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JAMES BONINI
CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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**CYNTHIA McKINNEY, ROSA
CLEMENTE, GREEN PARTY
OF THE UNITED STATES**)
)
)
)
Plaintiffs)
)
v.)
)
JENNIFER BRUNNER,)
Ohio Secretary of State,)
In her official capacity,)
)
Defendant)

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EAST. DIV. COLUMBUS

Case No.: 2:08 cv 819

Judge: JUDGE MARBLEY

**Magistrate Judge:
MAGISTRATE JUDGE ABEL**

**PRELIMINARY INJUNCTION
REQUESTED**

COMPLAINT

INTRODUCTION

Plaintiffs Cynthia McKinney and Rosa Clemente are the Green Party of the United States' candidates for President and Vice-President, respectively, in the 2008 election. They seek to run for President and Vice-President in Ohio in 2008.

Because Ohio's Ballot Access laws make it extremely difficult for minor parties (such as the Green Party of the United States) to qualify for the ballot, *see Libertarian Party of Ohio v. Blackwell*, 462 F3d 579, 588 (6th Cir.2006) ("of the seven states that require all political parties to nominate their candidates in the state's primary election, Ohio imposes the most burdensome restrictions of both automatic qualification and petition qualification; as a result, it has seen the fewest number of minor parties on the ballot"), minor presidential candidates tend to run as an independents in Ohio. In order to

gain ballot access as an independent, a candidate has to collect at least 5,000 signatures from registered voters in the State of Ohio. As is the practice in Ohio, these signatures are to be collected on pre-printed “part-petitions” that are circulated by either campaign volunteers or paid professionals. Whether volunteer or paid, these circulators, according to O.R.C. § 3503.06(A), must be both Ohio residents and properly registered to vote in Ohio.

Defendant, Jennifer Brunner, Ohio’s Secretary of State, is charged by Ohio law with enforcing O.R.C. § 3503.06(A). *See* O.R.C. § 3501(M) (stating that Ohio’s Secretary of State has the power to “[c]ompel the observance by election officers in the several counties of the requirements of the election laws”); *Rosen v. Brown*, 970 F.2d 169, 171 (6th Cir. 1992) (observing that Ohio’s secretary of state “compel[s] compliance with election law requirements by election officials. Brunner, under Ohio law, has the final say on whether McKinney has properly collected enough signatures to qualify for Ohio’s presidential ballot.

McKinney and Clemente sought to use non-resident volunteers and resident volunteers who are not registered to vote in Ohio to circulate their part-petitions. They also sought to hire paid professionals who are not residents of Ohio and who are not registered to vote in Ohio to circulate their part-petitions. Section 3505.06(A), which is enforced by the Defendant, prohibits these practices in violation of the First Amendment to the United States Constitution. *See Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999). Plaintiffs bring this action under 42 U.S.C. § 1983 and asks this Court to declare O.R.C. § 3505.06(A) unconstitutional under the First

Amendment, preliminarily and permanently enjoin its enforcement, and awards them costs and attorney's fees under 42 U.S.C. § 1988(b).

A seldom-used option that is theoretically available to McKinney and Clemente under Ohio law is to have the Green Party of the United States qualify as a minor party. McKinney and Clemente were nominated by the Ohio Green Party convention, but due to the unconstitutional and overly restrictive nature of the Ohio minor party laws they were unable to obtain ballot status as Green candidates. Before the Sixth Circuit's decision in *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006), it was virtually impossible for new parties to qualify and gain ballot access. Ohio law required that new parties file 40,000+ signatures one year in advance to qualify for the ballot. This law was struck down in 2006 by the Sixth Circuit in *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006).

Following the Sixth Circuit's decision striking down these requirements in *Libertarian Party of Ohio v. Blackwell*, the Defendant passed Directive, 2007-09, which essentially imposes the same early filing deadline (just twenty days shorter) and an equally oppressive signature requirement (20,000+ signatures).

