

IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> SKAGGS, <i>et al.</i>	:	
	:	Case No. 08-2206
Relators,	:	
	:	
v.	:	Original Action in Mandamus
	:	
JENNIFER L. BRUNNER	:	
SECRETARY OF STATE OF OHIO,	:	
<i>et al.</i> ,	:	
	:	
Respondents.	:	

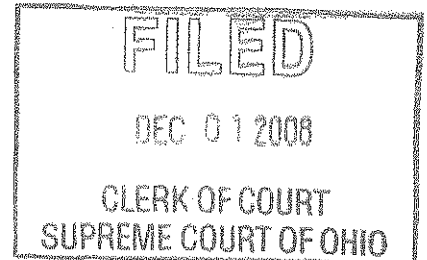
**MERIT BRIEF OF RESPONDENT FRANKLIN COUNTY
BOARD OF ELECTIONS**

Ron O'Brien (0017245)
PROSECUTING ATTORNEY
FRANKLIN COUNTY, OHIO
Patrick J. Piccininni (0055324)
Anthony E. Palmer, Jr. (0082108)
Assistant Prosecuting Attorneys
373 S. High Street, 13th Floor
Columbus, Ohio 43215
(614) 462-3520/Fax: (614) 462-6012
pjpiccin@franklincountyohio.gov
aepalmer@franklincountyohio.gov
*Counsel for Respondents,
Franklin County Board of Elections*

John W. Zeiger,
Marion H. Little, Jr.
Christopher J. Hogan
ZEIGER, TIGGES & LITTLE LLP
3500 Huntington Center
41 South High Street
Columbus, Ohio 43215
(614) 365-9900/Fax: (614) 365-7900
zeiger@litohio.com
little@litohio.com
Hogan@litohio.com
Counsel for Relators

Nancy H. Rogers
ATTORNEY GENERAL OF OHIO
Richard N. Coglianesse
Damian W. Sikora
Aaron Epstein
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, OH 43215-3400
(614) 466-2872/Fax: (614) 728-7592
rcoglianesse@ag.state.oh.us
dsikora@ag.state.oh.us
aepstein@ag.state.oh.us
*Counsel for Respondent, Jennifer Brunner,
Ohio Secretary of State*

Donald J. McTigue (0022849)
Mark A. McGinnis (0076725)
MCTIGUE LAW GROUP
550 East Walnut Street
Columbus, Ohio 43215
(614) 263-7000/Fax: (614) 263-7078
dmctigue@mctiguelaw.us
*Counsel for Intervenor Ohio Democratic
Party*



This matter is an original action in mandamus filed by the Relators against the Respondents, Franklin County Board of Elections (FCBOE) and the Ohio Secretary of State Jennifer Brunner. The Secretary attempted to remove this matter to the Federal Courts. On November 25, 2008, the United States Court of Appeals for the Sixth Circuit remanded this case back to the Court. See, *State ex rel Skaggs, et al v. Brunner, et al* (6th Cir., November 25, 2006), Case No. 2008-4585.

On November 14, 2008, the FCBOE met in special session to vote on issues related to provisional ballots. William Anthony, one of the Board members, made a motion to accept those provisional ballots that failed to contain the signature of the voter. (See Transcript of Nov. 14, 2008 Special Meeting of the FCBOE, pp. 16-17, Exhibit 1 of FCBOE Evidence.) Despite the contrary advice of the FCBOE's counsel (Ex. 1, pp. 17-19) and the vote of two of the four members that the signature was mandatory pursuant to R.C. §3505.183(B)(1)(a), the motion resulted in a tie vote along partisan lines. (Ex. 1, p. 21.) Secretary Brunner casts the tie-breaking vote pursuant to R.C. §3501.11(X).

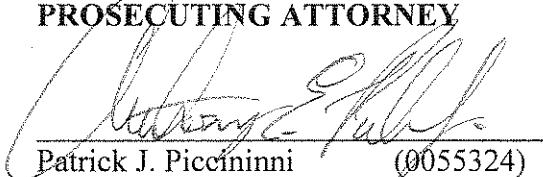
On Tuesday, November 18, 2008, the matter was referred to the Secretary to break the tie. (See Letter from Director Stinziano and Deputy Director Damschroder to Secretary Brunner, Exhibit 2 of FCBOE Evidence.) (See also, Letter from Douglas J. Preisse and Michael F. Colley, Exhibit 3, and Letter from William A. Anthony, Jr. and Kimberly E. Marinello, Exhibit 4 of FCBOE Evidence.) The written decision of the Secretary breaking the tie was rendered on November 20, 2008, after the United States District Court granted the Secretary's motion for summary judgment. (See Letter from Secretary Brunner to Director Stinziano, Exhibit 5 of FCBOE Evidence.) Thus, by virtue

of the Secretary's position in the tie-breaking vote, the FCBOE's position is that the disputed provisional ballots will be deemed valid, opened and counted.

As the Secretary has broken the tie, the FCBOE position has been set forth and it defers to her arguments in defense of this original action.

Respectfully submitted,

**RON O'BRIEN
FRANKLIN COUNTY
PROSECUTING ATTORNEY**



Patrick J. Piccininni (0055324)

Anthony E. Palmer, Jr. (0082108)

Assistant Prosecuting Attorneys

373 South High Street, 13th Floor

Columbus, Ohio 43215

614/462-3555 614/462-6012 FAX

pjpiccin@franklincountyohio.gov

aeplamer@franklincountyohio.gov

Attorneys for Respondent

Franklin County Board of Elections

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served this 1st day of December


2008 via ordinary U.S. Mail and email upon:

Nancy H. Rogers
ATTORNEY GENERAL OF OHIO
Richard N. Coglianesse
Damian W. Sikora
Aaron Epstein
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, OH 43215-3400
rcoglianesse@ag.state.oh.us
dsikora@ag.state.oh.us
aepstein@ag.state.oh.us

*Counsel for Respondent, Jennifer Brunner,
Ohio Secretary of State*

John W. Zeiger,
Marion H. Little, Jr.
Christopher J. Hogan
ZEIGER, TIGGES & LITTLE LLP
3500 Huntington Center
41 South High Street
Columbus, Ohio 43215
zeiger@litohio.com
little@litohio.com
hogan@litohio.com
Counsel for Relators

Donald J. McTigue
Mark A. McGinnis
MCTIGUE LAW GROUP
550 East Walnut Street
Columbus, Ohio 43215
dmctigue@mctiguelaw.us
*Counsel for Intervenor Ohio Democratic
Party*



Anthony E. Palmer, Jr.
Assistant Prosecuting Attorney