

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

VICTOR DIMAIO,

PLAINTIFF,

CASE NO.: 07-01552-CV-T-26-MAP

vs.

DEMOCRATIC NATIONAL COMMITTEE,

DEFENDANT.

**PLAINTIFF'S MOTION FOR ENTRY OF ORDER DISMISSING CASE
WITHOUT PREJUDICE WITH LEAVE TO AMEND**

Comes now the Plaintiff, by and through his undersigned attorney, and moves this court to enter a judgment dismissing this cause without prejudice with leave to amend and says:

On October 5, 2007, this court entered an order dismissing Plaintiff's claim, with prejudice. This court found that Plaintiff did not properly allege standing, but even if he were able to properly allege standing, based on the facts set forth in the complaint, he would be unable to state a cause of action, and therefore, dismissed the case with prejudice.

The Plaintiff appealed the judgment to the 11th Circuit Court of Appeals. The court rendered a decision on March 21, 2008, affirming this court's decision to dismiss the case for failure to properly allege standing, however, found it was error to consider

the substantive questions presented by the case, stating the case should have been dismissed on jurisdictional grounds only, and without prejudice.

Plaintiff wishes to file an amended complaint, based on similar facts, but which he believes will properly allege standing. Attached hereto is Plaintiff's proposed amended complaint, which Plaintiff would request that this Court deem filed, in the event this motion is granted.

While the order of the Appeals Court is silent as to whether the order of dismissal without prejudice may or shall include leave to amend, it would be appropriate for this court to dismiss Plaintiff's case without prejudice with leave to amend, if this court determines Plaintiff could properly allege standing, even if this court determines Plaintiff could not prevail on the merits, so that a decision on the merits can be made as expeditiously as possible.

Respectfully Submitted,

s/Michael A. Steinberg
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 24th day of March, 2008, a true and correct copy of Plaintiff's Amended Complaint for Declaratory and Injunctive Relief was filed in the United States District Court for the Middle District of Florida via CM/ECF System and a copy serviced upon counsel for Defendant, Democratic National Committee, Katherine Giddings, Akerman Senterfitt, 401 East Jackson Street, Suite 1700, Tampa, FL 33602-5803. I further certify that a copy of the foregoing document and the notice of electronic filing were mailed by first-class mail to the following non-CM/ECF participants: Joseph E. Sandler, Sandler, Reiff & Young, P.C., 50 E. Street, S.E., #300, Washington DC 20003; and Amanda S. LaForge, Chief Counsel, Democratic National Committee, 430 S. Capitol Street, S.E. Washington, DC 20003.

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