

In the
Supreme Court of Ohio

ORIGINAL

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

**RESPONSE OF INTERVENOR-RESPONDENTS
J. PARI SABETY, DIRECTOR, OFFICE OF BUDGET AND MANAGEMENT, AND
MICHAEL A. DOLAN, DIRECTOR, OHIO LOTTERY COMMISSION,
TO RELATORS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT
INSTANTER**

MICHAEL A. CARVIN* (*pro hac vice*
pending)

**Counsel of Record*

Jones Day
52 Louisiana Ave., N.W.
Washington D.C. 20001-2113
202-879-3939
202-626-1700 fax
macarvin@jonesday.com

Douglas R. Cole (0070665)
Chad A. Readler (0068394)
Jones Day
325 John H. McConnell Blvd, Suite 600
P.O. Box 165017
Columbus, Ohio 43216-5017
614-469-3939
614-461-4198 fax
dcole@jonesday.com
careadler@jonesday.com

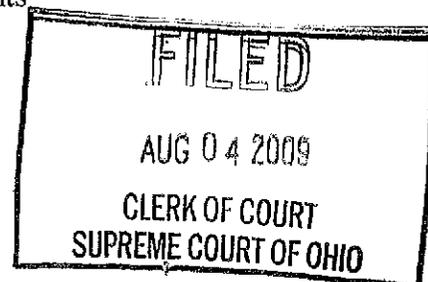
RICHARD CORDRAY (0038034)
Attorney General of Ohio

BENJAMIN C. MIZER* (0083089)
Solicitor General

**Counsel of Record*

ALEXANDRA T. SCHIMMER (0075732)
Chief Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
benjamin.mizer@ohioattorneygeneral.gov

Counsel for Proposed Intervenor-
Respondents



THOMAS W. KIDD, JR. (0066359)

BRADLEY M. PEPPPO (0083847)

Langdon Law LLC

11175 Reading Road, Suite 104

Cincinnati, Ohio 45241

513-577-7380

513-577-7383 fax

dlangdon@langdonlaw.com

tkidd@langdonlaw.com

bpeppo@langdonlaw.com

Counsel for Relators

LetOhioVote.org, Thomas E. Brinkman,
Jr., David Hansen, and Gene Pierce

RICHARD CORDRAY (0038034)

Attorney General of Ohio

RICHARD N. COGLIANESE* (0066830)

**Counsel of Record*

ERICK D. GALE (0075723)

PEARL M. CHIN (0078810)

Assistant Attorneys General

30 East Broad Street, 16th Floor

Columbus, Ohio 43215

614-466-2872

614-728-7592 fax

richard.coglianese@ohioattorneygeneral.gov

erick.gale@ohioattorneygeneral.gov

pearl.chin@ohioattorneygeneral.gov

Counsel for Respondent

Ohio Secretary of State Jennifer Brunner

Relators have moved to file an Amended Complaint. In that Amended Complaint, as well as in their Merit Brief and Evidence, Relators make representations about the interests and purpose of Relator organization LetOhioVote.org, the interests of the other Relators, the financial status of LetOhioVote.org, and various steps that LetOhioVote.org has taken to place a referendum on the ballot. See, e.g., Am. Cmplt. ¶¶ 2-3, 23-24, 28-29; Relators' Br. 3-5; Relators' Evidence Ex. 4. Intervenor-Respondents do not oppose Relators' motion to amend so long as Intervenor-Respondents are given an opportunity to conduct limited discovery on those issues.

Intervenor-Respondents seek and are entitled to narrow discovery to probe Relators' standing and the financial allegations asserted in Relators' Amended Complaint and Merit Brief. On information and belief, funding for LetOhioVote.org derives in part from individuals and entities whose goal is to install casinos in the State of Ohio.

These discovery requests are timely because Intervenor-Respondents were served with Relators' Amended Complaint at the close of business on Friday, July 31—the due date of Relators' Merit Brief—and ordered to respond to the motion for leave to amend by today. That eleventh-hour Amended Complaint contained new information not contained in the original Complaint. Intervenor-Respondents perceived the need for limited discovery in responding to the motion to amend and crafting an Answer to the Amended Complaint.

