
**In the Matter of the Recount of Votes
for President of the United States:**

JILL STEIN
c/o Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue, 10th Floor
New York, NY 10020

Petitioner,

v.

WISCONSIN ELECTIONS COMMISSION
212 East Washington Avenue
Third Floor
Madison, WI 53707, and

Members of the Wisconsin Elections Commission,
each and only in his or her official capacity:

MARK L. THOMSEN, ANN S. JACOBS,
BEVERLY GILL, JULIE M. GLANCEY,
STEVE KING, and DON M. MILLIS
212 East Washington Avenue
Third Floor
Madison, WI 53707,

Respondents.

FILED

NOV 29 2016

DANE COUNTY CIRCUIT COURT

Case No.: 2016-cv-3060

Honorable Valerie Bailey-Rihn

HILLARY CLINTON'S MOTION TO INTERVENE

Hillary Clinton, by her undersigned counsel and pursuant to Wis. Stat. § 803.09,
respectfully moves to intervene in this action filed yesterday afternoon, November 28, 2016, by
Jill Stein seeking an order under Wis. Stat. §§ 5.90(2) and 9.01 for a recount by hand of all

ballots cast in this State in the recent Presidential election. In support of her motion to intervene, Secretary Clinton states as follows:

1. Secretary Clinton was the Democratic Party nominee for President in the November 8, 2016 general election. Secretary Clinton and other candidates on the Presidential ballot have protected rights under Wisconsin law to receive notice of the pending recount and “to be present in person and by counsel to observe the proceedings.” Wis. Stat. § 9.01(2)-(3). Secretary Clinton has entered her notice of appearance through counsel in the statewide recount for the election for President now being overseen by the Wisconsin Election Commission (WEC).

2. On November 25, two other candidates on the Wisconsin Presidential ballot, Jill Stein and Roque (“Rocky”) De La Fuente, filed Verified Petitions for Recount with the WEC. Dr. Stein’s petition seeks, among other things, “a hand recount of all ballots in all wards in the State of Wisconsin pursuant to Wis. Stat. § 9.01.” The WEC is moving forward with the statewide recount, which is scheduled to begin later this week, but has rejected Dr. Stein’s petition for a statewide hand recount.

3. Dr. Stein petitioned this Court yesterday afternoon pursuant to Wis. Stat. §§ 5.90(2) and 9.01 for an order requiring that ballots under Wis. Stat. § 5.90(1) be counted by hand. This Court is required to “hear the matter as expeditiously as possible.” *Id.* § 5.90(3).

4. Secretary Clinton is entitled to intervene in this action as a matter of right pursuant to Wis. Stat. § 893.09(1), which provides that “[u]pon timely motion anyone shall be permitted to intervene in an action when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of

the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties."

5. Secretary Clinton's motion to intervene clearly is timely. Dr. Stein's petition was filed at the close of business yesterday afternoon; Secretary Clinton's motion to intervene is being filed and served the following morning.

6. Secretary Clinton's interests in the recount as a candidate are recognized in the recount statute itself, including rights of participation in the recount and any Circuit Court appeal following the conclusion of the recount. *See* Wis. Stat. § 9.01(6); *see also 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 Cty. 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 Chicago*, 586 F. Supp. 309, 312 (N.D. Ill. 1984) (Aspen, J.).¹

7. Nor will Secretary Clinton's interests be adequately represented by existing parties to this litigation. It is entirely foreseeable that Secretary Clinton and Dr. Stein may disagree on issues in this litigation. "[T]he burden to show inadequacy of representation of interests ... is a minimal one, and not onerous." *Hoblock*, 233 F.R.D. at 99. Secretary Clinton readily meets that "minimal" burden.

8. In the alternative to intervention as a matter of right, Secretary Clinton should be permitted to intervene in this action under Wis. Stat. § 893.09(2), which provides that, "[u]pon timely motion anyone may be permitted to intervene in an action when a movant's claim or defense and the main action have a question of law or fact in common." And Secretary Clinton

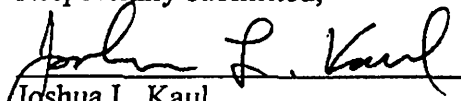
¹ "Wisconsin Stat. § 803.09(1) is based on Rule 24(a)(2) of the Federal Rules of Civil Procedure, and interpretation and application of the federal rule provide guidance in interpreting and applying § 803.09(1)." *Helgeland v. Wis. Municipalities*, 2008 WI 9, ¶ 37, 307 Wis. 2d 1, 20, 745 N.W.2d 1, 9-10 (footnote and citation omitted).

will ensure that her participation in this litigation does not “unduly delay or prejudice the adjudication of the rights of the original parties,” but instead promotes a just and expedited resolution. *Id.*

9. Secretary Clinton respectfully moves to intervene in this litigation, and will work cooperatively with other parties and this Court to achieve a just, prompt, and responsible result.

Dated this 29th day of November, 2016.

Marc E. Elias
Pro hac vice application to be filed
Perkins Coie LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
MElias@perkinscoie.com

Respectfully submitted,
By: 
Joshua L. Kaul
State Bar No. 1067529
Charles G. Curtis, Jr.
State Bar No. 1013075
Perkins Coie LLP
One East Main Street, Suite 201
Madison, WI 53703
Telephone: (608) 663-7460
JKaul@perkinscoie.com
CCurtis@perkinscoie.com

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2016, I served a copy of Hillary Clinton's Motion to Intervene by email on the following:

Assistant Attorney General Thomas C. Bellavia
bellaviatc@doj.state.wi.us

Assistant Attorney General Anthony D. Russomanno
russomannoad@doj.state.wi.us

Assistant Attorney General Michael S. Murphy
murphysm@doj.state.wi.us

Assistant Attorney General Colin T. Roth
rothct@doj.state.wi.us

Deputy Solicitor General Daniel P. Lennington
lenningtondp@doj.state.wi.us

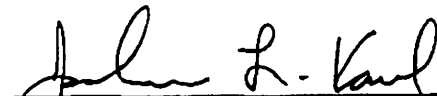
Christopher M. Meuler
cmm@ffsj.com

Matthew D. Brinckerhoff
mbrinckerhoff@ecbalaw.com

Debra L. Greenberger
dgreenberger@ecbalaw.com

David A. Lebowitz
dlebowitz@ecbalaw.com

By: _____


Joshua L. Kaul
State Bar No. 1067529