

In the
Supreme Court of Ohio

ORIGINAL

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

**SUBMISSION OF EVIDENCE BY RESPONDENT
OHIO SECRETARY OF STATE JENNIFER BRUNNER**

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**Counsel of Record*

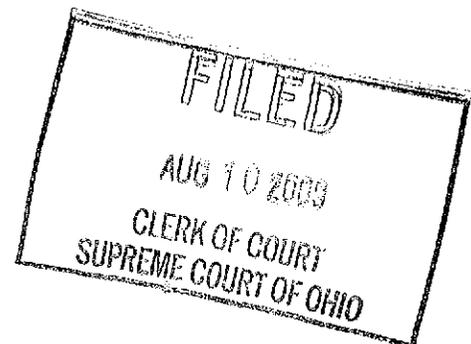
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Director, Office of Budget and
Management, and Michael A. Dolan,
Director, Ohio Lottery Commission

SUBMISSION OF EVIDENCE

Pursuant to S.Ct. Prac. R. X, Section 7, Respondent Ohio Secretary of State Jennifer

Brunner submits the following evidence in support of her arguments in this case.

- 1.) Exhibit 1 – Affidavit of Brian E. Shinn
- 2.) Exhibit 1-A – July 23, 2009 Letter from Brian Shinn

Respectfully submitted,

Richard Cordray (0038034)
Ohio Attorney General



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Attorneys for Respondent
Ohio Secretary of State Jennifer Brunner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Submission of Evidence by Respondent Ohio Secretary of State Jennifer Brunner* was served on August 10, 2009, via electronic mail upon the following counsel:

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Pearl M. Chin
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Exhibit 1

IN THE SUPREME COURT OF OHIO

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

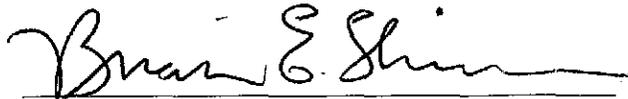
AFFIDAVIT OF BRIAN E. SHINN

I, Brian E. Shinn, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify to the facts set forth below based upon my personal knowledge.

1. I am an Ohio licensed attorney, and I was admitted to the Ohio bar on November 12, 1996.
2. I have been employed in the Legal Services Division of Ohio Secretary of State Jennifer Brunner's office since January 8, 2007, in the position of Assistant General Counsel and Elections Counsel.
3. In my position as Assistant General Counsel and Elections Counsel, I provide legal advice to the office and perform various functions on behalf of the office in accordance with the Secretary of State's duties under the Ohio Constitution and the Ohio Revised Code, including sometimes receiving bills from the governor's office and receiving petitions filed with the office.
4. When the Governor files an act with the Secretary of State's office, Secretary of State employees review the act to determine which provisions, as determined by the General Assembly, are subject to the referendum or are exempt from the referendum.

5. If the act, or sections in the act, are subject to the referendum, the Secretary of State employees calculate the expiration of the referendum period, which is ninety days following the date on which the act is filed with the Secretary of State's office.
6. Some acts filed with the Secretary of State have multiple effective dates. The Secretary of State's office records an act's effective date(s) in the Governor's Office Bill Record and in electronic logs kept in the Secretary of State's office and made available through the Secretary of State's website. As a service to the public, the Secretary includes in this electronic log her calculation of the effective date of those new laws.
7. On July 17, 2009, I received Amended Substitute House Bill 1 ("Am. Sub. H.B. 1") from representatives of Governor Strickland's office on behalf of the Ohio Secretary of State.
8. After receiving Am. Sub. H.B. 1, I reviewed the bill to determine the effective date of various sections of the bill as provided in the bill by the Ohio General Assembly.
9. I reviewed section 812.20 of Am. Sub. H.B. 1, which provides that certain sections of the bill, including the amendment to R.C. 3770.03 and the enactment of R.C. 3770.21, are exempt from the referendum and take effect immediately.
10. On July 23, 2009, Gene Pierce appeared at the Ohio Secretary of State's office and indicated that he had a referendum petition to file.
11. I reviewed one of the part-petitions and determined that the referendum concerned the amendment to R.C. 3770.03 and the enactment of R.C. 3770.21 in Am. Sub. H.B. 1.
12. Because Relators filed their Complaint for Writ of Mandamus on July 20, 2009, before Mr. Pierce presented his petitions, the Secretary of State's office was permitted the opportunity to consult the appropriate legal authorities to determine whether the Secretary should accept referendum petitions against sections of law that the General Assembly deemed exempt from the referendum. In the absence of a court order to the contrary, and expecting a court to clarify the Secretary's duties under the facts at issue, the Secretary decided to defer to the General Assembly's direction that the VLT sections were exempt from the referendum. Consequently, I informed Mr. Pierce that I could not accept the referendum petition for filing because the Ohio General Assembly had provided in section 812.20 of Am. Sub. H.B. 1 that the amendment to R.C. 3770.03 and the enactment of R.C. 3770.21 are not subject to referendum.
13. I provided Mr. Pierce with a letter declining to accept the referendum petition on behalf of the Ohio Secretary of State's office. A true and accurate copy of that letter is attached hereto as "Exhibit 1-A."

Further Affiant sayeth naught.



Brian E. Shinn
Brian E. Shinn

Sworn to before me, a notary public in and for said county and state, and subscribed in my presence, by the above-named Brian E. Shinn, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, this 7th day of August 2009, in the City of Columbus, County of Franklin, State of Ohio, in testimony whereof, I set my hand and official seal.

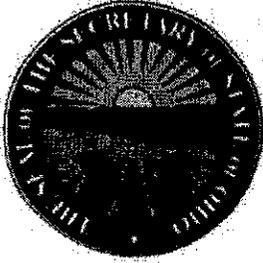


Eleanor Speelman
Eleanor Speelman, Attorney at Law

Notary Public - State of Ohio

My commission has no expiration. R.C.147.03.

Exhibit 1-A



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

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July 23, 2009

Today, Gene Pierce with LetOhioVote.org appeared at the Ohio Secretary of State's office and indicated that he had petitions related to a proposed referendum on the amendments to R.C. 3770.03 and the enactment of R.C. 3770.21 in H.B. 1.

The Ohio Secretary of State declines to accept the filing of these referendum petitions.

Sincerely,

A handwritten signature in cursive script that reads "Brian E. Shinn".

Brian E. Shinn
Assistant General Counsel