

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

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

MEMORANDUM IN SUPPORT OF
MOTION TO AMEND COMPLAINT

Rule 15(a) of the Federal Rules of Civil Procedure requires leave of the Court in order to amend pleadings when a responsive pleading has been filed. Because a responsive pleading has been filed in the present case, and because Defense counsel has indicated that it would like more time to decide whether to consent—Defense counsel will apparently be out of the office until July 28, 2008—Plaintiffs seek leave of court to amend the Complaint. Ordinarily, of course, counsel would wait for a decision from defense counsel; however, time in this ballot access case is short and Plaintiffs do not want to unnecessarily steal time from the Court’s decision process.

Rule 15(a) provides that leave of court “shall be freely given when justice so requires.” In the present case, justice requires that Plaintiffs be allowed to amend their

Complaint to add two additional plaintiffs—Stewart Alexander (who is the Socialist Party USA’s vice-presidential candidate) and the Socialist Party USA—and also add additional paragraphs and counts challenging Defendant’s Directive 2007-09, which was preliminarily enjoined by this Court (Judge Sargus) on July 17, 2008. *See Libertarian Party of Ohio v. Brunner*, No. 08-555 (S.D. Ohio) (Attached as Exhibit to the Amended Complaint).

In sum, Plaintiffs Moore, Alexander and the Socialist Party USA seek the same relief awarded to the Libertarian Party of Ohio in *Libertarian Party of Ohio v. Brunner*, No. 08-555 (S.D. Ohio). Judge Sargus ruled that Defendant’s Directive—which is the only obstacle to Plaintiffs’ gaining access to Ohio’s ballot as minor party presidential candidates—is unconstitutional. Judge Sargus also concluded that because the Libertarian Party of Ohio has a significant modicum of support, it must be included on Ohio’s ballot. For these same reasons, Plaintiffs should be ordered onto Ohio’s ballot. The Amended Complaint is designed to achieve that end.

Respectfully submitted,

/s/ Mark R. Brown

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing Motion with the Clerk of Court using the Electronic Filing System which will send notification of such filing to all counsel.

/s/ Mark R. Brown