

IN THE SUPREME COURT OF OHIO

STATE ex rel. SKAGGS, *et al.*,

Relators,

vs.

CASE NO. 08-2206

SECRETARY OF STATE  
JENNIFER BRUNNER, *et al.*,

Respondents.

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ANSWER OF SECRETARY OF STATE JENNIFER BRUNNER

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<p>John W. Zeiger (0010707) Marion H. Little, Jr. (0042679) Christopher J. Hogan (0079829) ZEIGER, TIGGES &amp; LITTLE LLP 3500 Huntington Center 41 South High Street Columbus, Ohio 43215 614-365-9900/614-365-7900</p> <p><i>Counsel for Relators</i></p>	<p>NANCY H. ROGERS Attorney General</p> <p>Richard N. Coglianesse (0066830) Damian W. Sikora (0075224) Aaron Epstein (0063286) Pearl M. Chin (0078810) Michael J. Schuler (0082390) Assistant Attorneys General Constitutional Offices Section 30 East Broad Street, 16<sup>th</sup> Floor Columbus, Ohio 43215 614-466-2872 614-728-7592 (Fax)</p> <p><i>Counsel for Respondent Secretary of State Brunner</i></p>
	<p>Patrick J. Piccininni Anthony E. Palmer, Jr. Franklin County Prosecutor's Office 375 South High Street, 13<sup>th</sup> Floor Columbus, Ohio 43215 614-462-3911</p> <p><i>Counsel for Franklin County Board of Elections</i></p>

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Now comes Respondent, Ohio Secretary of State Jennifer Brunner, and for her answer to the Relators' complaint states the following:

1. Denies each and every allegation not specifically admitted to herein.
2. With respect to the allegations contained in Paragraph 1 of the Complaint, denies for lack of knowledge the reason why the Relators have brought this complaint but states that the effect of the litigation is to disenfranchise over 1,000 eligible Ohio voters who cast ballots in their proper precinct on election day. The Respondent further denies the remaining allegations contained in Paragraph 1 of the Complaint.
3. Denies the allegations contained in Paragraph 2 of the Complaint.
4. States that the Relators have failed to include a Paragraph 3 in the Complaint.
5. With respect to the allegations contained in Paragraph 4 of the Complaint, admits that Relator Skaggs voted in Franklin County in the November 2008 general election. The Secretary denies for lack of knowledge the reasons why Relator Skaggs brought

this litigation and further denies that the Secretary's actions will result in Skaggs' vote being diluted because the Secretary has broken a tie in the Franklin County Board of Elections which will allow that board to count all legally cast ballots. The Secretary further states that Relator has attempted to disenfranchise over 1,000 legal and eligible electors in Franklin County through this litigation.

6. With respect to the allegations contained in Paragraph 5 of the Complaint, admits that Relator Fannin is a registered elector in Franklin County. The Secretary denies for lack of knowledge whether Fannin requested an absentee ballot, actually received such a ballot, or voted a provisional ballot in the November 2008 general election. The Secretary denies for lack of knowledge the reasons why Relator Fannin brought this litigation and further denies that the Secretary's actions will not result in Fannin's vote being diluted because the Secretary has broken a tie in the Franklin County Board of Elections which will allow that board to count all legally cast ballots. The Secretary further states that Relator Fannin has attempted to disenfranchise over 1,000 legal and eligible electors in Franklin County through this litigation.
7. Admits the allegations contained in Paragraph 6 of the Complaint.
8. Admits the allegations contained in Paragraph 7 of the Complaint.
9. Admits the allegations contained in Paragraph 8 of the Complaint and further states that the affidavit of Matthew M. Damschroder speaks for itself.
10. With respect to the allegations contained in Paragraph 9 of the Complaint, admits that over 27,000 provisional ballots remain to be counted in Franklin County and states that the rest of Paragraph 9 contains a legal conclusion which does not require a response. To the extent a response is required, it is denied.

