United States at the General Election held on November 8, 2016.

The petition requests a recount of all ballots in all wards in Wisconsin where votes were cast in this election for the office of President of the United States.

The Wisconsin Elections Commission staff has reviewed the petition. The petition is sufficient. A fee of \$3,499,689 is required by Wis. Stat. §9.01.

On November, 29, 2016, the Wisconsin Elections Commission received confirmation that \$3,499,689 was received from Jill Stein in payment of the estimate provided on November 28, 2016.

Pursuant to Wis. Stat. §9.01 of the Wisconsin Statutes:

IT IS ORDERED THAT:

1. A recount be conducted of all the votes cast for the office of President of the United States at the General Election held on November 8, 2016, in all counties in Wisconsin.
2. The Board of Canvassers of each County shall convene at 9:00 a.m. on Thursday, December 1, 2016 to begin the recount.
3. The Board of Canvassers of each County shall conduct the recount using the ballot count method selected per Wis. Stat. § 5.90(1) unless otherwise ordered by a court per Wis. Stat. § 5.90(2).
4. The recount shall be conducted using the procedures established by the Wisconsin Elections Commission’s Recount Manual (November 2016) and the November 30, 2016 webinar presentation, which are incorporated into this Order by reference herein. If necessary, the Wisconsin Elections Commission will issue supplemental directions regarding the procedures to be used by the county canvassing boards and communicate those directions to County Clerks via its website.
5. Each County Clerk shall post a notice of the Board of Canvassers’ public meeting, pursuant to the Open Meetings Law, including any dates or times that the Board adjourns or reconvenes. Each County Clerk shall immediately notify the WEC of the location of its Board of Canvassers meeting, if the Clerk has not already provided that information and the WEC shall publish the location of each county’s Board meeting on its website.
6. The recount shall be completed by the county boards of canvassers immediately, but no later than 8:00 p.m. on December 12, 2016. Each County Clerk shall transmit an email

communication to the WEC, at the end of each day of the Board of Canvasser's meeting, listing the reporting units completed that day and a tally of the votes cast for each candidate and the scattering votes which were counted that day. The email communication shall be in a form prescribed by the WEC.

7. Each county clerk shall transmit a certified canvass report of the result of the recount and a copy of the minutes of the recount proceedings to the Wisconsin Elections Commission immediately after the completion of the county's recount in the manner specified by the WEC.

Dated: November 29, 2016.

WISCONSIN ELECTIONS COMMISSION

A handwritten signature in black ink that reads "Michael Haas". The signature is written in a cursive, slightly slanted style.

Michael Haas
Administrator