

IN THE SUPREME COURT OF OHIO

LEAGUE OF WOMEN VOTERS OF OHIO, ET
AL.,

MERYL NEIMAN, ET AL.,

v.

SECRETARY OF STATE FRANK LAROSE, ET
AL.

Case No. 2022-0303

Case No. 2022-0298

Consolidated

Original Action Filed Pursuant to
Ohio Constitution, Article XIX, Section
3(A)

LEAGUE OF WOMEN VOTERS OF OHIO PETITIONERS'
MOTION FOR LEAVE TO FILE REBUTTAL EVIDENCE IN SUPPORT OF
PETITIONERS' REPLY BRIEF

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BACKGROUND

Discovery ended in this action when the parties submitted evidence on April 25, 2022. At no point had any party moved to compel additional evidence. Yet on May 25, 2022, Respondents argued in their Response Brief—for the first time—that they are entitled to further discovery regarding Petitioners’ experts before the Court can issue a ruling. Huffman, McColley, LaRe & Cupp Resp. Br. at 15 (“Resp. Br.”) (asserting that Petitioners “rely almost exclusively” on their experts’ testimony and that “[n]one of these experts have been subject to discovery”).

In response to this argument, Petitioners League of Women Voters of Ohio, *et al.*, filed the Thomson Affidavit in support of their Reply Brief on June 1, 2022 (the “Thomson Aff.”). Thomson Aff. & Exs. 1–7.¹ This Affidavit included exhibits of Respondents and Petitioners’ communications regarding the parties’ discovery requests and responses. And those exhibits demonstrate that Petitioners’ experts *were* subjected to discovery, thus illustrating the falsity of Respondents’ claim. Petitioners respectfully request that such rebuttal evidence be admitted in support of their Reply Brief.

ARGUMENT

I. Petitioners File this Motion Out of An Abundance of Caution as Regards the Rebuttal Evidence Submitted in Support of Their Reply Brief.

As an initial matter, Petitioners note that any obligation to file a motion for leave regarding rebuttal evidence submitted in support of a reply brief is not clear cut. Neither the language of this Court’s scheduling order nor the practice in this case appears to mandate such a motion.

¹ The Thomson Affidavit, and all accompanying exhibits, have been attached to this motion as Exhibit A.

First, this Court required the parties to “file any evidence they intend to present” by April 25, 2022. *See League of Women Voters of Ohio v. Ohio Redistricting Comm., 03/29/2022 Case Announcements #3, 2022-Ohio-1016.* But on April 25, Petitioners never intended to present evidence related to the parties’ discovery communications. Nor could they predict that they might need to submit such rebuttal evidence to an argument that Respondents did not raise until May 25.

Second, it is important to note that Respondents submitted additional evidence in support of their Response Brief on May 25, 2022, which was not included in their April 25, 2022 evidence submission. *See Resp. Br. at Ex. 1–2.* Notably, Respondents did not seek leave to file such evidence. Fairness does not support imposing such a requirement on Petitioners.²

II. Petitioners’ Motion is Well Founded.

Even if such a motion were required,³ this Court permits the filing of rebuttal evidence where a motion for leave is filed. *See State ex rel. Ware v. Crawford*, Slip Opinion No. 2022-Ohio-295, ¶ 10 (“It is appropriate to seek leave of court to submit rebuttal evidence after the deadline for submitting evidence in an original action.”). Here, there is good cause for permitting the filing of Petitioners’ rebuttal evidence on unanticipated issues raised for the first time in a response brief.

Nor does Petitioners’ motion break new ground. It bears emphasis that the *Neiman* Petitioners, in this consolidated action, have already filed a motion for leave to file nearly

² If the Court determines that a motion for leave in fact is required, Petitioners reserve the right to strike Respondents’ late-submitted evidence.

³ This appears to be the rule in mandamus actions. *See State ex rel. Gil-Llamas v. Hardin*, 164 Ohio St.3d 364, 2021-Ohio-1508, 172 N.E.3d 998, ¶ 14; *State ex rel. Pike Cty. Convention & Visitors Bureau v. Pike Cty. Bd. of Comm’rs.*, 165 Ohio St.3d 590, 2021-Ohio-4031, 180 N.E.3d 1135, ¶ 7, fn.3.

identical evidence. *See* Neiman Pet'rs' Mot. for Leave to File Rebuttal Evidence ("Neiman Mot."). In particular, the Neiman Petitioners requested leave to file the "discovery documents and emails between counsel to rebut the false claim made by the Republican Legislative Respondents in their merit brief that none of the Petitioners' experts 'have been subject to discovery.'" *See id.* at 1 (citing Resp. Br. at 15). This is the precise subject matter of the Thomson Affidavit and the exhibits attached thereto. *See* Thomson Aff. ¶¶ 2–9 & Exs. 1–7 (demonstrating that Petitioners completed their document production nearly seven weeks before the filing of Respondents' brief).

The exhibits to the Thomson Affidavit also mirror the exhibits to the Clinger Affidavit included in the Neiman Motion. *See* Neiman Mot., Aff. Derek S. Clinger ("Clinger Aff."). The Thomson Affidavit, like the Clinger Affidavit, includes as an exhibit Respondents Huffman and Cupp's first set of document requests to Petitioners. *See* Thomson Aff., Ex. 1; Clinger Aff., Exs. A–B. The remaining exhibits to the Thomson and Clinger Affidavits cover the League of Women Voters of Ohio Petitioners' and Neiman Petitioners' respective responses to Respondents' discovery requests. These include email correspondence regarding the responses, *see* Thomson Aff., Exs. 2, 4–7; Clinger Aff., Ex. C, as well as the responses themselves, *see* Thomson Aff., Ex. 3; Clinger Aff., Exs. D–E.

For the foregoing reasons, Petitioners respectfully request that their motion for leave be granted.

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Exhibit A



Thomson Affidavit.pdf

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E-Signature 1: Alexander Thomson (AT)

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E-Signature Notary: Theresa M Sabo (TMS)

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I, Theresa M Sabo, did witness the participants named above electronically sign this document.



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**LEAGUE OF WOMEN VOTERS OF OHIO, ET
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MERYL NEIMAN, ET AL.,

v.

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Case No. 2022-0303

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Ohio Constitution, Article XIX, Section
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**AFFIDAVIT OF ALEXANDER THOMSON IN SUPPORT OF
LEAGUE OF WOMEN VOTERS OF OHIO PETITIONERS'
REPLY IN SUPPORT OF MERITS BRIEF**



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Affidavit of Alexander Thomson

I, Alexander Thomson, having been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced in this affidavit, and further state as follows:

1. I am one of the counsel for Petitioners in the above-captioned case, *League of Women Voters of Ohio v. Ohio Redistricting Commission*, No. 2022-0303.
2. On March 30, 2022, Respondents served discovery requests on Petitioners. *See* Ex. 1, Resp'ts Huffman and Cupp's First Set of Doc. Requests to Pet'rs.
3. These aforementioned discovery requests sought an extensive amount of data used by Petitioners' expert witnesses in their analyses of both the First and Second Enacted Plans, *see id.*, including proprietary source code and data, which would require the safeguards of a Protective Order, *see* Ex. 2, Email from D. Denuyl to J. Pfeiffer, *et al.*, Apr. 5, 2022, at 7:02 p.m. ET.
4. Notwithstanding Petitioners' objections, to which Respondents voiced no concerns, Petitioners agreed to produce responsive, non-public documents in accordance with Respondents' aforementioned discovery requests. *See* Ex. 3, LWVO Pet'rs' Objs. and Resps. to Resp'ts Huffman and Cupp's First Set of Doc. Requests.
5. On the evening of Friday, April 1, 2022—two days after Respondents' discovery requests were served—Petitioners explained they were willing to produce documents that night and would continue working over the weekend with the goal of completing production by the end of Monday, April 4, 2022, subject to reaching an agreement on a Protective

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Order. *See* Ex. 4, Email from D. Denuyl to J. Pfeiffer, *et al.*, Apr. 1, 2022, at 8:00 p.m. ET.

6. While discussions between counsel for Petitioners and Respondents regarding the Protective Order remained ongoing, Petitioners produced all responsive, non-confidential documents on Monday, April 4, 2022. *See* Ex. 5, Email from Y. Fu to J. Pfeiffer, *et al.*, Apr. 4, 2022, at 5:54 p.m. ET.
7. Following initial disagreement between the parties on the language of the Protective Order, an agreement was reached on April 8, 2022 to ensure the confidentiality of the remaining materials to be produced. *See* Ex. 6, Email from A. Merino to D. Denuyl, Apr. 8, 2022, at 12:52 p.m. ET.
8. Within minutes of the aforementioned agreement, Petitioners completed their production of confidential materials that had previously been withheld due to the lack of a Protective Order. *See* Ex. 7, Email from Y. Fu to J. Pfeiffer, *et al.*, Apr. 8, 2022, at 1:05 p.m. ET.
9. Forty-seven days passed between Petitioners' completion of production on April 8, 2022 and the filing of Respondents' brief on May 25, 2022. During that nearly seven-week period prescribed by the Court, *see League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 03/29/2022 Case Announcements #4, 2022-Ohio-1017, Respondents did not seek further discovery.
10. Alongside this affidavit, Petitioners submit several Exhibits. A description of each of the Exhibits is also copied below.
11. **Exhibit 1** includes a true and correct copy of Respondents Huffman and Cupp's First Set of Document Requests to Petitioners, served on March 30, 2022.



