IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

OHIO REPUBLICAN PARTY, et al.	:	
	:	
Plaintiffs,	:	
	:	**Case No. 2:08-CV-913**
v.	:	
	:	**JUDGE SMITH**
JENNIFER BRUNNER,	:	
Secretary of State of Ohio,	:	**MAGISTRATE JUDGE KING**
	:	
Defendant	:	

ANSWER OF DEFENDANT
OHIO SECRETARY OF STATE JENNIFER BRUNNER

Now comes Defendant, Ohio Secretary of State Jennifer Brunner, and states the following as an answer to the Plaintiffs' complaint:

1. Denies each and every allegation not specifically admitted to.
2. With respect to the allegations contained in Paragraph 1, denies for lack of knowledge the reason that the Plaintiffs brought the action and further denies that the Plaintiffs have stated a claim against her. The Secretary specifically denies that she has issued arbitrary or unlawful directives.
3. Denies for lack of knowledge the number of Ohio electors who are members of plaintiff Ohio Republican Party. The Secretary admits the remaining allegations contained in Paragraph 2.
4. Denies the allegations in Paragraph 3 of the Complaint.

5. With respect to the allegations contained in Paragraph 4 of the Complaint, denies for lack of knowledge what the Plaintiffs seek through this litigation and further denies that the Plaintiffs are entitled to any relief whatsoever.

6. With respect to the allegations contained in Paragraph 5 of the Complaint, admits that the Republican Party is legally recognized as a "major political party" in the State of Ohio and that Larry Wolpert is a qualified elector and a member of the General Assembly from the 23rd House District. The Defendant denies the remaining allegations contained in Paragraph 5 of the Complaint.

7. Admits the allegations contained in Paragraph 6 of the Complaint and further states that the Secretary's duties are contained in Title 35 and other provisions of the Ohio Revised Code and Ohio Constitution.

8. Denies the allegations contained in Paragraph 7 of the Complaint.

9. Admits the allegations contained in Paragraph 8 of the Complaint.

10. Denies the allegations contained in Paragraph 9 of the Complaint.

11. Admits the allegations contained in Paragraph 10 of the Complaint and further states that the Secretary's duties are contained in Title 35 and other provisions of the Ohio Revised Code and Ohio Constitution.

12. With respect to the allegations contained in Paragraph 11 of the Complaint, admits that the Secretary is the Chief Elections Officer of the State of Ohio and that her duties are contained in Title 35 and other provisions of the Ohio Revised Code and Ohio Constitution and further states that she has, at all times, conformed her duties to the law as required.

13. States that Paragraph 12 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

14. States that Paragraph 13 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

15. States that Paragraph 14 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

16. States that Paragraph 15 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

17. Admits that R.C. 3509.03 requires an elector to include on a written application for an absent voter's ballot a statement that the person requesting the ballot is a qualified elector and further admits that an election officer may not legally deliver an absent voter's ballot to a person who has not provided the information required by R.C. 3509.03. The Secretary denies the remaining allegations contained in Paragraph 16 of the Complaint.

18. The Secretary states that she is not required to respond to references to statutory text that speaks for itself nor is she required to respond to legal conclusions included in Paragraph 17. The Secretary denies the remaining allegations contained in Paragraph 17.

19. With respect to the allegations contained in Paragraph 18 of the Complaint admits that the Secretary issued Directive 2008-63 on August 13, 2008 and that the directive speaks for itself and that no further response is required.

20. With respect to the allegations contained in Paragraph 19 of the Complaint,states that Directive 2008-63 speaks for itself and that no further response is required.

21. With respect to the allegations contained in Paragraph 20 of the Complaint states that Directive 2008-63 speaks for itself and that no further response is required.

22. The Secretary states that she is not required to respond to references to statutory text that speaks for itself nor is she required to respond to the legal conclusions included in Paragraph 21. The Secretary denies the remaining allegations contained in Paragraph 21.

23. The Secretary states that she is not required to respond to references to statutory text that speaks for itself nor is she required to respond to the legal conclusions included in Paragraph 22. The Secretary denies the remaining allegations contained in Paragraph 22.

24. The Secretary states that she is not required to respond to references to statutory text that speaks for itself nor is she required to respond to the legal conclusions included in Paragraph 23. The Secretary denies the remaining allegations contained in Paragraph 23.

25. States that Paragraph 24 is a legal conclusion and no response is required. To the extent a response is required, it is denied.

26. Denies the allegations contained in Paragraph 25 of the Complaint.

27. With respect to the allegations contained in Paragraphs 26 of the Complaint, states that Form No. 11-A speaks for itself and no response is required. To the extent a response is required, it is denied.