11. With respect to the allegations contained in Paragraph 10 of the Complaint, admits that if a voter seeks to cast a provisional ballot, the voter should be given a provisional ballot application prepared by the Secretary of State and referred to as a Form 12-B. The Secretary further states that the Franklin County Board of Elections has chosen to eschew her form and they have developed their own form which contains many extra-statutory requirements. The Secretary admits that the Relators have attached a copy of the Franklin County Provisional Ballot Application is attached to the Damschroder affidavit. The Secretary states that the Franklin County Provisional Ballot Application speaks for itself and further states that neither Ohio law nor Form 12-B requires a provisional voter to print and sign his or her name on the application. The Secretary states that the remaining allegations contained in Paragraph 10 of the Complaint are legal conclusions and no response is required. To the extent a response is required, it is denied.
12. With respect to the allegations contained in Paragraph 11 of the Complaint, admits that the board of elections, when determining the eligibility of a provisional voter, is to look at the information provided by both the voter and the poll worker on the application as well as any additional information that the provisional voter gives the board of elections during the 10-day cure period. The Secretary denies the remaining allegations contained in Paragraph 11 of the Complaint.
13. Admits the allegations contained in Paragraph 12 of the Complaint.
14. States that the allegations contained in Paragraph 13 of the Complaint are legal conclusions and that the statute speaks for itself. No further response is required to

the allegations contained in Paragraph 13. To the extent a further response is required, the allegations are denied.

15. Denies the allegation that any of the provisional ballots at issue in this litigation are fatally flawed but admits the remaining allegations contained in Paragraph 14 of the Complaint.
16. With respect to the allegations contained in Paragraph 15 of the Complaint, admits that the eligibility of the vast majority of provisional ballots is very clear including the ballots which the Relators seek to disqualify in this case and further states that there is no real dispute in this case. The Relators seek to disenfranchise and disqualify the legal votes cast by approximately 1,000 voters in Franklin County because poll workers failed to properly complete or assure the completion of the provisional ballot envelope. The Secretary further states that this problem would not have occurred but for the Franklin County Board of Elections using an unapproved provisional ballot envelope and including extra-statutory requirements on the form. The Secretary further admits that the Relators have correctly stated what the Franklin County Provisional Ballot envelope states but that such requirements are not present on the Secretary's provisional ballot envelope and are not required under Ohio law. The Secretary denies the remaining allegations contained in Paragraph 15 of the Complaint.
17. States that the allegations contained in Paragraph 16 are legal conclusions and that no response is required. To the extent a response is required, it is denied.

18. With respect to the allegations contained in Paragraph 17, states that the email of Mr. Shinn, the rest of the email chain, and the statutes cited therein speak for themselves and no response is required. To the extent a response is required, it is denied.
19. With respect to the allegations contained in Paragraph 18, states that Directive 2008-101 speaks for itself and no further response is required. To the extent a response is required, the allegations are denied.
20. States that the allegations contained in Paragraph 19 are legal conclusions and that no response is required. To the extent a response is required, it is denied.
21. With respect to the allegations contained in Paragraph 20, denies for lack of knowledge what the Franklin County Board of Elections was prepared to do before their public meeting and further states that based upon the Affidavit of Matthew Damschroder, it appears that Mr. Damschorder may have violated the State's open meeting statute by determining how his board members would vote prior to their public meeting. The Secretary further states that at a public meeting the board tied 2-2 on four different questions and that she has exercised her statutory authority to break the tie. The Secretary admits that Mr. DeRose sent an email and states that the email and response speaks for themselves.
22. With respect to the allegations contained in Paragraph 21 of the Complaint, states that Mr. DeRose's and Mr. Shinn's emails speak for themselves and that no further response is required. To the extent a response is required, it is denied.
23. With respect to the allegations contained in Paragraph 22 of the Complaint, states that the Franklin County Board of Elections did tie on whether to count provisional ballots that lacked a printed name but contained a signature, contained a printed name but

lacked a signature, had both a printed name and signature on the envelope but were located in the wrong places, and did not show whether the individual voter provided identification to the poll worker. The Secretary further states that she broke the tie-votes as is her statutory obligation. The Secretary denies the remaining allegations contained in Paragraph 22 of the Complaint.