Intervenor-Respondents' brief and evidence are due Monday, August 10, 2009. Intervenor-Respondents seek no change to that deadline so long as Relators respond to the discovery requests by 3:00 p.m. on Thursday, August 6, 2009. The requests are narrow and brief: Intervenor-Respondents simply seek information and documents relating to the interests of Relators and the financial allegations they asserted in their Complaint. (The interrogatories and

document requests are attached to this Response at Exhibit A). Moreover, such information and documents are maintained in the ordinary course of business by LetOhioVote.org and Relator Gene Pierce. Pursuant to R.C. 3517.10, the ballot issue committee is required by law to submit a report to the Secretary of State “setting forth in detail the contributions and expenditures” relating to the ballot issue committee. See also R.C. 3517.12 (requiring committee to file statement regarding expenditures relating to petition circulation, including contributors to circulation efforts); Am. Cmplt. ¶ 29 (alleging that “Relators have incurred costs in excess of \$10,000 to collect the signatures for the summary petitions”). In other words, the limited discovery sought by Intervenor-Respondents is maintained by the ballot issue committee and its treasurer in the ordinary course of business. Accordingly, there is nothing onerous or controversial about these requests.

Intervenor-Respondents also intend to depose the three named Relators—Thomas E. Brinkman, Jr., David Hansen, and Gene Pierce—on these limited subjects. Supreme Court Practice Rule X explicitly provides for the presentation of evidence, including depositions, and there is nothing controversial about seeking to depose the named Relators in an original action, particularly where, as here, the scope of the depositions will be narrow.

If Relators are unable to respond to the interrogatories and document requests by Thursday, then Intervenor-Respondents would consent to a modest extension of the briefing schedule to accommodate whatever reasonable time Relators state they need to comply with the discovery requests.

Finally, in the event that the Court grants Relators’ motion for leave to file the Amended Complaint, Intervenor-Respondents are filing an Answer to the Amended Complaint simultaneously with this response.

Respectfully submitted,

RICHARD CORDRAY (0038034)
Ohio Attorney General



BENJAMIN C. MIZER* (0083089)
Solicitor General

**Counsel of Record*

ALEXANDRA T. SCHIMMER (0075732)

Chief Deputy Solicitor General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

benjamin.mizer@ohioattorneygeneral.gov

Counsel for Intervenor-Respondents

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Response of Intervenor-Respondents J. Pari Sabety, Director, Office of Budget and Management, and Michael A. Dolan, Director, Ohio Lottery Commission, to Relators' Motion for Leave to File Amended Complaint *Instanter* was served by electronic mail on this 4th day of August 2009 upon the following counsel:

Michael A. Carvin (*pro hac vice* pending)
Jones Day
52 Louisiana Ave., N.W.
Washington D.C. 20001-2113
202-879-3939
202-626-1700 fax
macarvin@jonesday.com

Douglas R. Cole (0070665)
Chad A. Readler (0068394)
Jones Day
325 John H. McConnell Blvd, Suite 600
P.O. Box 165017
Columbus, Ohio 43216-5017
614-469-3939
614-461-4198 fax
dcole@jonesday.com
careadler@jonesday.com

David R. Langdon
Thomas W. Kidd, Jr.
Bradley M. Peppo
Langdon Law LLC
11175 Reading Road, Suite 104
Cincinnati, Ohio 45241
dlangdon@langdonlaw.com
tkidd@langdonlaw.com
bpeppo@langdonlaw.com

Counsel for Respondent
LetOhioVote.org, Thomas E. Brinkman, Jr.,
David Hansen, and Gene Pierce

Richard M. Coglianesse
Erick D. Gale
Pearl M. Chin
Assistant Attorneys General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
richard.coglianesse@ohioattorneygeneral.gov
erick.gale@ohioattorneygeneral.gov
pearl.chin@ohioattorneygeneral.gov

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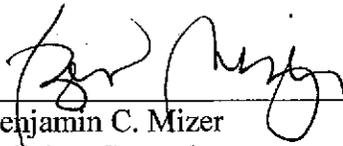

