

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

FEB 17 2016

JAMES W. MCCORMACK, CLERK  
By:  DEP CLERK

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF ARKANSAS  
WESTERN (LITTLE ROCK) DIVISION**

**LIBERTARIAN PARTY OF ARKANSAS,  
KRISTIN VAUGHN, ROBERT CHRIS HAYES,  
DEBRAH STANDIFORD, and MICHAEL PAKKO**

**PLAINTIFFS**

**VS.**

**NO. 4:15-CV-635-JM**

**HONORABLE MARK MARTIN  
in his official capacity as  
Arkansas Secretary of State**

**DEFENDANT**

**DEFENDANT, HONORABLE MARK MARTIN'S  
BRIEF IN SUPPORT OF HIS MOTION FOR LEAVE  
TO FILE AMENDED ANSWER**

**Comes Now**, Defendant, Honorable Mark Martin, ("Defendant Secretary"), in his official capacity as Arkansas Secretary of State, for his Brief in Support of Defendant Secretary's Motion for Leave of Court to File Amended Answer, and states:

The Court should grant the Motion. Plaintiffs, through counsel, have not objected to date. Federal Rule of Civil Procedure 15 sets out the process from which a party may amend a pleading. Leave to amend should be freely granted. Under Rule 15, a party may seek leave of from the Court to amend its pleading, and the Court should freely give leave when justice requires. Fed. R. Civ. P. 15(a)(2). The standard under the rule is certainly within the Court's

discretion, “but outright refusal to grant leave without any justifying reason appearing for denial is not an exercise of discretion, [but rather] abuse of that discretion and inconsistent with the spirit of the Federal Rules.” *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Wolgin v. Simon*, 722 F.2d 389, 394 (8<sup>th</sup> Cir. 1983).

There is no reason to deny the Motion. Some of the information in the proposed Amended Answer is responsive to information provided at a deposition last Friday, February 12, 2016. While the Supreme Court did note that valid reasons for denial include “undue delay, bad faith, or [a] dilatory motive on the part of the movant,” as well as “repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment, *Foman*, 371 U.S. at 182, none of those reasons are present here.

County Clerks are independent Constitutional Officers, entitled to their own defense. Secretary of State cannot represent their interests as to non-state Libertarian Party of Arkansas candidates. Additionally, it has become apparent through the filing of the Motion for Preliminary Injunction that the Democratic Party of Arkansas, and the Republican Party of Arkansas, have separate and distinct legal interests (and defenses) from Defendant Secretary, as Plaintiffs now seek to impose upon the rights of other political parties and their voters and supporters.


Defendant Secretary moves for leave of Court in good faith, and as previously requested of Plaintiffs’ counsel – and so far without written opposition.

***WHEREFORE***, and for the foregoing reasons, Defendant Secretary of State Mark Martin, in his official capacity, prays that this Court grant Defendant the leave to file an Amended Answer; that the Court consider the Amended Answer as Defendant's Answer in the present matter; and that the Court grant Defendant such additional relief to which he may be entitled under the circumstances.

Dated this 17<sup>th</sup> day of February 2016.

Respectfully submitted,

HONORABLE MARK MARTIN  
ARKANSAS SECRETARY OF STATE  
In his Official Capacity, Defendant

By:   
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*Attorney for Defendant  
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**CERTIFICATE OF SERVICE**

I do hereby certify that on this 17<sup>th</sup> day of February, 2016, I have served the foregoing via the electronic filing system in the Federal District Court Clerk's Office (CM/ECF):

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A.J. Kelly