

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

THE NORTHEAST OHIO COALITION FOR THE HOMELESS, et al.,	:	Civil Action No. C2-06-896
Plaintiffs,	:	Judge Algenon L. Marbley
vs.	:	Magistrate Judge Terence P. Kemp
JENNIFER BRUNNER, in her official capacity as Secretary of State of Ohio,	:	<b>MOTION OF PLAINTIFFS FOR LEAVE TO FILE <i>INSTANTER</i> A <u>SUPPLEMENTAL COMPLAINT</u></b>
Defendant.	:	
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THE NORTHEAST OHIO COALITION FOR THE HOMELESS, et al.,	:	
Plaintiffs,	:	
vs.	:	
THE STATE OF OHIO,	:	
Intervenor-Defendant.	:	
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Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, Plaintiffs respectfully move for leave to file *instanter* a Supplemental Complaint. Plaintiffs seek to plead new factual allegations relating to occurrences and events that happened after the date on which the Complaint was filed, supplement their existing claims accordingly, assert new claims based on those occurrences, and plead their claims in conformance with *Crawford v. Marion County*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 1610 (2008). A memorandum in support of this motion is attached. The proposed Supplemental Complaint, and an Order granting the requested relief, are attached as Exhibits A and B, respectively.

Respectfully submitted,

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Attorneys for Plaintiffs

**MEMORANDUM IN SUPPORT**

Plaintiffs respectfully move for leave to file *instanter* a Supplemental Complaint under Rule 15 of the Federal Rules of Civil Procedure, which states in pertinent part:

On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Fed. R. Civ. P. 15(d)

Ohio law requires certain Election-Day voters to cast provisional ballots rather than regular ballots. Election-Day voters may be required to cast provisional ballots for several reasons, including appearing not to be registered, appearing not to be in the correct precinct, appearing not to have a required form of identification, or having their eligibility challenged. Some of Plaintiff NEOCH's homeless members lack the required identification and, so, were required to vote by provisional ballot on Election Day.

When Plaintiffs first brought this action in 2006, one of their claims was based on their belief that provisional ballots would inevitably be treated unequally by Ohio's eighty-eight Boards of Elections. The parties addressed that issue in a Consent Order (Doc. No. 51) that, among other things, sought to ensure the uniformity of the Provisional Ballot Laws when applied to determining which provisional ballots were eligible to be counted.

As shown by the facts pled in the Supplemental Complaint, however, it is now clear that Ohio's eighty-eight Boards of Elections did apply different and unequal standards when determining which of the provisional ballots that were cast were eligible to be counted. These

facts establish, at a minimum, a realistic danger that Boards of Elections will similarly apply different and unequal standards when evaluating provisional ballots cast in the November 2008 Election. Accordingly, Plaintiffs seek leave to file a Supplemental Complaint that pleads the necessary factual and legal allegations to allow them to obtain preliminary injunctive relief.

Plaintiffs further seek leave to file a Supplemental Complaint that pleads facts and claims in conformance with the United States Supreme Court's decision in *Crawford v. Marion County*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 1610 (2008). Finally, Plaintiffs seek to add new claims that are based on the foregoing factual allegations.

For all of the foregoing reasons, Plaintiffs respectfully move this Court for leave to file *instanter* their proposed Supplemental Complaint, which is attached as Exhibit A. A proposed Order is attached as Exhibit B.

Respectfully submitted,

/s/ Caroline H. Gentry  
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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on October 14<sup>th</sup>, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the counsel of record in this case.

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