

This court has ordered relators to brief the issue of whether the court has jurisdiction in this case, given this court's ruling in *LetOhioVote.org v. Brunner* _____ Ohio St. _____, 2009-Ohio-4900. In *LetOhioVote.org*, this court issued a writ ordering the Ohio Secretary of State to accept the submission of referendum summary petitions and fulfill other referendum duties regarding amendments to R.C. Chap. 3770 allowing operation of video lottery terminals (the "VLT provisions"). *Id.* at ¶ 52. In addition to granting the writ, this court ordered a 90-day stay of the effective date of the VLT provisions. *Id.* at ¶ 54. The VLT provisions contain a section purporting to grant this court exclusive original jurisdiction over claims relating to the VLT provisions, such as the claims in the subject case. The pertinent VLT provisions in newly enacted R.C. 3770.21 state:

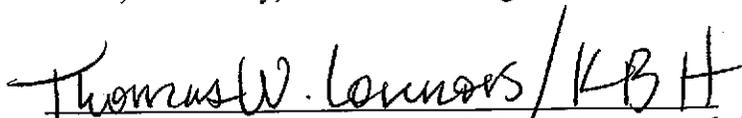
D. The supreme court shall have exclusive, original jurisdiction over any claim asserting that this section or section 3770.03 of the Revised Code or any portion of those sections or any rule adopted under those sections violates any provision of the Ohio Constitution, any claim asserting that any action taken by the governor or the lottery commission pursuant to those sections violates any provision of the Ohio Constitution or any provision of the Revised Code, or any claim asserting that any portion of this section violates any provision of the Ohio Constitution. If any claim over which the supreme court is granted exclusive, original jurisdiction by this division is filed in any lower court, the claim shall be dismissed by the court on the ground that the court lacks jurisdiction to review it.

E. Should any portion of this section or of section 3770.03 of the Revised Code be found to be unenforceable or invalid, it shall be severed and the remaining portions remain in full force and effect.

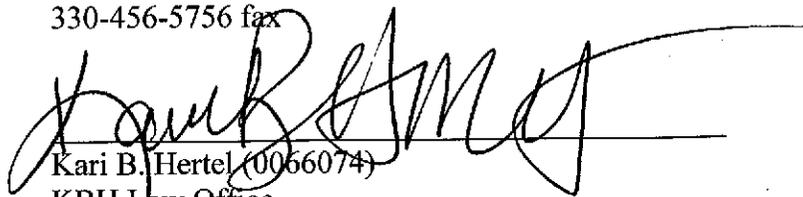
As a result of this court's ruling in *LetOhioVote.org*, the purported original jurisdiction upon which this case was commenced is subject to the referendum and is not now in effect. Accordingly, relators acknowledge that at present, this court lacks subject-matter jurisdiction of the claims in the subject case.

Respectfully submitted,

Black, McCuskey, Souers & Arbaugh

 Thomas W. Connors / KBH

Thomas W. Connors (0007226) *Counsel of Record 0066074
James M. Wherley, Jr. (0073932)
220 Market Avenue South, Suite 1000
Canton Ohio 44702
330-456-8341
330-456-5756 fax



Kari B. Hertel (0066074)
KBH Law Office
4607 Wuertz Court
Dublin, Ohio 43016
614-306-8638
KBHlaw@yahoo.com

Counsel for Relators
Ohio Policy Roundtable, David P. Zanotti,
John W. Edgar and Sandra L. Walgate

CERTIFICATE OF SERVICE

I certify that a copy of the above Relators' Brief re Jurisdiction was served by U.S. mail on this 5th day of October, 2009 upon the following counsel:

Richard Cordray
Attorney General of Ohio

Benjamin C. Mizer*
Ohio Solicitor General
**Counsel of Record*

Alexandra T. Schimmer
Chief Deputy Solicitor General

Richard N. Coglianesse
Mindy Worly
Erick D. Gale
Pearl M. Chin
Michael J. Schuler
Assistant Attorneys General
30 East Broad Street, 17th Floor
Columbus, Ohio 43214-5



Counsel for Relators
Ohio Policy Roundtable, David P. Zanotti,
John W. Edgar and Sandra L. Walgate