

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JILL STEIN AND RANDALL REITZ,	:	
	:	
Plaintiffs,	:	
v.	:	No. 16-cv-06287
	:	
PEDRO A. CORTÉS, in his official capacity as	:	
Secretary of the Commonwealth; and JONATHAN	:	
MARKS, in his official capacity as Commissioner	:	
of the Bureau of Commissions, Elections, and	:	
Legislation	:	
Defendants.	:	

ORDER

AND NOW, this day of 2016, upon consideration of the Motion to Intervene of President-Elect Donald Trump; Vice President-Elect Michael Pence; all of the Pennsylvania Electors of President-Elect Donald Trump and Vice President-Elect Michael Pence; Donald J. Trump for President, Inc.; and the Republican Party of Pennsylvania (the “Motion”), and any response thereto, it is hereby ORDERED that the Motion is GRANTED, and President-Elect Trump; Vice President-Elect Michael Pence; all of the Pennsylvania Electors of President-Elect Donald Trump and Vice President-Elect Michael Pence; Donald J. Trump for President, Inc.; and the Republican Party of Pennsylvania may intervene as parties to this action.

BY THE COURT:

Paul S. Diamond, J.

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Legislation	:	
Defendants.	:	

**PRESIDENT-ELECT DONALD TRUMP; VICE PRESIDENT-ELECT MICHAEL
PENCE; ALL OF THE PENNSYLVANIA ELECTORS OF PRESIDENT-ELECT
DONALD TRUMP AND VICE PRESIDENT-ELECT MICHAEL PENCE;
DONALD J. TRUMP FOR PRESIDENT, INC.; AND THE REPUBLICAN PARTY
OF PENNSYLVANIA’S MOTION TO INTERVENE**

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, President-Elect Donald Trump; Vice President-Elect Michael Pence; all of the Pennsylvania Electors of President-Elect Donald Trump and Vice President-Elect Michael Pence; Donald J. Trump for President, Inc.; and the Republican Party of Pennsylvania (collectively, “Movants”) hereby move for leave to intervene in the above-captioned matter. Movants incorporate the attached Memorandum of Law in support of this Motion.

Respectfully submitted,

/s/ Lawrence J. Tabas
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Dated: December 5, 2016

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JILL STEIN AND RANDALL REITZ,	:	
	:	
Plaintiffs,	:	
v.	:	No. 16-cv-06287
	:	
PEDRO A. CORTÉS, in his official capacity as	:	
Secretary of the Commonwealth; and JONATHAN	:	
MARKS, in his official capacity as Commissioner	:	
of the Bureau of Commissions, Elections, and	:	
Legislation	:	
Defendants.	:	

**PRESIDENT-ELECT DONALD TRUMP; VICE PRESIDENT-ELECT MICHAEL
PENCE; ALL OF THE PENNSYLVANIA ELECTORS OF PRESIDENT-ELECT
DONALD TRUMP AND VICE PRESIDENT-ELECT MICHAEL PENCE;
DONALD J. TRUMP FOR PRESIDENT, INC.; AND THE REPUBLICAN PARTY
OF PENNSYLVANIA MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION TO INTERVENE**

President-Elect Donald Trump; Vice President-Elect Michael Pence; all of the Pennsylvania Electors of President-Elect Donald Trump and Vice President-Elect Michael Pence; Donald J. Trump for President, Inc.; and the Republican Party of Pennsylvania hereby submit this Memorandum of Law in Support of their Motion to Intervene.

I. FACTUAL BACKGROUND

A. THE COMPLAINT

On December 5, 2016, Jill Stein and Randall Reitz (the “Plaintiffs”) filed a Complaint for Declaratory and Injunctive Relief (the “Complaint”) against Pedro A. Cortés, in his official capacity as Secretary of the Commonwealth, and Jonathan Marks,

in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation (collectively, the “Defendants”).

In their Complaint, the Plaintiffs raise alleged constitutional issues with the voting system in Pennsylvania and Pennsylvania’s Election Code, and ask the Court to grant a recount of papers ballots in optical scan counties in Pennsylvania and a forensic examination of a reasonable sample of DRE voting systems in Pennsylvania, all in connection with the General Election of November 8, 2016 in the Commonwealth of Pennsylvania (the “Election”).