On July 17, 2008, this Court, in an Order issued by Judge Sargus, ruled that the Defendant's Directive is likely unconstitutional. *Libertarian Party of Ohio v. Brunner*, No. 08-555 (S.D. Ohio, July 17, 2008) (Exhibit 1). Judge Sargus accordingly preliminarily enjoined its application and ordered that the Libertarian Party, including its presidential candidate (Bob Barr) be placed on Ohio's 2008 ballot. The Order was stayed for ten days to allow the Defendant an opportunity to take an emergency appeal.

In light of this Court's decision in *Libertarian Party of Ohio v. Brunner*, Ohio has

no valid restrictions preventing McKinney and Clemente from running on Ohio's presidential election ballot as a Green Party of the United States candidates. They have sufficient community support and must be included on the ballot. Plaintiffs accordingly seek preliminary relief under the First and Fourteenth Amendments, Article II of the United States Constitution, and 42 U.S.C. § 1983, placing McKinney's and Clemente's names as the Green Party of the United States' candidates for President and Vice-president, respectively, on Ohio's 2008 ballot.

Under the reasoning of *Moore v. Brunner*, Case No. 2:08-CV-224, (6th Cir. 2008), the Plaintiffs' motion for a preliminary injunction should be granted. In *Moore v. Brunner* the Court used a four-part test to determine whether a preliminary injunction should be granted. One concern addressed in the opinion under the factor addressing the "probability that granting the injunction will cause substantial harm to others," was whether too many parties on the ballot could be confusing for voters. The opinion specifically anticipated that the decision could open the door to similar treatment for the Green Party. *Moore v. Brunner*, Case No. 2:08-CV-224, (6th Cir. 2008) at 6. The Court found that defendant was able to make no showing that voters would be "flummoxed" by a ballot featuring multiple political parties, *Id.*, at 6, referencing *Blackwell* 462 F.3d at 594, and stated that even though the decision could open the door to other parties, such as the Green Party, being placed on the ballot, there was "little risk of harm to the public in terms of causing a disorderly election process or ballot confusion". *Id.* at 7).

PARTIES

1. Plaintiffs, Cynthia McKinney and Rosa Clemente, are the Green Party of the United

States' candidates for President and Vice-president, respectively.

2. McKinney resides in Georgia and is registered to vote in Georgia.
3. Clemente resides in New York and is registered to vote in New York.
4. The Green Party the United States is a federation of state Green Parties. The Federal Elections Commission recognizes the Green Party of the United States as the official Green Party National Committee. The Green Party of the United States is a partner with the European Federation of Green Parties and the Federation of Green Parties of the Americas.
5. The Green Party of Ohio had its beginnings in the Green Party of Northeast Ohio in the early 1990's. Local Green Party groups have formed in Central Ohio and Southeast Ohio. The Green Party of Ohio has three elected officials in Ohio, including Dennis Spisak, a school board member in Mahoning county; a member of the Cleveland City Council; and Bob Fittrakis, member of the Columbus Near East Area Commission. Dennis Spisak is an official write-in candidate for Congress in twelve Ohio counties for the upcoming election in November, 2008. Tim Kettler is running as a Green for State Senate.
6. Defendant, Jennifer Brunner, is Ohio's Secretary of State, who at all times relevant to this action was and is engaged in state action under color of state law.
7. Defendant is being sued in her official capacity for declaratory and injunctive relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, as well as costs and attorney's fees under 42 U.S.C. §1988(b).

JURISDICTION

8. Jurisdiction in this case is predicated on 28 U.S.C. § 1331, this being a case arising

under the Constitution of the United States and 42 U.S.C. § 1983.

9. Venue is proper under 28 U.S.C. 1391(b) because the Defendant resides in the Southern District of Ohio, Eastern Division, has her principal place of business in the Southern District of Ohio, Eastern Division, and a substantial part of the events giving rise to Plaintiffs' claims occurred in the Southern District of Ohio, Eastern Division.