12. **Exhibit 2** includes a true and correct copy of an email from D. Denuyl to J. Pfeiffer, *et al.*, sent on April 5, 2022, at 7:02 p.m. ET.
13. **Exhibit 3** includes a true and correct copy of Petitioners' Objections and Responses to Respondents Huffman and Cupp's First Set of Document Requests, served on April 1, 2022.
14. **Exhibit 4** includes a true and correct copy of an email from D. Denuyl to J. Pfeiffer, *et al.*, sent on April 1, 2022, at 8:00 p.m. ET.
15. **Exhibit 5** includes a true and correct copy of an email from Y. Fu to J. Pfeiffer, *et al.*, sent on April 4, 2022, at 5:54 p.m. ET.
16. **Exhibit 6** includes a true and correct copy of an email from A. Merino to D. Denuyl, *et al.*, sent on April 8, 2022, at 12:52 p.m. ET.
17. **Exhibit 7** includes a true and correct copy of an email from Y. Fu to J. Pfeiffer, *et al.*, sent on April 8, 2022, at 1:05 p.m. ET.

Alexander Thomson
Signed on 2022/06/01 12:30:27 -8:00

Alexander Thomson

Columbus, Franklin, Ohio

Signed at _____, _____, _____.
 City County State

06/01/2022

Sworn to and subscribed before me this _____ day of June, 2022

Theresa M Sabo
Signed on 2022/06/01 12:30:27 -8:00



Notarial act performed by audio-visual communication



CERTIFICATE OF SERVICE

I, Alexander Thomson, hereby certify that on this 1st day of June 2022, I caused a true and correct copy of the foregoing to be served by email upon the counsel below:

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EXHIBIT 1

IN THE SUPREME COURT OF OHIO

Meryl Neiman, *et al.*,

**League of Women Voters of Ohio, *et al.*,
Petitioners,**

v.

Secretary of State Frank LaRose, *et al.*,

Respondents.

Case No. 2022-298

Case No. 2022-303

Consolidated

Original Action Filed Pursuant to Ohio
Constitution, Article XIX, Section 3(A)

**RESPONDENTS HUFFMAN AND CUPP’S FIRST SET OF DOCUMENT REQUESTS
TO PETITIONERS**

Pursuant to Rule 34 of the Ohio Rules of Civil Procedure, and the Court’s expedited scheduling order of March 29, 2022 Respondents Huffman and Cupp hereby propound to Petitioners the following requests for production of documents, to be responded to by 12:00 PM EST Friday, April 1, 2022. Documents and responsive to the following requests shall be produced via electronic means.

DEFINITIONS AND INSTRUCTIONS

- A. Notwithstanding any definition set forth below, each word, term, or phrase used in these requests is intended to have the broadest meaning permitted under the Ohio Rules of Civil Procedure.
- B. Words or terms not specifically defined herein have the meaning commonly understood, and no definition is intended as exclusive.
- C. The following terms shall have the meanings indicated below:
 - (1) The terms “Petitioners,” “you,” and “your” shall mean: the Petitioners individually, and collectively in this action, and other persons or entities acting or purporting to act on Petitioners’ behalf.
 - (2) The term “Commission” shall mean the Ohio Redistricting Commission.

- (3) The term “Second Plan” shall mean the Congressional district plan approved by the Ohio Redistricting Commission on March 2, 2022.
- (4) The term “First Plan” shall mean the Congressional district plan passed by the General Assembly entitled S.B. 258, and signed into law by Governor DeWine on November 20, 2021.
- (5) The term “Maptitude or other mapping software” means any and all digital programs that may be used to assist in drawing Congressional districts, including but not limited to Maptitude, a software program created by Caliper Corporation.
- (6) The term “Expert Witness” means any individual retained by Petitioners and/or their counsel for the purpose of providing expert evidence or an expert report in this matter.
- (7) The term “Supporting Data” means any data used to analyze or create simulated plans or used in the assistance of drafting an expert report.
- (8) The term “person” shall mean and include natural persons, governmental entities, proprietorships, corporations, partnerships, joint ventures, and each other form of organization, entity, or association.
- (9) The term “document” is used in the broadest possible sense and shall mean, without limitation, any kind of written, printed, recorded or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts and both sides of originals, copies and drafts, and including but not limited to papers, books, letters, correspondence, telegrams, cables, telex messages, text message, electronic messages or electronic mail (whether or not stored or recorded on-line or off-line in archive storage), financial statements, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone conversations or other conversations, or of interviews, or of conferences or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical records, desk calendars, appointment books, diaries, expense account records, lists, tabulations, summaries, sound recordings, videotapes, word processing disks and/or memory or archive systems, computer disks and/or memory or archive systems, computer printouts, data processing input and output, magnetic tapes, magnetic disks, microfilms, all other records kept by electronic, magnetic, photographic, optical or mechanical means, and things similar to any of the foregoing, however denominated.
- (10) The terms “relating to” and “concerning” shall mean referring to, related to, regarding, consisting of, pertaining to, reflecting, evidencing, describing, constituting, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic, without limitation, unless otherwise specified in the Request.

D. The following rules of construction apply to all requests for production:

- a. The terms “all” and “any” shall each be construed as encompassing any and all;
 - b. All uses of the word “each” include “every” (and vice versa);
 - c. The connective terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the requests all responses that might otherwise be construed to be outside of its scope;
 - d. The term “including” shall be construed without limitation;
 - e. The use of a verb in any tense encompasses the use of the verb in all tenses;
 - f. References to agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf include both current and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf; and
 - g. References to any entity include all of that entity’s agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on that entities’ behalf.
 - h. The singular number and masculine gender shall include, and be applied as, the plural or the feminine gender or neuter, and vice-versa, as the circumstances of the particular request may make appropriate.
- E. Each request for documents shall be construed according to its most inclusive meaning so that if information or a document is responsive to any reasonable interpretation of the request, the information or document is responsive.
- F. If you deem any request for documents to call for the production of privileged or otherwise nondisclosable materials and you assert such claim, furnish a list at the time of production identifying each document so withheld together with the following information:
- (1) the reason for withholding each such document or material, stated with sufficient particularity so as to permit the Court to adjudicate the validity of the claimed privilege;
 - (2) a statement of the facts constituting the basis for any claim of privilege or other ground of non-disclosure; and
 - (3) a brief description of each such document or other material, including:
 - (a) the date of the document;

- (b) the name of its author(s) or preparer(s) and an identification by employment and title of each such person(s);
 - (c) the name of each person to whom the document or other material was sent or who has had access to, or custody of, the document or other material, together with an identification of each such person(s);
 - (d) the paragraph of this request to which the document or other material is responsive; and
 - (e) in the case of any document or other material that relates in any way to a meeting or conversation, identification of such meeting or conversation and the persons attending or participating in such meeting or conversation.
- G. With respect to each document request, Respondents request that Petitioners identify and produce all documents that are known to Petitioners or that Petitioners can locate or discover that are in Petitioners' possession, custody or control, from whatever source derived, which, directly or indirectly, relate, refer or pertain to the subject matter of the request made, including, without limitation, all such documents in the files (whether they be denominated personal, business or any other files) in the possession, custody or control of Petitioners' or, as applicable, of Petitioners' employees, agents, representatives or other persons acting on Petitioners' behalf or under Petitioners' control.
- H. Respondents request that, if Petitioners are unable to respond to any of the requests fully and completely, after exercising due diligence to obtain the information necessary to provide a full and complete response, so state, and answer each such request to the fullest extent possible, specifying the extent of Petitioners' knowledge and Petitioners' inability to answer the remainder, and setting forth whatever information or knowledge Petitioners may have concerning the unanswered portions thereof and efforts Petitioners made to obtain the requested information. If Petitioners have no information responsive to a request, then Petitioners shall so state.
- I. Respondents request that Petitioners produce all responsive documents and other materials in an orderly manner (and with appropriate markings or other identification) so that Respondents will be able to identify the source of the document or other material, the file in which the document or other material was maintained, the person to whom such file belongs, and the specific request to which the document or other material is responsive.
- J. These requests shall be deemed to be continuing so as to require further and supplemental production if Petitioners receive or discover additional documents or other material between the time of original production and the time of any hearing, trial, or other presentation of evidence in this matter.
- K. All documents and data are to be produced in electronic form.

L. Produce any password-protected documents with any applicable passwords.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: All Supporting Data or Backup Data drafted and/or utilized by Petitioners' Expert Witnesses, including but not limited to Drs. Imai, Rodden, Warshaw, and Chen, in their analysis of the Second Plan and any Expert Report. This includes but is not limited to any code for the base algorithm(s), the algorithm(s) used to create any simulated plans, backup data, and for each simulated map: the equivalent code, shapefile, or BAF file with data to the block or precinct level, to create copies of each simulated map.

RESPONSE:

REQUEST NO. 2: All Supporting Data or Backup Data drafted and/or utilized by Petitioners' Expert Witnesses, including but not limited to Drs. Imai, Rodden, Warshaw, and Chen, in their analysis of the First Plan and any Expert Report. This includes but is not limited to any code for the base algorithm(s), the algorithm(s) used to create any simulated plans, backup data, and for each simulated map: the equivalent code, shapefile, or BAF file with data to the block or precinct level, to create copies of each simulated map.

RESPONSE:

This the 30th day of March, 2022.

