

ORIGINAL

In the
Supreme Court of Ohio

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

Relators, :

Case No. 2009-1310

vs. :

Original Action in Mandamus

OHIO SECRETARY OF STATE
JENNIFER BRUNNER, :

Respondent. :

ANSWER OF RESPONDENT
OHIO SECRETARY OF STATE JENNIFER BRUNNER

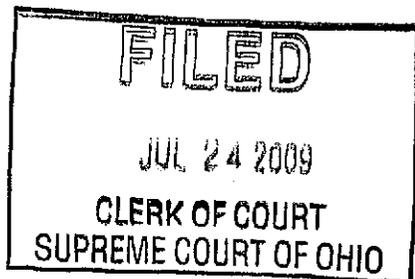
David R. Langdon (0067046)
Counsel of Record
Thomas W. Kidd, Jr. (0066359)
Bradley M. Peppo (0083847)
LANGDON LAW LLC
11175 Reading Road, Suite 104
Cincinnati, Ohio 45241
(513) 577-7380 – telephone
(513) 577-7383 – fax
dlangdon@langdonlaw.com
tkidd@langdonlaw.com
bpeppo@langdonlaw.com

*Attorneys for Relators LetOhioVote.org,
Thomas E. Brinkman, Jr., David Hansen, and
Gene Pierce*

RICHARD CORDRAY
Ohio Attorney General

Richard N. Coglianese (0066830)
Counsel of Record
Erick D. Gale (0075723)
Pearl M. Chin (0078810)
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-2872 – telephone
(614) 728-7592 – fax
Richard.Coglianese@ohioattorneygeneral.gov
Erick.Gale@ohioattorneygeneral.gov
Pearl.Chin@ohioattorneygeneral.gov

*Attorneys for Respondent Ohio Secretary of
State Jennifer Brunner*



In the
Supreme Court of Ohio

STATE ex rel. LETOHIOVOTE.ORG, et al.	:	
	:	
Relators,	:	Case No. 2009-1310
	:	
vs.	:	
	:	Original Action in Mandamus
OHIO SECRETARY OF STATE	:	
JENNIFER BRUNNER,	:	
	:	
Respondent.	:	
	:	

**ANSWER OF RESPONDENT
OHIO SECRETARY OF STATE JENNIFER BRUNNER**

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

1. Denies each and every allegation not specifically admitted to herein.
2. States that the allegations contained in Paragraph 1 of the Complaint contain purely legal conclusions and that no response to those allegations is required. To the extent a response is required, the allegations are denied.
3. Denies for lack of knowledge the allegations contained in Paragraph 2 of the Complaint.
4. Denies for lack of knowledge the allegations contained in Paragraph 3 of the Complaint.
5. Admits the allegations contained in Paragraph 4 of the Complaint.
6. Admits the allegations contained in Paragraph 5 of the Complaint.

7. Admits the allegations contained in Paragraph 6 of the Complaint.
8. Admits the allegations contained in Paragraph 7 of the Complaint.
9. Admits the allegations contained in Paragraph 8 of the Complaint.
10. With respect to the allegations contained in Paragraph 9 of the Complaint, states that the Governor's directive speaks for itself and that no response is required. To the extent a response is required, the allegations are denied.
11. Denies for lack of knowledge the allegations contained in Paragraph 10 of the Complaint.
12. Denies for lack of knowledge the allegations contained in Paragraph 11 of the Complaint.
13. With respect to the allegations contained in Paragraph 12 of the Complaint, states that the Governor's directive speaks for itself and that no response is required. To the extent a response is required, the allegations are denied.
14. With respect to the allegations contained in Paragraph 13 of the Complaint, states that the Governor's directive speaks for itself and that no response is required. To the extent a response is required, the allegations are denied.
15. Admits the allegations contained in Paragraph 14 of the Complaint.
16. Denies for lack of knowledge the allegations contained in Paragraph 15 of the Complaint.
17. With respect to the allegations contained in Paragraph 16 of the Complaint, states that Am. Sub. H.B. 1 speaks for itself and no response is required. To the extent a response is required, the allegations are denied.

