

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>Project Vote, et al,</b>	:	
	:	
<b>Plaintiffs</b>	:	<b>Case No. 1:08-cv-2266</b>
	:	
<b>v.</b>	:	<b>Judge Gwin</b>
	:	
<b>Madison County Board of Elections, et al,</b>	:	
	:	
<b>Defendants.</b>	:	

**ANSWER OF DEFENDANT  
OHIO SECRETARY OF STATE JENNIFER BRUNNER**

Now comes Defendant Ohio Secretary of State Jennifer Brunner and gives the following for her answer to the Plaintiffs complaint:

1. Denies each and every allegation not specifically admitted to herein.
2. With respect to the allegations contained in the introductory Paragraph, admits that if the Madison County Board of Elections were to require individuals to be registered to vote for 30 days before providing those individuals with an absentee ballot, such a requirement would violate State and Federal law.
3. Denies for lack of knowledge the allegations contained in Paragraph 1(a) through (e).
4. Admits the allegations contained in Paragraphs 2(a) through (b).
5. With respect to the allegations contained in Paragraph 3 of the Complaint admits that the court has jurisdiction over the Plaintiffs federal claims but denies that the Court has supplemental jurisdiction over State law claims brought against her by means of the Eleventh Amendment.
6. Admits the allegations contained in Paragraph 4 of the Complaint.

7. With respect to the allegations contained in Paragraph 5 of the Complaint states that the Ohio Constitution speaks for itself and that no further pleading is required. To the extent a further response is required, it is denied.
8. With respect to the allegations contained in Paragraph 6 of the Complaint states that R.C. 3503.07 speaks for itself and that no further pleading is required. To the extent a further response is required, it is denied.
9. With respect to the allegations contained in Paragraph 7 of the Complaint states that R.C. 3501.01 speaks for itself and that no further pleading is required. To the extent a further response is required, it is denied.
10. With respect to the allegations contained in Paragraph 8 of the Complaint states that R.C. 3509.01 and .02 speak for themselves and that no further pleading is required. To the extent a further response is required, it is denied.
11. With respect to the allegations contained in Paragraph 9 of the Complaint states that R.C. 3509.06 and .07 speak for themselves and that no further pleading is required. To the extent a further response is required, it is denied.
12. Admits the allegations contained in Paragraph 10 of the Complaint.
13. With respect to the allegations contained in Paragraph 11 of the Complaint, admits that she issued Directive 2008-63 on August 13, 2008 and further states that the Directive speaks for itself. To the extent a further response is required, it is denied.
14. With respect to the allegations contained in Paragraph 12 of the Complaint, states that the Directive speaks for itself and no further response is required.
15. With respect to the allegations contained in Paragraph 13 of the Complaint, states that the Directive speaks for itself and no further response is required.

16. With respect to the allegations contained in Paragraph 14 of the Complaint, admits that she issued Directive 2008-91 on September 11, 2008 and further states that the directive speaks for itself and no response is required.
17. With respect to the allegations contained in Paragraph 15 of the Complaint, states that R.C. 309.09(A) speaks for itself. The Secretary further admits that several county prosecutors improperly advised their county boards of elections they were free to disregard a directive of the Secretary of State.
18. With respect to the allegations contained in Paragraph 16 of the Complaint, admits that Stephen Pronai advised the Madison County Board of Elections that they should disregard Directive 2008-63. The Secretary further states that the prosecutor's opinion is an incorrect statement of the law and that it speaks for itself. No further response is required.
19. Admits the allegations contained in Paragraph 17 of the Complaint.
20. Admits the allegations contained in Paragraph 18 of the Complaint.
21. Admits the allegations contained in Paragraph 19 of the Complaint.
22. With respect to the allegations contained in Paragraph 20 of the Complaint admit that Rhonda L. Colvin and C. Douglas Moody filed a writ of mandamus against the Secretary of State in the Ohio Supreme Court and that the Court went on to uphold her interpretation of Ohio law that a person does not need to be registered to vote for 30 days before receiving a ballot.
23. With respect to the allegations contained in Paragraph 21 of the Complaint admit that the Plaintiffs have properly characterized the allegations in *Colvin* and further states that the Supreme Court rejected their argument.