Benjamin C. Mizer
Solicitor General

EXHIBIT A

RICHARD CORDRAY (0038034)
Ohio Attorney General

RICHARD N. COGLIANESE* (0066830)

**Counsel of Record*

ERICK D. GALE (0075723)

PEARL M. CHIN (0078810)

Assistant Attorneys General

30 East Broad Street, 16th Floor

Columbus, Ohio 43215

614-466-2872

614-728-7592 fax

richard.coglianese@ohioattorneygeneral.gov

erick.gale@ohioattorneygeneral.gov

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*Counsel for Respondent Ohio Secretary
of State Jennifer Brunner*

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	:	Case No. 09-1310
Relators,	:	
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vs.	:	Original Action in Mandamus
	:	
OHIO SECRETARY OF STATE	:	
JENNIFER BRUNNER, et al.,	:	
	:	
Respondents.	:	

**INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS OF
INTERVENOR-RESPONDENTS J. PARI SABETY, DIRECTOR, OFFICE OF BUDGET
AND MANAGEMENT, AND MICHAEL A. DOLAN, DIRECTOR, OHIO LOTTERY
COMMISSION, TO RELATORS**

Pursuant to Rule 33 of the Ohio Rules of Civil Procedure, Intervenor-Respondents, J. Pari Sabety, Director, Office of Budget and Management, and Michael A. Dolan, Director, Ohio Lottery Commission, propound the following Interrogatories upon Relators to be answered separately and fully, in writing and under oath, and the responses to be served upon the undersigned by 3:00 p.m. on Thursday, August 6, 2009. Intervenor-Respondents request that written responses be electronically mailed, per the instructions of the Clerk of the Supreme Court of Ohio for filings in this case, to counsel for the parties.

Additionally, pursuant to Rule 34 of the Ohio Rules of Civil Procedure, Intervenor-Respondents hereby request that, by 3:00 p.m. on Thursday, August 6, 2009, Relators produce and permit Intervenor-Respondents' counsel and such other representatives as are employed by the Intervenor-Respondents to inspect and copy each of the documents requested herein, at the office of the Attorney General Richard Cordray, Appeals Section, 30 East Broad Street, 17th Floor,

Columbus, Ohio 43215. In the alternative, copies of the documents may be delivered or electronically mailed to counsel for the parties by 3:00 p.m. on August 6, 2009.

INSTRUCTIONS AND DEFINITIONS

1. If production of any document called for by these requests is refused because of claim of privilege or upon any other basis, please state in a written response the privilege claimed, the basis for such refusal to produce, and identify the document in question with sufficient particularity that it may be the subject of a Rule 37 motion.
2. More than one paragraph of these Requests may call for the same document. The presence of such duplication is not to be interpreted to, in any manner, narrow or limit each individual request.
3. As used herein, “and” or “or” shall be construed to mean “and/or” where the effect of such construction is to broaden the request.
4. These Interrogatories and Request for Production of Documents shall be deemed to be continuing in nature, so as to require the Relator and his counsel to seasonably notify the Intervenor-Respondents and to supplement his responses hereto in the event that any additional information responsive to these Interrogatories and Request for Production of Documents herein should be discovered during the pendency of these proceedings. Supplementation of responses is to be undertaken in accordance with Rule 26(c) of the Ohio Rules of Civil Procedure.
5. “LetOhioVote.org” refers to the Relator LetOhioVote.org.
6. “Complaint” refers to LetOhioVote.org’s Petition bringing an Original Action in Mandamus, filed on July 20, 2009, or to the Amended Complaint filed on July 31, 2009.
7. “Referendum Petition” refers to the proposed referendum petition allegedly seeking to place certain portions of Amended Substitute House Bill No. 1 on ballot.
8. “You” and “your” include Relators Thomas E. Brinkman, Jr., David Hansen, and Gene Pierce, and Relator LetOhioVote.org and its officers, agents, employees, assistants, investigators, consultants, accountants, and attorneys, and the officers, agents, employees, assistants, investigators, consultants, accountants, and attorneys of any of its subdivisions, subsidiaries, parent or affiliated corporations.
9. The term “person” means any natural or artificial person, including, but not limited to, incorporated business entities, political action committees, and/or petition committees within the meaning and scope of R.C. §3519.02.
10. The term “Entity” means any corporation, committee, or organization, including, but not limited to, incorporated business entities, political action committees, and/or petition

committees within the meaning and scope of R.C. §3519.02.

