

CASE NO. 18-1382

**UNITED STATES OF APPEALS
FOR THE EIGHTH CIRCUIT**

MARK MOORE

PLAINTIFF-APPELLEE

v.

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

DEFENDANT-APPELLANT

**APPELLANT SECRETARY OF STATE MARK MARTIN'S
MOTION TO STAY INJUNCTION
SETTING MAY 1, 2018, AS DEADLINE
FOR PLAINTIFF TO FILE
INDEPENDENT CANDIDATE PETITIONS
PENDING APPEAL;
AND ALTERNATIVE MOTION
TO VACATE, SET ASIDE, DISSOLVE, AND HOLD FOR NAUGHT
INJUNCTION SETTING MAY 1 DEADLINE**

COMES NOW, Defendant-Appellant, Honorable Mark Martin, in his official capacity as Secretary of State for the State of Arkansas, for his Motion to Stay Injunction Setting May 1, 2018, as Deadline for Plaintiff to File Independent Candidate Petitions; and Alternative Motion to Vacate, Set Aside, Dissolve, and

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Hold For Naught the Injunction Setting a May 1 Deadline, Pending Appeal, and states that:

1. This is a ballot access case for an Independent Candidate, Mark Moore.
2. Moore challenged the March 1 due date for signature petitions for Independent Candidates for the 2014 General Election ballot in the State of Arkansas, and subsequently claimed by Affidavit that he would also be a candidate in 2018, in order to maintain his standing as a potential candidate. Def. AR SOS Ex. 6 (Moore's 2015 Affidavit).
3. After a December 12, 2017, trial on the merits, the U.S. District Court on January 25, 2018, entered an Injunction, granting Plaintiff-Appellee Mark Moore an extended deadline until May 1, 2018, in which to file his petitions for an Independent Candidacy in the 2018 election cycle, and further declared the March 1 statutory deadline unconstitutional.¹ A copy of the District Court's Order (as amended) and Judgment are attached hereto as Def. AR SOS Exhibits 1 (Order) and 2 (Judgment).

¹ In light of Defendant-Appellant Secretary's argument that the procedural posture of the case prohibited the trial court from entering any broader injunction, the District Court limited its injunction to one person, Plaintiff-Appellee, Mark Moore.

4. Appellant moved for dissolution, or, alternatively, a stay of the injunction in the district court and the district court failed to afford the relief requested. The district court's Order, deferring consideration of the Motion to Vacate or Stay pursuant to Fed. R. Civ. P. 62.1(a)(1), because the matter is on appeal, is attached hereto as Def. AR SOS Exhibit 3.
5. Plaintiff-Appellee Moore did not challenge other filing deadlines, including the deadlines for Independent Candidates to file political practices pledge, affidavit of eligibility, and a notice of candidacy, all of which are required "during the party filing period" which ended March 1, 2018. See Complaint, attached hereto as Defendant AR SOS Exhibit 4.
6. Plaintiff-Appellee Moore failed to file any of the required paperwork to run for political office with the Arkansas Secretary of State during the party filing period ended March 1, 2018. Affidavit of Director of Elections, Leslie Bellamy, attached hereto as Defendant AR SOS Exhibit 5.
7. The trial court entered its Order and Judgment in this case on or about January 25, 2018, granting Plaintiff Mark Moore a one-person injunction, extending his deadline to file his signature petitions (ostensibly for the

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Office of Lt. Governor) until May 1, 2018. See Defendant AR SOS Exhibit 2 (Judgment entered January 25).

8. On January 31, 2018, the trial court issued its Amended Order *nunc pro tunc* January 25, 2018. Defendant AR SOS Exhibit 1.
9. As part of the January 31, 2018, Order, the Court ruled that the “Plaintiff may file his petition to run for office as an independent candidate on or before May 1, 2018.” Def. AR SOS Exhibit 1, Par. 38.
10. That Arkansas Code Annotated § 7-7-103 requires independent candidate to file their political practices pledge, affidavit of eligibility, and a notice of candidacy during the party filing period (A.C.A. § 7-7-203(c)), i.e., provisions that were not challenged at trial, nor in the original Complaint.
11. The party filing period for the 2018 election cycle ran from noon on February 22 to noon on March 1, 2018. *Ark. Code Ann. § 7-7-203(c)(1)*.
12. The party filing period for the 2018 election ended at noon on March 1, 2018. *Ark. Code Ann. § 7-7-203(c)(1)*.
13. As set forth in the Affidavit attached hereto, Plaintiff-Appellee Mark Moore did not file *any* of the required paperwork to run as an Independent Candidate for Lieutenant Governor, or for *any other* position

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for which the filing office is the Secretary of State. Defendant AR SOS Exhibit 5.

14. Defendant-Appellant Secretary of State moves to stay the injunction, pursuant to Fed. R. App. P. 8(a), as it is now moot; Plaintiff-Appellee Mark Moore cannot file petitions for an office in the 2018 calendar year.
15. In the alternative, Defendant Secretary moves to vacate, set aside, dissolve, and hold for naught the injunction pending appeal. Fed. R. App. P. 8(a).
16. Defendant Secretary files this Motion in an excess of caution, during the pendency of his appeal, and as required by the norms of appellate procedure, where the U.S. District Court had the first opportunity to resolve the issue, but declined to rule, given the response of Plaintiff in the U.S. District Court that he would file *all of his paperwork* on May 1, and not simply his signature petitions. Fed. R. App. P. 8(a).
17. The U.S. District Court did not make an indicative ruling, nor did the District Court state that the motion raises a substantial issue, Fed. R. App. P. 12.1(a), so no remand is requested.
18. Defendant Secretary asks the Court to grant him the relief he seeks

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herein; that the Court stay the U.S. District Court's injunction, giving Mark Moore until May 1 in which to file his candidate petitions, pending appeal, since Moore has failed to file as a candidate for office in the State of Arkansas in the 2018 election cycle; alternatively to vacate, set aside, dissolve, and hold for naught the injunction as moot; and to grant Defendant Secretary such relief to which he may be entitled under the circumstances.

MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION

A four-part test governs stays pending appeal: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Brady v. National Football League*, 640 F.3d 785, 789 (8th Cir. 2011).

First, Defendant-Appellant Secretary has made a strong showing that he is likely to succeed on the merits concerning the injunction. Plaintiff-Appellee failed

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to file to run for office. The party filing period for the 2018 election cycle ran from noon on February 22 to noon on March 1, 2018. As required by A.C.A. § 7-7-103, an independent candidate in Arkansas must file his political practices pledge, affidavit of eligibility, and a notice of candidacy during the party filing period (A.C.A. § 7-7-203(c)). Plaintiff-Appellee Mark Moore did not file *any* of the required paperwork to run as an Independent Candidate for Lieutenant Governor, or for *any other* position, by the deadline of noon on March 1, 2018. Affidavit, Def. AR SOS Exhibit 5, attached.

Plaintiff Moore lacks standing concerning the injunction; Plaintiff-Appellee is no longer entitled to keep the injunctive relief. Plaintiff-Appellee challenged the petition filing deadline for Independent Candidates, asking that the *petitions* containing the required signatures be due by May 1, rather than during the Party Filing Period ending March 1. Def. AR SOS Exhibit 4, Complaint p. 3-4. Plaintiff claimed that changes in the law in 2013 (Arkansas Act 1356 of 2013) impermissibly changed the deadline for filing petition signatures.

Appellee Moore has lost any claim to standing for injunctive relief. Plaintiff Moore's initial assertions of standing were based on his desire to run for office in 2014. The only evidence supporting his standing presented at trial was Moore's

2015 affidavit stating that he intended to run for Lt. Governor in 2018. Def. AR SOS Ex. 6.

Plaintiff-Appellee Moore's failure to file a political practices pledge, an affidavit of eligibility, and a notice of candidacy is a new development in the factual circumstances of this case. Defendant Secretary did not know, and could not know, that at the time of the Trial, Plaintiff Moore would not file the necessary supporting documents required to run as an Independent Candidate in the 2018 election cycle. Plaintiff Moore's failure to file required documents by the end of the party filing period would have changed the result were a new trial to be granted. *Daniels v. Agin*, 736 F.3d 70, 86 (1st Cir. 2013); *see also Thermacor Process, L.P. v. BASF Corp.*, 567 F.3d 736, 744 (5th Cir. 2009); *Feature Rlty., Inc. v. City of Spokane*, 331 F.3d 1082, 1093 (9th Cir. 2013).

Plaintiff's failure to file is a significant change in factual events that warrant a stay of the injunction. *See Agostini v. Felton*, 521 U.S. 203, 215 (1997). "A court errs when it refuses to modify an injunction or consent decree in light of such changes." *Id.* Notwithstanding the spurious claims made in Plaintiff's 2015 Affidavit, Plaintiff did not take the necessary steps to run for office in 2018.

"Article III of the U.S. Constitution limits the jurisdiction of the federal

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courts to actual, ongoing cases and controversies.” *Hayden v. Pelofsky*, 212 F.3d 466, 469 (8th Cir. 2000); U.S. Const. Art. III, § 2, cl. 1. “When, during the course of litigation, the issues presented in a case ‘lose their life because of the passage of time or a change in circumstances . . . and a federal court can no longer grant effective relief,’ the case is considered moot.” *Id.* (quoting *Beck v. Mo. State High Sch. Activities Ass’n*, 18 F.3d 604, 605 (8th Cir. 1994); *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). As the Eighth Circuit has said: “If an issue is moot in the Article III sense, we have no discretion and must dismiss” for lack of jurisdiction. *Ali v. Cangemi*, 419 F.3d 722, *3 (8th Cir. 2005) citing *Powell v. McCormack*, 395 U.S. 486, 496 n.1 (1969); see *Teague v. Cooper*, 720 F.3d 973, 977 (8th Cir. 2013); *Valero Terrestrial Corp. v. Paige*, 211 F.3d 112 (4th Cir. 2000).

Moore has lost his standing for injunctive relief. The Article III jurisdictional “requirement subsists through all stages of federal judicial proceedings, trial and appellate.” *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). The Eighth Circuit will dismiss a case as moot when “changed circumstances” have “eliminate[d] the need for court action.” *Teague v. Cooper*, 720 F.3d 973, 976 (8th Cir. 2013) (quoting *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 n.10 (1982) (internal quotation marks omitted)). See

Libertarian Party of Arkansas v. Martin, Secretary, No. 16-3794 (Eighth Cir. Nov. 30, 2017), slip op. at 5. When he failed to file for office, Def. AR SOS Ex. 5, Bellamy Affidavit, Moore lost his standing to continue to claim injunctive relief.

If a plaintiff lacks standing, the district court has no subject matter jurisdiction to enforce its injunction. *See Faibisch v. Univ. of Minnesota*, 304 F.3d 797, 801 (8th Cir. 2002); *Friedmann v. Sheldon Cmty. Sch. Dist.*, 995 F.2d 802, 804 (8th Cir.1993). The injunction should be stayed, or vacated, dissolved, set aside, and held for naught. *Tapper v. Hearn*, 833 F.3d 166, 169 (2nd Cir. 2016); *Horne v. Flores*, 557 U.S. 433, 447 (2009); *see Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 383-84 (1992).

The State of Arkansas, Appellant Secretary, and the citizens of the State of Arkansas will suffer irreparable harm in the absence of a stay. When “a State is enjoined by a court from effectuating statutes enacted by its people, it suffers a form of irreparable injury.” *Maryland v. King*, 133 S.Ct. 1, 3 (2012) (Roberts, C.J., *in chambers*).