28. Denies the allegations contained in Paragraph 27 of the Complaint.

29. With respect to the allegations contained in Paragraph 28 of the Complaint, states that Directive 2008-63 speaks for itself and denies the remaining allegations.

30. With respect to the allegations in Paragraph 29 of the Complaint, states that Directive 2008-63 speaks for itself and denies the remaining allegations.

31. With respect to the allegations in Paragraph 30 of the Complaint, states that Form No. 11-A speaks for itself. The Secretary further states that Paragraph 30 contains a legal conclusion to which no response is required. The Secretary denies the remaining allegations contained in Paragraph 30 of the Complaint.

32. With respect to the allegations contained in Paragraph 31, admits that the Secretary issued Advisory 2008-24 on September 23, 2008 and states that the Advisory speaks for itself. The Secretary states that no further response is required.

33. Denies the allegations in Paragraph 32 of the Complaint.

34. Denies the allegations in Paragraph 33 of the Complaint.

35. With respect to the allegations contained in Paragraph 34 of the Complaint, admits that the Secretary issued Directive 2008-101 on October 24, 2008 and states that the Directive speaks for itself. To the extent that a response is required, the Secretary denies the remaining allegations contained in Paragraph 34 of the Complaint.

36. With respect to the allegations contained in Paragraph 35 of the Complaint, states that Directive 2008-101 speaks for itself. To the extent that a response is required, the Secretary denies the allegations contained in Paragraph 35 of the Complaint.

37. With respect to the allegations contained in Paragraph 36 of the Complaint, admits that the Secretary issued Directive 2008-105 on October 31, 2008 and states that the Directive speaks for itself. To the extent that a response is required, the Secretary denies the remaining allegations contained in Paragraph 36 of the Complaint.

38. With respect to the allegations contained in Paragraph 37 of the Complaint, states that Directive 2008-105 speaks for itself. To the extent that a response is required, the Secretary denies the remaining allegations contained in Paragraph 37 of the Complaint.

39. Denies the allegations contained in Paragraph 38 of the Complaint

40. Denies the allegations contained in Paragraph 39 of the Complaint

41. Denies the allegations contained in Paragraph 40 of the Complaint

42. With respect to the allegations in Paragraph 41, states that Article II Section 1 Clause 2 of the United States Constitution speaks for itself and no response is needed.

43. States that the allegations contained in Paragraph 42 are a legal conclusion and no response is required. To the extent a response is required, it is denied.

44. With respect to the allegations contained in Paragraph 43 of the Complaint, admits that Secretary of State Brunner is the state's chief elections officer and has the responsibilities as set forth in Title 35 of the Revised Code. She further admits that a general election will take place on November 4, 2008 at which time the electors of Ohio will choose its Presidential Electors.

45. Denies the allegations contained in Paragraph 44 of the Complaint.

46. Denies the allegations contained in Paragraph 45 of the Complaint.

47. Denies the allegations contained in Paragraph 46 of the Complaint.

48. Denies the allegations contained in Paragraph 47 of the Complaint.

49. Denies the allegations contained in Paragraph 48 of the Complaint.

50. States that Section 303 of the Help American Vote Act ("HAVA") speaks for itself and that Paragraph 49 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, it is denied.

51. States that Section 303 of the Help American Vote Act ("HAVA") speaks for itself and that Paragraph 50 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, it is denied.

52. States that R.C. 3503.09(B)(2) speaks for itself and that Paragraph 51 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, it is denied.

53. Denies the allegations contained in Paragraph 52 of the Complaint.

54. Denies the allegations contained in Paragraph 53 of the Complaint.

55. With respect to the allegations contained in Paragraph 54 of the Complaint, states that Advisory 2008-24 speaks for itself and denies the remaining allegations.

56. Denies the allegations contained in Paragraph 55 of the Complaint.

57. States that Paragraph 56 states a legal conclusion and no response is required. To the extent a response is required, it is denied.

58. Denies the allegations contained in Paragraph 57 of the Complaint.

59. Denies the allegations contained in Paragraph 58 of the Complaint.

60. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint in light of the ambiguity of the phrases "racially polarized voting patterns" and "certain regions of Ohio" contained therein.

61. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint in light of the ambiguity of the phrase "history of official discrimination" contained therein.

62. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint in light of the ambiguity of the phrases "significant socioeconomic disparities" and "largely divided" contained therein..

63. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint in light of the use of ambiguous phrases contained therein, e. g., "large election districts."

64. States that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint in light of the use of ambiguous phrases contained therein, e. g., "hinders their ability to participate fully and effectively in the political process."

65. Admits that some political campaigns in the past may have resorted to subtle and overt racial appeals, and denies any remaining allegations contained in Paragraph 64 of the Complaint. .

