

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

MAY 09 2016

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**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 SECOND 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 Second Amended Answer, and states:

The Court should grant the Motion. 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 (8th Cir. 1983). Defendant’s Motion is timely pursuant to the Court’s proposed Scheduling Order, and by agreement of the parties as set forth in the Rule 26(f) Report recently filed.

There is no reason to deny the Motion. The proposed additional defenses arise from the ongoing process of discovery, including Plaintiffs’ requests for certain discovery materials. The “valid reasons” for denial are not present, and specifically, there is no showing of “undue delay, bad faith, or [a] dilatory motive on the part of the movant,” nor any “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.

Defendant, in his Second Amended Answer, seeks to add two clarifying defenses concerning the Equal Protection clauses of the U.S. Constitution and the Arkansas Constitution, as well as adding a defense that the challenged statute is part of the State’s policy to prohibit “party raiding.”

Plaintiffs, through counsel, have so far not objected at the time of filing this Motion.

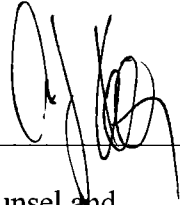
Defendant Secretary moves for leave of Court in good faith, and as requested (prior to filing) of Plaintiffs’ counsel – and so far without written opposition.

Wherefore, and for the foregoing reasons, Defendant Secretary, in his official capacity, prays that this Court grant Defendant the leave to file his Second Amended Answer; that the Court consider the Second 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 9th day of May, 2016.

Respectfully submitted,

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

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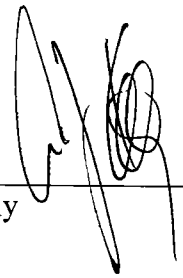
CERTIFICATE OF SERVICE

I do hereby certify that on this 9th day of May, 2016, I have served the foregoing BRIEF IN SUPPORT via the electronic filing system in the Federal District Court Clerk's Office (CM/ECF):

James C. Linger
1710 South Boston Avenue
Tulsa, OK 74119-4810

W. Whitfield Hyman (*Via Fax*)
300 North 6th Street
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A.J. Kelly

A handwritten signature in black ink, appearing to be 'A.J. Kelly', is written over a horizontal line. The signature is stylized with loops and a long vertical stroke extending downwards.