

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

<b>BRIAN MOORE, et al.,</b>	)	
	)	
	)	
<b>Plaintiffs,</b>	)	<b>Case No. 2:08cv224</b>
	)	
<b>v.</b>	)	<b>Judge Frost</b>
	)	
<b>JENNIFER BRUNNER,</b>	)	
<b>Ohio Secretary of State,</b>	)	<b>Magistrate Judge Kemp</b>
<b>in her official capacity,</b>	)	
	)	
<b>Defendant.</b>	)	<b>PRELIMINARY INJUNCTION</b>
_____	)	<b>REQUESTED</b>

**MEMORANDUM IN SUPPORT OF  
SECOND MOTION FOR PRELIMINARY INJUNCTION**

In this Second Motion for Preliminary Injunction, Plaintiffs seek an Order placing the names of Brian Moore and Stewart Alexander as presidential and vice-presidential candidates, respectively, of the Socialist Party USA on Ohio’s 2008 election ballot. In *Libertarian Party of Ohio v. Brunner*, No. 08-555 (S.D. Ohio), this Court on July 17, 2008, preliminarily enjoined enforcement of Defendant’s Directive 2007-09, which was the only obstacle under Ohio law preventing their access to Ohio’s ballot as Socialist Party USA candidates. The only question, according to *Libertarian Party of Ohio v. Brunner*, No. 08-555 (S.D. Ohio), is whether the Socialist Party USA and its chosen candidates have “the requisite community support” to justify ballot access as presidential and vice-presidential candidates. Plaintiffs clearly do.

The Socialist Party USA's modern history traces back to 1972 when the Socialist Party of America split into two groups: the "Coalition Caucus" (which supported Democrat George McGovern for President) and the "Debs Caucus" (which backed anti-war candidate Benjamin Spock for President). The Debs Caucus then formed the Union for Democratic Socialism, which became the Socialist Party USA in 1973.

The Socialist Party USA fielded its own candidates for President and Vice-President beginning in 1976 (Frank P. Zeidler and J. Quinn Brisben). Except for 1984, it has fielded a presidential ticket in every election since. Most recently, in 2004, Walter Brown and Mary Alice Herbert were the Socialist Party USA's standard-bearers; they officially appeared on eight states' ballots—Colorado, Delaware, Florida, Louisiana, Michigan, New Jersey, South Carolina and Wisconsin—and received write-in votes in 10 additional states. *See* Exhibit 1. All told, the Socialist Party USA presidential ticket won 10,822 votes nationwide. *Id.*

Of course, the Socialist Party USA's roots run deeper than 1972. Today's Socialist Party USA is a direct descendant of Eugene Debs's Socialist Party of America. Eugene Debs ran for President five times from 1900 to 1920. *See* RAY GINGER, *THE BENDING CROSS: A BIOGRAPHY OF EUGENE VICTOR DEBS* (1949) (recounting Debs's presidential campaigns). In 1912, Debs won 6% of the popular vote—more than 900,000 votes all told. *See* JAMES CHACE, *1912: WILSON, TAFT & DEBS—THE ELECTION THAT CHANGED THE COUNTRY* (2004) (describing the 1912 presidential election).

Debs performed even better in Ohio in 1912, winning 8.69% of the vote (90,144 votes). *See* 1912 Presidential General Election Results—Ohio (<http://uselectionatlas.org/RESULTS/>). In 1920, Debs and the Socialist Party won 57,147

votes in Ohio, or 2.83 % of those cast for President. *See* 1920 Presidential Election Results—Ohio (<http://uselectionatlas.org/RESULTS/>).<sup>1</sup>

In 1928, Norman Thomas, running on the Socialist ticket, continued what Debs started by winning 8,683 votes in Ohio (0.35% of those cast). *See* 1928 Presidential Election Results—Ohio (<http://uselectionatlas.org/RESULTS/>). Thomas increased this percentage in 1932, winning 64,094 votes (2.46%) in Ohio. *See* 1932 Presidential Election Results—Ohio (<http://uselectionatlas.org/RESULTS/>).<sup>2</sup>