66. Denies the allegations contained in Paragraph 65 of the Complaint.

67. Denies the allegations contained in Paragraph 66 of the Complaint.

68. Denies the allegations contained in Paragraph 67 of the Complaint.

69. States that Paragraph 68 contains a legal conclusion and no response is required. To the extent a response is required, it is denied.

70. States that Paragraph 69 contains a legal conclusion and no response is required. To the extent a response is required, it is denied.

71. States that Paragraph 70 contains a legal conclusion and no response is required. To the extent a response is required, it is denied.

72. States that Paragraph 71 contains a legal conclusion and no response is required. To the extent a response is required, it is denied.

73. Denies the allegations in Paragraph 72 of the Complaint.

74. Denies the allegations in Paragraph 73 of the Complaint.

75. Denies the allegations in Paragraph 74 of the Complaint.

76. Denies for lack of knowledge the allegations contained in Paragraph 75 of the Complaint.

77. Denies for lack of knowledge the allegations contained in Paragraph 76 of the Complaint.

78. Denies for lack of knowledge the allegations contained in Paragraph 77 of the Complaint.

79. With respect to the allegations contained in Paragraph 78 of the Complaint, admits that the Secretary issued Directives 2008-91 and 2008-92 on September 11, 2008 and further states that the directives speak for themselves.

80. Denies the allegations contained in Paragraph 79 of the Complaint.

81. Denies the allegations contained in Paragraph 80 of the Complaint.

82. Denies the allegations contained in Paragraph 81 of the Complaint.

83. With respect to the allegations contained in Paragraph 82 of the Complaint, admits that the Secretary issued Advisory 2008-24 of September 23, 2008 and states that the Advisory speaks for itself.

84. Denies the allegations contained in Paragraph 83 of the Complaint.

85. Denies the allegations contained in Paragraph 84 of the Complaint.

86. Denies the allegations contained in Paragraph 85 of the Complaint.

87. States that Paragraph 86 states a legal conclusion and no response is required. To the extent a response is required, it is denied.

88. States that Paragraph 87 states a legal conclusion and no response is required. To the extent a response is required, it is denied.

89. States that Paragraph 88 states a legal conclusion and no response is required. To the extent a response is required, it is denied.

90. Denies the allegations contained in Paragraph 89 of the Complaint.

91. Denies the allegations contained in Paragraph 90 of the Complaint.

92. With respect to the allegations contained in Paragraph 91 of the Complaint, admits that the present election has seen a record number of new voter registrations. With respect to the remaining allegations contained in Paragraph 91 of the Complaint, denies for lack of knowledge whether there have been instances of fraudulent voter registration or fraudulent voting across the State of Ohio. With respect to the allegations contained in footnote 1 of Paragraph 91 of the Complaint, denies for lack of knowledge the information contained in the articles cited, and states that the articles speak for themselves. To the extent that the remaining allegations require a

response, the Secretary denies the remaining allegations contained in Paragraph 91 of the Complaint.

93. Denies the allegations contained in Paragraph 92 of the Complaint.

94. States that Paragraph 93 states a legal conclusion and no response is required. To the extent a response is required, it is denied.

95. States that Paragraph 94 states a legal conclusion and no response is required. To the extent a response is required, it is denied.

96. Denies the allegations contained in Paragraph 95 of the Complaint.

97. Denies that the Plaintiffs are entitled to any relief requested in the Complaint or to any relief whatsoever.

Wherefore, having answered the Plaintiffs' complaint, the Secretary raises the following defenses, including affirmative defenses.

First Defense

98. The Complaint states no claim upon which relief can be granted.

Second Defense

99. The Court lacks subject matter jurisdiction over the Plaintiffs' complaint.

Third Defense

100. Venue in this case should be transferred to the United States District Court For The Northern District of Ohio.

Fourth Defense

101. The Secretary's Directives and Advisories and in concert with Ohio and federal law.

Fifth Defense

102. The Secretary of State has the legal power to issue directives.

Sixth Defense

103. The Plaintiffs cannot bring a private cause of action under the Help America Vote Act, 42 USC 15301, *et seq.*

Seventh Defense

104. County boards of elections are required to follow directives and advisories issued by the Ohio Secretary of State regardless of the legal opinions issued by their county prosecutors.

Eighth Defense

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

WHEREFORE, having answered the Plaintiffs' complaint, the Secretary requests that this Court transfer this case to the United States District Court for the Northern District of Ohio. In the alternative, the Secretary asks that this Court dismiss this case.

Respectfully submitted,

NANCY H. ROGERS
ATTORNEY GENERAL

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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 19th day of November, 2008.

/s Richard N. Coglianese