The district court’s injunction invalidated the enforcement of a state law and disrupts the public policy of the state. The district court specifically created a new deadline for one person, Mark Moore, to file his signature petitions for an

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independent candidacy in 2018. Moore is not entitled to this court-ordered deadline, as he has failed to follow other, unchallenged, aspects of Arkansas' ballot access statutes for prospective independent candidates. Candidates for other offices are proceeding based upon the filings for office made by other candidates – partisan, non-partisan, write-in, and independent. It would be wholly unfair to any of those already-filed candidates to suddenly face a new person – Mark Moore – who has evaded all financial reporting requirements and public scrutiny to date.

There will be no harm to Moore, since he failed to file for office. The deadlines to file political practices pledges, affidavits of eligibility, and notice of candidacy were not challenged by Moore at trial. Def. AR SOS Ex. 4 (Complaint). The trial court did not alter any other deadlines for Moore. Def. AR SOS Ex. 1 (Order). No other parties are affected by the injunction. Def. AR SOS Ex. 2 (Judgment).

The public interest will be served by staying the injunction or by vacating, dissolving, setting aside, and holding for naught the Court's injunction, since Moore has not filed to run for office this year. Other candidates should not have to wait on Moore to attempt to file all of his required paperwork on May 1, at the time he is allowed to file his petition signatures. Moore's personal claims to relief

as a candidate are moot; it serves the public interest to set aside the person deadline he was able to obtain in January, and remove any doubt.

WHEREFORE, and for the foregoing reasons, Defendant-Appellant Secretary of State Mark Martin, in his official capacity, prays that the Court grant Defendant-Appellant's Motion to Stay the Injunction pending this appeal, and preserve the status-quo in Arkansas pending the outcome of this appeal; that, alternatively, the Court vacate, set aside, dissolve, and hold for naught the injunction; that the Court deny any requests for fees, costs, or expenses related to this Motion; and that the Court grant Defendant-Appellant Secretary such additional relief to which he may be entitled under the circumstances.

Respectfully submitted this 6th day of April, 2018.

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

By: /s/ A.J. Kelly
AJ Kelly
General Counsel and
Deputy Secretary of State
Arkansas Secretary of State
P.O. Box 251570

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Little Rock, AR 72225
Phone: (501) 682-3401
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And

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Associate General Counsel
Arkansas Secretary of State
Suite 256 – State Capitol
500 Woodlane Avenue
Little Rock, AR 72201

*Attorneys for Defendant-
Appellant, Secretary of State*

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CERTIFICATE OF SERVICE

I do hereby certify that on the date set forth below, I electronically filed the foregoing Motion (and attached Exhibits) with the Eighth Circuit Court Clerk using the electronic filing system in the Court Clerk's Office so that the attorneys of record can be served electronically using the Court's filing system (CM/ECF), and I previously advised Plaintiff-Appellee's counsel by email this even date herewith that an appropriate Motion would be filed with the Circuit Clerk's Office:

James C. Linger
1710 South Boston Avenue
Tulsa, OK 74119-4810
Fax: (918) 583-8283

Dated this 6th day of April, 2018.

/s/ A.J. Kelly
AJ Kelly

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MARK MOORE and MICHAEL HARROD

PLAINTIFFS

V.

4:14CV00065 JM

MARK MARTIN in his official capacity as
Arkansas Secretary of State

DEFENDANT

AMENDED ORDER

The Court held a bench trial on December 12, 2017. The parties stipulated to the admission of the July 27, 2015 transcript from the summary judgment motion hearing. After review of the record, transcript, the witnesses' testimony and exhibits presented at trial, along with the arguments of counsel, and the decision of the United States Court of Appeals for the Eighth Circuit in *Moore v. Martin*, 854 F.3d 1029 (8th Cir. 2017), the Court makes the following findings of fact and conclusions of law.

1. Plaintiffs filed suit on February 6, 2014, seeking a declaratory judgment from the Court that Arkansas Code Ann §§ 7-7-101, 7-7-103, and 7-7-203(c)(1) are unconstitutional because the statutes violate the First and Fourteenth Amendments to the United States Constitution by way of 42 U.S.C. § 1983. Plaintiffs also seek injunctive relief.
2. This case is before the Court on remand from the Court of Appeals for the Eighth Circuit. Plaintiff Mark Moore appealed this Court's Order granting summary judgment to Defendant Secretary of State and denying summary judgment to the original Plaintiffs. The Court of Appeals affirmed the denial of summary judgment to Plaintiffs, but reversed the summary judgment granted to Defendant and remanded this case for trial on the

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merits.

3. Plaintiff Moore was a candidate for Lieutenant Governor of Arkansas in 2014, but did not successfully petition for ballot access.

4. Plaintiff William Chris Johnson voluntarily dismissed himself from this suit in 2015, and has not refiled.

5. Plaintiff Michael Harrod, a putative candidate for State House of Representatives, declined to appeal from this Court's summary judgment order.

6. Plaintiff Moore intends to be an independent candidate for Lieutenant Governor of Arkansas in the November 2018 general election.

7. Plaintiff Moore is not asking the Court to order any names printed on the Arkansas ballot for a future General Election. Plaintiff is asking for injunctive relief against enforcement of the current independent petition deadline as to future elections.

8. Arkansas Code § 7-7-103 provides the specific requirements for filing as an independent. An independent candidate must file a political practices pledge, an affidavit of eligibility, a petition signed by 3% of qualified electors of the place where the person is seeking office, and a notice of candidacy stating the name and title of the elective office the candidate seeks. The statute also provides that “[p]etitions shall be circulated not earlier than ninety (90) calendar days before the deadline for filing petitions. . . .” Ark. Code Ann. § 7-7-103(b)(3)(B) (West).

9. Specifically, Arkansas Code § 7-7-203(c)(1) provides that the filing period is a “one-week period ending at 12:00 noon on the first day in March and beginning at 12:00 noon one (1) week prior to the first day in March.” Ark. Code Ann. § 7-7-203(c)(1) (West). The March deadline is the same for party candidates and independent candidates.