11. The term "affiliated," as used in these Interrogatories, means sharing resources or funds (including, but not limited to, office space, staff, mailing lists, or telephone lists), or having common management or officers.
12. "Document" means the original, each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) and (if the original is not in existence or subject to the control of the Relator) each copy, regardless of origin or location, of any handwritten, typewritten, printed, recorded, transcribed, punched, taped, tape recorded, photocopied, photostatic, "telex," filmed, microfilmed or otherwise prepared matter, however produced or reproduced, which is in Relator's possession, custody or control, including, but not limited to, all papers, letters, correspondence, catalogs, advertisements, telegrams, telexes, cables, memoranda, or minutes of meetings of conversations (personal or telephonic), desk pads, calendars, diaries, telephone pads, travel and expense records, reports, summaries, surveys, analyses, ledgers, journals and other formal or information books of record or account, bulletins, instructions, agreements, legal documents, billing records, telephone toll records, drafts, notebooks, worksheets, attorneys' and accountants' invoices, audits and audit records, purchase orders, accounting worksheets, time records, canceled checks, vouchers, check stubs and writing of every description, including drawings, graphs, charges, photographs, films, recordings, transcriptions of recordings, computer tapes and printouts, and other data or compilations from which information can be obtained and translated, if necessary, by Relator through detection devices into reasonably usable form.
13. "Identify" shall have the following meaning:
 - a. When identifying a person, entity, or organization, give such person's, entity's, or organization's:
 - (1) full name;
 - (2) last known business address and telephone number and last known residence address and telephone number;
 - (3) present or last known business affiliation, and position and business at the time in question.
 - b. When identifying a document:
 - (1) identify the author, addressee, the name of the person(s) who signed the document and any persons shown as receiving copies of the document;
 - (2) state the document title, number, code or other identifying data;
 - (3) state the number of pages;

- (4) identify any attachments or supplemental items incorporated into the document;
 - (5) state the date on which the document was prepared, or, if not known, the approximate date;
 - (6) state the date appearing on the document;
 - (7) state the transaction, act or occurrence to which each such document relates and the substance of the document;
 - (8) state the general description of the document;
 - (9) state the name, address and description of the person having possession, custody or control of the document, if other than you;
 - (10) if such document was, but no longer is, in your possession or subject to your control, state what disposition was made of the document.
14. Each interrogatory shall be answered separately and fully in writing under oath. The space for your answer following each interrogatory is furnished for your convenience and is not intended to limit your response or to suggest the length of the answer that is desired. If necessary, attach additional sheets to complete any answer that requires more space.
 15. When an interrogatory does not specifically request a particular fact, but such a fact is necessary in order to make the answer to the interrogatory comprehensible, complete, or not misleading, please include each such fact as part of the answer and the interrogatory shall be deemed specifically to request each such fact.
 16. When, after a reasonable investigation using due diligence, you are unable to answer any interrogatory or any part of it because of lack of information available to you, describe the type of information that you claim is not available.
 17. When an interrogatory asks for specific information (e.g., a date), identify the information precisely if known. If the precise date or other specific information is unknown to you, please give your best approximation, provided that you indicate in your response that the information being provided is an approximation.
 18. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
 19. Unless words or terms have been given a specific definition herein (e.g., "relating to" or "document"), each word or term used herein shall be given its usual and customary dictionary definition except where such words have specific custom and usage, in which event they shall be interpreted in accordance with such usual custom and usage definition of which you are aware.

INTERROGATORIES

Interrogatory No. 1: State the name, address, and telephone number of each individual answering or providing information in response to these Interrogatories.