By:

/s/ Phillip J. Strach

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Counsel for Respondents Huffman and Cupp

**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of March, 2022, I have served the foregoing document by email:

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Counsel for LWVO Petitioners

/s/ Phillip J. Strach
(PHV 2022-25444)

EXHIBIT 2

Thomson, Alex

From: Denuyl, David S
Sent: Tuesday, April 5, 2022 7:02 PM
To: Julie Pfeiffer; Jonathan Blanton; Erik J. Clark; 'Harleen Gambhir'; 'Phil Strach'; 'Alyssa Riggins'; 'Don McTigue'; 'Abha Khanna'; 'Ben Stafford'; 'Jyoti Jasarasaria'; 'Spencer Klein'; 'Raisa Cramer'; 'dclinger@electionlawgroup.com'; Ashley Merino; 'benc@cooperelliott.com'; 'chipc@cooperelliott.com'; Michael Walton; 'Dornette, W. Stuart'; 'bryan@taftlaw.com'; 'pwilliamson@taftlaw.com'; Allison Daniel; Smith, James (Jay); Fram, Robert; Fu, Yale; Sharma, Anupam; Listengourt, Denis; Brown, Donald; Suwanda, Sarah; Thomson, Alex; Gethers, Stuart; Plumer, Kimberly; Lamb, Janelle; 'jebenstein@aclu.org'; 'Freda Levenson'; 'athomas@aclu.org'; 'David Carey'; Bridget Coontz
Cc: 'Tom Farr'; 'Cassie Holt'; 'John Branch'
Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Julie,

Thank you for your willingness to consider reaching an agreement on our specific confidential documents. LWVO Petitioners fundamentally disagree that *Levin* or the Yellow Book support the assertion that the "trial prep exception is during litigation only." Rather, trial preparation records become public records only if and when they are *publicly* filed in court. See Yellow Book at 45 ("Once an attorney has filed documents in a court case, any trial preparation exemption is waived, and the public office must produce those documents in response to subsequent records requests."); *State ex rel. Cincinnati Enquirer v. Dinkelacker*, 144 Ohio App. 3d 725, 729, 761 N.E.2d 656, 659 (2001) ("We hold that the documents in question did indeed change character—from discovery materials to court documents—when they were introduced in court as exhibits for a motion hearing."); *Cleveland Clinic Found. v. Levin*, 2008-Ohio-6197, ¶ 15 ("[W]e hold that the BTA has a legal obligation to determine the confidential status of particular documents and to provide appropriate relief, such as sealing the documents, if it finds that the documents qualify as confidential trade secrets.").

Nevertheless, LWVO Petitioners do not wish to engage in a dispute that delays discovery if it can be avoided, and believe that reaching an agreement regarding the treatment of specific confidential documents, as the AG's office suggests, is the most efficient path forward. Our confidential documents consist of proprietary source code and data used by Dr. Warshaw and Imai in their analyses. Please confirm that AG's Office will maintain the confidentiality of these materials, either by returning them to LWVO Petitioners at the end of discovery or the litigation (consistent with the AG's stated interpretation of *Levin* and the Yellow Book), or by confirming that the AG's office will not treat these materials as being subject to Ohio public records law as long as they remain in the possession of the AG's office or its clients.

Regards,
David

David Denuyl

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From: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>

Sent: Tuesday, April 05, 2022 8:32 AM

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Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>; 'Cassie Holt' <cassie.holt@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

EXTERNAL

David,

As I understand it, LWVO's concern with confidentiality may involve one of your expert's codes that he used in developing his conclusions in his report. If this is the case, we can come to some understanding as to protection of that information. I understand that time is of the essence here and I don't think any party wishes to engage in a discovery dispute over that. Please advise.

Best,



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

Office of Ohio Attorney General Dave Yost

Office Number: 614-466-2872

Fax Number: 866-422-9192

Julie.Pfeiffer@OhioAGO.gov

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Sent: Monday, April 04, 2022 4:31 PM

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Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>; 'Cassie Holt' <cassie.holt@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

We are familiar with what the Yellowbook says...we wrote it. The trial prep exception is during litigation only. And *Levin* interprets that to be at most until the case is closed and arguably only until discovery closes. That is a temporary exception to the public records law, which would still be available under our proposed Paragraph 20.

We cannot agree to ignore the Ohio Public Records Act in favor of a general agreement that allows the parties to unilaterally deem information confidential and thus permanently non-disclosable. Our position is not coming from an ignorance of the law.

As we have stated before, if there is a specific document that is at issue we can perhaps come to some agreement as to a protective order on a case by case basis. Or that information, whatever it is, might fall under some permanent exception to the Ohio Public Records Act. We just don't know.

We're not going to get much farther with the proposed general confidentiality agreement. That agreement without the proposed Paragraph 20 is a non-starter.



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices
Office of Ohio Attorney General Dave Yost
Office Number: 614-466-2872
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From: Denuyl, David S <DDenuyl@cov.com>
Sent: Monday, April 04, 2022 3:38 PM
To: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Erik J. Clark <ejclark@organlegal.com>; 'Harleen Gambhir' <hgambhir@elias.law>; 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasarasaria' <jjasarasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton <Michael.Walton@OhioAGO.gov>; 'Dornette, W. Stuart' <dornette@taftlaw.com>; 'bryan@taftlaw.com' <bryan@taftlaw.com>; 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>; Allison Daniel <Allison.Daniel@OhioAGO.gov>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; 'jebenstein@aclu.org' <jebenstein@aclu.org>; 'Freda Levenson' <flevenson@acluohio.org>; 'athomas@aclu.org' <athomas@aclu.org>; 'David Carey' <dcarey@acluohio.org>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>; 'Cassie Holt' <cassie.holt@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>
Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Jonathan and Julie,

The AG's apparent position in this case that materials produced to it in discovery are subject to disclosure under Ohio's open records act, despite a protective order to the contrary, appears to go against Ohio law as well as the AG's own stated policy. In particular:

- The 2022 version of the Yellow Book (available on the AG's webpage here: <https://www.ohioattorneygeneral.gov/YellowBook>) states that "[d]ocuments that a public office obtains through discovery during litigation are considered trial preparation records" and are "excluded from the definition of a public record under R.C. 149.43(A)(1)." Yellow Book at 32, 38, 45.
- The Yellow Book cites *Cleveland Clinic Found. v. Levin*, 120 Ohio St.3d 1210, 2008-Ohio-6197, ¶ 10 as its authority for this proposition. In *Levin*, the Supreme Court of Ohio goes on to say that "because those documents are exempt from public-records disclosure during discovery, the public-office litigant is no less bound by the terms of the stipulated confidentiality order than a private litigant would be." *Levin*, 2008-Ohio-6197, ¶ 11.

In light of the Yellow Book, and the Supreme Court of Ohio's *Levin* decision, we remain unclear how agreeing to the proposed PO agreed to by the other parties in this litigation would cause the AG's office or its clients "to violate Ohio's open records act." If you have authority to the contrary, please share it with us so that we may consider it.

Regards,
David

David Denuyl

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

EXTERNAL

All,

Attached is a revised proposed order striking through Paragraph 21 since it is objectionable to the LWVO Petitioners. We cannot agree to circumvent the Ohio Public Records Act. As we have stated before, if there is a specific document that is at issue we can perhaps come to some agreement as to a protective order on a case by case basis. Thank you.



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

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To: Denuyl, David S <DDenuyl@cov.com>; Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Erik J. Clark <ejclark@organlegal.com>; 'Harleen Gambhir' <hgambhir@elias.law>; 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasrasaria' <jjasrasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton <Michael.Walton@OhioAGO.gov>; 'Dornette, W. Stuart' <dornette@taftlaw.com>; 'bryan@taftlaw.com' <bryan@taftlaw.com>; 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Allison Daniel <Allison.Daniel@OhioAGO.gov>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; 'jebenstein@aclu.org' <jebenstein@aclu.org>; 'Freda Levenson' <flevenson@acluohio.org>; 'athomas@aclu.org' <athomas@aclu.org>; 'David Carey' <dcarey@acluohio.org>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>

Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>; 'Cassie Holt' <cassie.holt@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

The Attorney General is not prepared to agree to conditions that would require the office, or our clients, to violate Ohio's open records act. We are willing to consider reasonable alternatives such as those we have already proposed. If those accommodations are unacceptable, it's time to engage the court. LMVO cannot use its desire to avoid the possibility of public disclosure as an avenue to avoid the production of otherwise discoverable information.

JB

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From: Denuyl, David S <DDenuyl@cov.com>

Date: Sunday, Apr 03, 2022, 7:33 PM

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Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>, 'Cassie Holt' <cassie.holt@nelsonmullins.com>, 'John Branch' <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All,

The AGO edits to the PO are not acceptable to LWVO Petitioners as they appear to effectively treat all confidential documents produced to the AG's Office as non-confidential and shift the burden to the producing party to litigate the confidentiality of documents on an ad hoc basis each and every time a public records request is made to the AG's Office that implicates confidential material.

We are currently considering how to proceed. In the interim, we are preparing a production of non-confidential documents. Until the terms of the PO are resolved we cannot produce confidential documents given the uncertainty of the material terms of the proposed PO in light of the new paragraphs proposed by the AG's office. Once the terms are resolved, we will expeditiously produce the confidential documents.

Regards,
David

David Denuyl

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

EXTERNAL

All,

Attached are the Ohio Attorney General's additions – see Paragraphs 20 and 21.



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices
Office of Ohio Attorney General Dave Yost
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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Julie,

It appears the AGO's edits and reference to Paragraph 17 were made to the version containing only the Neiman Petitioners' edits. I sent a version with additional edits at 1:43 pm ET today, which was subsequently responded to by Respondents Huffman and Cupp, the Neiman Petitioners, and the Commission.

Regards,
David

David Denuyl

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

[EXTERNAL]

Additionally, we can't agree to Paragraph 17 as to the public agency/public officials. We will agree to follow the normal records retention policies that are applicable to the information. Thank you.



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

Office of Ohio Attorney General Dave Yost

Office Number: 614-466-2872

Fax Number: 866-422-9192

Julie.Pfeiffer@OhioAGO.gov

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All, Attached please find edits by the parties represented by the Ohio Attorney General. The edit regards the Ohio Public Records Law. The public agency/public official respondents would be required to disclose documents if the Ohio

Public Records Law required it. This agreement would not override that obligation. Please let me know if you have any questions. Thanks!



