

ORIGINAL

In the
Supreme Court of Ohio

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

**RESPONSE OF RESPONDENT OHIO SECRETARY OF STATE
JENNIFER BRUNNER TO RELATORS' MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT INSTANTER**

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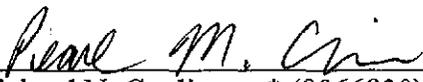
*Counsel for Intervenors J. Pari Sabety,
Director, Office of Budget and
Management, and Michael A. Dolan,
Director, Ohio Lottery Commission*

Respondent Ohio Secretary of State Jennifer Brunner, in response to Relators' Motion for Leave to File Amended Complaint *Instante*, states that she does not oppose Relators' motion.

In the event that the Court grants Relators' motion for leave to file the Amended Complaint, Respondent is filing an Answer to the Amended Complaint simultaneously with this response.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response of Secretary of State Brunner to Relators' Motion for Leave to File Amended Complaint was served on August 4, 2009, via electronic mail upon the following counsel:

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JENNIFER BRUNNER,	:	
	:	
Respondent.	:	
	:	

**ANSWER OF RESPONDENT
OHIO SECRETARY OF STATE JENNIFER BRUNNER
TO RELATORS' AMENDED COMPLAINT FOR WRIT OF MANDAMUS**

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

1. The preamble to Relators' Amended Complaint states that "[t]his action is brought . . . against Respondent Ohio Secretary of State Jennifer Brunner and Respondent Ohio Attorney General Richard Cordray." Am. Cmplt. at 1. Respondent denies that Ohio Attorney Richard Cordray has been named as a Respondent to this action. Relators' motion for leave to file the Amended Complaint makes no mention of adding the Attorney General as a Respondent; the caption of the Amended Complaint does not name the Attorney General as a Respondent; paragraphs 2-9 of the Amended Complaint, which describe the parties to this action, do not identify the

Attorney General as a Respondent; and in the prayer for relief, Relators have not requested that this Court issue any order with respect to the Attorney General.

2. Denies each and every allegation not specifically admitted to herein.
3. States that the allegations contained in Paragraph 1 of the Amended 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.
4. Denies for lack of knowledge the allegations contained in Paragraph 2 of the Amended Complaint.
5. Admits that LetOhioVote.org filed a Designation of Treasurer purporting to appoint Gene Pierce as the Treasurer. Denies for lack of knowledge the remaining allegations contained in Paragraph 3 of the Amended Complaint.
6. With respect to paragraph 4 of the Amended Complaint, admits that Jennifer Brunner is the Ohio Secretary of State and the chief elections officer of the State of Ohio. Further answering, Respondent states that Article III of the Ohio Constitution and R.C. 111.08 speak for themselves.
7. Admits the allegations contained in Paragraph 5 of the Amended Complaint.
8. Admits the allegations contained in Paragraph 6 of the Amended Complaint.
9. Admits that Respondent must determine whether referendum petitions are timely filed under Article II section 1c of the Ohio Constitution.
10. With respect to paragraph 8 of the Amended Complaint, Respondent states that R.C. 3518.01(B)(2) speaks for itself and denies that the Secretary of State had a duty to verify the signatures on the summary referendum part-petitions presented to her by Gene Pierce on July 23, 2009.

11. With respect to paragraph 9 of the Amended Complaint, Respondent states that R.C. 3519.01(B)(3) speaks for itself and denies that the Attorney General had a duty to examine and certify the language of the summary referendum petitions presented to him by Gene Pierce on July 23, 2009.
12. Admits the allegation in paragraph 10 of the Amended Complaint that Governor Strickland issued a Directive to the Ohio Lottery Director entitled "Implementing Video Lottery Terminals." Further answering, Respondent admits that Exhibit A of Relators' Amended Complaint is a true and accurate copy of the Directive, but without a signature by Governor Strickland.
13. With respect to the allegations contained in Paragraph 11 of the Amended Complaint, states that the Governors' Directive speaks for itself and that no response is required.
14. Denies for lack of knowledge the allegations contained in Paragraph 12 of the Amended Complaint.
15. Denies for lack of knowledge the allegations contained in Paragraph 13 of the Amended Complaint.
16. With respect to the allegations contained in Paragraph 14 of the Amended 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.
17. With respect to the allegations contained in Paragraph 15 of the Amended 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.