It was because of these Socialist successes that the Ohio legislature decided to clamp down on minor parties. According to Richard Winger, editor of *Ballot Access News*, the Socialist Labor Party in 1946 suprisingly won 13,885 votes for a United States Senate seat and 11,203 votes for Governor. *See* Richard Winger, *Ballot Format: Must Candidates be Treated Equally?*, 45 CLEVE. ST. L. REV. 87, 90 (1997). This development, Winger reports, did not please Ohio’s legislators. *Id.* In an effort to keep socialist candidates off the ballot and stop Henry Wallace’s “progressive” campaign for President in 1948, the Ohio legislature in 1947 erased party labels from minor candidates’s ballot-listings and attempted to prevent independent presidential candidates from using Ohio’s petition process. *Id.* at 90-91. In 1951, the Ohio legislature went farther and increased the petition requirement seven-fold. *Id.* at 92. Thus, it became

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<sup>1</sup> Eugene Debs and the Socialist Party have a unique connection to the State of Ohio. Debs, after all, was arrested in Canton, Ohio for delivering a speech criticizing the war effort in 1918. *See* Ginger, *supra*, at 377. He was charged with espionage, lost in the Supreme Court, *see Debs v. United States*, 249 U.S. 211 (1919), and spent several years in prison. *See* GINGER, *supra*.

<sup>2</sup> Thomas and the Socialist Party did not qualify in Ohio in 1936, 1940, 1944 and 1948. Still, Thomas received 117 write-in votes in 1936. *See* 1936 Presidential Election Results—Ohio (<http://uselectionatlas.org/RESULTS/>). Nationally, Thomas received 187,910 votes in 1936, 116,599 votes in 1940, 79,017 votes in 1944, and 139,569 votes in 1948. *See* Presidential Election Results (<http://uselectionatlas.org/RESULTS/>).

virtually impossible for small parties, like the Socialist Party of America, to gain ballot access in Ohio after 1951.<sup>3</sup>

It was not until 1968, with George Wallace's successful Supreme Court challenge, *see Williams v. Rhodes*, 393 U.S. 23 (1968), that Ohio's ballot was again opened to minor parties. As a result, the Ohio legislature in 1969 was forced to allow minor presidential candidates to use Ohio's petition procedure and was forced to reduce its signature requirement. The signature requirement for independent candidates was cut in half (almost), *see Winger, supra*, at 93, as was the signature requirement for new parties. *Id.* As a result of further litigation, these still-draconian requirements were reduced again in the early 1970s to 5,000 signatures for independent presidential candidates and to a number equal to 1% of the last gubernatorial vote for minor parties. *Id.* at 94.

Because of the still-large number of signatures required for minor party access and an unusually early filing deadline, minor-party candidates for president in Ohio still continued to use the independent route to Ohio's ballot even after these changes. This appeared to change with the Sixth Circuit's decision in *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6<sup>th</sup> Cir. 2006), which ruled that Ohio's early filing deadline, when coupled with its 1% signature requirement, for new political parties violated the First and Fourteenth Amendments. Following this decision, it appeared that Ohio would

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<sup>3</sup> The Socialist Party of America continued to field presidential candidates even after being excluded from Ohio's ballot. In 1952, Darlington Hoopes received 20,203 votes. *See* 1952 Presidential Election Results (<http://uselectionatlas.org/RESULTS/>). He received 2,044 votes in 1956. *See* 1956 Presidential Election Results (<http://uselectionatlas.org/RESULTS/>).

have to adopt a more reasonable, constitutionally acceptable procedure for minor parties to access its ballots.

Unfortunately, this did not happen. Instead, the Ohio legislature did nothing, and Ohio was left with no law governing minor party access. Secretary Brunner stepped in to fill this void in 2007 with Directive 2007-09, which essentially re-enacted Ohio's unconstitutional early-filing requirement, and halved Ohio's signature demand. Judge Sargus in *Libertarian Party of Ohio v. Brunner*, No. 08-555, ruled that this Directive was likely still invalid under the First and Fourteenth Amendments, as well as Articles I and II of the United States Constitution. Because Judge Sargus enjoined enforcement of the Directive (stayed for ten days), Ohio is once again left with no law restricting new parties from accessing the ballot.

In the absence of legislation restricting access, the ballot access question is whether a party or candidate has sufficient community support to justify a court order awarding ballot access. Judge Sargus concluded that the Libertarian Party of Ohio has met that standard, in part, because of its longevity (it was founded in 1972), its past history of qualifying candidates for the ballot, and its present presidential and vice-presidential candidates' already having qualified in 31 states. *See Libertarian Party of Ohio v. Brunner*, No. 08-555, at 12.