Interrogatory No. 2: Provide the name, address, and telephone number of each current and/or former office holder of LetOhioVote.org, and the office each holds or has held.

Interrogatory No. 3: Provide the name, address, and telephone number of each person and/or entity that is now, or has ever been, a member of LetOhioVote.org.

Interrogatory No. 4: Provide the name, address, and telephone number of any and all organizations with which LetOhioVote.org is affiliated.

Interrogatory No. 5: Provide the name, address, and telephone number of each person and/or entity that has contributed funds or committed to contribute funds to LetOhioVote.org or to its members and officers, including, but not limited to, the individual Relators, or the benefit of LetOhioVote.org, and the dates and amounts of each contribution or commitment to contribute.

Interrogatory No. 6: Provide the name, address, and telephone number of any person(s) and/or entity(ies) that has made payment directly to third parties for purposes of the activities or the benefit of LetOhioVote.org, including, but not limited to, direct payment to third parties or services rendered to LetOhioVote.org, such as circulators and legal counsel.

Interrogatory No. 7: Identify the name, address, and telephone number of the national petition management firm hired to collect signatures for the Referendum Petition, as alleged in Paragraph 28 of the Amended Complaint for Writ of Mandamus.

Interrogatory No. 8: Identify the source(s) of the \$1.75 million used to pay or contract with the national petition management firm hired to collect signatures for the Referendum Petition, as alleged in Paragraph 28 of the Amended Complaint for Writ of Mandamus.

Interrogatory No. 9: Identify the source(s) of the funds in excess of \$10,000 spent to collect signatures for the Referendum Petition, as alleged in Paragraph 29 of the Amended Complaint for Writ of Mandamus, and if paid by a person and/or entity other than LetOhioVote.org, identify the payor.

REQUEST FOR PRODUCTION OF DOCUMENTS

Document Request No. 1: Produce any and all documents that indicate and/or memorialize the agreement between LetOhioVote.org and the national petition management firm hired to collect signatures for the Referendum Petition, as alleged in Paragraph 28 of the Amended Complaint for Writ of Mandamus.

Document Request No. 2: Produce any and all documents that refer or relate to your response to Interrogatory Number 5.

Document Request No. 3: Produce any and all documents that refer or relate to your response to Interrogatory Number 6.

Document Request No. 4: Produce any and all documents that refer or relate to your response to Interrogatory Number 8.

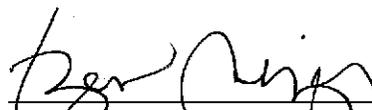
Document Request No. 5: Produce any and all documents that refer or relate to your response to Interrogatory Number 9.

Document Request No. 6: Produce any and all documents that indicate the person(s), entity(ies) and/or sources from which LetOhioVote.org acquired or received commitments to acquire the \$2.5 million allotted to invest in the Referendum Petition effort, as alleged in Paragraph 28 of the Amended Complaint for Writ of Mandamus including, but not limited to, correspondence, checks, and ledgers.

Document Request No. 7: Produce any and all documents that refer or relate to the \$750,000 budget referred to in Paragraph 28 of the Amended Complaint for Writ of Mandamus, including, but not limited to, drafts of proposals, solicitations, correspondence, budget spreadsheets, and lists of contributions, commitments to contribute, and expenditures.

Respectfully submitted,

RICHARD CORDRAY
Ohio Attorney General



BENJAMIN C. MIZER* (0083089)

Solicitor General

**Counsel of Record*

ALEXANDRA T. SCHIMMER (0075732)

Chief Deputy Solicitor General

Constitutional Offices Section

30 E. Broad Street, 17th fl.

Columbus, Ohio 43215

614-466-8980

614-466-5087 (fax)

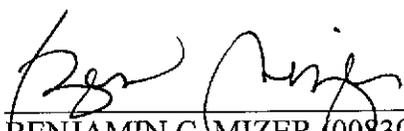
benjamin.mizer@ohioattorneygeneral.gov

Counsel for Intervenor-Respondents

CERTIFICATE OF SERVICE

I hereby certify that the foregoing First Set of Interrogatories and Request for Production of Documents of Intervenor-Respondents J. Pari Sabety, Director, Office of Budget and Management, and Michael A. Dolan, Director, Ohio Lottery Commission, to Relators was served on August 4, 2009, by electronic mail and facsimile, upon the following:

