

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FREEDOM WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

Defendants.

Civil Action No. 1:16-cv-00516 (EGS)

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

Defendants.

Civil Action No. 1:13-cv-01363 (EGS)

**PLAINTIFF FREEDOM WATCH'S MOTION TO INTERVENE AND PARTICIPATE
IN DISCOVERY AND FOR LEAVE TO ISSUE SUBPOENAS TO COUNSEL FOR
HILLARY CLINTON AND CHERYL MILLS**

Plaintiff, Freedom Watch, Inc., moves this honorable Court for leave to intervene pursuant to Federal Rules of Civil Procedure Rule 24 (b) ("FRCP") as permissive intervention to allow it to participate in any remaining discovery in an identical case styled *Judicial Watch, Inc. v. U.S. Department of State* ("DOS"), Civil Action No. 1:13-cv-01363 as well as the above styled related case, and as grounds therefore would show:

1. As set forth in FRCP 24(b), the two actions, one filed by Judicial Watch and one filed by Freedom Watch, are identical and thus related cases. Therefore, as provided by FRCP 24(b) for permissive intervention, the two cases have "a claim or defense that shares with the

main (Judicial Watch) action a common question of law or fact.” Thus permission intervention is appropriate.

2. The undersigned counsel, Larry Klayman, has reviewed transcripts of prior discovery in the related Judicial Watch case and it appears that the attorneys for Judicial Watch lacked the experience to elicit answers to a number of questions. Indeed, deponents such as Cheryl Mills, former Secretary Hillary Clinton’s top aide at DOS and generally was improperly and unethically instructed not to answer relevant questions on numerous occasions. Indeed, she and her counsel, Beth Wilkinson, effectively walked out of the deposition, thumbing their noses at and flouting the lawful practice before this Court to answer the questions subject to judicial review if so desired. Now, motions to compel and or for contempt are necessitated. Adjudication of these potential motions will further delay these proceedings.

3. These improper and obstructionist objections in the Mills deposition, as well as improper claims of Fifth Amendment rights in the case of Brian Pagliano, and other obstruction tactics in other depositions went essentially unchallenged by Judicial Watch’s attorneys. As a result, Judicial Watch, the Court and the public learned little from the previously taken depositions about whether an adequate search was done by DOS for the requested records by both Judicial Watch and Freedom Watch, as well as where the missing records can now be found and retrieved.

4. The participation of the undersigned counsel, who as a former federal prosecutor for the U.S. Department of Justice and who ironically was the founder and general counsel of Judicial Watch before he left to run for the U.S. Senate in Florida in 2003- 2004, has nearly 40 years of litigation experience. In the interests of justice, respectfully he should be allowed to be present and participate as counsel at future depositions. This will aid the Court in moving this

case along – and also to elicit the necessary discovery – as the delay caused by defense counsel was calculated to prevent disclosure of crucial evidence before the FBI concluded its investigation recently of Hillary Clinton’s private email server and before she secured the Democratic Party nomination for President of the United States.

5. Further, Plaintiff respectfully requests that this Court authorize depositions of counsel for Mrs. Hillary Clinton who FBI Director James Comey disclosed last week participated in irreparably and permanently deleting DOS documents that are likely responsive to the parties outstanding FOIA requests. As Cheryl Mills is Mrs. Clinton’s closest confidant and aide, and given the obstruction of her deposition, Plaintiff also moves to depose her counsel, Beth Wilkinson. That these persons are lawyers, including but not limited to David Kendall of Williams and Connelly, do not insulate them from discovery, particularly since the deletion of these requested records – which Director Comey revealed was done professionally to prevent their recovery by law enforcement authorities – would, at a minimum, trigger the crime fraud exception to any claim of attorney-client privilege.

6. Finally, a review of the filings today of the Justice Department (“DOJ”) in particular underscore why this Court must respectfully order additional depositions including the deposition of Mrs. Clinton’s lawyers. It is frankly incredible and outrageous that at taxpayer expense the DOJ of Attorney General Loretta Lynch would run interference for Mrs. Clinton by arguing in essence that since former Secretary Clinton was “cleared” by the FBI and indeed DOJ itself, finding that she had no intent to violate the law with the use of her private email server, that this forecloses discovery to determine whether an adequate search was done, and if not where the requested documents by Judicial Watch and Freedom Watch can be located and

retrieved. Indeed, FBI Director Comey laid the trail for these records squarely at the doorstep of Mrs. Clinton's counsel when he disclosed to the public on July 5, 2015 that:

It could also be that some of the additional work-related e-mails we recovered were among those deleted as "personal" by Secretary Clinton's lawyers when they reviewed and sorted her e-mails for production in 2014.

The lawyers doing the sorting for Secretary Clinton in 2014 did not individually read the content of all of her e-mails, as we did for those available to us; instead, they relied on header information and used search terms to try to find all work-related e-mails among the reportedly more than 60,000 total e-mails remaining on Secretary Clinton's personal system in 2014. It is highly likely their search terms missed some work-related e-mails, and that we later found them, for example, in the mailboxes of other officials or in the lack space of a server.

It is also likely that there are other work-related e-mails that they did not produce to State and that we did not find elsewhere, and that are now gone because they deleted all e-mails they did not return to State, and the lawyers cleaned their devices in such a way as to preclude complete forensic discovery.

See Exhibit 1 (emphasis added).

Thus, it is absolutely incumbent that the attorneys for Mrs. Clinton be deposed before even she herself is subject to deposition, which must ultimately happen in any event as a matter of common sense and as importantly justice, under these serious circumstances.

WHEREFORE Plaintiff moves for the above relief. Judicial Watch and DOS through its counsel at the Justice Department do not consent to this motion.

Dated: July 12, 2016

Respectfully submitted,

/s/ Larry Klayman
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of July, 2016, a true and correct copy of the foregoing was submitted electronically to the District Court for the District of Columbia and served via CM/ECF upon the following:

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