24. With respect to the allegations contained in Paragraph 23 of the Complaint, admits that any tie vote by a board of elections results in the Secretary summarily deciding the issue but denies for lack of knowledge the remaining allegations contained in Paragraph 23 of the Complaint.
25. Denies the allegations contained in Paragraph 24 of the Complaint.
26. With respect to the allegations contained in Paragraph 25 of the Complaint, states that these statutory provisions speak for themselves and that no response is required. To the extent a response is required, it is denied.
27. With respect to the allegations contained in Paragraph 26 of the Complaint, denies for lack of knowledge the percentage of provisional ballots where the poll worker failed to indicate whether the voter provided identification. The Secretary states that the remainder of Paragraph 26 contains legal conclusions and that no further response is required. To the extent a response is required, it is denied.
28. With respect to the allegations contained in Paragraph 27 of the Complaint, admits that the Franklin County Board of Elections tied 2-2 on whether to count those provisional ballots. The Secretary further states that the Plaintiffs have admitted that these ballots must be counted and are judicially estopped from arguing otherwise. The Secretary further states that the remainder of Paragraph 27 contains legal

conclusions and that no further response is required. To the extent a further response is required, it is denied.

29. With respect to the allegations contained in Paragraph 28 of the Complaint, admits that once a provisional ballot envelope is opened all provisional ballots must be opened and that it is impossible to find any particular ballot since they are commingled. The Secretary denies the remaining allegations contained in Paragraph 28 of the Complaint.
30. With respect to the allegations contained in Paragraph 29 of the Complaint, reincorporates by reference the responses to Paragraphs 1-28 of the Complaint.
31. Admits the allegations contained in Paragraph 30 of the Complaint and further states that all of the Secretary's actions in this case have been consistent with the requirements of both State and federal law.
32. Admits the allegations contained in Paragraph 31 of the Complaint and further states that all of the Secretary's actions in this case have been consistent with the requirements of both State and federal law.
33. Denies the allegations contained in Paragraph 32 of the Complaint.
34. Denies the allegations contained in Paragraph 33 of the Complaint.
35. Denies the allegations contained in Paragraph 34 of the Complaint.
36. Denies the allegations contained in Paragraph 35 of the Complaint.
37. With respect to the allegations contained in Paragraph 36 of the Complaint, reincorporates by reference the allegations contained in Paragraphs 1-35 of the Complaint.

38. Denies the allegations contained in Paragraph 37 of the Complaint and further states that Article IV Section 2 of the Ohio Constitution as well as numerous previous decisions of this Court make it clear that this Court is patently and unambiguously without jurisdiction to grant any type of injunctive relief.
39. Denies the allegations contained in Paragraph 38 of the Complaint.
40. Denies the allegations contained in Paragraph 39 of the Complaint.
41. With respect to the Relators' prayer for relief, denies that they are entitled to any relief requested therein or to any relief whatsoever.
42. WHEREFORE, having answered the Relators' complaint, the Secretary raises the following defenses, including affirmative defenses:
  43. The Relators have no clear legal right to the relief sought.
  44. The Respondent does not owe the Relators a clear legal duty.
  45. The Relators have an adequate remedy at law as is proven by their request for a temporary restraining order in this Court.
  46. This Court lacks jurisdiction to hear this case or to issue the relief sought.
  47. The Secretary's actions in this case are consistent with the requirements of State and federal law.
  48. The Secretary's actions in this case are consistent with the requirements of various court orders.
  49. The Relators are judicially estopped from asserting their claims.
  50. The Relators have asked this Court to engage in a hyper-technical reading of Ohio's statutes which would result in the disenfranchisement of over 1,000 voters in Franklin County alone.

51. The Relators and their counsel have failed to comply with S. Ct. Prac. R. X Sec. 4(B).
52. WHEREFORE, having answered the Relators' complaint, the Respondent prays that this case be dismissed.

Respectfully submitted,

Nancy H. Rogers  
Attorney General <

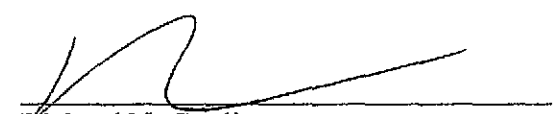


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Richard N. Coglianesse (0066830)  
Damian W. Sikora (0075224)  
Aaron Epstein (0063286)  
Pearl M. Chin (0078810)  
Michael J. Schuler (0082390)  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215  
614-466-2872  
614-728-7592 (Fax)

**Certificate of Service**

This is to certify a copy of the foregoing was served upon all counsel of record by email and by US Mail, postage prepaid, on this 1<sup>st</sup> day of December, 2008.



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Richard N. Coglianesse