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All,
The Commission is amenable to the proposed order as revised below.
Best,
Erik

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All,

The LWVO Petitioners' revisions are acceptable to the Neiman Petitioners, as well. We would just note that there appears to be a typo on page 6 ("maerial" instead of "material").

Best,
Harleen

Harleen Gambhir
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Cc: Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

David, those revisions are acceptable to us. Phil



PHILLIP J. STRACH PARTNER

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From: Denuyl, David S <DDenuyl@cov.com>

Sent: Friday, April 1, 2022 1:43 PM

To: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Phil Strach <phil.strach@nelsonmullins.com>; Harleen Gambhir <hgambhir@elias.law>; Don McTigue <dmctigue@electionlawgroup.com>; Abha Khanna <akhanna@elias.law>; Ben Stafford <bstafford@elias.law>; Jyoti Jasrasaria <jjasrasaria@elias.law>; Spencer Klein <sklein@elias.law>; Raisa Cramer <rcramer@elias.law>; dclinger@electionlawgroup.com; Erik J. Clark <ejclark@organlegal.com>; amerino@organlegal.com; benc@cooperelliott.com; chipc@cooperelliott.com; Julie Pfeiffer <Julie.Pfeiffer@ohioago.gov>; Michael Walton <michael.walton@ohioago.gov>; Dornette, W. Stuart <dornette@taftlaw.com>; bryan@taftlaw.com; pwilliamson@taftlaw.com; Jonathan.Blanton@OhioAGO.gov; Allison.Daniel@ohioAGO.gov; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; jebenstein@aclu.org; Freda Levenson <flevenson@acluohio.org>; athomas@aclu.org; David Carey <dcarey@acluohio.org>; Thomson, Alex <AJThomson@cov.com>

Cc: Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Alyssa,

Attached to this email are the LWVO Petitioners' proposed edits to the PO, which are made on top of the Neiman Petitioners' edits. Please let us know if these are acceptable the other parties in this action. We can be available to meet and confer, if necessary.

Regards,
David

David Denuyl

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From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>

Sent: Friday, April 01, 2022 9:08 AM

To: Phil Strach <phil.strach@nelsonmullins.com>; Harleen Gambhir <hgambhir@elias.law>; Don McTigue <dmctigue@electionlawgroup.com>; Abha Khanna <akhanna@elias.law>; Ben Stafford <bstafford@elias.law>; Jyoti Jasarasaria <jjasarasaria@elias.law>; Spencer Klein <sklein@elias.law>; Raisa Cramer <rcramer@elias.law>; dclinger@electionlawgroup.com; Erik J. Clark <ejclark@organlegal.com>; amerino@organlegal.com; benc@cooperelliott.com; chipc@cooperelliott.com; Julie Pfeiffer <Julie.Pfeiffer@ohioago.gov>; Michael Walton <michael.walton@ohioago.gov>; Dornette, W. Stuart <dornette@taftlaw.com>; bryan@taftlaw.com; pwilliamson@taftlaw.com; Jonathan.Blanton@OhioAGO.gov; Allison.Daniel@ohioAGO.gov; Denuyl, David S <DDenuyl@cov.com>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; jebenstein@aclu.org; Freda Levenson <flevenson@acluohio.org>; athomas@aclu.org; David Carey <dcarey@acluohio.org>; Thomson, Alex <AJThomson@cov.com>

Cc: Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

[EXTERNAL]

Good Afternoon,

Could counsel for the remaining parties kindly let us know your position on the protective order with Bennett Petitioners changes, so that we may file this promptly with the court?

Particularly, if the League Petitioners could let us know your position we would appreciate it. We have not received documents from the League. If you do not plan on producing documents, and/or object to the protective order, please let us know a time today that we can meet and confer on the issue so that we may seek resolution.

Best,
Alyssa



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From: Phil Strach <phil.strach@nelsonmullins.com>

Sent: Friday, April 1, 2022 11:17 AM

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Cc: Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Harleen,

Those changes are acceptable to us. We look forward to the production and agree that it is subject to the provisions of the protective order even though it has not yet been entered by the court.

Thanks.

Phil



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From: Harleen Gambhir <hgambhir@elias.law>

Sent: Friday, April 1, 2022 11:02 AM

To: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Don McTigue <dmctigue@electionlawgroup.com>; Abha Khanna <akhanna@elias.law>; Ben Stafford <bstafford@elias.law>; Jyoti Jasrasaria <jjasrasaria@elias.law>; Spencer Klein <sklein@elias.law>; Raisa Cramer <rcramer@elias.law>; dclinger@electionlawgroup.com; Erik J. Clark <ejclark@organlegal.com>; amerino@organlegal.com; benc@cooperelliott.com; chipc@cooperelliott.com; Julie Pfeiffer <Julie.Pfeiffer@ohioago.gov>; Michael Walton <michael.walton@ohioago.gov>; Dornette, W. Stuart <dornette@taftlaw.com>; bryan@taftlaw.com; pwilliamson@taftlaw.com; Jonathan.Blanton@OhioAGO.gov; Allison.Daniel@ohioAGO.gov; ddenuy1@cov.com; jsmith@cov.com; rfram@cov.com; yfu@cov.com; asharma@cov.com; dlistengourt@cov.com; dwbrown@cov.com; ssuwanda@cov.com; ajthomson@cov.com; sgethers@cov.com; kplumer@cov.com; jlamb@cov.com; jebenstein@aclu.org; Freda Levenson <flevenson@acluohio.org>; athomas@aclu.org; David Carey <dcarey@acluohio.org>; Thomson, Alex <AJThomson@cov.com>

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Dear Counsel,

The Neiman Petitioners agree to the proposed protective order, subject to the minor edits in the attached document. Please let us know whether you agree to the changes. If so, we will provide responsive documents today, subject to the mutual understanding that the terms of the edited protective order will apply to those documents, even though the order will not yet have been entered by the Court.

Best,
Harleen

Harleen Gambhir

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From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>

Sent: Wednesday, March 30, 2022 12:41 PM

To: Don McTigue <dmctigue@electionlawgroup.com>; Abha Khanna <akhanna@elias.law>; Ben Stafford <bstafford@elias.law>; Harleen Gambhir <hgambhir@elias.law>; Jyoti Jasrasaria <jjasrasaria@elias.law>; Spencer Klein <sklein@elias.law>; Raisa Cramer <rcramer@elias.law>; dclinger@electionlawgroup.com; Erik J. Clark <ejclark@organlegal.com>; amerino@organlegal.com; benc@cooperelliott.com; chipc@cooperelliott.com; Julie Pfeiffer <Julie.Pfeiffer@ohioago.gov>; Michael Walton <michael.walton@ohioago.gov>; Dornette, W. Stuart <dornette@taftlaw.com>; bryan@taftlaw.com; pwilliamson@taftlaw.com; Jonathan.Blanton@OhioAGO.gov; Allison.Daniel@ohioAGO.gov; ddenuy1@cov.com; jsmith@cov.com; rfram@cov.com; yfu@cov.com; asharma@cov.com; dlistengourt@cov.com; dwbrown@cov.com; ssuwanda@cov.com; ajthomson@cov.com; sgethers@cov.com; kplumer@cov.com; jlamb@cov.com; jebenstein@aclu.org; Freda Levenson <flevenson@acluohio.org>; athomas@aclu.org; David Carey <dcarey@acluohio.org>; Thomson, Alex <AJThomson@cov.com>

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Subject: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Dear Counsel,

Please find attached Respondents Huffman and Cupp's First Set of Document Requests to Petitioners. Anticipating that Petitioners' may want a protective order governing responsive materials, we have attached a draft protective order as well.

Best,
Alyssa



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EXHIBIT 3

IN THE SUPREME COURT OF OHIO

League of Women Voters of Ohio, *et al.*,

Petitioners,

v.

Secretary of State Frank LaRose, *et al.*,

Respondents.

Original Action Pursuant to
Ohio Const., Art. XIX, Section 3(A)

2022-303

**LEAGUE OF WOMEN VOTERS OF OHIO PETITIONERS' OBJECTIONS AND
RESPONSES TO RESPONDENTS HUFFMAN AND CUPP'S FIRST SET OF
DOCUMENT REQUESTS**

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*Counsel for Respondents House Speaker
Robert R. Cupp and Senate President Matt
Huffman*

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Counsel for Petitioners

Pursuant to Rules 26 and 34 of the Ohio Rules of Civil Procedure, the League of Women Voters of Ohio Petitioners (“Petitioners”) hereby object and respond to Respondents Huffman and Cupp’s requests for production of documents (“Requests”).

GENERAL OBJECTIONS

1. Petitioners object to these Requests to the extent they seek to impose duties upon Petitioners that exceed, or are different from, those set forth in the Ohio Rules of Civil Procedure. Accordingly, Petitioners shall follow the Ohio Rules of Civil Procedure in providing its responses and any supplemental responses.

2. Petitioners object to these Requests to the extent that they seek information or identification of documents protected from disclosure by the attorney-client privilege, the settlement privilege, the work-product privilege, the joint defense privilege, the common interest doctrine, or any other applicable privileges, protections, or immunities from discovery. Petitioners hereby asserts all such applicable privileges and protections, and will not produce such privileged and protected information in response to these Requests. Any such disclosure of such privileged or protected information is inadvertent and is not intended to waive those privileges or protections.

3. Petitioners object to these Requests to the extent they seek confidential information. As the parties are negotiating a Protective Order in which such protections will be set forth, Petitioners object to the production of any confidential information until suitable protections are in place.

4. Petitioners object to these Requests to the extent they seek information that is not relevant to any claim or defense raised in this litigation. Petitioners object to these Requests to the extent they are not proportional to the needs of the case.