10. The current deadline to file petitions to run for statewide office as an independent candidate is March 1, 2018. Therefore, the deadline for filing a petition to run as an independent candidate for Lieutenant Governor in Arkansas is March 1, 2018.
11. Arkansas's filing deadline for independent candidates in partisan elections was changed in 2013 from May 1st to March 1st of election years.
12. The Secretary of State contends that the March 1st deadline for filing independent petitions is necessary because there has been an increase in the number of initiative petitions filed with the Secretary of State since 2011. The processing of, and the litigation involving, initiative petitions interferes with the independent candidate signature processing.
13. The Secretary states that the March 1st deadline for filing independent petitions is necessary because numerous nonpartisan judicial and nonpartisan prosecutorial candidates file for office by petition with the Secretary of State.
14. The Secretary contends that litigation involving nonpartisan petitions in 2014 would have interfered with the processing of independent candidate signature petitions under the May 1st filing deadline.
15. The current deadline for filing initiative petitions is July 6, 2018.
16. The current deadline for filing nonpartisan petitions is January 8, 2018.¹
17. The Secretary of State must finish the review of all the nonpartisan candidates' signatures before the independent candidate filing period begins.
18. The next preferential primary election is on May 22, 2018. Independent candidates do not appear on the ballot in the preferential primary election. Nonpartisan

¹ In the original Order the Court inadvertently stated that the deadline for nonpartisan petitions is March 1, 2018. The deadline was January 8, 2018 and this fact was stipulated to by the parties.

candidates appear on the ballot in the preferential primary election.

19. The next general election and non-partisan runoff election will be held on November 6, 2018. Independent candidates appear on the general election ballot.

20. Independent candidate petitions have been timely processed when the independent petition deadline was either May 1st or May 29th of the election year.

21. At the state level, there are generally no conflicting petition filing deadlines between May 1st and July 6th.

22. The number of independent candidates who filed petitions to run for office in Arkansas were as follows: 2006: 10 independent candidates filed documents, only 6 candidates were processed, none for a statewide office; 2008: 10 independent candidates filed documents, only 6 were processed, none for statewide office; 2010: 22 independent candidates filed documents, only 10 were processed, one for statewide office; 2012: 12 independent candidates filed documents, only 8 were processed, none for statewide office; 2014: 1 independent candidate filed documents, 1 was processed, none for statewide office; 2016: 2 independent candidates were processed, none for statewide office.

23. The number of signatures required for an independent petitioning to run for statewide office is at least 10,000. The number of signatures required for an independent candidate running for state office is generally several hundred.

24. There have been no independent candidates for statewide office since the independent petition filing deadline was changed in 2013.

25. The number of initiative petition signatures which were processed and verified for sufficiency by the Arkansas Secretary of State from the initiative deadline in early July to

late August of the election year were as follows: 2010: no petitions were submitted; 2012: four petitions were processed, 424,293 signatures were submitted and 391,184 were reviewed for sufficiency; one petition was void for want of initiation for failure to meet the constitutional fifteen county requirement; 2014: two petitions were processed, 257,281 signatures were submitted and reviewed for sufficiency; 2016: four petitions were processed; approximately 511,322 signatures were submitted and reviewed for sufficiency.

26. Between the March 1st deadline for independent candidate petition filing and the early July deadline for initiative petitions, the Secretary of State presides over early voting in the preferential primary, the preferential primary election, early voting runoff, and the runoff election.

27. The Secretary of State can and has hired, trained, and used temporary workers to verify petition signatures when needed.

28. A trained worker can generally verify 4-5 petition signatures per minute.

29. Plaintiff Moore has standing under Article III of the United States Constitution. The case constitutes a case and controversy that impacts Plaintiff's petition deadline as a future independent candidate in Arkansas and his rights as an Arkansas voter to cast his vote effectively. "Ballot access restrictions implicate not only the rights of potential candidates for public office, but also the First and Fourteenth Amendment rights of voters to cast their ballots for a candidate of their choice and to associate for the purpose of advancing their political beliefs." *Moore v. Martin*, 854 F.3d 1021, 1025 (8th Cir. 2017) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 786-88, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)).

30. The case is not moot because the relief requested can be granted as applied to the current election cycle.

31. The Court has reviewed the statute “under a form of strict scrutiny referred to as the ‘compelling state interest test’ by first determining whether the challenged statute causes a burden of some substance on a plaintiff’s rights, and if so, upholding the statute only if it is ‘narrowly drawn to serve a compelling state interest.’” *Moore*, 854 F.3d at 1026 (quoting *Libertarian Party of N.D. v. Jaeger*, 659 F.3d 687, 693 (8th Cir. 2011); (*McLain v. Meier*, 851 F.2d 1045, 1049 (8th Cir. 1988)).

32. “[T]he State bears the burden of showing that the challenged statute is narrowly drawn to serve the State’s compelling interest.” *Moore*, 854 F.3d at 1026.

33. The Court finds the March 1st filing deadline to be a substantial burden on an independent candidate’s right to ballot access and a voter’s right to support a candidate of their choice.

34. The Court also finds that the State of Arkansas has a compelling interest in timely certifying independent candidates for inclusion on the general election ballot.

35. Even considering the federal election law deadlines of the Uniformed and Overseas Citizens Absentee Voting Act, the Military Overseas Voter Empowerment Act, potential litigation, and various other election deadline burdens, the Secretary of State has failed to show why a March 1st petition deadline rather than a May 1st petition deadline for independent candidates is necessary to process independent candidate petitions.

36. The Court finds that the Arkansas election laws in question are unconstitutional as a violation of the First and Fourteenth Amendments to the United States Constitution and to 42 U.S.C. § 1983 to the extent they set an unnecessary March 1st deadline which is not

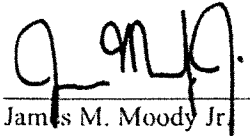
narrowly drawn to serve a compelling state interest.

37. The case is dismissed and judgment is entered in favor of the Plaintiff.

38. Plaintiff may file his petition to run for office as an independent candidate on or before May 1, 2018.

IT IS SO ORDERED this 31st day of January, 2018.