<p>MICHAEL A. CARVIN* (<i>pro hac vice</i> pending) <i>*Counsel of Record</i> Jones Day 52 Louisiana Ave., N.W. Washington D.C. 20001-2113 202-879-3939 202-626-1700 fax macarvin@jonesday.com</p> <p>Douglas R. Cole (0070665) Chad A. Readler (0068394) Jones Day 325 John H. McConnell Blvd, Suite 600 P.O. Box 165017 Columbus, Ohio 43216-5017 614-469-3939 614-461-4198 fax dcole@jonesday.com careadler@jonesday.com</p>	<p>RICHARD N. COGLIANESE* (0066830) <i>*Counsel of Record</i> ERICK D. GALE (0075723) PEARL M. CHIN (0078810) Assistant Attorneys General 30 East Broad Street, 16th Floor Columbus, Ohio 43215 614-466-2872 614-728-7592 fax richard.coglianese@ohioattorneygeneral.gov erick.gale@ohioattorneygeneral.gov pearl.chin@ohioattorneygeneral.gov</p> <p><i>Counsel for Respondent Ohio Secretary Of State Jennifer Brunner</i></p>
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BENJAMIN C. MIZER (0083089)
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Relators,	:	Original Action in Mandamus
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OHIO SECRETARY OF STATE	:	
JENNIFER BRUNNER,	:	
	:	
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ANSWER OF INTERVENOR-RESPONDENTS
J. PARI SABETY, DIRECTOR, OFFICE OF BUDGET AND MANAGEMENT, AND
MICHAEL A. DOLAN, DIRECTOR, OHIO LOTTERY COMMISSION
TO RELATORS' AMENDED COMPLAINT FOR WRIT OF MANDAMUS

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ALEXANDRA T. SCHIMMER (0075732)
Chief Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
benjamin.mizer@ohioattorneygeneral.gov

Counsel for Intervenor-Respondents

THOMAS W. KIDD, JR. (0066359)
BRADLEY M. PEPP0 (0083847)
Langdon Law LLC
11175 Reading Road, Suite 104
Cincinnati, Ohio 45241
513-577-7380
513-577-7383 fax
dlangdon@langdonlaw.com
tkidd@langdonlaw.com
bpeppo@langdonlaw.com

Counsel for Relators

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RICHARD CORDRAY (0038034)
Attorney General of Ohio

RICHARD N. COGLIANESE* (0066830)
**Counsel of Record*

ERICK D. GALE (0075723)

PEARL M. CHIN (0078810)

Assistant Attorneys General

30 East Broad Street, 16th Floor

Columbus, Ohio 43215

614-466-2872

614-728-7592 fax

richard.coglianese@ohioattorneygeneral.gov

erick.gale@ohioattorneygeneral.gov

pearl.chin@ohioattorneygeneral.gov

Counsel for Respondent

Ohio Secretary of State Jennifer Brunner

Intervenor-Respondents (“Intervenors”) J. Pari Sabety, Director, Office of Budget and Management, and Michael A. Dolan, Director, Ohio Lottery Commission, in answer to Relators’ Amended Complaint, state 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. Intervenors deny 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 identify 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. Intervenors state that no response is required to the allegations in paragraph 1 of the Amended Complaint because they contain purely legal conclusions. To the extent a response is required, the allegations are denied.

3. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Amended Complaint.

4. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Amended Complaint.

5. With respect to paragraph 4 of the Amended Complaint, Intervenors admit that Respondent Jennifer Brunner is the Ohio Secretary of State and the chief elections officer of the State of Ohio. Further answering, Intervenors state that Article III of the Ohio Constitution and R.C. 111.08 speak for themselves.