24. Admits the allegations contained in Paragraph 22 of the Complaint.
25. Admits the allegations contained in Paragraph 23 of the Complaint.
26. With respect to the allegations contained in Paragraph 24 of the Complaint states that the Ohio Supreme Court determined that Secretary Brunner's position on the five-day window was correct.
27. With respect to the allegations contained in Paragraph 25 of the Complaint, states that until the Supreme Court decision in *State ex rel. Colvin v Brunner* and this Court's decision granting a temporary restraining order, the Madison County Board of Elections had apparently informed the Plaintiffs that they would refuse to follow the lawful directive of the Secretary of State. The Secretary now believes that the Madison County Board of Elections is currently complying with her directive, this Court's order, and the decision of the Ohio Supreme Court.
28. With respect to the allegations contained in Paragraph 26, the Secretary reincorporates by reference the responses she has given to Paragraphs 1-25 of the Complaint.
29. With respect to the allegations contained in Paragraph 27, states that the Plaintiffs have pled a legal conclusion and no further response is required. To the extent a response is required, it is denied.
30. With respect to the allegations contained in Paragraph 28 of the Complaint, states that the Voting Rights Act speaks for itself and no further response is required.
31. With respect to the allegations contained in Paragraph 29 of the Complaint, admit that if the Madison County Board of Elections were to require a person be a resident of

- Ohio for 30 days prior to providing that person with an absentee ballot, such a requirement would violate the Voting Rights Act.
32. With respect to the allegations contained in Paragraph 30 of the Complaint, reincorporates by reference the responses she has given to Paragraphs 1-29 of the Complaint.
  33. With respect to the allegations contained in Paragraph 31 of the Complaint, states that the National Voter Registration Act speaks for itself and no further response is required.
  34. Admits the allegations contained in Paragraph 32 of the Complaint.
  35. With respect to the allegations contained in Paragraph 33 of the Complaint, reincorporates by reference the responses she has already given to Paragraphs 1-34 of the Complaint.
  36. With respect to the allegations contained in Paragraph 34 of the Complaint, states that the Plaintiff has pled a legal conclusion and that no further response is required.
  37. Denies the allegations contained in Paragraph 35.
  38. Admits the allegations contained in Paragraph 36 of the Complaint.
  39. With respect to the allegations contained in Paragraph 37 of the Complaint, reincorporates by reference the responses she has already given to Paragraphs 1-36 of the Complaint.
  40. With respect to the allegations contained in Paragraph 38 of the Complaint, states that the Plaintiff has pled a legal conclusion and that no further response is required.

41. With respect to the allegations contained in Paragraph 39 of the Complaint, reincorporates by reference the responses she has already given to Paragraphs 1-38 of the Complaint.
42. Admits the allegations contained in Paragraph 40 of the Complaint.
43. With respect to the allegations contained in Paragraph 41 of the Complaint, reincorporates by reference the responses she has already given to Paragraphs 1-40 of the Complaint.
44. Admits the allegations contained in Paragraph 42 of the Complaint.
45. With respect to the allegations contained in Paragraph 43 of the Complaint, reincorporates by reference the responses she has already given to Paragraphs 1-42 of the Complaint.
46. Admits the allegations contained in Paragraph 44 of the Complaint.
47. With respect to the allegations contained in Paragraph 45 of the Complaint, admits that the Defendant Madison County Board of Elections has acted in a manner contrary to state and federal law and is properly remedied by this Court entering an injunction against that Defendant.
48. WHEREFORE, having answered the Plaintiffs' complaint, the Defendant raises the following defenses, including affirmative defenses.

**First Defense**

49. Failing to state a claim upon which relief can be granted.

**Second Defense**

50. The Plaintiffs' claim is moot.

### **Third Defense**

51. The Secretary of State did not engage in any action which deprived the Plaintiffs of their Constitutional or federal statutory rights.

### **Fourth Defense**

52. The Secretary reserves the right to supplement her answer with additional defenses, including affirmative defenses as discovery proceeds.

Respectfully submitted,

**NANCY H. ROGERS**  
**ATTORNEY GENERAL**

*Damian W. Sikora*

Richard N. Coglianese (0066830) Trial Attorney

Aaron D. Epstein (0063286)

Damian W. Sikora (0075224)

Assistant Attorneys General

Constitutional Offices

30 East Broad Street, 16<sup>th</sup> Floor

Columbus, Ohio 43215-3400

aepstein@ag.state.oh.us

(614) 466-2872 – phone

(614) 728-7592 – fax

Attorneys for Defendant

Jennifer Brunner

Ohio Secretary of State

**CERTIFICATE OF SERVICE**

This is to certify a copy of the foregoing was served upon all counsel of record by means of the Court's electronic filing system on this 3<sup>rd</sup> day of November, 2008.

/s/ Damian W. Sikora