NUNC PRO TUNC January 25, 2018.

A handwritten signature in black ink, appearing to read "J. Moody Jr.", written over a horizontal line.

James M. Moody Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MARK MOORE and MICHAEL HARROD

PLAINTIFFS

V.

4:14CV00065 JM

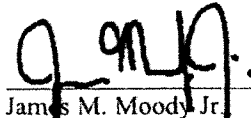
**MARK MARTIN in his official capacity as
Arkansas Secretary of State**

DEFENDANT

JUDGMENT

Pursuant to the Court's findings of facts and conclusions of law set forth in the Order entered on January 25, 2018, it is hereby CONSIDERED, ORDERED, and ADJUDGED that judgment is entered in favor of Plaintiff Mark Moore. Plaintiff's request for injunctive relief is granted. Plaintiff Mark Moore may file his petition to run for office as an independent candidate on or before May 1, 2018. The Clerk is directed to close the case.

IT IS SO ORDER this 25th day of January, 2018.



James M. Moody Jr.
United States District Judge

DEFENDANT AR SOS EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MARK MOORE and MICHAEL HARROD

PLAINTIFFS

V.

4:14CV00065 JM

MARK MARTIN in his official capacity as
Arkansas Secretary of State

DEFENDANT

ORDER

Pending are Plaintiff Moore's motions for attorneys fees and costs and the Defendant's motion to vacate or stay the injunction.

In the motion to vacate, the Secretary of State asks the Court to vacate the injunctive relief granted to the Plaintiff allowing him to file his petition to run as an independent candidate in the 2018 General Election at any time up to May 1, 2018. The Secretary claims that because the Court did not include the filing deadline for the political practices pledge, affidavit of eligibility, and notice of candidacy in the Order granting injunctive relief, Plaintiff was required to file those documents on March 1, 2018 as stated in Ark. Code Ann. § 7-7-103. The Secretary claims that because Plaintiff failed to file these documents on March 1, 2018, he is ineligible to file his signature petitions on May 1, 2018 and the Court should vacate the injunction allowing Plaintiff to do so.

The Secretary filed a Notice of Appeal on February 22, 2018 and a Rule 60(b) motion to vacate on March 7, 2018. Federal Rule of Civil Procedure 62.1 states, in pertinent part:

- (a) If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:
- (1) defer considering the motion;
 - (2) deny the motion; or
 - (3) state either that it would grant the motion if the court of appeals remands for

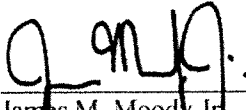
DEFENDANT AR SOS EXHIBIT 3

that purpose or that the motion raises a substantial issue.

Fed. R. Civ. P. 62.1. Pursuant to Rule 62.1(a)(1), the Court defers ruling on the motion to vacate.

Plaintiff's motions for costs and attorneys fees are held in abeyance pending appeal.

IT IS SO ORDERED this 29th day of March, 2018.



James M. Moody Jr.
United States District Judge

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

FEB 06 2014

JAMES W. McCORMACK, CLERK
By: 210 DEP CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

_____)
 MARK MOORE, MICHAEL HARROD,)
 and WILLIAM CHRIS JOHNSON,)
Plaintiffs)
 v.)
 MARK MARTIN, in his official)
 capacity as Secretary of State)
 for the State of Arkansas;)
Defendant.)
 _____)

Case No. 4:14 cv 65 Jmm

This case assigned to District Judge
and to Magistrate Judge

Meady
Kearney

COMPLAINT

COME now the Plaintiffs, Mark Moore, Michael Harrod, and William Chris Johnson, and for their cause of action against the Defendant, Mark Martin, in his official capacity as Secretary of State for the State of Arkansas, allege and state as follows, to-wit:

PARTIES

I.

Plaintiff MARK MOORE is a resident of Benton County, Arkansas, a registered voter in the State of Arkansas, and is an Independent candidate for Lieutenant Governor of the State of Arkansas for the 2014 General Election.

Plaintiff MICHAEL HARROD is a resident of Washington County, Arkansas, a registered voter in the State of Arkansas, and is an Independent candidate for District 84 of the Arkansas House of Representatives for the 2014 General Election.

Plaintiff WILLIAM CHRIS JOHNSON is a resident of White County, Arkansas, a registered voter in the State of Arkansas, and is an Independent candidate for County Judge of White County, Arkansas, for the 2014 General Election.

DEFENDANT AR SOS EXHIBIT 4

All the above-named individual Plaintiffs are citizens of the State of Arkansas and the United States of America, and registered voters of the State of Arkansas. Plaintiffs wish to have the right to cast their votes effectively for Independent candidates in Arkansas in the 2014 Arkansas election and future Arkansas elections.

II.

Defendant MARK MARTIN is the SECRETARY OF STATE FOR THE STATE OF ARKANSAS (hereinafter referred to as Defendant Secretary), and is responsible in his official capacity for administering the election and voter registration laws of the State of Arkansas pursuant to Ark. Code Ann., §§ 7-7-401, *et seq.* and 25-16-403. Specifically, the Defendant SECRETARY has supervisory authority over all election officials or officers of the county boards of election commissioners, is required to receive the returns from the county boards of election commissioners and canvas and certify the election results, certify the nomination as to independent candidates, maintain the State's election records, assist county officials with conducting federal, state, and district elections, and has responsibility to promulgate, repeal or modify such rules or regulations as he deems necessary to facilitate and assist in achieving and maintaining uniformity in the application, operation, and interpretation of the State and Federal election laws and a maximum degree of correctness, impartiality, and efficiency in administration of the election laws, and to act as the chief state election official responsible for coordination of state responsibilities so as to insure compliance with Federal election laws such as the National Voter Registration Act of 1993 (42 U.S.C. § 1973gg, *et seq.*).

The aforesaid Defendant Secretary has offices in the Arkansas State Capitol Building, Rm 256, Little Rock, Arkansas 72201.

JURISDICTION AND VENUE

III.

