

**NO. 08-4585**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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**State of Ohio ex rel., Dana Skaggs, et al.,**

**Relators-Appellants,**

**v.**

**Jennifer L. Brunner, Secretary of the State of Ohio, et al.,**

**Defendants-Appellees.**

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On Appeal from the United States District Court  
for the Southern District of Ohio, Eastern Division

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**MOTION OF OHIO DEMOCRATIC PARTY**

**FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

In Support of Appellee Ohio Secretary of State Jennifer Brunner

Seeking Affirmance of the District Court

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*Attorneys for Amicus Curiae  
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Now comes the Ohio Democratic Party who hereby seeks leave to file an *Amicus Curiae* brief pursuant to F.R.A.P. 29.

The Amicus Curiae is a state political party organized under Chapter 3517 of the Ohio Rev. Code, recognized by the State of Ohio as an official political party with the right to nominate candidates for election to public office at the primary election and to have its nominees designated by their political party on the general election ballot. The Party's interest in this case is in ensuring uniform, lawful and fair criteria with respect to the determination of the eligibility of provisional ballots to be counted. The Party represents hundreds of thousands of electors throughout the State of Ohio, including many who have cast provisional ballots and whose ballots will be affected by a ruling in this case. The Ohio Democratic Party has a direct interest in this case as well based on its status as a party in the consolidated cases *The Northeast Ohio Coalition for the Homeless, et al v. Jennifer Brunner*, Case No. 2:06-CV-896 ("NEOCH") and *Ohio Republican Party, et al v. Jennifer Brunner*, Case No. 2:08-CV-913 ("ORP"), pending in the District Court for the Southern District of Ohio.

On election day, November 4, 2008, the Plaintiffs in ORP, a case originally filed shortly before the election, moved to amend their complaint to include additional claims that went directly to the counting of provisional

ballots. The motion to amend was granted by Judge Smith. The amended complaint alleged that by virtue of various acts and omissions of Secretary Brunner, there would not be uniform procedures or standards for determining the eligibility of provisional ballots to be counted or in the counting of such ballots. (See paragraphs 34, 35, 87, 92, 94 of the amended Complaint.) The amended complaint sought affirmative preliminary and permanent injunctions to enjoin Secretary Brunner to promulgate uniform standards for the determination of the eligibility of provisional ballots to be counted and for the counting of the same.

The same day, the Secretary and the Plaintiffs in NEOCH filed motions to consolidate the ORP case with the NEOCH case given that the amended claims in the ORP case were now inextricably intertwined with the claims in the NEOCH case and directly affected by the prior two Orders in that case governing provisional voting. Also that day, Amicus Curiae, Ohio Democratic Party, filed a motion to intervene in the NEOCH because of its interest in insuring uniform, lawful and fair application of criteria in determining the eligibility of provisional ballots to be counted. The Party also filed a Motion to Consolidate the ORP case with the NEOCH case. On November 5, 2008, the Court granted the Ohio Democratic Party's motion to

intervene and on November 6, 2008, granted all the parties' motions to consolidate the ORP case with the NEOCH case.

The case before the Court at this time has been designated a related case to the NEOCH case because the claims for relief, characterized as requests for writs of mandamus, are inextricably intertwined with the Orders issued in the NEOCH case and are in essence no different than the affirmative injunctive relief being requested in the consolidated Ohio Republican Party case.

The filing of a brief by Amicus Curiae, Ohio Democratic Party, is both desirable and relevant to the issues in the case because it addresses the proper construction of the Ohio statutes from a perspective of First Amendment and Equal Protection considerations and provides alternative grounds for affirming the District Court based on the Voting Rights Act of 1964 and the Help America Vote Act of 2002.

### **CONCLUSION**

For the foregoing reasons, the Ohio Democratic Party should be granted leave to participate as an *amicus curiae*.

Respectfully submitted,

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November 23, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on November 23, 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 matter.

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