

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TRACIE HUNTER, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Case No. 1:10-cv-820
	:	
vs.	:	JUDGE DLOTT
	:	
HAMILTON COUNTY BOARD OF	:	
ELECTIONS, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	

ANSWER OF INTERVENOR-DEFENDANT OHIO REPUBLICAN PARTY

Now comes Intervenor-Defendant Ohio Republican Party (“ORP”), by and through counsel, and hereby make the following averments in response to the Verified Complaint for Temporary Restraining order and Injunctive Relief (“Complaint”) of Plaintiff Tracie Hunter (“Hunter”):

1. ORP admits that Hunter seeks to count certain provisional ballots due to alleged poll worker error. ORP further admits that Hunter has fewer votes than her opponent in the race for Hamilton County Juvenile Court Judge. No response is required to the extent allegations in paragraph 1 of the Complaint contain legal conclusions. ORP denies the remaining allegations contained in paragraph 1 of the Complaint

2. ORP avers that no response is required to the extent allegations in paragraph 2 of the Complaint contain legal conclusions. ORP denies the remaining allegations contained in paragraph 2 of the Complaint.

3. ORP denies the allegations contained in paragraph 3 of the Complaint.

4. ORP admits the allegations contained in paragraph 4 of the Complaint.

5. ORP admits the allegations contained in paragraph 5 of the Complaint

6. ORP admits the allegations contained in paragraph 6 of the Complaint.

7. ORP admits that Tracie Hunter is a candidate for election to the office of Hamilton County Juvenile Court in the November 2010 general election. ORP avers that it is without sufficient information to admit or deny the remaining allegations contained in paragraph 7 of the Complaint.

8. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 8 of the Complaint.

9. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 9 of the Complaint.

10. ORP admits the allegations contained in paragraph 10 of the Complaint.

11. ORP admits that the Williams/Hunter race for Hamilton County Juvenile Court Judge is subject to an automatic recount. ORP denies the remaining allegations contained in paragraph 11 of the Complaint.

12. ORP avers that no response is required to the extent allegations in paragraph 12 of the Complaint contain legal conclusions. ORP denies the remaining allegations contained in paragraph 12 of the Complaint.

13. ORP avers that no response is required to the extent allegations in paragraph 13 of the Complaint contain legal conclusions. ORP denies the remaining allegations contained in paragraph 13 of the Complaint.

14. ORP avers that no response is required to the extent allegations in paragraph 14 of the Complaint contain legal conclusions. ORP denies the remaining allegations contained in paragraph 14 of the Complaint.

15. ORP denies the allegations contained in paragraph 15 of the Complaint.

16. ORP avers that the terms of the Secretary of State Directive 2010-74 speak for themselves. ORP denies the remaining allegations contained in paragraph 16 of the Complaint.

17. ORP avers that the terms of the Secretary of State Directive 2010-74 speak for themselves. ORP denies the remaining allegations contained in paragraph 17 of the Complaint.

18. ORP denies the allegations contained in paragraph 18 of the Complaint.

19. ORP avers that the terms of the Secretary of State Directive 2010-74 speak for themselves. ORP denies the remaining allegations contained in paragraph 19 of the Complaint.

20. ORP avers that the Ohio Supreme Court's decision in *State ex rel. Skaggs v. Brunner*, 120 Ohio St. 3d 506, 2008-Ohio-6333 (2008) speaks for itself. ORP denies the remaining allegations contained in paragraph 20 of the Complaint.

21. ORP denies the allegations contained in paragraph 21 of the Complaint.

22. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 22 of the Complaint.

23. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 23 of the Complaint.

24. ORP avers that no response is required to the extent allegations in paragraph 24 of the Complaint contain legal conclusions.

25. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 25 of the Complaint.

26. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 26 of the Complaint.

27. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 27 of the Complaint.

28. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 28 of the Complaint.

29. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 29 of the Complaint.

30. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 30 of the Complaint.

31. ORP denies the allegations contained in paragraph 31 of the Complaint.

32. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 32 of the Complaint.

33. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 33 of the Complaint.

34. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 34 of the Complaint.

35. ORP avers that it is without sufficient information to admit or deny the allegations contained in paragraph 35 of the Complaint.

36. ORP admits the allegations contained in paragraph 36 of the Complaint.

37. ORP denies the allegations contained in paragraph 37 of the Complaint.

38. ORP denies the allegations contained in paragraph 38 of the Complaint.

39. ORP denies the allegations contained in paragraph 39 of the Complaint.

40. ORP denies the allegations contained in paragraph 40 of the Complaint.

41. ORP denies the allegations contained in paragraph 41 of the Complaint.

42. ORP denies the allegations contained in paragraph 42 of the Complaint.

43. ORP denies the allegations contained in paragraph 43 of the Complaint.

CLAIM FOR RELIEF

First Claim – 42 U.S.C. § 1983 – United States Constitution

44. ORP denies the allegations contained in paragraph 44 of the Complaint.

45. ORP denies each and every allegation not expressly admitted herein.

AFFIRMATIVE DEFENSES

46. The Complaint fails to state a claim upon which relief can be granted.

47. Plaintiff's Complaint fails because the Court does not have subject matter jurisdiction over this claim.

48. The actions or omissions, if any, by the Defendant Board of Elections were undertaken in good faith, pursuant to duties imposed on them by Ohio and federal law, and without intention to discriminate on the basis of any protected class.

49. Hunter's claims are barred because Hunter has an adequate remedy at law, including but not limited to, an election contest as set forth in R.C. 3518.08.

50. Hunter's claims are barred as set forth in the Ohio Supreme Court's opinion in *State ex rel. Painter v. Brunner*, 127 Ohio St. 3d 463, 2010-Ohio-6461 (2010).

51. Hunter's claims are barred because the provisional ballots that were not counted are not similarly situated to those provisional ballots that were counted.

52. ORP avers that the terms of the Consent Decree entered into on April 19, 2010 in the case of *Northeast Ohio Coalition for the Homeless v. Brunner*, Case No. 06-CV-896 (S.D. Ohio) are not implicated in this case.

53. The Complaint fails because Hunter's claims are not yet ripe.

54. The Complaint presents a political question over which this Court lacks jurisdiction.

55. ORP reserves the right to amend this Answer to assert any affirmative defense that may arise during the further course of this action.

WHEREFORE, ORP prays that judgment be entered for Defendants, that Hunter's Complaint be dismissed with prejudice, that ORP be granted its attorneys' fees and costs incurred herein, and for such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Anne Marie Sferra

Anne Marie Sferra (0030855)

James P. Schuck (0072356)

Christopher N. Slagle (0077641)

BRICKER & ECKLER LLP

100 South Third Street

Columbus, Ohio 43215-4291

Telephone: (614) 227-2300

Facsimile: (614) 227-2390

asferra@bricker.com

jschuck@bricker.com

cslagle@bricker.com

*Attorneys for Intervenor-Defendant
Ohio Republican Party*

CERTIFICATE OF SERVICE

This will certify that the foregoing document was filed electronically on May 24, 2011.

Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Anne Marie Sferra

Anne Marie Sferra