

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

NORTHEAST OHIO COALITION	:	
FOR THE HOMELESS, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	CASE NO. 06-0896
v.	:	
	:	JUDGE ALGENON MARBLEY
JENNIFER BRUNNER,	:	MAGISTRATE TERENCE KEMP
SECRETARY OF STATE, <i>et al.</i> ,	:	
	:	
Defendants.	:	

OHIO REPUBLICAN PARTY, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	CASE NO. 08-913
v.	:	
	:	JUDGE ALGENON MARBLEY
JENNIFER BRUNNER, <i>et al.</i> ,	:	MAGISTRATE TERENCE KEMP
	:	
Defendants.	:	

**ANSWER OF STATE OF OHIO
TO COMPLAINT FILED BY OHIO DEMOCRATIC PARTY**

The State of Ohio hereby answers the complaint (the “Complaint”) filed by the Ohio Democratic Party (“ODP”) as follows:

First Defense

1. The State of Ohio denies all averments not expressly admitted to in this answer.
2. The allegations contained in paragraph 1 are denied.
3. The State of Ohio admits the allegations set forth in Paragraph 2 of the Complaint.

4. In response to Paragraph 3 of the Complaint, the State of Ohio admits that Jennifer Brunner is the Secretary of the State of Ohio, and that as such she has those powers and duties that are provided by Ohio law. To the extent that the allegations set forth in paragraph 3 are consistent with Ohio law, they are admitted; to the extent that they are not, they are denied. Further, the State of Ohio admits that Secretary Brunner is sued in her official capacity. Any other allegations set forth in Paragraph 3 are denied.

5. The allegations set forth in Paragraph 4 are denied.

6. In response to Paragraph 4 of the Complaint, the State of Ohio admits that the complaint is properly venued in this Court, if this Court has jurisdiction.

7. The State of Ohio admits the allegations set forth in Paragraph 6 of the Complaint.

8. In response to the allegations set forth in Paragraph 7 of the Complaint, the State of Ohio avers that the provisions of the Help America Vote Act of 2002 (“HAVA”) speak for themselves. To the extent that the allegations in Paragraph 7 comport with HAVA, they are admitted. The State of Ohio further avers that Ohio statutes provide the circumstances under which provisional ballots are to be counted in Ohio. To the extent that the allegations in Paragraph 7 comport with the relevant statutes of the State of Ohio, they are admitted. To the extent that the allegations in Paragraph 7 do not comport with the relevant statutes of the State of Ohio, they are denied. Any other allegations set forth in Paragraph 7 are denied.

9. In response to the allegations set forth in Paragraph 8 of the Complaint, the State of Ohio admits that the process of casting a provisional ballot includes both a ballot and an envelope, and that Ohio statutes specify the circumstances under which the ballot is to be removed from the envelope and counted. To the extent that the allegations set forth in Paragraph

8 are consistent with the statutes of the State of Ohio, they are admitted; to the extent that the allegations set forth in Paragraph 8 are not consistent with the statutes of the State of Ohio, they are denied. Any other allegations set forth in Paragraph 8 are denied.

10. In response to Paragraph 9 of the Complaint, the State of Ohio admits that the Secretary of State of Ohio promulgated Directive No. 2008-101 on October 24, 2008. The State of Ohio further avers that the Directive speaks for itself regarding its subject. Any other allegations set forth in paragraph 9 are denied.

11. In response to Paragraph 10 of the Complaint, the State of Ohio admits that on October 24, 2008, this Court issued an order that provided that “by agreement of the Plaintiffs and the Secretary of State, the Court adopts and annexes hereafter Directive 2008-101 as an Order of this Court.” Any other allegations set forth in Paragraph 10 of the Complaint are denied.

12. The State of Ohio denies the allegations set forth in Paragraphs 11 and 12 of the Complaint.

Second Defense

13. This Court lacks jurisdiction over the claims asserted in the Complaint.

Third Defense

14. ODP has failed to join indispensable parties to this litigation.

Fourth Defense

15. ODP fails to present a claim upon which relief can be granted.

Fifth Defense

16. ODP’s claims are barred by the Eleventh Amendment.

Sixth Defense

17. ODP lacks standing.

Seventh Defense

18. ODP's claims are barred by abstention doctrines, including, but not limited to, *Pullman* abstention.

Eighth Defense

19. ODP is not entitled to injunctive relief.

Ninth Defense

20. Defendant State of Ohio reserves the right to bring additional defenses, including affirmative defenses, as the case proceeds.

WHEREFORE, having full answered the Complaint, Defendant State of Ohio respectfully requests that judgment be entered in its favor on all claims.

Respectfully submitted,

NANCY H. ROGERS
OHIO ATTORNEY GENERAL

/s/ Sharon A. Jennings
SHARON A. JENNINGS (0055501)
Principal Assistant Attorney General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3428
(614) 466-2872
(614) 728-7592 (fax)
*Counsel for Intervenor
State of Ohio*

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2008, the foregoing Answer was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Sharon A. Jennings _____
Sharon A. Jennings