18. Admits the allegation contained in Paragraph 16 of the Amended Complaint that on July 13, 2009, the 128th General Assembly enacted Amended Substitute House Bill No. 1 (“Am. Sub. H.B. 1”), which included the 2010-2011 biennium budget.
19. Admits that Governor Strickland signed Am. Sub. H.B. 1 on July 17, 2009, but denies for lack of knowledge the remaining allegations contained in Paragraph 17 of the Amended Complaint.
20. With respect to the allegations contained in Paragraph 18 of the Amended Complaint, states that Am. Sub. H.B. 1 speaks for itself and no response is required. Further answering, Respondent states that a true and accurate copy of the portions of Am. Sub. H.B. 1 amending Chapter 3770 are attached as Exhibit B to Relators’ Amended Complaint.
21. With respect to the allegations contained in Paragraph 19 of the Amended 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. With respect to the allegations contained in Paragraph 20 of the Amended 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.
23. With respect to the allegations contained in Paragraph 21 of the Amended Complaint, states that section 812.20 of Am. Sub. H.B. 1 speaks for itself and no response is required. To the extent a response is required, the allegations are denied.
24. With respect to the allegations contained in Paragraph 22 of the Amended Complaint, states that sections 812.10, 812.30, 812.40, and 812.50 of the Am. Sub. H.B. 1 speak for themselves and no response is required. Further answering, Respondent admits

that Exhibit C to Relators' Amended Complaint is a true and accurate copy of section 812 of Am. Sub. H.B. 1.

25. Denies for lack of knowledge the allegations contained in Paragraph 23 of the Amended Complaint.
26. With respect to paragraphs 24 and 25 of the Amended Complaint, Respondent admits that on July 23, 2009, Relator Gene Pierce attempted to file with the Ohio Secretary of State's office petitions relating to a proposed referendum on the amendments to R.C. 3770.03 and the enactment of R.C. 3770.21, and with the Ohio Attorney General, a proposed summary for a referendum petition regarding those provisions. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraphs 24 and 25 of the Amended Complaint and therefore denies them.
27. With respect to paragraphs 26 and 27 of the Amended Complaint, Respondent admits that Exhibits D and E of the Amended Complaint are the letters sent, respectively, by the offices of the Secretary of State and the Attorney General regarding proposed petitions and the proposed summary for a referendum. Respondent further states that the letters speak for themselves. To the extent an additional response is required, the allegations are denied.
28. Denies for lack of knowledge the allegations contained in Paragraph 28 of the Amended Complaint.
29. Denies for lack of knowledge the allegations contained in Paragraph 29 of the Amended Complaint.

30. Denies for lack of knowledge the allegations contained in Paragraph 30 of the Amended Complaint. Further answering, Respondent states that R.C. 3770.03 and R.C. 3770.21 are not subject to referendum under Article II of the Ohio Constitution.
31. With respect to the allegations contained in Paragraph 31 of the Amended Complaint, Respondent restates and reincorporates by reference all responses given to Paragraphs 1-30 of the Amended Complaint.
32. States that Paragraph 32 contains a legal conclusion and that Art. II Section 1c of the Ohio Constitution speaks for itself. No further response is required to Paragraph 32 of the Amended Complaint, but to the extent a response is required, the allegations are denied.
33. States that Paragraph 33 contains a legal conclusion and that Art. II Section 1d of the Ohio Constitution speaks for itself. No further response is required to Paragraph 33 of the Amended Complaint, but to the extent a response is required, the allegations are denied.
34. States that Paragraph 34 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 34 of the Amended Complaint, but to the extent a response is required, the allegations are denied.
35. States that Paragraph 35 contains a legal conclusion and no response is required. To the extent a response is required, the allegations are denied.
36. States that Paragraph 36 contains a legal conclusion and no response is required. To the extent a response is required, the allegations are denied.

37. States that Paragraph 37 contains a legal conclusion and no response is required. To the extent a response is required, the allegations are denied.
38. States that Paragraph 38 contains a legal conclusion and no response is required. To the extent a response is required, the allegations are denied.
39. With respect 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' Amended Complaint, the Respondent raises the following defenses, including affirmative defenses.

First Defense

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

Second Defense

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

Third Defense

42. The Relators lack standing to bring their claims.

Fourth Defense

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

Fifth Defense

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

Sixth Defense

45. The Relators have an adequate remedy at law.

Seventh Defense

46. 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.

Eighth Defense

47. 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.

Ninth Defense

48. 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.

Tenth Defense

49. 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.

Eleventh Defense

50. 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.

Twelfth Defense

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

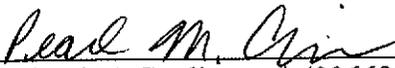
Thirteenth Defense

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

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

Respectfully submitted,

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Ohio Attorney General



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