FACTS

10. Ohio law requires that independent candidates collect 5,000 signatures from properly registered voters in order to have their names appear on its presidential ballot.
11. Ohio law requires that these 5,000 signatures be delivered to Defendant no later than 4 PM on August 21, 2008 for an independent presidential candidate to qualify for the 2008 ballot.
12. Collecting 5,000 valid signatures from registered voters in Ohio requires, as both legal and practical necessities, the use of paid- and volunteer-circulators to collect voters' signatures on a candidate's part-petitions,
13. O.R.C. § 3503.06(A) states: "No person shall be entitled to vote at any election, or to sign or circulate any declaration of candidacy or any nominating, or recall petition, unless the person is registered as an elector and will have resided in the county and precinct where the person is registered for at least thirty days at the time of the next election."
14. Section 3503.06(A) of Ohio's Revised Code requires that the circulators of nominating petitions for independent candidates for President be Ohio residents who are properly registered Ohio voters.

15. Cynthia McKinney seeks to qualify as an independent candidate for President in Ohio for 2008.
16. Cynthia McKinney is not registered to vote in Ohio and does not reside in Ohio, nor will she be a resident of Ohio at any relevant time for purposes of these proceedings.
17. Cynthia McKinney cannot lawfully circulate her own nominating petitions (“part-petitions”) within the meaning of O.R.C. § 3503.06(A).
18. Cynthia McKinney must use volunteers or pay professionals to circulate her part-petitions.
19. Cynthia McKinney is qualified to run as an independent candidate for President in Ohio in 2008.
20. Cynthia McKinney has substantially complied with all requirements despite the unsettled and unconstitutional minor party election law.
21. Plaintiffs, McKinney and Clemente, seek to circulate nominating part-petitions on behalf of Cynthia McKinney in order to have McKinney qualified to appear on Ohio's 2008 presidential ballot.
22. If a part-petition's circulator is not properly registered or resident in Ohio within the meaning of O.R.C. § 3503.06(A) all of the voters' signatures collected on part-petitions circulated by that circulator are invalid under Ohio law. *See, e.g., In re Protest of Brooks*, 786 N.E.2d 126, 129 (Ohio Comm. Pl. 2003) (invalidating part-petitions because circulator was not Ohio resident).
23. Under Ohio law, every voter's signature on a flawed or invalid part-petition is necessarily invalid and can not be counted toward qualifying the candidate for the ballot. *See, e.g., State ex rel. Committee for the Referendum of City of Lorain*

Ordinance No. 77- 01 v. Lorain County Board of Elections, 774 N.E.2d 239, 249
(Ohio 2002) (throwing out part-petition including properly witnessed signatures
because circulator did not witness each signature contained in part-petition).

24. Plaintiffs McKinney and Clemente were prohibited by §3503.06(A) from lawfully circulating part-petitions on McKinney's behalf in Ohio.
25. Should Plaintiffs McKinney and Clemente circulate part-petitions, none of the signatures they collect will count toward qualifying McKinney for Ohio's presidential ballot.
26. Defendant is responsible under Ohio law for enforcing O.R.C. § 3503.06(A)'s residence and registration requirements.
27. Defendant has in the past and will in the future invalidate any voter's signature contained on a part-petition circulated by an ineligible circulator under O.R.C. § 3503.06(A).
28. Defendant is responsible for ordering and directing local election boards in Ohio to apply and enforce O.R.C. § 3503.06(A)'s residence and registration requirements for circulators.
29. Defendant has in the past and will in the future order and direct local election boards in Ohio to enforce O.R.C. § 3503.06(A)'s residence and registration requirements for circulators.
30. Local election boards in Ohio have in the past and will in the future, acting pursuant to Defendant's orders and instructions, invalidate voters' signatures contained on part-petitions circulated by ineligible circulators under O.R.C. § 3503.06(A).
31. Plaintiffs, McKinney and Clemente, are injured by § 3503.06(A) and by Defendant's

enforcement of a 3503.06(A); this injury is caused by § 3503.06(A) and by Defendant's enforcement of § 3503.06(A), and this injury will be redressed by this Court's invalidation of § 3503.06(A) and/or its order directing Defendant to stop enforcing § 3503.06(A).