This is an action for declaratory and injunctive relief. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, §§ 1343(3), 1343(4), 2201, and 2202, and 42 U.S.C. § 1983. Venue of this Court is invoked pursuant to Title 28, U.S.C. § 1391. The rights, privileges, and immunities sought to be declared and redressed are those secured by the First and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CLAIM

IV.

This proceeding seeks a judgment declaring Ark. Code Ann. §§ 7-7-101, 7-7-103, and 7-7-203(c)(1), as applied to the Plaintiffs for the 2014 Arkansas General Election and all subsequent general elections in the State of Arkansas and the facts and circumstances relating thereto, unconstitutional in that it violates in its application to the Plaintiffs herein for the 2014 Arkansas General Election, and all subsequent Arkansas General Elections, the First and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. § 1983. This proceeding also seeks an injunction, both temporary and permanent, against Defendant SECRETARY, prohibiting said Defendant from following and enforcing the provisions of Ark. Code. Ann. §§ 7-7-101, 7-7-103, and 7-7-203(c)(1) as applied to the Plaintiffs herein for the 2014 Arkansas General Election, and all subsequent Arkansas General Elections, to the extent that said statutes set an unconstitutional early and vague deadline of March 3, 2014, during election years for Independent candidates, coupled with a loss of two months of petitioning time closer to the election as a result of the Arkansas Legislature in 2013, moving the Independent candidate petition deadline from May to March of the

General Election year, along with the requirement for the gathering of numerous petition signatures at a time when the weather is not as good nor the political interest as high as in the petitioning time period allowed by the previous law.

V.

The laws in question which were stated in rhetorical paragraph IV above, effective for the 2014 Arkansas General Election cycle, and all subsequent Arkansas General Election cycles, are as follows, to-wit:

Ark. Code Ann. § 7-7-101—Selection of nominees

The name of no person shall be printed on the ballot in any general or special election in this state as a candidate for election to any office unless the person shall have been certified as a nominee selected pursuant to this subchapter.

Ark. Code Ann. § 7-7-103—Filing as an independent—Petitions--Disqualification

(a)(1) A person desiring to have his or her name placed upon the ballot as an independent candidate without political party affiliation for any United States office other than President of the United States or Vice President of the United States or state, county, township, or district office in any general election in this state shall file, during the party filing period for the year in which the election is to be held, a political practices pledge, an affidavit of eligibility, the petition under this section, and a notice of candidacy stating the name and title the candidate proposes to appear on the ballot and identifying the elective office sought, including the position number, if any.

(2)(A) An independent candidate shall state the same position, including the position number, if any, on his or her petition.

(B) When a candidate has identified the position sought on the notice of candidacy, the candidate shall not be allowed to change the position but may withdraw a notice of candidacy and file a new notice of candidacy designating a different position before the deadline for filing.

(b)(1)(A) The person shall file petitions signed by not less than three percent (3%) of the qualified electors in the county, township, or district in which the person is seeking office, but in no event shall more than two thousand (2,000) signatures be required for a district, county, or township office.

(B) If the person is a candidate for state office or for United States Senator in which a statewide race is required, the person shall file petitions signed by not less than three percent (3%) of the qualified electors of the state or which contain ten thousand (10,000) signatures of qualified electors, whichever is the lesser.

(2) Each elector signing the petition shall be a registered voter, and the petition shall be directed to the official with whom the person is required by law to file the petition to qualify as a candidate and shall request that the name of the person be placed on the ballot for election to the office mentioned in the petition.

(3) Petitions shall be circulated not earlier than ninety (90) calendar days before the deadline for filing petitions to qualify as an independent candidate unless the number of days is reduced by a proclamation, ordinance, resolution, order, or other authorized document for a special election under 7-11-101, *et seq.*

(4) In determining the number of qualified electors in any county, township, or district or in the state, the total number of votes cast therein for all candidates in the preceding general election for the office of Governor shall be conclusive of the number of qualified electors therein for the purposes of this section.

(5) If the number of days in which the petition for independent candidacy may be circulated is reduced by a proclamation, ordinance, resolution, order, or other authorized document for a special election under 7-11-101, *et seq.*, the number of signatures required on the petition shall be reduced proportionately.

Ark. Code Ann., § 7-7-203(c)(1)

(c)(1) Party pledges, if any, shall be filed and any filing fees of a political party, if any, shall be paid during regular office hours in the period beginning at 12:00 noon on the first weekday in March and ending at 12:00 noon on the seventh day thereafter before the preferential primary election.

VI.

That previous to the aforesaid laws of the State of Arkansas as set forth in rhetorical paragraph V hereinabove, the election laws of the State of Arkansas as to ballot access for independent candidates were much less vague, less restrictive, less drastic and demanding in their requirements, and applied equally to all independent candidates and citizens wishing to exercise their fundamental rights to political expression and association.

The pertinent, relevant, and material changes in the aforesaid election law of the State of Arkansas, as complained of in the paragraph immediately hereinabove involve the movement by the Arkansas Legislature in 2013 of the signature petition deadline for independent candidates from May 1 to the party filing period for the year in which the election is to be held (i.e., March 3 for the year 2014 pursuant to the dictates of Ark. Code Ann. §§ 7-1-108, 7-7-103(a)(1), 7-7-103(b)(1)(A), and 7-7-203(c)(1)) of the year in which the election is to be held, with the further consequence because of the aforesaid amendment of moving the actual ninety (90) day petitioning time for the 2014 election cycle to a period farther removed from the General Election and during a time when the Arkansas weather and hours of daylight after normal working hours is less conducive to petitioning.

VII.

Ark. Code Ann., § 7-7-103(b)(1)(A) was amended in 2013 to move the petition filing deadline for independent candidates from May 1 of an election year to the party filing period for the year in which the election is to be held. Amended by laws 2013, Act 1356 (HB 2036). However, because of the requirements of Ark. Code Ann., §§ 7-1-108 and 7-7-203(c)(1), the petition filing deadline for independent candidates for 2014 will be on Monday, March 3, 2014. The foregoing change in the ballot access law for independent candidates made petitioning even more difficult by setting a petitioning deadline farther away from the date of the Arkansas General Election when political interest among the voting public is less and placing the ninety (90) day petitioning time during weather conditions in December, January, and February when Arkansas weather is generally not the most conducive for petitioning, the hours of daylight after normal working hours are minimal, and the holidays take many voters out of place of residence.