18. With respect to the allegations contained in Paragraph 17 of the Complaint, states that Am. Sub. H.B. 1 speaks for itself and no response is required. To the extent a response is required, the allegations are denied.
19. With respect to the allegations contained in Paragraph 18 of the Complaint, states that Am. Sub. H.B. 1 speaks for itself and no response is required. To the extent a response is required, the allegations are denied.
20. With respect to the allegations contained in Paragraph 19 of the Complaint, states that Am. Sub. H.B. 1 speaks for itself and no response is required. To the extent a response is required, the allegations are denied.
21. With respect to the allegations contained in Paragraph 20 of the Complaint, states that Am. Sub. H.B. 1 speaks for itself and no response is required. To the extent a response is required, the allegations are denied.
22. Denies for lack of knowledge the allegations contained in Paragraph 21 of the Complaint.
23. Denies for lack of knowledge the allegations contained in Paragraph 22 of the Complaint.
24. Denies for lack of knowledge the allegations contained in Paragraph 23 of the Complaint.
25. With respect to the allegations contained in Paragraph 24 of the Complaint, restates and reincorporates by reference all responses given to Paragraphs 1-23 of the Complaint.

26. States that Paragraph 25 contains a legal conclusion and that Art. II Section 1c of the Ohio Constitution speaks for itself. No further response is required to Paragraph 25 of the Complaint, but to the extent a response is required, the allegations are denied.
27. States that Paragraph 26 contains a legal conclusion and that Art. II Section 1d of the Ohio Constitution speaks for itself. No further response is required to Paragraph 26 of the Complaint, but to the extent a response is required, the allegations are denied.
28. States that Paragraph 27 contains a legal conclusion and that Art. II Sections 1c and d of the Ohio Constitution speak for themselves. No further response is required to Paragraph 27 of the Complaint, but to the extent a response is required, the allegations are denied.
29. States that Paragraph 28 of the Complaint contains a legal conclusion and no response is required. The Respondent further states that the amendments to R.C. 3770.03 and 3770.21 do not change the permanent law of the State of Ohio. Instead, these amendments simply restate Ohio law as it currently exists in allowing the Ohio Lottery Commission to operate video lottery terminals. Ohio's current constitution was originally adopted in 1851 and Article XV Section 6 of that Constitution contained a blanket prohibition against lotteries and the sale of lottery tickets. In 1973, the voters of the State approved an amendment to Article XV, Section 6 of the Ohio Constitution which allowed the General Assembly to authorize an agency of the State to conduct lotteries, to sell rights to participate in them, and to award prizes by chance to participants, provided that the entire net proceeds were paid into the general revenue fund of the State. In 1975, the electorate again approved an amendment to Article XV, Section 6 of the Ohio Constitution authorizing charitable bingo and its

regulation. Most recently, the electorate amended Article XV, Section 6 again in 1988 when the electorate required that the net proceeds of the State lottery be used solely for the support of elementary, secondary, vocational, and special education programs as determined by appropriations made by the General Assembly. Thus, with the passage of the 1973 amendment to the Ohio Constitution, as well as the statutory enactments prior to Am. Sub. H.B. 1, the voters of the State of Ohio and the General Assembly granted the Ohio Lottery Commission the authority to operate video lottery terminals. Because this power specifically existed before the enactment of Am. Sub. H.B. 1, there was no change to the permanent law of the State. To the extent a response is required, the allegations are denied.

30. States that Paragraph 29 of the Complaint contains a legal conclusion and no response is required. To the extent a response is required, the allegations are denied.
31. States that Paragraph 30 of the Complaint contains a legal conclusion and no response is required. To the extent a response is required, the allegations are denied.
32. States that Paragraph 31 of the Complaint contains a legal conclusion and no response is required. To the extent a response is required, the allegations are denied.
33. With regard to the allegations contained in the WHEREFORE paragraphs and subparagraphs states that the Relators are not entitled to the relief requested therein or to any other relief whatsoever.