32. Section 3503.06's residence and registration requirements for the circulators of petitions are clearly unconstitutional. *See Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999); *Lerman v. Board of Elections*, 232 F.3d 135 (2d Cir. 2000); *Krislov v. Rednour*, 236 F.3d 851 (7th Cir. 2000) *Morrill v. Weaver*, 224 F.Supp.2d 882 (E.D. Pa. 2002); *Yassky v. Kings County Democratic Committee*, 259 F.Supp.2d 332 (E.D.N.Y. 2003); *Chou v. New York State Board of Elections*, 332 F.Supp.2d 510 (E.D.N.Y. 2004).
33. Prior to the Sixth Circuit's decision in *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006), Ohio law required that new parties in Ohio, including the Green Party of the United States, supply a number of voters' signatures equal to 1% of the total number of votes cast for governor in the preceding election. *See* Ohio Rev. Code §§ 3501.01(F) (3), 3517.012 & 3501.01 (E).
34. These signatures described in paragraph 34 under Ohio law were due to be filed with Defendant 120 days before the primary election.
35. Were it not for *Libertarian Party of Ohio v. Blackwell*, the signature requirement for a petition to qualify the Green Party of the United States as a political party would have been 40,228 signatures due on November 5, 2007.
36. The Sixth Circuit in *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006), invalidated Ohio's signature requirement and its filing deadline for new

parties.

37. The court followed the reasoning of *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006) in *Moore v. Brunner*, Case No. 2:08-CV-224, (6th Cir. 2008), granting the Socialist Party USA's Motion seeking an order directing the Defendant to place the Socialist Party and its candidates on the 2008 general election ballot for the state of Ohio.
38. The Ohio legislature has not amended or replaced the laws invalidated by the Sixth Circuit.
39. On May 27, 2007, Defendant issued Directive 2007-09 (Exhibit 2), which was intended to fill the void left by the Ohio legislature; in sum, this Directive required that new parties gather voters' signatures equal in number to 1/2 of 1% of the votes cast in the last gubernatorial election and deliver them to Defendant by November 26, 2007.
40. Directive 2007-09 further provided that a new party's presidential candidate can qualify by delivering this same number of signatures to Defendant by August 18, 2008.
41. On July 17, 2008, this Court in *Libertarian Party of Ohio v. Brunner*, No. 08-555 (S.D. Ohio) (Exhibit 1), ruled that Directive 2007-09 is likely unconstitutional and enjoined its enforcement.
42. The Courts in *Libertarian Party of Ohio v. Brunner*, no. 08-555 (.S.D. Ohio) (Exhibit 1), and *Moore v. Brunner*, Case No. 2:08-CV-224, (6th Cir. 2008), (Exhibit 3) also ordered that the Libertarian Party of Ohio and the Socialist Party USA be placed on Ohio's 2008 election ballot because the parties have sufficient support in Ohio.

43. The Court in *Libertarian Party of Ohio v. Brunner*, No. 08-555 (S.D. Ohio) (Exhibit 1), stayed its Order for ten days to allow the state time to take an emergency appeal.
44. Because of *Libertarian Party of Ohio v. Brunner*, No. 08-555 (S.D. Ohio) (Exhibit 1), Ohio has no valid requirements preventing the Green Party of the United States from running its presidential and vice-presidential selections, Plaintiffs Cynthia McKinney and Rosa Clemente, as official candidates in Ohio's 2008 ballot.
45. The Green Party of the United States, like the Libertarian Party of Ohio and the Socialist Party USA, has sufficient community support in Ohio and across the United States to justify ordering the inclusion of its presidential and vice-presidential candidates on Ohio's ballot.
46. In 2000, Green Party Presidential Candidate Ralph Nader received 2.74 percent of the popular vote, qualifying the Greens for ballot status in many new states. A committee of Greens formed and succeeded in getting Nader on the ballot in Ohio in 2000. The Green Party had an active statewide Nader campaign and the Ohio electoral results were similar to the national level.
47. In 2006, independent candidate for Governor of Ohio, Bob Fitrakis, was endorsed by the Green Party and garnered 40,965 votes, amounting to 1.02 percent of the vote. Fitrakis' campaign gathered approximately 12,000 signatures to get on the ballot for the 2006 gubernatorial election.