VIII.

On the 3rd day of March, 2014, the independent candidates will be required to turn in petition signatures for recognition and certification of themselves as independent candidates under the current election laws in question at a time when there is relatively less interest in politics, there is uncertainty as to who the major party candidates will be, what issues they will campaign on, and the unsettled final results of who will be nominated as the major party candidates. Under current Arkansas law, ten thousand (10,000) valid petition signatures of registered Arkansas voters are required for a statewide independent candidate, with three (3%) percent required for districts or counties.

Arkansas's unnecessarily early aforesaid petition signature deadline for independent candidates, coupled with the petition signature requirement, the lowered political interest of the voting public further removed from the election dates in Arkansas, and the inconvenient petitioning time period is unconstitutional, is constitutionally unnecessary and vague, lacks any compelling interest, and unequally and unfairly impacts in a discriminatory manner the rights of Independent candidates in Arkansas.

IX.

In the election year in Arkansas for the year 2014, the independent candidate petition deadline is Monday, March 3, 2014, while the political party Preferential Primary Election is on May 20, 2014, a General Primary Runoff Election is on June 10, 2014, the General Election is on November 4, 2014, and the General Runoff Election is on November 25, 2014. If Ark. Code Ann., §§ 7-7-103 and 7-7-203(c)(1) is enforced as to deny the independent candidates and individual Arkansas registered voters who support those candidates' ballot access, the right to a constitutional

independent petition deadline, time period in which to petition during 2013-2014, and signature requirement, then the rights to political association, First Amendment free speech, and free and equal elections will be abridged and denied.

X.

Defendant SECRETARY has and will exercise his authority under color of state law in enforcing the aforesaid state laws in such a manner as to be in an unlawful, discriminatory, capricious, vague, and arbitrary manner, in violation of the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983, in that:

A. By reason of said required action as set forth in rhetorical paragraph IX above by said Defendant Secretary, through his agents, employees, and servants, the Plaintiffs herein will be denied their rights to actively and effectively engage in the exercise of their free speech, right to political association, seek redress of grievances, cast an effective vote, and equal protection and due process of the laws of the State of Arkansas and the United States of America;

B. Said required action as set forth in rhetorical paragraph IX above works to further no constitutional compelling state interest or political purpose for said state election laws, Plaintiffs' fundamental constitutional freedoms are or will be denied and abridged, the laws in question work in an unequal, vague, and discriminatory manner in that they favor the established and entrenched political parties (viz.: Republican Party and Democratic Party), and the aforesaid statutes in question are not framed in the least restrictive manner necessary to achieve the legitimate state interests in regulating ballot access, particularly as relating to the unnecessarily early and vague petitioning filing deadline, inconvenient and unnecessarily limited petitioning time for 2013-2014, and unnecessarily high petition signature requirement when considered with the petition signature

deadline and limited time period for petitioning for independent candidates in Arkansas.

XI.

Plaintiffs herein will suffer immediate and irreparable harm in the event that the complained of actions set forth in rhetorical paragraph VIII and IX hereinabove are allowed to occur. The effect of the aforesaid complained of actions would be to effectively deny Plaintiffs those rights enumerated hereinabove in rhetorical paragraph X(A). Plaintiffs have no adequate remedy at law for the denial of their rights and the impairment of the constitutional rights, privileges, and immunities enjoyed by a citizen of the United States and the State of Arkansas, and, unless a preliminary injunction and a permanent injunction are granted, Plaintiffs will suffer great and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment:

1. Declaring that the said required actions as set forth in rhetorical paragraph IX above pursuant to Ark. Code Ann., §§ 7-7-101, 7-7-103, and 7-7-203(c)(1) are illegal and unconstitutional when considered in combination, particularly as applied to the facts of the case at bar in that they establish an unnecessarily early and vague petition deadline for independent candidates for elective office in the State of Arkansas, which results in a limited petitioning time period further removed from the general election than was required under prior election law in Arkansas, and during a period of time when the weather is not as conducive to petitioning and political interest among the voting public is lower, so that it is in violation of the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983;
2. Entering a preliminary and permanent injunction placing the plaintiffs on the

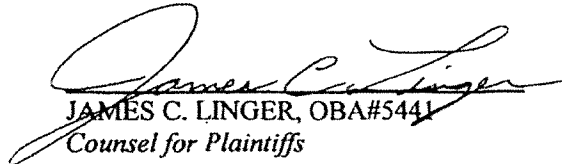
Arkansas ballot as independent candidates for the general election for 2014, restraining, prohibiting, and enjoining the Defendant Secretary to the instant action, his agents, employees, and servants, and all persons in active concert and participation with them, from enforcing, applying, or implementing the aforesaid complained of state election law as applied to the instant Plaintiffs and all similarly situated individuals;

3. Awarding Plaintiffs the reasonable costs and expenses of this action, including attorney's fees pursuant to the Civil Rights Attorney's Fees and Awards Act of 1976, 42 U.S.C. § 1988; and

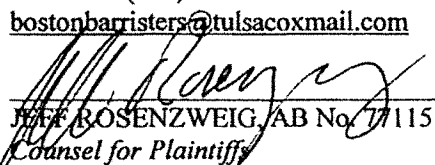
4. Granting Plaintiffs such further relief as to which they may be entitled and which the Court may deem equitable and just.

Dated this 6 day of February, 2014.

