

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO ex rel.
DEWEY STOKES

Relator,

vs.

JENNIFER BRUNNER, SECRETARY
OF STATE OF OHIO,

Respondent.

Case No. 2008-1950

Original Action in Mandamus

Expedited Election Matter

Under S.Ct. Prac. R.X. § 9

ANSWER OF RESPONDENT
JENNIFER BRUNNER, SECRETARY OF STATE

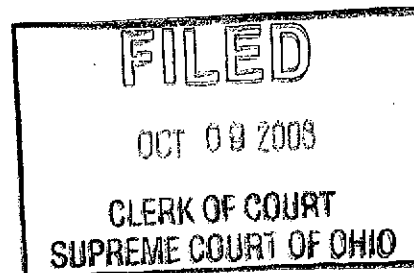
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Attorneys for Respondent



Answer

Now comes Respondent Secretary of State Jennifer Brunner, and for her answer to the Relator's Complaint states the following:

1. Respondent denies each and every allegation not specifically admitted to herein.
2. In response to Paragraph 1 of the Complaint, Respondent admits that Ohio law allows political parties with candidates on the ballot, any group of five or more candidates, and committees in support or in opposition to a ballot issue to appoint qualified electors as polling place or precinct observers on the day of any primary, special or general election, but that the Ohio General Assembly has not specifically provided for election observers during the 35-day in-person absentee voting period immediately preceding Election Day. Respondent further states that these observers act as the parties' and candidates' eyes and ears on Election Day and that observers can play an important role in assuring the public that the elections process is open and transparent. Respondent further states that activities conducted by boards of elections, including the tabulation of votes, and the running of a precinct, are done in a bi-partisan manner with teams of employees from each political party able to see what the other political party is doing. Respondent denies the Relator's allegation of "malfeasance" or "outright fraud" on the part of Ohio election workers. Respondent denies all other allegations made in Paragraph 1.

3. With regard to Paragraph 2 of the Complaint, Respondent denies that she has shielded anything from public scrutiny and further states that she is following the provisions of the Ohio Revised Code and not reading into the code any provisions not included in the statutory text as this Court has previously instructed. The Respondent admits that on February 28, 2008, she issued Directive 2008-29 which states that "[p]oll observers play an important role in assuring the public that the election processes are open and transparent, affecting public trust of

the process, and thus, the potential for future participation in the democratic process.”

Respondent also admits that on September 23, 2008, she issued Advisory 2008-24. Advisory 2008-24 speaks for itself. Respondent denies Relator’s characterizations of Advisory 2008-24. Respondent denies all other allegations in Paragraph 2.

4. With respect to Paragraph 3 of the Complaint, Respondent admits that several thousand Ohioans registered and then immediately voted during the five day window permitted under Ohio law and approved by this Court in *State ex rel. Colvin v. Brunner*, Slip Opinion No. 2008-Ohio-5041. Respondent denies all other allegations in Paragraph 3 for lack of knowledge.

5. With respect to Paragraph 4 of the Complaint, the Secretary admits that Dewey Stokes is a registered voter in the State of Ohio. The Secretary denies for lack of knowledge all of the other allegations contained in Paragraph 4 of the Complaint. R.C. 3501.01(N) defines “qualified elector” as “a person having the qualifications provided by law to be entitled to vote.” The Secretary denies for lack of knowledge that Dewey Stokes is and will remain eligible to cast a ballot in the 2008 general election.

6. With respect to the allegations contained in Paragraph 5 of the Complaint, admits that Secretary Brunner is the duly elected Secretary of State of Ohio and that she has certain duties that are outlined predominantly, but not exclusively, in Title 35 of the Ohio Revised Code. R.C. 3501.05, R.C. 3501.053 and R.C. 3501.01 are statutory provisions that speak for themselves. The Secretary further avers that the remaining allegations Paragraph 5 contain legal conclusions and that no response is required. To the extent a response is required, the allegations in Paragraph 5 are denied.

7. With respect to Paragraph 6, the Ohio Constitution and the cases cited therein speak for themselves. The Secretary further avers that Paragraph 6 contains legal conclusions

and that no response to the allegations is required. To the extent a response is required, the allegations in Paragraph 6 are denied.

8. With respect to Paragraph 7, Respondent admits that on August 13, 2008, she issued Directive 2008-63. Directive 2008-63 speaks for itself. The Respondent further admits that her Directive was upheld by this Court in *State ex rel. Colvin v. Brunner*, Slip Opinion No. 2008-Ohio-5041. All other allegations in Paragraph 7 are denied.

9. With respect to Paragraph 8, Respondent denies the allegations for lack of knowledge. In addition, the cited websites speak for themselves.

10. With respect to Paragraph 9, Respondent states that Directive 2008-50 and R.C. 3501.11 speak for themselves. All other allegations in Paragraph 9 are denied.