B. THE MOVANTS

President-Elect Donald Trump and Vice President-Elect Michael Pence won approximately 48.61% of the votes for the offices of President and Vice President of the United States in the Election.¹ Plaintiff’s allegations call into question the results of the Election for these offices.

The Pennsylvania Electors of President-Elect Donald Trump and Vice President-Elect Michael Pence (the “Electors”) are individuals in the Commonwealth of Pennsylvania elected by the voters at the Election to cast votes at the Electoral College of Pennsylvania for the President and Vice President of the United States on behalf of Pennsylvania’s citizens. Pursuant to Chapter 1, Section 7 of Title 3, United States Code, the Electoral College in Pennsylvania will convene on Monday, December 19, 2016. To comply with the Federal Safe Harbor under 3 U.S.C. § 5, the Electors are required to be certified by the Governor of Pennsylvania on or before December 13, 2016. This ensures that they may cast their vote for President and Vice President of the United States on December 19, 2016.

¹ Available at, http://www.electionreturns.pa.gov/ENR_NEW (last visited, December 5, 2016).

The Republican Party of Pennsylvania represents the interests of all Republican candidates who appeared on the ballot in the Election in the Commonwealth of Pennsylvania.

Donald J. Trump for President, Inc. is the campaign committee representing the interests of President-Elect Donald Trump and Vice President-Elect Michael Pence.

II. ARGUMENT

As discussed below, the Federal Rules of Civil Procedure entitle the Movants to intervene as a matter of right. The Motion is timely. The Movants possess legally sufficient interests that may be impaired by the litigation, and their interests will not otherwise be adequately represented. In the alternative, permissive intervention is warranted.

A. THE MOVANTS ARE ENTITLED TO INTERVENE AS OF RIGHT

Rule 24(a) of the Federal Rules of Civil Procedure provides that: “On timely motion, the court must permit anyone to intervene who . . . (2) 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 the parties adequately represent that interest.” *See*, F.R.C.P. 24(a)(2).

Applying Rule 24(a)(2), courts have identified four factors that must be satisfied for there to be a right to intervene: (1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation. *Liberty Mut. Ins. Co. v.*

Treesdale, Inc., 419 F.3d 216, 220 (3d Cir. 2005) (citing *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 969 (3d Cir. 1998)). The movant must satisfy all four requirements. *Id.* (quoting, *Mountain Top Condo. Assoc. v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995)).

i. The Motion is Timely

The Movants timely filed this Motion. This Motion is being filed the very same day that Plaintiffs filed the Complaint. *See, United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1183 (3d Cir. 1994) (motion is timely filed in relation to the point at which the applicant knew, or should have known, of the risk to its rights). Further, as discussed above, the deadline for the Governor of Pennsylvania to certify the Electors, December 13, 2016, is rapidly approaching, all as per the requirements of 3 U.S.C. § 5, and the Electoral College must meet by December 19, 2016. *See, Bush v. Gore*, 531 U.S. 98 (2000).

ii. The Movants Possess a Sufficient Interest

“To establish a sufficient interest for intervention, [the movant] must demonstrate an ‘interest relating to the property or transaction which is the subject of the action.’” *Liberty Mut.* 419 F.3d at 220 (quoting, *Mountain Top Condo. Ass’n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995)).

The Electors have sufficient interests in that they were elected by the voters of Pennsylvania in the Election to represent the interests of individuals who voted in the Election. President-Elect Donald Trump and Vice President-Elect Michael Pence are the choice of the voters in the Commonwealth of Pennsylvania to fill the offices of the President of the United States and the Vice President of the United States. Donald J.