MARK MOORE, MICHAEL HARROD, and
WILLIAM CHRIS JOHNSON, Plaintiffs


JAMES C. LINGER, OBA#5441
Counsel for Plaintiffs

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jrosenzweig@att.net

AFFIDAVIT OF DIRECTOR OF ELECTIONS

State of Arkansas)
) ss.
County of Pulaski)

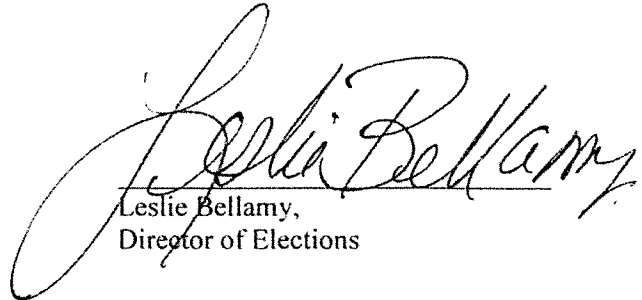
I, Leslie Bellamy, duly deposed upon oath, state:

1. My name is Leslie Bellamy.
2. I am the Director of Elections for the State of Arkansas and the Arkansas Secretary of State.
3. I am over the age of 18, am competent to make the statements herein, and know of no reason why I cannot make the statements herein.
4. I make the statements herein of my own personal knowledge, and as designated by the Secretary of State, as the keeper of the records, for purposes of this Affidavit.
5. During the party filing period that ended on March 1, 2018, Mark Moore did not file with the Arkansas Secretary of State to run for any public office in the State of Arkansas for the 2018 election cycle.
6. During the party filing period that ended on March 1, 2018, Mark Moore did not attempt to file, nor did he attempt to tender, with the Arkansas Secretary of State, any documents required for filing to run for any public office in the State of Arkansas for the 2018 election cycle.
7. That Mark Moore, by his own inaction, is prohibited from running for any public office in the 2018 election cycle, in which the Secretary of State is the filing office, because the party filing period closed on March 1, 2018, without Moore having tendered any documents required for such filing.

Further, Affiant sayeth not.

DEFENDANT AR SOS EXHIBIT 5

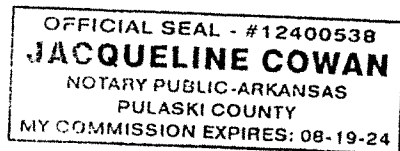
Dated this 3rd day of April, 2018.



Leslie Bellamy,
Director of Elections

VERIFICATION

Subscribed and sworn to before me, a Notary Public, duly authorized and acting, by the person well known to me as Leslie Bellamy, the Arkansas Secretary of State Director of Elections, who appeared personally, and stated that she signed her name for the purposed therein set forth, in support of the Secretary of State's Motion.

In witness whereof, I hereunto set my hand and seal on this 3rd day of April.




NOTARY PUBLIC

My commission expires:

8-19-24

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

_____)
MARK MOORE, MICHAEL HARROD,))
and WILLIAM CHRIS JOHNSON,))
....Plaintiffs))
))
v.)	Case No. 4:14-cv-00065-JM
))
MARK MARTIN, in his official))
capacity as Secretary of State))
for the State of Arkansas;))
....Defendant.))
_____))

AFFIDAVIT OF MARK MOORE

I, Mark Moore, being first duly sworn, state as follows:

1. I was a candidate for the office of Lieutenant Governor of the State of Arkansas for the General Election which was held on November 4, 2014, and make this Affidavit on my own personal knowledge and with the understanding that it is to be used in support of Plaintiffs' Memorandum Brief in Support of Plaintiffs' Motion for Summary Judgment and Plaintiffs' Statement of Material Facts Not in Dispute in the above referenced case.

2. I have read the facts set forth in the Complaint filed in the instant case, in which I am one of the Plaintiffs, and know them to be true and correct.

3. I am a resident of Benton County, Arkansas, a registered voter in the State of Arkansas, a citizen of the United States of America, and was an Independent candidate for Lieutenant Governor for the State of Arkansas for the 2014 General Election, although I refused to comply with the petition signature deadline by the deadline of March 3, 2014 (which will be March 1 in future election years) because I believed such a deadline was discriminatory, unduly burdensome, and a violation of my constitutional rights. I therefore appealed to the court that the court might determine a just remedy. As a result, I could not appear on the Arkansas ballot as an Independent candidate for

DEFENDANT AR SOS EXHIBIT 6


the office of Lieutenant Governor in the General Election on November 4, 2014.

4. I know there is support for Independent candidates in Arkansas because—while I chose not to comply with the petition process which I felt had been changed in a discriminatory manner from the one I complied with in the 2012 election where I ran as an Independent candidate for the Arkansas State Legislature, I did commission polling as to the office of Arkansas Lieutenant Governor which showed that up to 53% of Arkansas voters would consider an Independent candidate for Lieutenant Governor, that 20% of Arkansas voters polled would consider me as an Independent candidate for Lieutenant Governor, that only 30% of the voters knew the name of both the Republican and Democratic candidates for Lieutenant Governor in Arkansas. The poll which I commissioned was conducted on September 2, 2014. Obtaining those results so close to election day in 2014 gives me assurance that there would be support for an Independent candidate for Lieutenant Governor in a future election, particularly for the next General Election in November of 2018.

5. It is my intention to be an Independent candidate for Lieutenant Governor in Arkansas for the General Election to be held in November of 2018. An early deadline of March 1, 2018, for the submission of petition signatures will impact my ability to comply, is well before the Republican-Democratic candidates will be chosen for the General Election in November of 2018, and denies me equal access to the ballot in temporal terms. It will also impact my ability to cast my vote effectively as an Arkansas voter who supports potential Independent candidates for elective office in Arkansas.


6. I have personal knowledge of the facts stated in my Affidavit herein, and I understand that any false statements made herein will subject me to the penalties of perjury.

Further Affiant Sayeth Not.


Mark Moore

STATE OF OHIO)
COUNTY OF Lucas) ss.

SUBSCRIBED and sworn to before me this 8th day of May, 2015.


Notary Public

My Commission Expires
(SEAL)



DANIELLE RAUSCH
Notary Public, State of Ohio
My Commission Expires 01/26/16