11. With respect to Paragraph 10, the Ohio Revised Code speaks for itself. The Respondent denies the remaining allegations in Paragraph 10.

12. Respondent admits the allegations in Paragraph 11 of the Complaint.

13. With Respect to Paragraph 12, Respondent admits she is fully committed to open and honest elections. Respondent also admits that on September 23, 2008, she issued Advisory 2008-24. Advisory 2008-24 speaks for itself. Respondent denies all other allegations made in Paragraph 12.

14. With respect to the allegations contained in Paragraph 13 of the Complaint, the District Court's order in *Ohio Republican Party v. Brunner*, No. 2:80-cv-00913, slip op. at 7 (S.D. Ohio Sept. 28, 2008) speaks for itself. Respondent also admits that on appeal, the Sixth Circuit granted the Secretary of State's motion to stay the District Court's decision, finding that the trial court abused its discretion by entering a temporary restraining order because the

plaintiffs had failed to prove that they were likely to succeed on the merits. All other allegations in Paragraph 13 are denied.

15. With respect to the allegations contained in Paragraph 14 of the Complaint, Respondent admits that she appealed the temporary restraining order issued by the District Court in *Ohio Republican Party v. Brunner*, No. 2:80-cv-00913, slip op. at 7 (S.D. Ohio Sept. 28, 2008). Respondent further admits that the Sixth Circuit Court of Appeals granted her motion to stay the temporary restraining order. Respondent avers that the Sixth Circuit decision speaks for itself. Respondent admits that this is the first instance where this Court has considered the issue of whether Ohio law permits observers to be present for in-person absentee voting in the 35-day period prior to Election Day. Respondent denies all other allegations in paragraph 14.

16. The Secretary denies the averments made in Paragraph 15 of the Complaint for lack of knowledge.

17. The Secretary denies the averments made in Paragraph 16 of the Complaint for lack of knowledge.

18. The Secretary denies the averments made in Paragraph 17 of the Complaint for lack of knowledge.

19. The Secretary denies the averments made in Paragraph 18 of the Complaint for lack of knowledge.

20. In response to Paragraph 19 of the Complaint, R.C. 3505.21 and Directive 2008-50 speak for themselves. The Respondent denies the allegations in Paragraph 19.

21. Respondent denies for lack of knowledge the last sentence in Paragraph 20 of the Complaint. Respondent denies all other allegations raised in Paragraph 20.

22. The Secretary denies the averments made in Paragraph 21 of the Complaint.

23. The Secretary denies the averments made in Paragraph 22 of the Complaint.

24. With respect to Paragraph 23 of the Complaint, the Secretary admits that Dewey Stokes is a registered voter in the State of Ohio. The Secretary denies for lack of knowledge that Mr. Stokes is a qualified elector within the State. The Secretary denies all other allegations raised in Paragraph 23.

25. With respect to the WHEREFORE Paragraph and its respective subparagraphs, Respondent denies that the Relator is entitled to any of the relief stated therein or to any relief whatsoever.

WHEREFORE, having answered the Relator's Complaint, the Respondent asserts the following defenses, including affirmative defenses:

First Defense

26. This Court lacks subject matter jurisdiction to hear the Relator's claims.

Second Defense

27. The Relator has failed to state a claim upon which relief in mandamus can be granted.

Third Defense

28. The Secretary of State's September 5, 2008 Advisory follows the statutory scheme established by the Ohio General Assembly.

Fourth Defense

29. The Secretary's issuance of an advisory is a discretionary act that cannot be reviewed by this Court in mandamus.

Fifth Defense

30. The Relator's claims are barred by the doctrine of laches.

Sixth Defense

31. The Secretary of State's September 5, 2008 Memorandum is fully consistent with both state and federal law.

Seventh Defense

32. The Relator does not have a clear legal right to the relief requested.

Eighth Defense

33. The Respondent does not owe a clear legal duty to the Relator.

Ninth Defense

34. The Relator has an adequate remedy at law.

Tenth Defense

35. The Respondent reserves the right to add additional defenses, including additional affirmative defenses, as discovery proceeds in this case.

WHEREFORE, having answered the Relator's Complaint, the Respondent requests that the Court dismiss this case.

Respectfully submitted,

NANCY H. ROGERS
Attorney General of Ohio



Richard N. Coglianese (0066830)

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Attorneys for Respondent

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing *Answer of Respondent Jennifer Brunner, Secretary of State* was served on this 9th day of October, 2008, by electronic mail, facsimile transmission and ordinary, postage prepaid U.S. mail to:

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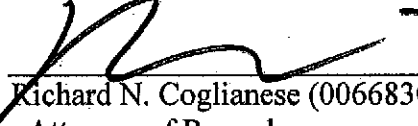
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Attorneys for Respondent

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