5. Petitioners object to these Requests to the extent that they seek information that is publicly available, already has been provided or made available to Respondents, is reasonably available to Respondents from other sources, or is otherwise already in Respondents' possession, custody, or control, such as data associated with the First Plan and Second Plan made available to the public by the Ohio General Assembly and/or Commission and open source software packages which are available publicly.

6. Petitioners object to these Requests to the extent that Petitioners would have to draw legal conclusion(s) in order to respond.

7. Petitioners object to these Requests to the extent that they seek information that is not in the possession, custody, or control of Petitioners.

8. Petitioners object to these Requests as premature to the extent they seek information prior to the time set forth by the Court.

9. By providing discovery, Petitioners do not waive any right to object to the use of such discovery, including, for example, on relevancy, admissibility, or authenticity grounds.

10. The foregoing general objections are incorporated in full into each specific objection set forth below.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1:

All Supporting Data or Backup Data drafted and/or utilized by Petitioners' Expert Witnesses, including but not limited to Drs. Imai, Rodden, Warshaw, and Chen, in their analysis of the Second Plan and any Expert Report. This includes but is not limited to any code for the base algorithm(s), the algorithm(s) used to create any simulated plans, backup data, and for each simulated map: the equivalent code, shapefile, or BAF file with data to the block or precinct level, to create copies of each simulated map.

RESPONSE TO REQUEST NO. 1:

Petitioners incorporate by reference the General Objections stated above as if set forth fully herein. Petitioners further object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case to the extent that it requires Petitioners to generate data beyond what was used by Petitioners' Expert Witnesses in their work for this case or otherwise provide data or information other than that maintained by Petitioners. Petitioners further object to this Request to the extent that it seeks documents, information, or data that is not in the possession, custody, or control of Petitioners. Petitioners further object to this Request to the extent it seeks information subject to confidentiality obligations prior to the entry of a protective order. Petitioners further object to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work-product privilege, the joint defense privilege, the common interest doctrine, or any other applicable privileges, protections, or immunities from discovery. Petitioners further object to the term "Backup Data" as undefined and otherwise vague and ambiguous.

Subject to and without waiving the foregoing general and specific objections, Petitioners respond that much of the data and information covered by this Request is available publicly, including data and files available in the text of SB258, data and files available for download from the Commission's website at <https://redistricting.ohio.gov/maps>, and the open-source software package *redist* available at <https://cran.r-project.org/package=redist>. Subject to the foregoing objections and the entry of an agreed upon protective order sufficient to protect source code and proprietary information, Petitioners agree to produce non-public Supporting Data utilized by Drs. Imai and Warshaw in their analysis of the Second Plan and will do so on a rolling basis.

REQUEST NO. 2:

All Supporting Data or Backup Data drafted and/or utilized by Petitioners' Expert Witnesses, including but not limited to Drs. Imai, Rodden, Warshaw, and Chen, in their analysis of the First Plan and any Expert Report. This includes but is not limited to any code for the base algorithm(s), the algorithm(s) used to create any simulated plans, backup data, and for each simulated map: the equivalent code, shapefile, or BAF file with data to the block or precinct level, to create copies of each simulated map.

RESPONSE TO REQUEST NO. 2:

Petitioners incorporate by reference the General Objections stated above as if set forth fully herein. Petitioners further object to this Request as overly broad, unduly burdensome, and not proportional to the needs of the case to the extent that it requires Petitioners to generate data beyond what was used by Petitioners' Expert Witnesses in their work for this case or otherwise provide data or information other than that maintained by Petitioners. Petitioners further object to this Request to the extent that it seeks documents, information, or data that is not in the possession, custody, or control of Petitioners. Petitioners further object to this Request to the extent it seeks information subject to confidentiality obligations prior to the entry of a protective order. Petitioners further object to this Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work-product privilege, the joint defense privilege, the common interest doctrine, or any other applicable privileges, protections, or immunities from discovery. Petitioners further object to the term "Backup Data" as undefined and otherwise vague and ambiguous.

Subject to and without waiving the foregoing general and specific objections, Petitioners respond that much of the data and information covered by this Request is available publicly, including data and files available in the text of SB258, data and files available for download from the Commission's website at <https://redistricting.ohio.gov/maps>, and the open-source software package *redist* available at <https://cran.r-project.org/package=redist>. Subject to the

foregoing objections and the entry of an agreed upon protective order sufficient to protect source code and proprietary information, Petitioners agree to produce non-public Supporting Data utilized by Drs. Imai and Warshaw in their analyses of the First Plan and will do so on a rolling basis.

Dated: April 1, 2022

Robert D. Fram (PHV 25414-2022)*
Donald Brown (PHV 25480-2022)*
David Denuyl (PHV 25452-2022)*
Juliana Goldrosen (PHV 25193-2022)*
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Respectfully submitted,

/s/ Freda J. Levenson
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Counsel for Petitioners
**Applications for Admission Pro Hac Vice*
Forthcoming

CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on this 1st day of April 2022, I caused a true and correct copy of the foregoing to be served by email upon the counsel listed below:

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*Counsel for Respondents House Speaker Robert R. Cupp and Senate President
Matt Huffman*

/s/ Freda J. Levenson
Freda J. Levenson (0045916)
Counsel for Petitioners

EXHIBIT 4

Thomson, Alex

From: Denuyl, David S
Sent: Friday, April 1, 2022 8:00 PM
To: Julie Pfeiffer; Erik J. Clark; 'Harleen Gambhir'; 'Phil Strach'; 'Alyssa Riggins'; 'Don McTigue'; 'Abha Khanna'; 'Ben Stafford'; 'Jyoti Jasrasaria'; 'Spencer Klein'; 'Raisa Cramer'; 'dclinger@electionlawgroup.com'; Ashley Merino; 'benc@cooperelliott.com'; 'chipc@cooperelliott.com'; Michael Walton; 'Dornette, W. Stuart'; 'bryan@taftlaw.com'; 'pwilliamson@taftlaw.com'; Jonathan Blanton; Allison Daniel; Smith, James (Jay); Fram, Robert; Fu, Yale; Sharma, Anupam; Listengourt, Denis; Brown, Donald; Suwanda, Sarah; Thomson, Alex; Gethers, Stuart; Plumer, Kimberly; Lamb, Janelle; 'jebenstein@aclu.org'; 'Freda Levenson'; 'athomas@aclu.org'; 'David Carey'; Thomson, Alex; Bridget Coontz
Cc: 'Tom Farr'; 'Cassie Holt'; 'John Branch'
Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All,

LWVO Petitioners request that the AG's office propose any changes to the draft PO in the operative version so that we may consider their proposal as a whole.

Additionally, LWVO Petitioners confirm that once all parties have agreed to the terms of the PO we are prepared to begin our production. If the parties reach agreement tonight, we will produce an initial tranche of materials tonight, will continue working over the weekend, and will endeavor to complete our production by the end of the day Monday.

Regards,
David

David Denuyl

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From: Denuyl, David S
Sent: Friday, April 01, 2022 1:23 PM
To: 'Julie Pfeiffer' <Julie.Pfeiffer@OhioAGO.gov>; Erik J. Clark <ejclark@organlegal.com>; 'Harleen Gambhir' <hgambhir@elias.law>; 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasrasaria' <jjasrasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton

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Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>; 'Cassie Holt' <cassie.holt@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Julie,

It appears the AGO's edits and reference to Paragraph 17 were made to the version containing only the Neiman Petitioners' edits. I sent a version with additional edits at 1:43 pm ET today, which was subsequently responded to by Respondents Huffman and Cupp, the Neiman Petitioners, and the Commission.

Regards,

David

David Denuyl

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Thomson, Alex <AJThomson@cov.com>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

[EXTERNAL]

Additionally, we can't agree to Paragraph 17 as to the public agency/public officials. We will agree to follow the normal records retention policies that are applicable to the information. Thank you.



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices
Office of Ohio Attorney General Dave Yost
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Julie.Pfeiffer@OhioAGO.gov

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All, Attached please find edits by the parties represented by the Ohio Attorney General. The edit regards the Ohio Public Records Law. The public agency/public official respondents would be required to disclose documents if the Ohio Public Records Law required it. This agreement would not override that obligation. Please let me know if you have any questions. Thanks!



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

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Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>; 'Cassie Holt' <cassie.holt@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All,
The Commission is amenable to the proposed order as revised below.
Best,
Erik

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Cc: Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>
Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All,

The LWVO Petitioners' revisions are acceptable to the Neiman Petitioners, as well. We would just note that there appears to be a typo on page 6 ("maerial" instead of "material").

Best,
Harleen

Harleen Gambhir
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(she/her)

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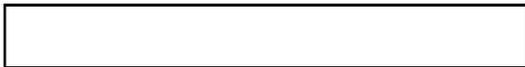
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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

David, those revisions are acceptable to us. Phil



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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Alyssa,

Attached to this email are the LWVO Petitioners' proposed edits to the PO, which are made on top of the Neiman Petitioners' edits. Please let us know if these are acceptable the other parties in this action. We can be available to meet and confer, if necessary.

Regards,
David

David Denuyl

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

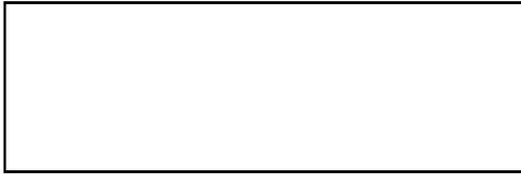
[EXTERNAL]

Good Afternoon,

Could counsel for the remaining parties kindly let us know your position on the protective order with Bennett Petitioners changes, so that we may file this promptly with the court?