6. Intervenors admit the allegations in paragraph 5 of the Amended Complaint.
7. Intervenors admit the allegations in paragraph 6 of the Amended Complaint.
8. Intervenors admit the allegations in paragraph 7 of the Amended Complaint.
9. With respect to paragraph 8 of the Amended Complaint, Intervenors state that R.C. 3519.01(B)(2) speaks for itself and deny that the Secretary had a duty to verify the signatures on the summary referendum part-petitions presented to her by Gene Pierce on July 23, 2009.
10. With respect to paragraph 9 of the Amended Complaint, Intervenors state that R.C. 3519.01(B)(3) speaks for itself and deny 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.
11. Intervenors admit the allegation in paragraph 10 of the Amended Complaint that Governor Strickland issued a Directive to the Ohio Lottery Director titled "Implementing Video Lottery Terminals." Further answering, Intervenors admit that Exhibit A of Relator's Amended Complaint is a true and accurate copy of the Directive, but without a signature by Governor Strickland.
12. Intervenors admit the allegations in paragraph 11 of the Amended Complaint and state that the complete Directive speaks for itself.
13. Intervenors deny the allegations in paragraph 12 of the Amended Complaint.
14. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Amended Complaint and therefore deny them.

15. Intervenor state with respect to paragraphs 14 and 15 of the Amended Complaint that the Directive speaks for itself. Intervenor deny all other allegations in paragraphs 14 and 15 of the Amended Complaint.

16. Intervenor admit the allegation 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.

17. Intervenor admit that Governor Strickland signed Am. Sub. H.B. 1 on July 17, 2009, but deny the remaining allegations in paragraph 17 of the Amended Complaint.

18. Intervenor admit the allegation in paragraph 18 of the Amended Complaint that Am. Sub. H.B. 1 included amendments to Chapter 3770 of the Revised Code and 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. Further answering, Intervenor state that Am. Sub. H.B. 1 speaks for itself.

19. Intervenor state with respect to paragraphs 19 and 20 of the Amended Complaint that Am. Sub. H.B. 1’s amendments to sections 3770.03 and 3770.21 of the Revised Code speak for themselves.

20. Intervenor state with respect to paragraph 21 of the Amended Complaint that section 812.20 of Am. Sub. H.B. 1 speaks for itself.

21. Intervenor admit the allegation in paragraph 22 that Exhibit C to the Amended Complaint is a true and accurate copy of section 812 of Am. Sub. H.B. 1. Further answering, Intervenor state that sections 812.10, 812.30, 812.40, and 812.50 of Am. Sub. H.B. 1 speak for themselves.

22. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Amended Complaint and therefore deny them.

23. With respect to paragraphs 24 and 25 of the Amended Complaint, Intervenor admits that on July 23, 2009, Relator Gene Pierce attempted to file with the Ohio Secretary of State petitions relating to a proposed referendum on the amendments to R.C. 3770.03 and R.C. 3770.21, and with the Ohio Attorney General, a proposed summary for a referendum petition regarding those provisions. Intervenor 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 deny them. Further answering, on information and belief, funding for LetOhioVote.org derives in part from individuals and corporate interests whose goal is to install casinos in the State of Ohio.

24. With respect to paragraphs 26 and 27 of the Amended Complaint, Intervenor 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 the proposed petitions and the proposed summary for a referendum. Intervenor further states that the letters speak for themselves.

25. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Amended Complaint and therefore deny them.

26. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Amended Complaint and therefore deny them.

27. Intervenor is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Amended Complaint and therefore deny them.

Further answering, Intervenors state that R.C. 3770.03 and R.C. 3770.21 are not subject to referendum under Section 1d, Article II of the Ohio Constitution.

28. Intervenors, in response to the allegations in paragraph 31 of the Amended Complaint, restate and incorporate herein their responses to paragraphs 1-30.

29. Intervenors state in response to the allegations in paragraph 32 of the Amended Complaint that Section 1c of Article II of the Ohio Constitution speaks for itself and that paragraph 32 contains a legal conclusion to which no response is required.

30. Intervenors state in response to paragraph 33 of the Amended Complaint that Section 1d of Article II of the Ohio Constitution speaks for itself and that paragraph 26 contains a legal conclusion to which no response is required.