WHEREFORE, having answered the Relators Complaint, the Respondent raises the following defenses, including affirmative defenses.

First Defense

34. The Relators have failed to state a claim upon which relief can be granted.

Second Defense

35. This Court lacks subject matter jurisdiction over the Relators' claim.

Third Defense

36. The Relators do not have a clear legal right to submit a referendum petition against the challenged provisions of Am. Sub. H.B. 1.

Fourth Defense

37. The Respondent does not owe the Relators any clear legal duty.

Fifth Defense

38. The Relators have an adequate remedy at law.

Sixth Defense

39. R.C. 3770.03 and R.C. 3770.21, as amended by Am. Sub. H.B. 1, provide for appropriations for the current expenses of the state government, pursuant to section 1d of Article II of the Ohio Constitution, and became immediately effective.

Seventh Defense

40. R.C. 3770.03 and R.C. 3770.21, as amended by Am. Sub. H.B. 1, do not change the permanent law of the state.

Eighth Defense

41. R.C. 3770.03 and R.C. 3770.21, as amended by Am. Sub. H.B. 1, are not subject to the referendum under powers reserved to the people by Section 1d of Article II, of the Ohio Constitution.

Ninth Defense

42. R.C. 3770.03 and R.C. 3770.21, as amended by Am. Sub. H.B. 1, are constitutional under Section 6, Article XV of the Ohio Constitution.

Tenth Defense

43. R.C. 3770.03 and R.C. 3770.21, as amended by Am. Sub. H.B. 1, clarify the Ohio Lottery Commission's authority to operate, and promulgate rules for, video lottery terminals.

Eleventh Defense

44. Relators are not entitled to attorneys' fees and/or costs.

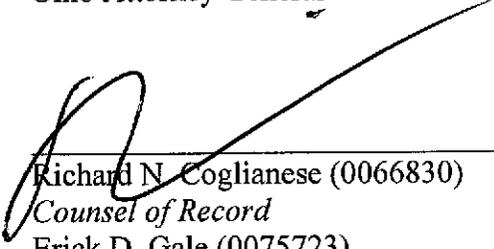
Twelfth Defense

45. The Respondent reserves the right to add additional defenses, including affirmative defenses, as this case progresses.

Wherefore, having answered the Relators' Complaint, the Respondent prays that this Court dismiss this case and award her any other remedies the Court deems just and appropriate.

Respectfully submitted,

RICHARD CORDRAY
Ohio Attorney General



Richard N. Coglianesse (0066830)
Counsel of Record

Erick D. Gale (0075723)

Pearl M. Chin (0078810)

Assistant Attorneys General

Constitutional Offices Section

30 East Broad Street, 16th Floor

Columbus, Ohio 43215

(614) 466-2872 – telephone

(614) 728-7592 – fax

Richard.Coglianesse@ohioattorneygeneral.gov

Erick.Gale@ohioattorneygeneral.gov

Pearl.Chin@ohioattorneygeneral.gov

*Attorneys for Respondent Ohio Secretary of State
Jennifer Brunner*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing answer of Secretary of State Brunner 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.

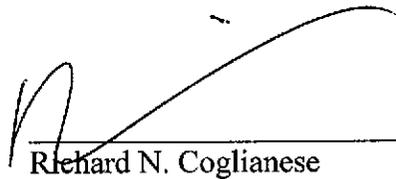
David R. Langdon
Thomas W. Kidd, Jr.
Bradley M. Peppo
dlangdon@langdonlaw.com
tkidd@langdonlaw.com
bpeppo@langdonlaw.com

Attorneys for Relators

Cc: clerk@sc.ohio.gov
kristinia.frost@sc.ohio.gov
amy.reitz@sc.ohio.gov
justin.kudela@sc.ohio.gov

Benjamin C. Mizer
Alexandra T. Schimmer
benjamin.mizer@ohioattorneygeneral.gov
alexandra.schimmer@ohioattorneygeneral.gov

Attorneys for Proposed Intervenors


Richard N. Coglianese