Particularly, if the League Petitioners could let us know your position we would appreciate it. We have not received documents from the League. If you do not plan on producing documents, and/or object to the protective order, please let us know a time today that we can meet and confer on the issue so that we may seek resolution.

Best,
Alyssa



ALYSSA RIGGINS SENIOR ASSOCIATE

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Harleen,

Those changes are acceptable to us. We look forward to the production and agree that it is subject to the provisions of the protective order even though it has not yet been entered by the court.

Thanks.

Phil



PHILLIP J. STRACH PARTNER

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From: Harleen Gambhir <hgambhir@elias.law>

Sent: Friday, April 1, 2022 11:02 AM

To: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Don McTigue <dmctigue@electionlawgroup.com>; Abha Khanna <akhanna@elias.law>; Ben Stafford <bstafford@elias.law>; Jyoti Jasrasaria <jjasrasaria@elias.law>; Spencer Klein <sklein@elias.law>; Raisa Cramer <rcramer@elias.law>; dclinger@electionlawgroup.com; Erik J. Clark <ejclark@organlegal.com>; amerino@organlegal.com; benc@cooperelliott.com; chipc@cooperelliott.com; Julie Pfeiffer <Julie.Pfeiffer@ohioago.gov>; Michael Walton <michael.walton@ohioago.gov>; Dornette, W. Stuart <dornette@taftlaw.com>; bryan@taftlaw.com; pwilliamson@taftlaw.com; Jonathan.Blanton@OhioAGO.gov; Allison.Daniel@ohioAGO.gov; ddenuy1@cov.com; jsmith@cov.com; rfram@cov.com; yfu@cov.com; asharma@cov.com; dlistengourt@cov.com; dwbrown@cov.com; ssuwanda@cov.com; ajthomson@cov.com; sgethers@cov.com; kplumer@cov.com; jlamb@cov.com; jebenstein@aclu.org; Freda Levenson <flevenson@acluohio.org>; athomas@aclu.org; David Carey <dcarey@acluohio.org>; Thomson, Alex <AJThomson@cov.com>

Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Dear Counsel,

The Neiman Petitioners agree to the proposed protective order, subject to the minor edits in the attached document. Please let us know whether you agree to the changes. If so, we will provide responsive documents today, subject to the mutual understanding that the terms of the edited protective order will apply to those documents, even though the order will not yet have been entered by the Court.

Best,
Harleen

Harleen Gambhir

Associate
Elias Law Group LLP
10 G St NE Ste 600
Washington DC 20002
202-968-4665
hgambhir@elias.law
(she/her)

Admitted in California only. Practicing under the supervision of DC Bar members.

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From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>

Sent: Wednesday, March 30, 2022 12:41 PM

To: Don McTigue <dmctigue@electionlawgroup.com>; Abha Khanna <akhanna@elias.law>; Ben Stafford <bstafford@elias.law>; Harleen Gambhir <hgambhir@elias.law>; Jyoti Jasrasaria <jjasrasaria@elias.law>; Spencer Klein <sklein@elias.law>; Raisa Cramer <rcramer@elias.law>; dclinger@electionlawgroup.com; Erik J. Clark <ejclark@organlegal.com>; amerino@organlegal.com; benc@cooperelliott.com; chipc@cooperelliott.com; Julie Pfeiffer <Julie.Pfeiffer@ohioago.gov>; Michael Walton <michael.walton@ohioago.gov>; Dornette, W. Stuart <dornette@taftlaw.com>; bryan@taftlaw.com; pwilliamson@taftlaw.com; Jonathan.Blanton@OhioAGO.gov; Allison.Daniel@ohioAGO.gov; ddenuy1@cov.com; jsmith@cov.com; rfram@cov.com; yfu@cov.com; asharma@cov.com; dlistengourt@cov.com; dwbrown@cov.com; ssuwanda@cov.com; ajthomson@cov.com; sgethers@cov.com; kplumer@cov.com; jlamb@cov.com; jebenstein@aclu.org; Freda Levenson <flevenson@acluohio.org>; athomas@aclu.org; David Carey <dcarey@acluohio.org>; Thomson, Alex <AJThomson@cov.com>

Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Dear Counsel,

Please find attached Respondents Huffman and Cupp's First Set of Document Requests to Petitioners. Anticipating that Petitioners' may want a protective order governing responsive materials, we have attached a draft protective order as well.

Best,
Alyssa



ALYSSA RIGGINS SENIOR ASSOCIATE

alyssa.riggins@nelsonmullins.com

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EXHIBIT 5

Thomson, Alex

From: Fu, Yale
Sent: Monday, April 4, 2022 5:54 PM
To: julie.pfeiffer@ohioago.gov; michael.walton@ohioago.gov; allison.daniel@ohioago.gov; jonathan.blanton@ohioago.gov; phil.strach@nelsonmullins.com; tom.farr@nelsonmullins.com; alyssa.riggins@nelsonmullins.com; john.branch@nelsonmullins.com; dornette@taftlaw.com; bryan@taftlaw.com; pwilliamson@taftlaw.com
Cc: Lamb, Janelle; Gupta, Rishi; Suwanda, Sarah; Arent, Madison P; Brown, Donald; Denuyl, David S; Fram, Robert; Gethers, Stuart; Listengourt, Denis; Goldrosen, Juliana; González, Joshua; Hovard, James; Plumer, Kimberly; Sharma, Anupam; Smith, James (Jay); Stanton, David; Thomson, Alex; Freda Levenson; David Carey; 'athomas@aclu.org'; 'jebenstein@aclu.org'; 'kmiller1@aclu.org'; 'MPerez@aclu.org'; Tess Sabo
Subject: RE: Service of Discovery - Case No. 2022-0303; League of Women Voters, et al. v. LaRose, et al.

Counsel,

LWVO Petitioners are producing to all Respondents production volume LWVO_WARSHAW_002. LWVO Petitioners are not including any materials designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY in this production.

This production volume is being provided via FTP at the following link: <https://covington.kiteworks.com/w/f-7db1b039-f80a-41a2-a06a-c78bfd9b9d65>. The password for the zip file will be sent in a separate email.

As noted in LWVO Petitioners' RFP responses, additional responsive data and files can be accessed through the following public sources: the text of SB258, the Commission's website at <https://redistricting.ohio.gov/maps>, and the website hosting the open-source software package redist at <https://cran.r-project.org/package=redist>.

Regards,
Yale

Yale Fu

Covington & Burling LLP
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From: Tess Sabo <tsabo@acluohio.org>
Sent: Friday, April 01, 2022 2:13 PM
To: julie.pfeiffer@ohioago.gov; michael.walton@ohioago.gov; allison.daniel@ohioago.gov; jonathan.blanton@ohioago.gov; phil.strach@nelsonmullins.com; tom.farr@nelsonmullins.com;

alyssa.riggins@nelsonmullins.com; john.branch@nelsonmullins.com; dornette@taftlaw.com; bryan@taftlaw.com; pwilliamson@taftlaw.com

Cc: Lamb, Janelle <JLamb@cov.com>; Gupta, Rishi <RRGupta@cov.com>; Suwanda, Sarah <SSuwanda@cov.com>; Arent, Madison P <Marent@cov.com>; Brown, Donald <dwbrown@cov.com>; Denuyl, David S <DDenuyl@cov.com>; Fram, Robert <rfram@cov.com>; Gethers, Stuart <SGethers@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Fu, Yale <yfu@cov.com>; Goldrosen, Juliana <JGoldrosen@cov.com>; González, Joshua <JGonzalez@cov.com>; Hovard, James <JHovard@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Sharma, Anupam <asharma@cov.com>; Smith, James (Jay) <jmsmith@cov.com>; Stanton, David <dstanton@cov.com>; Thomson, Alex <AJThomson@cov.com>; Freda Levenson <flevenson@acluohio.org>; David Carey <dcarey@acluohio.org>; 'athomas@aclu.org'; 'jebenstein@aclu.org'; 'kmiller1@aclu.org'; 'MPerez@aclu.org'

Subject: Service of Discovery - Case No. 2022-0303; League of Women Voters, et al. v. LaRose, et al.

EXTERNAL

Good afternoon Counsel,

Attached please find:

- Petitioners' Objections and Responses to Respondents Huffman and Cupp's First Set of Document Requests
- Petitioners' First Set of Requests for Production and Interrogatories to Respondents

Regards,

Tess Sabo

Paralegal

ACLU of Ohio

tsabo@acluohio.org

(614) 586-1972 ext. 2013

Pronouns: She, her, hers



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EXHIBIT 6

Thomson, Alex

From: Ashley Merino <amerino@organlegal.com>
Sent: Friday, April 8, 2022 12:52 PM
To: Denuyl, David S; Phil Strach; Julie Pfeiffer; Jonathan Blanton; Erik J. Clark; 'Harleen Gambhir'; Alyssa Riggins; 'Don McTigue'; 'Abha Khanna'; 'Ben Stafford'; 'Jyoti Jasarasaria'; 'Spencer Klein'; 'Raisa Cramer'; 'dclinger@electionlawgroup.com'; 'benc@cooperelliott.com'; 'chipc@cooperelliott.com'; Michael Walton; 'Dornette, W. Stuart'; 'bryan@taftlaw.com'; 'pwilliamson@taftlaw.com'; Allison Daniel; Smith, James (Jay); Fram, Robert; Fu, Yale; Sharma, Anupam; Listengourt, Denis; Brown, Donald; Suwanda, Sarah; Thomson, Alex; Gethers, Stuart; Plumer, Kimberly; Lamb, Janelle; 'jebenstein@aclu.org'; 'Freda Levenson'; 'athomas@aclu.org'; 'David Carey'; Bridget Coontz
Cc: Tom Farr; Cassie Holt; John Branch
Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

EXTERNAL

The Commission has no objections to the revised protective order.

