

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO ex rel.
David Myhal

Relator,

vs.

JENNIFER BRUNNER, SECRETARY
OF STATE OF OHIO,

Respondent.

Case No. 2008-2027

Original Action in Mandamus

Expedited Election Matter

Under S.Ct. Prac. R.X. § 9

ANSWER OF RESPONDENT
JENNIFER BRUNNER, SECRETARY OF STATE

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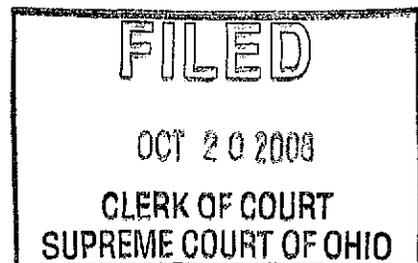
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Attorneys for Respondent



Answer

Now comes Respondent Secretary of State Jennifer Brunner, and for her answer to the Relator's Complaint states the following:

1. Respondent denies each and every allegation not specifically admitted to herein.
2. In response to the text preceding the Introduction of the Complaint, the Respondent denies for lack of knowledge the reason that the Plaintiff brought the action and states that the Complaint speaks for itself. Respondent further states that the judicial decisions cited by the Relator speak for themselves. The Secretary further states that the bipartisan election system established by the Ohio Revised Code and implemented by bipartisan county boards of elections for decades under the administrative direction of the Ohio Secretaries of State includes multiple protections and safeguards against fraud. Respondent denies all remaining allegations in the text preceding the Introduction of the Complaint.
3. In response to Paragraph 1 of the Complaint, this Court's opinion in *State ex rel. Colvin v. Brunner*, Slip Opinion No. 2008-Ohio-5041 speaks for itself. Respondent denies for lack of knowledge all other allegations made in Paragraph 1.
4. With response to Paragraph 2, Respondent states that she is not required to respond to references to statutory text and case law that speak for themselves nor is she required to respond to legal conclusions included in Paragraph 2. The Respondent denies the remaining allegations contained in Paragraph 2.
5. With respect to Paragraph 3 of the Complaint, Respondent states that she is not required to respond to references to statutory text that speak for themselves nor is she required to respond to legal conclusions included in Paragraph 3. The Respondent denies the remaining allegations contained in Paragraph 3.

6. With respect to Paragraph 4 of the Complaint, the pleading cited by the Relator speaks for itself, and no response is necessary. To the extent a response is necessary, Respondent denies the allegations in Paragraph 4.

7. With respect to Paragraph 5 of the Complaint, Respondent states that the decisions cited speak for themselves and require no response. Respondent further states that she is not required to respond to the legal conclusions included in Paragraph 5. The Respondent denies the remaining allegations in Paragraph 5.

8. Respondent denies the allegations in Paragraph 6.

9. Respondent denies the allegations in Paragraph 7.

10. With respect to footnote 1 of the Complaint, the articles cited by the Relator speak for themselves, are not permitted to be introduced into evidence in this proceeding because they are hearsay, and that the Secretary is not required to respond to the allegations contained in footnote 1. Respondent denies all other allegations in the footnote.

11. With respect to Paragraph 8, the Expedited Petition for a Writ of Mandamus speaks for itself. Respondent further states that Directive 2008-67 speaks for itself and that she is not required to respond to the legal conclusions included in Paragraph 8. The Respondent expressly denies that the Relator's requested relief is "narrowly tailored." The Respondent denies the remaining allegations contained in Paragraph 8.

12. Respondent states that the Relator *spelled his name differently in the caption of the complaint as compared to the rest of the complaint*. One presumes that this is an innocent typographical error. Respondent, however, is unsure if the actual Relator in this case is "David Mahal" as listed in the caption or "David Myhal" as listed in the body of the complaint. Respondent denies for lack of knowledge the allegations in Paragraph 9 of the Complaint.

13. With respect to Paragraph 10, admits that the Respondent is the Chief Elections Officer of the State of Ohio and that her duties are contained in Title 35 and other provisions of the Ohio Revised Code and the Ohio Constitution. Respondent further states that the statutes cited in Paragraph 10 speak for themselves and that no response is required.

14. Respondent denies the allegations in Paragraph 11 of the Complaint.

15. With Respect to Paragraph 12, Respondent states that the statute cited speaks for itself and requires no response. Respondent further states that she is not required to respond to the legal conclusions in Paragraph 12. The Respondent denies the remaining allegations contained in Paragraph 12.