Trump for President, Inc. also represents the interests of President-Elect Donald Trump and Vice President-Elect Michael Pence. The Republican Party of Pennsylvania represents the interests of all Republican candidates on the ballot in the Election, including President-Elect Donald Trump and Vice President-Elect Michael Pence.

iii. The Movants' Interests Will Be Impaired by the Litigation

Pursuant to Chapter 1, Section 7 of Title 3, United States Code, the Electoral College in Pennsylvania will convene on Monday, December 19, 2016. To comply with the Federal Safe Harbor under 3 U.S.C. § 5, the Electors must be certified by the Governor of Pennsylvania on or before December 13, 2016, which ensures that they may cast their vote for President and Vice President of the United States on December 19, 2016. Failure to meet this deadline will prevent the Electoral College from timely casting their vote on the 19th and could delay the inauguration of President-Elect Donald Trump and Vice President-Elect Michael Pence and prevent them from fulfilling their constitutional duties to the American people. The interests of the Republican Party of Pennsylvania and Donald J. Trump for President, Inc. will be impacted if they are unable to participate in this litigation because they too represent the interests of President-Elect Donald Trump and Vice President-Elect Michael Pence and all Republican candidates on the ballot in the Election (which includes the Electors).

iv. The Defendants Do Not Adequately Represent the Interests of the Movants

To qualify for intervention, “an intervenor need only show that representation *may* be inadequate, not that it is inadequate.” *Am. Farm*, 278 F.R.D. at 110 (*citing*, *Trbovich v. United Mine Workers*, 404 U.S. 528, 538, n.10 (1972); *Kleissler*, 157 F.3d at 972). “The possibility that the interests of the applicant and the parties may diverge ‘need

not be great' in order to satisfy the minimal burden." *Id.* (quoting *Utah Assoc. of Counties*, 255 F.3d at 1254).

The Movants are confident that Defendant Pedro Cortés, the Secretary of the Commonwealth, and Jonathan Marks, the Commissioner of the Bureau of Commissions, Elections, and Legislation, will fairly and adequately defend this litigation, but they have a more generalized interest in preserving validly-adopted laws that regulate elections. They do not and cannot give specific representation to the particular interests of President-Elect Donald J. Trump and Vice President-Elect Michael Pence; those individuals who voted for President-Elect Donald J. Trump and Vice President-Elect Michael Pence; and the Electors, as well as the interests of all Republican candidates on the ballot in the Election and the voters who cast their ballots for them. If the Court were to rule against the Secretary and the Commissioner, they may not decide not to appeal the decision, and the Movants would be without recourse to enforce and defend their rights.

B. IF THE COURT DOES NOT GRANT INTERVENTION AS OF RIGHT, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION

Under Rule 24(b)'s permissive intervention, the Court in its discretion considers whether the original parties share with the intervenor common questions of law or fact, and whether they will be prejudiced by the intervention. *McKay v. Heyison*, 614 F.2d 899, 906 (3d Cir. 1980).

Here, Plaintiffs' Complaint alleges that the election laws of the Commonwealth of Pennsylvania are unconstitutional. The Movant's defenses and the main action as described in the Complaint involve common questions of law and fact relating to whether this Court can grant Plaintiffs' their requested relief. These common questions of law and

fact should be decided in one case in which all interested parties are present. By doing so, the Court will be able to evaluate the competing claims and arguments, preventing piecemeal and prolonged adjudication which would, in this emergency situation, cause irreparable injury. The time element makes this imperative. Furthermore, the Movant's Motion to Intervene is timely, and it will not prejudice or delay the original Plaintiffs and the Defendants.

III. CONCLUSION

For these reasons, the Movants respectfully request that this Court grant their Motion to Intervene and permit them to intervene in this action as parties to this litigation.

Respectfully submitted,

/s/ Lawrence J. Tabas

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Email: rebecca.warren@obermayer.com

Dated: December 5, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Proposed Order, Motion, and Memorandum of Law was electronically filed with the Clerk of Court on December 5, 2016 using CM/ECF, which will send notification of such filing to counsel of record.

I hereby certify that a true and correct copy of the foregoing Proposed Order, Motion, and Memorandum of Law will be served by first-class mail, postage prepaid, on December 5, 2016 on all unrepresented parties at the following addresses:

Pedro Cortés, Secretary of the Commonwealth
Office of the Secretary
302 North Office Building
Harrisburg, PA 17120

Jonathan Marks, Commissioner
Bureau of Commissions, Elections and Legislation
210 North Office Building, 401 North Street
Harrisburg, PA 17120

/s/ Lawrence J. Tabas

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Dated: December 5, 2016

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