

ORIGINAL

In the
Supreme Court of Ohio

STATE ex rel. LETOHIOVOTE.ORG, et al. :

Relators, :

vs. :

OHIO SECRETARY OF STATE
JENNIFER BRUNNER,

Respondent. :

Case No. 2009-1310

Original Action in Mandamus

**RESPONSE OF RESPONDENT SECRETARY OF STATE BRUNNER IN OPPOSITION
TO RELATOR'S EMERGENCY MOTION FOR STAY**

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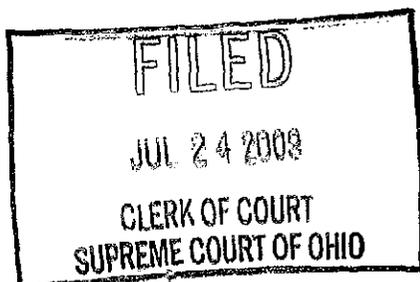
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**RESPONSE OF RESPONDENT SECRETARY OF STATE BRUNNER
IN OPPOSITION TO RELATOR'S EMERGENCY MOTION FOR STAY**

Relators filed with this Court an Emergency Motion for Stay and To Expedite Writ of Mandamus. The Court's July 21, 2009 briefing schedule moots Relators' request for expedited consideration of their mandamus petition. Additionally, Relators request "an emergency order staying implementation of sections R.C. 3770.03 and 3770.21 of the recently enacted budget bill for the duration of this lawsuit." Relators' Motion for Stay, p.2. The object of Relators' Motion is to stay the effective date of legislation which, by its own terms, took effect immediately. See H.B. 1, Section 812.20. While Respondent Secretary of State does agree that the case should move forward expeditiously, Relators' Motion for Stay should be denied for several reasons.

First, Relators' request for a stay puts the cart before the horse. Relators are, in effect, asking the Court to issue a temporary restraining order and to make a premature determination before Relators have argued the merits of their case. Because the challenged portions of H.B.1 are already effective law, those provisions enjoy a presumption of constitutionality that Relators must rebut. *Desenco, Inc. v. Cleveland* (1999), 84 Ohio St.3d 535, 538; *State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251, ¶ 9. Relators, however, have turned that presumption on its head. Rather than presuming that the law is constitutional—which by its terms states that it is not subject to a referendum and takes immediate effect—Relators are presuming that the opposite is true: that the law is subject to a referendum. Since that question is at the core of the merits of the case, and since the merits will, under the Court's expedited briefing schedule, be resolved in short order, Relators' stay request should be denied, and the status quo should be preserved until a final determination.

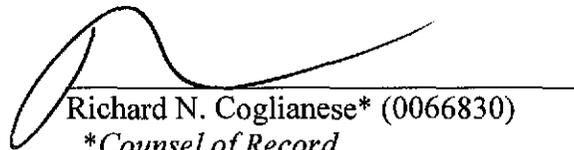
Furthermore, Relators are in effect asking the Court to issue a temporary restraining order. To the extent that Relators are attempting to invoke the Court's equitable powers to

enjoin implementation of H.B. 1 during the pendency of this mandamus action, it is well-settled that such relief is beyond this Court's original jurisdiction. See, e.g., *State ex rel. Smith v. Industrial Comm'n.* (1942), 139 Ohio St. 303, 306 (court lacked jurisdiction to issue order to cease disbursements from state workers compensation fund); *State ex rel. Youngstown v. Mahoning County Bd. of Elections* (1995), 72 Ohio St. 3d 69, 70 (denied request to enjoin a county board of elections from holding city council elections when the legality of those elections were the subject of the mandamus action).

For these reasons, Respondent Secretary of State Brunner respectfully asks the Court to deny Relators' Emergency Motion for Stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response of Respondent Secretary of State Brunner in Opposition to Relators' Emergency Motion for Stay was served on July 24, 2009 via electronic mail upon the following counsel. A copy of the same was sent to the Clerk's Office via electronic mail.

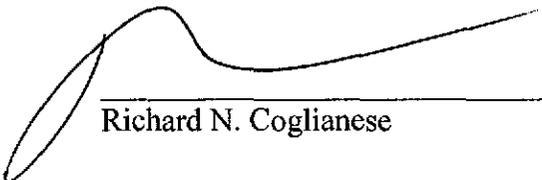
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