Thank you,

Ashley T. Merino
ORGAN LAW LLP
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Columbus, Ohio 43215
614.481.0900
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=====
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From: Denuyl, David S [mailto:DDenuyl@cov.com]
Sent: Friday, April 8, 2022 11:45 AM
To: Phil Strach <phil.strach@nelsonmullins.com>; Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Erik J. Clark <ejclark@organlegal.com>; 'Harleen Gambhir' <hgambhir@elias.law>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasarasaria' <jjasarasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton <Michael.Walton@OhioAGO.gov>; 'Dornette, W. Stuart' <dornette@taftlaw.com>; 'bryan@taftlaw.com' <bryan@taftlaw.com>; 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>; Allison Daniel <Allison.Daniel@OhioAGO.gov>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald

<dwbrown@cov.com>; Suwanda, Sarah <SSuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; 'jebenstein@aclu.org' <jebenstein@aclu.org>; 'Freda Levenson' <flevenson@acluohio.org>; 'athomas@aclu.org' <athomas@aclu.org>; 'David Carey' <dcarey@acluohio.org>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
Cc: Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Phil,

Thanks for your email, which I understand to be providing the confirmation we requested from Speaker Cupp and President Huffman. We are also waiting on confirmation from the Ohio Redistricting Commission and the Neiman Petitioners. While they both previously approved an earlier version of the PO, there have been edits from both the AG's office and LWVO Petitioners since their earlier approval.

Once we receive their confirmation on the PO, we will make our production.

Separately, as the party who initially circulated the PO, I understand that your team will be working to get the PO on file with the Court once all parties have confirmed their agreement.

Regards,
David

David Denuyl

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From: Phil Strach <phil.strach@nelsonmullins.com>

Sent: Friday, April 08, 2022 7:49 AM

To: Denuyl, David S <DDenuyl@cov.com>; Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Erik J. Clark <ejclark@organlegal.com>; 'Harleen Gambhir' <hgambhir@elias.law>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasarasaria' <jjasarasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton <Michael.Walton@OhioAGO.gov>; 'Dornette, W. Stuart' <dornette@taftlaw.com>; 'bryan@taftlaw.com' <bryan@taftlaw.com>; 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>; Allison Daniel <Allison.Daniel@OhioAGO.gov>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <SSuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; 'jebenstein@aclu.org' <jebenstein@aclu.org>; 'Freda Levenson' <flevenson@acluohio.org>; 'athomas@aclu.org'

<athomas@aclu.org>; 'David Carey' <dcarey@acluohio.org>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>

Cc: Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

[EXTERNAL]

David, which parties are you waiting on? I believe you have what you need from us so we would appreciate the production being made as soon as possible. Thank. Phil



PHILLIP J. STRACH PARTNER

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From: Denuyl, David S <DDenuyl@cov.com>

Sent: Thursday, April 7, 2022 4:34 PM

To: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Erik J. Clark <ejclark@organlegal.com>; 'Harleen Gambhir' <hgambhir@elias.law>; Phil Strach <phil.strach@nelsonmullins.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasarasaria' <jjasarasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton <Michael.Walton@OhioAGO.gov>; 'Dornette, W. Stuart' <dornette@taftlaw.com>; 'bryan@taftlaw.com' <bryan@taftlaw.com>; 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>; Allison Daniel <Allison.Daniel@OhioAGO.gov>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; 'jebenstein@aclu.org' <jebenstein@aclu.org>; 'Freda Levenson' <flevenson@acluohio.org>; 'athomas@aclu.org' <athomas@aclu.org>; 'David Carey' <dcarey@acluohio.org>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>

Cc: Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Julie and all,

LWVO Petitioners' confidential production is ready to go, as we stated in our email this morning.

The AG's office and its clients, and LWVO Petitioners are in agreement on the PO. However, we still need the remaining parties to agree to the PO, as there have been recent edits to the PO from the AG's office and LWVO Petitioners.

We understand that the AG's office and its clients have agreed to respect our designation of our experts' code as "trade secrets" and seek confirmation that the other public officials will do the same.

Once the remaining parties confirm their agreement to the PO and the public officials confirm they will respect our trade secret designations, we will make our production.

Regards,
David

David Denuyl

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From: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>

Sent: Thursday, April 07, 2022 10:49 AM

To: Denuyl, David S <DDenuyl@cov.com>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Erik J. Clark <ejclark@organlegal.com>; 'Harleen Gambhir' <hgambhir@elias.law>; 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasarasaria' <jjasarasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton <Michael.Walton@OhioAGO.gov>; 'Dornette, W. Stuart' <dornette@taftlaw.com>; 'bryan@taftlaw.com' <bryan@taftlaw.com>; 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>; Allison Daniel <Allison.Daniel@OhioAGO.gov>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; 'jebenstein@aclu.org' <jebenstein@aclu.org>; 'Freda Levenson' <flevenson@acluohio.org>; 'athomas@aclu.org' <athomas@aclu.org>; 'David Carey' <dcarey@acluohio.org>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>; 'Cassie Holt' <cassie.holt@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

[EXTERNAL]

In order for everyone to be on the same page, below is our position, which I sent you, David, in an email a couple of days ago. Frankly, I'm not sure what the problem is. You have designated your expert's codes as "trade secrets" and we have agreed to respect that designation. Your continued discussion and dispute over what is or isn't trial preparation material is beside the point. The public officials will comply with the Ohio Public Records Law. They aren't going to "confirm" anything further. We are satisfied with the changes to the agreement as we indicated earlier this morning.

As I understand it, you still have not disclosed responsive documents when time is of the essence. Please proceed to finalize and execute the agreement so that you can disclose them.

Best,

Julie Pfeiffer

R.C. 149.43(A)(1)(m) provides an exception for trade secrets. The definition of trade secrets can be found at R.C. 1333.61(D). It appears that you are asserting that the “proprietary source code and data used by Dr. Warshaw and Imai in their analyses” is a trade secret. If that is the case, please identify that information as a trade secret and we can deny a public records request under the Ohio Public Records Act.

This is a “permanent” exception which is not contingent on active litigation, like the trial preparation exception is. It will survive after the resolution of this case. If we receive a public records request for the information that you have deemed a trade secret, we can deny the request and we will notify you. However, if that designation is ultimately challenged in a court by an individual seeking it through a public records request, you or your client will need to defend that designation.

We cannot simply destroy records or return them to you. *See* R.C. 149.351 The Office of the Ohio Attorney General has clear records retention policies that we must follow.

Again, this is your information that you have chosen to use in this litigation. When you sue a public entity in Ohio, Ohio law provides for wide transparency with limited exceptions. We are willing to respect your analysis that your information falls under the trade secret exception and we will not disclose it under that exception.



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

Office of Ohio Attorney General Dave Yost

Office Number: 614-466-2872

Fax Number: 866-422-9192

Julie.Pfeiffer@OhioAGO.gov

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From: Denuyl, David S <DDenuyl@cov.com>

Sent: Thursday, April 07, 2022 12:38 PM

To: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Erik J. Clark <ejclark@organlegal.com>; 'Harleen Gambhir' <hgambhir@elias.law>; 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasrasaria' <jjasrasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton <Michael.Walton@OhioAGO.gov>; 'Dornette, W. Stuart' <dornette@taftlaw.com>; 'bryan@taftlaw.com' <bryan@taftlaw.com>; 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>; Allison Daniel <Allison.Daniel@OhioAGO.gov>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; 'jebenstein@aclu.org' <jebenstein@aclu.org>; 'Freda Levenson' <flevenson@acluohio.org>; 'athomas@aclu.org' <athomas@aclu.org>; 'David Carey' <dcarey@acluohio.org>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>

Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>; 'Cassie Holt' <cassie.holt@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All,

LWVO Petitioners and the AG's office have reached an agreement with respect to their PO dispute. LWVO Petitioners assert that our materials designated as "Highly Confidential/Outside Attorneys' Eyes Only" qualify as trade secrets under the definition in R.C. 1333.61(D). The AG's office and its clients have agreed to deny public records requests for our HC/OAEO information on the basis that they are exempt trade secrets and will notify us of any such requests or resulting legal challenges to that designation. LWVO Petitioners continue to contend that all of our Confidential materials are exempted from Ohio public records law under the trial preparation exemption, even after discovery or this litigation conclude, unless and until the documents are publicly filed in Court.

We ask all parties who are public officials to confirm that you will treat our confidential information as exempt from Ohio public records law, either under the trade secret exemption, as a trial preparation exemption, or both.

Additionally, we ask all parties to confirm that you agree to the attached PO, which is the version last circulated by the AG's office with the following two additional edits: (1) corrected a typographical error in paragraph 10 ("maerial" to "material"); and (2) added "including an Ohio public records request," to Paragraph 14.

Once we receive confirmation on the two issues above (i.e., from the public officials on the public records issue and from all parties on the PO language), LWVO Petitioners will make their confidential production.

Regards,
David

David Denuyl

Covington & Burling LLP
Salesforce Tower, 415 Mission Street, Suite 5400

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Sent: Tuesday, April 05, 2022 4:02 PM

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Julie,

Thank you for your willingness to consider reaching an agreement on our specific confidential documents. LWVO Petitioners fundamentally disagree that *Levin* or the Yellow Book support the assertion that the "trial prep exception is during litigation only." Rather, trial preparation records become public records only if and when they are *publicly* filed in court. See Yellow Book at 45 ("Once an attorney has filed documents in a court case, any trial preparation exemption is waived, and the public office must produce those documents in response to subsequent records requests."); *State ex rel. Cincinnati Enquirer v. Dinkelacker*, 144 Ohio App. 3d 725, 729, 761 N.E.2d 656, 659 (2001) ("We hold that the documents in question did indeed change character—from discovery materials to court documents—when they were introduced in court as exhibits for a motion hearing."); *Cleveland Clinic Found. v. Levin*, 2008-Ohio-6197, ¶ 15 ("[W]e hold that the BTA has a legal obligation to determine the confidential status of particular documents and to provide appropriate relief, such as sealing the documents, if it finds that the documents qualify as confidential trade secrets.").