The Socialist Party USA has similar indicia of community support. As described above, the Socialist Party USA has as long a modern history as the Libertarian Party. Indeed, its roots stretch back much farther; to the turn of the twentieth century and the historical candidacies of Eugene Debs. To be sure, it has not appeared on the ballot in

Ohio since its modern reformation in 1973, but this is due to Ohio's draconian access laws, and not a lack of Socialist Party presence in Ohio. Indeed, the Socialist Party of Ohio has had an active history in Ohio, including a publication entitled "The Ohio Socialist." The Socialist Party of Ohio, moreover, has remained active as a state party. Its Chairperson, Geoff Braasch, was a leading candidate for the Socialist Party USA presidential nomination in 2004. The Socialist Party of Ohio was headquartered in Kent, Ohio from 1999-2001, Lima in 2002, Cincinnati in 2003, Toledo in 2003-2004, and Yellow Springs, Ohio from 2005-2006. Ohio to this day has a disproportionately large number of Socialist Party members. *See* Declaration of Matt Erard (Exhibit 2).

The Party's presidential and vice-presidential candidates in 2004 (Walter Brown and Mary Alice Herbert) officially appeared on eight states' ballots—Colorado, Delaware, Florida, Louisiana, Michigan, New Jersey, South Carolina and Wisconsin—and received write-in votes in 10 additional states. *See* Exhibit 1. All told, the Socialist Party USA presidential ticket won 10,822 votes nationwide in 2004. *Id.*

Plaintiffs Moore and Alexander are presently qualified in Vermont and Colorado and hope to qualify in twenty states by September 9, 2008. *See* Socialist Nationalist Committee Press Release (July 16, 2008) (<http://vote-socialist.org/press/index.html>). Even if the party does not reach this goal, the Court can be confident that it will access as many states (eight) as it did in 2004.

The Socialist Party USA is a well-structured organization. It holds national conventions in odd-numbered years and organizing conferences in even-numbered years (the last being held August 4-6, 2006 in Detroit, Michigan). Its most recent national

convention was held from October 19<sup>th</sup> to the 21<sup>st</sup>, 2007 in St. Louis, Missouri, where it nominated the Plaintiffs, Brian Moore and Stewart Alexander, as its presidential and vice-presidential candidates. It is clearly an historical, structured and established party.<sup>4</sup>

The Sixth Circuit in *Goldman-Frankie v. Austin*, 727 F.2d 603, 607 n.4 (6<sup>th</sup> Cir. 1984), which ordered ballot access for a relatively unknown Communist Party candidate in the face of legislative obstinance, noted that “it would be understandable if the courts looked with increasing disfavor on the State's arguments regarding requisite support for a candidate when the State possesses the power to establish a uniform method of assuring such support and continuously refuses to do so.” Thus, the fact that a candidate or party would not or could not meet constitutionally acceptable ballot access requirements—were they properly put in place by the State—is not controlling. Even when evidence of support is “not compelling,” as was true in *Goldman-Frankie*, 727 F.2d at 607, courts can and should order ballot access when candidates and/or parties have some showing of support. Otherwise, states will have no incentive to pass constitutionally acceptable laws.

The Socialist Party USA satisfies the standards adopted by Judge Sargus in *Libertarian Party of Ohio v. Brunner*, No. 08-555, and applied by the Sixth Circuit in *Goldman-Frankie*, 727 F.2d at 607. It should have its presidential and vice-presidential candidates included on Ohio’s ballot.

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<sup>4</sup> According to Richard Winger, editor of Ballot Access News, there are four additional parties that will likely be able to claim ballot status for president in more than one state this year: the Constitution Party (established in 1992), the Green Party (established in 1991), the Socialist Workers Party (established in 1938), and the Party for Socialism and Liberation (with roots tracing back to the Workers World Party (established in 1959)). The Socialist Party USA, measured by longevity, historical access to the presidential ballot, present qualification for the presidential election, party structure, and general consistency, surely ranks near the top of this group in terms of meaningful community support.

Moreover, this relatively short list proves that Ohio will not be threatened by an avalanche of party-presidential candidates this year if it follows Judge Sargus’s formula.

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Defendant be ordered to place the names of Brian Moore and Stewart Alexander on the ballot as Socialist Party USA candidates for President and Vice-President.

Respectfully submitted,

*/s/ Mark R. Brown*

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**CERTIFICATE OF SERVICE**

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

*/s/ Mark R. Brown*\_\_\_\_\_