

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**LIBERTARIAN PARTY OF OHIO, et al.**  
**Plaintiffs,**

**and**

**ROBERT HART, et al.,**  
**Intervenor-Plaintiffs,**

**Case No. 2:13-cv-00953**

**v.**

**JUDGE WATSON  
MAGISTRATE JUDGE KEMP**

**JON HUSTED,**  
**in his Official Capacity as Ohio**  
**Secretary of State,**  
**Defendant,**

**STATE OF OHIO,**  
**Intervenor-Defendant,**

**and**

**GREGORY FELSOCI,**  
**Intervenor-Defendant.**

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**PLAINTIFFS' MOTION UNDER LOCAL RULE 7.2 TO FILE SUR-REPLY TO  
DEFENDANT-SECRETARY'S REPLY (DOC. NO. 292) TO PLAINTIFFS' RESPONSE  
TO DEFENDANT-SECRETARY'S MOTION TO STRIKE**

Defendant-Secretary asserts in his Reply (Doc. No. 292) to Plaintiffs' Response to his Motion to Strike that no "actual legal authority" supports Plaintiffs' request that the Court take notice of "legislative facts." *See* Secretary of State Reply, Doc. No. 292 at PAGEID # 7713. He further makes the rather remarkable claim that *Toth v. Grand Trunk Railroad*, 306 F.3d 335, 349

(6<sup>th</sup> Cir. 2002), somehow prohibits this Court from noticing "legislative facts." Defendant-Secretary is wrong on both counts, and Plaintiffs' respectfully request leave to file the attached Sur-Reply explaining why Defendant-Secretary is incorrect.

Plaintiffs' Response did not include citations to the cases included in the attached Sur-Reply because a Court's authority to notice "legislative facts" is hornbook law; until Defendant-Secretary claimed that no "actual legal authority" supports it, Plaintiffs believed that it did not demand extensive discussion. Plaintiffs did not make "any reference to *Toth v. Grand Trunk Railroad*, 306 F.3d 335 (6<sup>th</sup> Cir. 2002)," Defendant-Secretary's Reply, Doc. No. 292 at PAGEID # 7713, moreover, because *Toth* says nothing to the contrary.

Respectfully submitted,

s/ Mark R. Brown  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this Motion and attached Sur-Reply were filed using the Court's electronic filing system and will thereby be electronically delivered to all parties through their counsel of record.

*s/ Mark R. Brown*

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Mark R. Brown