31. Intervenors deny the allegations in paragraph 34 of the Amended Complaint.

32. Intervenors deny the allegations in paragraph 35 of the Amended Complaint.

33. Intervenors deny the allegations in paragraph 36 of the Amended Complaint.

34. Intervenors deny the allegations in paragraph 37 of the Amended Complaint.

35. Intervenors deny the allegations in paragraph 38 of the Complaint.

36. Intervenors deny that Relators are entitled to any relief sought in their demand for relief or any other relief.

37. Intervenors deny each and every allegation in the Amended Complaint not otherwise expressly admitted.

WHEREFORE, having answered Relators' Amended Complaint, Intervenors J. Pari Sabety, Director, Office of Budget and Management, and Michael A. Dolan, Director, Ohio Lottery Commission, raise the following defenses, including affirmative defenses:

FIRST DEFENSE

38. The Court lacks subject matter jurisdiction to hear Relators' claims.

SECOND DEFENSE

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

THIRD DEFENSE

40. Relators lack standing to seek the relief requested in their Amended Complaint.

FOURTH DEFENSE

41. Relators have no clear legal right to the relief requested.

FIFTH DEFENSE

42. Respondent Brunner has no clear legal duty to perform as requested by Relators.

SIXTH DEFENSE

43. Relators have an adequate remedy at law.

SEVENTH DEFENSE

44. 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 and state institutions, pursuant to section 1d of Article II of the Ohio Constitution, and therefore became immediately effective.

EIGHTH DEFENSE

45. 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

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

TENTH DEFENSE

47. 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

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

TWELFTH DEFENSE

49. Relators are not entitled to attorneys' fees or costs.

THIRTEENTH DEFENSE

50. Intervenors reserve the right to add additional defenses, including additional affirmative defenses, as may be disclosed during the course of this proceeding.

Respectfully submitted,

RICHARD CORDRAY (0038034)
Ohio Attorney General


BENJAMIN C. MIZER* (0083089)
Solicitor General

**Counsel of Record*

ALEXANDRA T. SCHIMMER (0075732)
Chief Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
benjamin.mizer@ohioattorneygeneral.gov

Counsel for Intervenor-Respondents

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer of Intervenor-Respondents J. Pari Sabety, Director, Office of Budget and Management, and Michael A. Dolan, Director, Ohio Lottery Commission, was served by electronic mail on this 4th day of August 2009 upon the following counsel:

Michael A. Carvin (*pro hac vice* pending)
Jones Day
52 Louisiana Ave., N.W.
Washington D.C. 20001-2113
202-879-3939
202-626-1700 fax
macarvin@jonesday.com

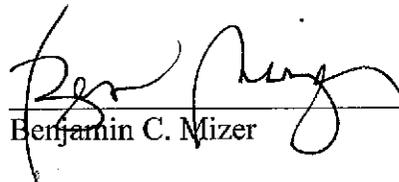
Douglas R. Cole (0070665)
Chad A. Readler (0068394)
Jones Day
325 John H. McConnell Blvd, Suite 600
P.O. Box 165017
Columbus, Ohio 43216-5017
614-469-3939
614-461-4198 fax
dcole@jonesday.com
careadler@jonesday.com

David R. Langdon
Thomas W. Kidd, Jr.
Bradley M. Peppo
Langdon Law LLC
11175 Reading Road, Suite 104
Cincinnati, Ohio 45241
dlangdon@langdonlaw.com
tkidd@langdonlaw.com
bpeppo@langdonlaw.com

Counsel for Respondent
LetOhioVote.org, Thomas E. Brinkman, Jr.,
David Hansen, and Gene Pierce

Richard M. Coglianese
Erick D. Gale
Pearl M. Chin
Assistant Attorneys General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
richard.coglianese@ohioattorneygeneral.gov
erick.gale@ohioattorneygeneral.gov
pearl.chin@ohioattorneygeneral.gov

Counsel for Respondent
Ohio Secretary of State Jennifer Brunner


Benjamin C. Mizer

Solicitor General