

No. _____

IN THE

Supreme Court of the United States

DR. JILL STEIN AND JILL STEIN FOR PRESIDENT,

Applicants,

- v. -

FEDERAL ELECTION COMMISSION,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA**

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TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA:

Pursuant to this Court’s Rule 13.5, Applicants Dr. Jill Stein and Jill Stein for President (together, “Stein”) respectfully request a 60-day extension of time, to and including January 28, 2024, in which to file a petition for a writ of certiorari to the U.S. Court of Appeals for the District of Columbia Circuit. The Court of Appeals entered its judgment on July 21, 2023. *See Stein v. Federal Election Commission*, No. 21-1213 (D.C. Cir. July 21, 2023) (attached as Exhibit A). On August 31, 2023, the Court of Appeals denied Stein’s petition for rehearing en banc. *See Order, Stein v. Federal Election Commission*, No. 21-1213 (D.C. Cir. August 31, 2023) (attached as Exhibit B). Unless extended, the time in which to file a petition for a writ of certiorari will expire on November 29, 2023. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case raises an issue of exceptional importance – whether Section 9032(6) of the Presidential Primary Matching Payment Account Act (“the Act”), *see* 26 U.S.C. §§ 9031–42, is unconstitutional because it invidiously discriminates against minor party candidates. This question is exceptionally important because it implicates the constitutionality of the federal statute that establishes the public financing scheme applicable to all candidates for President of the United States. Further, the resolution of this question will determine whether the public financing scheme established by the Act remains viable as applied to minor party candidates in future election cycles.

2. Under Section 9032(6), all candidates become ineligible to receive matching funds no later than the last date of the major parties' conventions. *See* 26 U.S.C. § 9032(6). This provision applies to minor party candidates even if they continue to incur ballot access costs that otherwise qualify for funding under the Act, and notwithstanding the express conclusion of the Federal Election Commission ("the Commission") that "the petition process required of the presidential candidates of the minor parties [is] the equivalent of the primary elections and convention process of the major party candidates." AO 1975-44, at 2 (Socialist Workers 1976). As a result, Section 9032(6) guarantees that major party candidates are eligible for funding during the entire length of their primary election campaigns, but terminates a minor party candidate's eligibility for funding in the midst of theirs whenever the major parties happen to hold early nomination conventions.

3. The arbitrary termination date imposed by Section 9032(6) produces disparate results that serve no legitimate governmental interest. In 2012, for example, Stein ran for President, qualified for matching funds under the Act and remained eligible to receive them for the duration of her primary election campaign because the major parties held their conventions in September. No repayment order issued. In 2016, by contrast, Stein again ran for President and qualified for matching funds under the Act, but her eligibility to receive them terminated in the midst of her primary election campaign because the major parties held their conventions in August. This led the Commission to enter the \$175,272.00 Repayment Order at issue in this case. *See Stein v. Federal Election Commission*, No. 21-1213 (July 21, 2023)

(“Panel Opinion”) (attached as Exhibit C).

4. The Court of Appeals incorrectly rejected Stein’s Equal Protection challenge to Section 9032(6) on the ground that “the public funding limits at issue are indistinguishable from those upheld in *Buckley*.” Panel Opinion at 7 (citing *Buckley v. Valeo*, 424 U.S. 1 (1976).) But Stein did not challenge the Act’s public funding limits and they are not “at issue” in this case. The Court of Appeals did not even address the claim Stein asserts – that Section 9032(6) is invidiously discriminatory because it arbitrarily and prematurely terminates minor party candidates’ eligibility to receive funding under the Act in election cycles when the major parties hold early nominating conventions. Nor did the Court of Appeals address the disparate results that Section 9032(6) produces, or Stein’s claim that Section 9032(6) serves no legitimate governmental interest. *See id.* at 1-10.

5. The Court of Appeals’ decision warrants this Court’s review because Section 9032(6) threatens the Act’s viability as applied to minor party candidates. A statutory scheme that promises such candidates federal funding for their primary election campaigns, subject to the risk that their eligibility to receive the funding may be terminated in the midst of those campaigns, is unworkable. And the Commission’s Repayment Order stands as a stark warning to minor party candidates in future election cycles.

6. Additional time is warranted to allow counsel to prepare a petition for certiorari that would be helpful to the Court. Counsel for applicant has significant professional responsibilities that conflict with this matter, including an opening

appellate brief due for filing in the Court of Appeals for the Seventh Circuit on November 17, 2023, *see Indiana Green Party v. Morales*, No. 23-2756 (7th Cir.), and an opening appellate brief due for filing in the Court of Appeals for the Fifth Circuit on December 1, 2023. *See Miller v. Doe*, No. 23-50537 (5th Cir.). The undersigned counsel has primary responsibility to author these briefs and sole responsibility to author the petition for certiorari in this case, which is currently due on or before November 29, 2023. Additionally, the holiday season is approaching and the undersigned counsel is schedule to travel abroad for a family wedding at that time.

7. Applicant is not aware of any party that would be prejudiced by a 60-day extension. Pursuant to the parties' agreement, Stein has deposited sufficient funds to pay the Repayment Order in an escrow account, and those funds are payable to the Commission at the conclusion of this litigation if Stein does not prevail.

Accordingly, Applicant respectfully requests that an order be entered extending the time to file a petition for certiorari by 60 days, to and including January 28, 2024.

Dated: November 14, 2023

Respectfully submitted,

/s/Oliver B. Hall

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