

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

BRIAN MOORE,)	
DERON MIKAL, and)	
SHERRY SUTER,)	
)	
)	
Plaintiffs,)	Case No. 2:08cv224
)	
v.)	Judge _____
)	
JENNIFER BRUNNER,)	
Ohio Secretary of State,)	Magistrate Judge _____
in her official capacity,)	
)	
Defendant.)	PRELIMINARY INJUNCTION
_____)	REQUESTED

COMPLAINT

INTRODUCTION

Plaintiff, Brian Moore, the Socialist Party USA candidate for President in 2008, seeks to run for President as an independent candidate in Ohio in 2008. Because Ohio’s ballot access laws make it extremely difficult for minor parties (like the Socialist Party USA) to qualify for the ballot, *see Libertarian Party of Ohio v. Blackwell*, 462 F.3d 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”), Moore intends to run as an independent presidential candidate in Ohio. In order to gain ballot access as an independent, Moore 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.

Plaintiff, Sherry Suter, resides in Ohio but is not registered to vote. Suter seeks to circulate part-petitions on Moore's behalf in order to have Moore's name placed on Ohio's presidential ballot.

Plaintiff, Deron Mikal, resides in Florida and consequently is not (and cannot be) registered to vote in Ohio. Mikal also seeks to circulate part-petitions on Moore's behalf in order to have Moore's name placed on Ohio's presidential ballot.

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 Moore has properly collected enough signatures to qualify for Ohio's presidential ballot.

Moore seeks to use non-resident volunteers and resident volunteers who are not registered to vote in Ohio to circulate his part-petitions. He also seeks to hire paid professionals who are not residents of Ohio and who are not registered to vote in Ohio to circulate his part-petitions. Section 3503.06(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. § 3503.06(A) unconstitutional under the First Amendment, preliminarily and permanently enjoin its enforcement, and award them costs and attorney's fees under 42 U.S.C. § 1988(b).

PARTIES

1. Plaintiff, Brian Moore, the Socialist Party USA candidate for President in 2008, resides in Florida and is registered to vote in Florida.
2. Plaintiff, Sherry Suter, resides in Ohio and is not registered to vote in the State of Ohio.
3. Plaintiff, Deron Mikal, resides in Florida and is not (and cannot be) registered to vote in Ohio.
4. 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.
5. 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

6. 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.

VENUE

7. 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

8. 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.
9. 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.
10. 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.
11. 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."
12. 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.
13. Brian Moore seeks to qualify as an independent candidate for President in Ohio for 2008.
14. Brian Moore is not registered to vote in Ohio and does not reside in Ohio, nor will he be a resident of Ohio at any relevant time for purposes of these proceedings.

15. Brian Moore cannot lawfully circulate his own nominating petitions (“part-petitions”) within the meaning of O.R.C. § 3503.06(A).
16. Brian Moore must use volunteers or pay professionals to circulate his part-petitions.
17. Brian Moore is qualified to run as an independent candidate for President in Ohio in 2008.
18. Brian Moore either has satisfied, or is prepared to satisfy in a timely fashion, any and all conditions precedent to appearing on Ohio’s presidential ballot as an independent candidate, including, *inter alia*, presenting to Defendant a proper Nominating Committee, a proper slate of electors, and the signatures of 5,000 registered voters in Ohio as required by Ohio law.
19. Plaintiffs, Moore, Mikal and Suter, seek to circulate nominating part-petitions on behalf of Brian Moore in order to have Moore qualified to appear on Ohio’s 2008 presidential ballot.
20. 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).
21. 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).

22. Plaintiffs, Moore, Mikal and Suter, are prohibited by § 3503.06(A) from lawfully circulating part-petitions on Moore's behalf in Ohio.

23. Should Plaintiffs, Moore, Mikal or Suter, circulate part-petitions, none of the signatures they collect will count toward qualifying Moore for Ohio's presidential ballot.

24. Defendant is responsible under Ohio law for enforcing O.R.C. § 3503.06(A)'s residence and registration requirements.

25. 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).

26. 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.

27. 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.

28. 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).

29. Plaintiffs, Moore, Mikal and Suter, are injured by § 3503.06(A) and by Defendant's enforcement of § 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).

30. Section 3503.06's residence and registration requirements for the circulators of part-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).

CAUSES OF ACTION AND DEMAND FOR RELIEF

FIRST CAUSE OF ACTION

31. Plaintiffs hereby incorporate all of the claims, allegations and assertions set forth in paragraphs 1-30 as if fully rewritten herein.

32. 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.

33. 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

34. Plaintiffs hereby incorporate all of the claims, allegations and assertions set forth in paragraphs 1-30 as if fully rewritten herein.

35. 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.

36. 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

37. Plaintiffs hereby incorporate all of the claims, allegations and assertions set forth in paragraphs 1-30 as if fully rewritten herein.

38. 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.

39. Section 3503.06(A)'s application to Plaintiffs, Moore and Mikal, violates Article IV, § 2 of the United States Constitution and 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION

40. Plaintiffs hereby incorporate all of the claims, allegations and assertions set forth in paragraphs 1-30 as if fully rewritten herein.

41. 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.

42. Section 3503.06(A)'s application to Plaintiffs, Moore and Mikal, violates Article I, § 8 of the United States Constitution and 42 U.S.C. § 1983.

DEMAND FOR RELIEF

43. 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.

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

- 44. O.R.C. § 3503.06(A) be declared unconstitutional under 28 U.S.C. § 2201;
- 45. Defendant be preliminarily enjoined from enforcing § 3503.06(A);
- 46. Defendant be permanently enjoined from enforcing § 3503.06(A);
- 47. Defendant be ordered to pay to Plaintiffs costs and a reasonable attorney's fees under 42 U.S.C. § 1988(b); and
- 48. Defendant be directed to provide to Plaintiffs any additional relief the Court deems just.

Respectfully submitted,

/s/ Mark R. Brown

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