16. With respect to the allegations contained in Paragraph 13, Respondent states that the statutes cited speak for themselves and require no response. Respondent further states that she is not required to respond to the legal conclusions in Paragraph 13. The Respondent denies the remaining allegations contained in Paragraph 13.

17. With respect to the allegations contained in Paragraph 14, Respondent states that the statutes cited speak for themselves and require no response. Respondent further states that she is not required to respond to the legal conclusions in Paragraph 14. The Respondent denies the remaining allegations contained in Paragraph 14.

18. With respect to the allegations contained in Paragraph 15, Respondent states that the statutes cited speak for themselves and require no response. Respondent further states that she is not required to respond to the legal conclusions in Paragraph 15. The Respondent denies the remaining allegations contained in Paragraph 15.

19. With respect to Paragraph 16 of the Complaint, Respondent admits that the counsel of record for Relator are also the counsel of record in a similar lawsuit that was filed in

federal court. Respondent further states that the pleadings cited by the Relator and the transcripts of the oral argument cited by the Relator speak for themselves, and no response is required. To the extent any response is required, the allegations in Paragraph 16 are denied.

20. With respect to the allegations contained in Paragraph 17, Respondent states that Directive 2008-96 and the pleadings cited by the Relator speak for themselves and that no response is required. To the extent a response may be required, the allegations contained in Paragraph 17 are denied.

21. Respondent denies the allegations in Paragraph 18 of the Complaint.

22. Respondent denies the allegations in Paragraph 19 of the Complaint and affirmatively states that the relief requested by the Relator would indeed represent an undue burden on the county boards of elections that is not contemplated by any provision in the Revised Code.

23. With respect to Paragraph 20 of the Complaint, Respondent states that Directive 2008-96 speaks for itself. The Respondent admits that the county boards of elections are obligated to follow Ohio law. The Respondent denies the remaining allegations in Paragraph 20 of the complaint.

24. With respect to the WHEREFORE Paragraph and its respective subparagraphs, Respondent denies that the Relator is entitled to any of the relief stated therein or to any relief whatsoever.

WHEREFORE, having answered the Relator's Complaint, the Respondent asserts the following defenses, including affirmative defenses:

First Defense

25. This Court lacks subject matter jurisdiction to hear the Relator's claims.

Second Defense

26. The Relator has failed to state a claim upon which relief in mandamus can be granted.

Third Defense

27. The Relator lacks standing.

Fourth Defense

28. The Secretary's issuance of a Directive is a discretionary act that cannot be reviewed by this Court in mandamus.

Fifth Defense

29. The Relator has failed to join all necessary parties.

Sixth Defense

30. Some or all of the Relator's claims are barred by the doctrines of issue and/or claim preclusion.

Seventh Defense

31. The relief requested by the Relator would violate Article II Section 1 of the United States Constitution.

Eighth Defense

32. The relief sought by the Relator asks this Court to violate the constitutional principle of separation of powers.

Ninth Defense

33. The relief requested by the Relator would violate the Due Process clause of the Fourteenth Amendment.

Tenth Defense

34. The relief requested by the Relator would violate the Equal Protection clause of the Fourteenth Amendment.

Eleventh Defense

35. The relief requested by the Relator would violate the Help America Vote Act.

Twelfth Defense

36. The relief requested by the Relator would violate the National Voter Registration Act of 1993.

Thirteenth Defense

37. The relief requested by the Relator would violate the Voting Rights Act.

Fourteenth Defense

38. The relief requested by the Relator is barred by the doctrine of laches.

Fifteenth Defense

39. The relief requested by the Relators is barred by the decision of the United States Supreme Court in the case of Purcell v. Gonzales.

Sixteenth Defense

40. The relief requested by the Relators is barred by federal and state law.

Seventeenth Defense

41. The Secretary of State's Directive 2008-96 is fully consistent with both state and federal law.

Eighteenth Defense

42. The Relator does not have a clear legal right to the relief requested.

Nineteenth Defense

43. The Respondent does not owe a clear legal duty to the Relator.

Twentieth Defense

44. The Relator has an adequate remedy at law.

Twenty-First Defense

45. There is no private right of action to enforce the federal and state statutes at issue.

Twenty-Second Defense

46. The Respondent reserves the right to add additional defenses, including additional affirmative defenses, as discovery proceeds in this case.

WHEREFORE, having answered the Relator's Complaint, the Respondent requests that the Court dismiss this case.

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing *Answer of Respondent Jennifer Brunner, Secretary of State* was served on this 20th day of October, 2008, by electronic mail, facsimile transmission and ordinary, postage prepaid U.S. mail to:

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