

In the
Supreme Court of Ohio

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

**INTERVENOR-RESPONDENTS' MOTION TO SUBMIT
NEWLY AVAILABLE EVIDENCE**

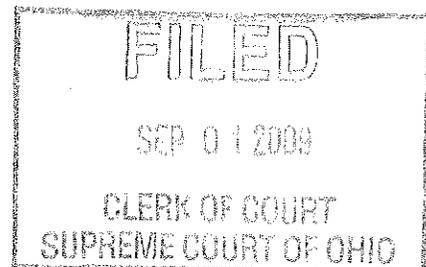
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**INTERVENOR-RESPONDENTS' MOTION TO SUBMIT
NEWLY AVAILABLE EVIDENCE**

In accordance with S.Ct. Rule XIV, § 4, Intervenor-Respondents seek leave of the Court to submit newly available evidence. Intervenor's proposed evidence, an affidavit from Senator Bill Seitz, is attached as Exhibit A to this Motion.

As this Court is aware, Intervenor requested discovery from Relators about specific allegations in the Amended Complaint, including the interests and purpose of Relator organization LetOhioVote.org, the interests and purpose of the other Relators, the financial status and support of LetOhioVote.org, and the 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 has sought to establish that these Relators were not the real parties in interest to this original mandamus action against the Secretary of State. See generally *State ex rel. Jones v. Suster*, 84 Ohio St. 3d 70, 77, 1998-Ohio-275 (“[I]f a claim is asserted by one who is not the real party in interest, then the party lacks standing to prosecute the action.”). Relators refused to respond to Respondent's discovery requests. And although the Court denied Intervenor's motion to compel discovery on these issues, the Court's order did not state that the denial was based on relevancy grounds. Therefore, Intervenor has sought to preserve that issue in this litigation.

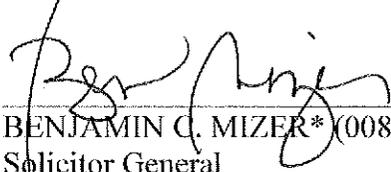
The attached affidavit from Senator Seitz directly relates to facts pled and statements made in the Amended Complaint about the financial status and support of LetOhioVote.org, and it is relevant to the Relators' standing and capacity to maintain this litigation. This evidence raises fundamental questions about who the true party in interest is; whether these Relators are for hire; and whether an out-of-state corporation should be allowed to rent a right to sue from

three Ohio electors and pretend that the lawsuit's objective is to defend democracy, when in fact its intent is to do everything possible to harm that corporation's economic competitors.

Although Intervenors exercised due diligence for discovery and the submission of evidence, this affidavit was not available during the expedited discovery period, as Senator Seitz was traveling out of the state and unavailable at that time. For the foregoing reasons, Intervenors request that the Court grant this motion to submit newly available evidence, and that the attached affidavit be incorporated into and considered with Intervenors' previously submitted evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the above Intervenor-Respondents' Motion to Submit Newly Available Evidence was served by electronic mail on this 1st day of September, 2009 upon the following counsel:

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EXHIBIT A

IN THE SUPREME COURT OF OHIO

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 : Case No. 2009-1310
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OHIO SECRETARY OF STATE :
JENNIFER BRUNNER, :
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Respondent. :
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STATE OF OHIO:
 :
 : SS
COUNTY OF FRANKLIN:

AFFIDAVIT OF BILL SEITZ

I, Bill Seitz, 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 a member of the 128th General Assembly and represent the 8th District in the Ohio Senate. I previously served in the Ohio House of Representatives from January 2001 until joining the Senate on October 10, 2007.
2. On or about the 22nd day of July 2009, I had a telephone conversation with Thomas E. Brinkman, Jr., who was a colleague of mine in the General Assembly. Mr. Brinkman is one of the three individual Relators in the case pending in the Ohio Supreme Court captioned *State ex rel. LetOhioVote.org v. Brunner*. Our conversation focused on Mr. Brinkman's involvement in this case.
3. During our discussion, I asked Mr. Brinkman why he was involved in the lawsuit as I knew he had previously supported the installation of video lottery terminals at

Ohio's horserace tracks. He said he had been asked by David Langdon to participate in the suit, and that he remained supportive of video lottery terminals, but wanted to vindicate the ability to have a popular referendum on the issue. He said he had asked Langdon who was paying for the litigation and any resulting referendum, and Langdon had answered him that it was Penn National (Argosy, the Southeastern Indiana Casino affiliate of Penn National).

FURTHER AFFIANT SAYETH NAUGHT

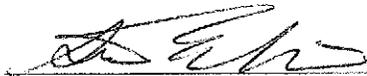


BILL SEITZ

JURAT

Sworn to before me and subscribed in my presence this 27th day of August 2009.

Sept. 1, 2009
SE



NOTARY PUBLIC



SCOTT E. ELISAR, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.