CAUSES OF ACTION AND DEMAND FOR RELIEF

FIRST CAUSE OF ACTION

48. Section 3503.06(A) is unconstitutional under the First and Fourteenth Amendments because it requires that circulators of part-petitions on behalf of candidates for elected office be properly registered to vote in Ohio.
49. Section 3503.06(A)'s application to Plaintiffs violates the First and Fourteenth Amendments to the United States Constitution, as well as 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION

50. Section 3503.06(A) is unconstitutional under the First and Fourteenth Amendments because it requires that circulators of part-petitions on behalf of candidates for elected office be residents of Ohio.
51. Section 3503.06(A)'s application to Plaintiffs violates the First and Fourteenth Amendments to the United States Constitution, as well as 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

52. Section 3503.06(A) is unconstitutional under the Privileges and Immunities Clause of Article IV, § 2 of the United States Constitution because it requires that circulators of part-petitions on behalf of candidates for elected office be residents of Ohio.
53. Section 3503.06(A)'s application to the Plaintiffs violates Article IV, § 2 of the United States Constitution and 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION

54. Section 3503.06(A) is unconstitutional under the Dormant Commerce Clause of Article I, § 8 of the United States Constitution because it requires that circulators of part-petitions on behalf of candidates for elected office be residents of Ohio.
55. Section 3503.06(A)'s application to the Plaintiffs violates Article I, § 8 of the United States Constitution and 42 U.S.C. § 1983.

FIFTH CAUSE OF ACTION

- 56. Defendant's Directive 2007-09 is unconstitutional under the First and Fourteenth Amendments and 42 U.S.C. § 1983.
- 57. Defendant's application of Directive 2007-09 to Plaintiffs violates the First and Fourteenth Amendments and 42 U.S.C. § 1983.

SIXTH CAUSE OF ACTION

- 58. Defendant's Directive 2007-09 is unconstitutional under Article II of the United States Constitution and 42 U.S.C. § 1983.
- 59. Defendant's application of Directive 2007-09 to Plaintiffs violates Article II of the United States Constitution and 42 U.S.C. § 1983.

DEMAND FOR RELIEF

- 60. Defendant's unconstitutional enforcement of O.R.C. § 3503.06(A), under color of law and in her official capacity as Ohio's Secretary of State, renders her liable at equity for prospective declaratory and injunctive relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201.
- 61. Defendant's unconstitutional enforcement of Directive 2007-09, under color of law and in her official capacity as Ohio's Secretary of State, renders her liable at equity for prospective declaratory and injunctive relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201.

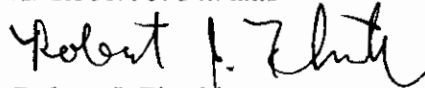
WHEREFORE, Plaintiffs demand that judgment be entered against Defendant and that:

- 62. O.R.C. § 3503.06(A) be declared unconstitutional under 28 U.S.C. § 2201;
- 63. Defendant be preliminarily enjoined from enforcing § 3503.06(A);
- 64. Defendant be permanently enjoined from enforcing § 3503.06(A);

65. Directive 2007-09 be declared unconstitutional under 28 U.S.C. § 2201;
66. Defendant be preliminarily enjoined from enforcing Directive 2007-09;
67. Defendant be permanently enjoined from enforcing Directive 2007-09;
68. Defendant be ordered to place Plaintiffs McKinney's and Clemente's names on the 2008 Ohio election ballot as Green Party of the United States candidates;
69. Defendant be ordered to pay to Plaintiffs costs and a reasonable attorney's fees under 42 U.S.C. I 1988(b); and
70. Defendant be directed to provide to Plaintiffs any additional relief the Court deems just.

Respectfully submitted,

/s/ Robert J. Fitrakis

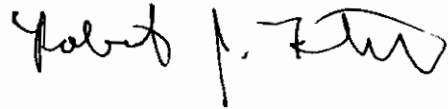


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CERTIFICATE OF SERVICE

I certify that I ^{hand some} ~~electronically~~ filed the foregoing Amended Complaint with the Clerk of Court using the Electronic Filing System which will send notification of such filing to all counsel.

/s/ Robert J. Fitrakis

A handwritten signature in black ink, appearing to read "Robert J. Fitrakis", written over a horizontal line.