Nevertheless, LWVO Petitioners do not wish to engage in a dispute that delays discovery if it can be avoided, and believe that reaching an agreement regarding the treatment of specific confidential documents, as the AG's office suggests, is the most efficient path forward. Our confidential documents consist of proprietary source code and data used by Dr. Warsaw and Imai in their analyses. Please confirm that AG's Office will maintain the confidentiality of these materials, either by returning them to LWVO Petitioners at the end of discovery or the litigation (consistent with the AG's stated interpretation of *Levin* and the Yellow Book), or by confirming that the AG's office will not treat these materials as being subject to Ohio public records law as long as they remain in the possession of the AG's office or its clients.

Regards,
David

David Denuyl

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From: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>
Sent: Tuesday, April 05, 2022 8:32 AM
To: Denuyl, David S <DDenuyl@cov.com>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Erik J. Clark <ejclark@organlegal.com>; 'Harleen Gambhir' <hgambhir@elias.law>; 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasrasaria' <jjasrasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton <Michael.Walton@OhioAGO.gov>; 'Dornette, W. Stuart' <dornette@taftlaw.com>; 'bryan@taftlaw.com' <bryan@taftlaw.com>; 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>; Allison Daniel <Allison.Daniel@OhioAGO.gov>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <kPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; 'jebenstein@aclu.org' <jebenstein@aclu.org>; 'Freda Levenson' <flevenson@acluohio.org>; 'athomas@aclu.org' <athomas@aclu.org>; 'David Carey' <dcarey@acluohio.org>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

EXTERNAL

David,

As I understand it, LWVO's concern with confidentiality may involve one of your expert's codes that he used in developing his conclusions in his report. If this is the case, we can come to some understanding as to protection of that information. I understand that time is of the essence here and I don't think any party wishes to engage in a discovery dispute over that. Please advise.

Best,



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

Office of Ohio Attorney General Dave Yost

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Julie.Pfeiffer@OhioAGO.gov

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Sent: Monday, April 04, 2022 4:31 PM

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

We are familiar with what the Yellowbook says....we wrote it. The trial prep exception is during litigation only. And *Levin* interprets that to be at most until the case is closed and arguably only until discovery closes. That is a temporary exception to the public records law, which would still be available under our proposed Paragraph 20.

We cannot agree to ignore the Ohio Public Records Act in favor of a general agreement that allows the parties to unilaterally deem information confidential and thus permanently non-disclosable. Our position is not coming from an ignorance of the law.

As we have stated before, if there is a specific document that is at issue we can perhaps come to some agreement as to a protective order on a case by case basis. Or that information, whatever it

is, might fall under some permanent exception to the Ohio Public Records Act. We just don't know.

We're not going to get much farther with the proposed general confidentiality agreement. That agreement without the proposed Paragraph 20 is a non-starter.



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

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From: Denuyl, David S <DDenuyl@cov.com>

Sent: Monday, April 04, 2022 3:38 PM

To: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Erik J. Clark <ejclark@organlegal.com>; 'Harleen Gambhir' <hgambhir@elias.law>; 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasarasaria' <jjasarasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton <Michael.Walton@OhioAGO.gov>; 'Dornette, W. Stuart' <dornette@taftlaw.com>; 'bryan@taftlaw.com' <bryan@taftlaw.com>; 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>; Allison Daniel <Allison.Daniel@OhioAGO.gov>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; 'jebenstein@aclu.org' <jebenstein@aclu.org>; 'Freda Levenson' <flevenson@acluohio.org>; 'athomas@aclu.org' <athomas@aclu.org>; 'David Carey' <dcarey@acluohio.org>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Jonathan and Julie,

The AG's apparent position in this case that materials produced to it in discovery are subject to disclosure under Ohio's open records act, despite a protective order to the contrary, appears to go against Ohio law as well as the AG's own stated policy. In particular:

- The 2022 version of the Yellow Book (available on the AG's webpage here: <https://www.ohioattorneygeneral.gov/YellowBook>) states that "[d]ocuments that a public office obtains through discovery during litigation are considered trial preparation records" and are "excluded from the definition of a public record under R.C. 149.43(A)(1)." Yellow Book at 32, 38, 45.
- The Yellow Book cites *Cleveland Clinic Found. v. Levin*, 120 Ohio St.3d 1210, 2008-Ohio-6197, ¶ 10 as its authority for this proposition. In *Levin*, the Supreme Court of Ohio goes on to say that "because those documents are exempt from public-records disclosure during discovery, the public-office litigant is no less bound by the terms of the stipulated confidentiality order than a private litigant would be." *Levin*, 2008-Ohio-6197, ¶ 11.

In light of the Yellow Book, and the Supreme Court of Ohio's *Levin* decision, we remain unclear how agreeing to the proposed PO agreed to by the other parties in this litigation would cause the AG's office or its clients "to violate Ohio's open records act." If you have authority to the contrary, please share it with us so that we may consider it.

Regards,
David

David Denuyl

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[EXTERNAL]

All,

Attached is a revised proposed order striking through Paragraph 21 since it is objectionable to the LWVO Petitioners. We cannot agree to circumvent the Ohio Public Records Act. As we have stated before, if there is a specific document that is at issue we can perhaps come to some agreement as to a protective order on a case by case basis. Thank you.



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

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Sent: Sunday, April 03, 2022 8:05 PM

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<john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

The Attorney General is not prepared to agree to conditions that would require the office, or our clients, to violate Ohio's open records act. We are willing to consider reasonable alternatives such as those we have already proposed. If those accommodations are unacceptable, it's time to engage the court. LMVO cannot use its desire to avoid the possibility of public disclosure as an avenue to avoid the production of otherwise discoverable information.

JB

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From: Denuyl, David S <DDenuyl@cov.com>

Date: Sunday, Apr 03, 2022, 7:33 PM

To: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>, Erik J. Clark <ejclark@organlegal.com>, 'Harleen Gambhir' <hgambhir@elias.law>, 'Phil Strach' <phil.strach@nelsonmullins.com>, 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>, 'Don McTigue' <dmctigue@electionlawgroup.com>, 'Abha Khanna' <akhanna@elias.law>, 'Ben Stafford' <bstafford@elias.law>, 'Jyoti Jasarasia' <jjasarasia@elias.law>, 'Spencer Klein' <sklein@elias.law>, 'Raisa Cramer' <rcramer@elias.law>, 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>, Ashley Merino <amerino@organlegal.com>, 'benc@cooperelliott.com' <benc@cooperelliott.com>, 'chipc@cooperelliott.com' <chipc@cooperelliott.com>, Michael Walton <Michael.Walton@OhioAGO.gov>, 'Dornette, W. Stuart' <dornette@taftlaw.com>, 'bryan@taftlaw.com' <bryan@taftlaw.com>, 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>, Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>, Allison Daniel <Allison.Daniel@OhioAGO.gov>, Smith, James (Jay) <jmsmith@cov.com>, Fram, Robert <rfram@cov.com>, Fu, Yale <yfu@cov.com>, Sharma, Anupam <asharma@cov.com>, Listengourt, Denis <DListengourt@cov.com>, Brown, Donald <dwbrown@cov.com>, Suwanda, Sarah <ssuwanda@cov.com>, Thomson, Alex <AJThomson@cov.com>, Gethers, Stuart <SGethers@cov.com>, Plumer, Kimberly <KPlumer@cov.com>, Lamb, Janelle <JLamb@cov.com>, 'jebenstein@aclu.org' <jebenstein@aclu.org>, 'Freda Levenson' <flevenson@acluohio.org>, 'athomas@aclu.org' <athomas@aclu.org>, 'David Carey' <dcarey@acluohio.org>, Bridget Coontz <Bridget.Coontz@OhioAGO.gov>

Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>, 'Cassie Holt' <cassie.holt@nelsonmullins.com>, 'John Branch' <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All,

The AGO edits to the PO are not acceptable to LWVO Petitioners as they appear to effectively treat all confidential documents produced to the AG's Office as non-confidential and shift the burden to the producing party to litigate the confidentiality of documents on an ad hoc basis each and every time a public records request is made to the AG's Office that implicates confidential material.

We are currently considering how to proceed. In the interim, we are preparing a production of non-confidential documents. Until the terms of the PO are resolved we cannot produce confidential documents given the uncertainty of the material terms of the proposed PO in light of the new paragraphs proposed by the AG's office. Once the terms are resolved, we will expeditiously produce the confidential documents.

Regards,
David

David Denuyl

Covington & Burling LLP
Salesforce Tower, 415 Mission Street, Suite 5400

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Cc: 'Tom Farr' <tom.farr@nelsonmullins.com>; 'Cassie Holt' <cassie.holt@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>
Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

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All,

Attached are the Ohio Attorney General's additions – see Paragraphs 20 and 21.



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices
Office of Ohio Attorney General Dave Yost
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Sent: Friday, April 01, 2022 4:23 PM

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Julie,

It appears the AGO's edits and reference to Paragraph 17 were made to the version containing only the Neiman Petitioners' edits. I sent a version with additional edits at 1:43 pm ET today, which was subsequently responded to by Respondents Huffman and Cupp, the Neiman Petitioners, and the Commission.

Regards,
David

David Denuyl

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<alyssa.riggins@nelsonmullins.com>; 'Don McTigue' <dmctigue@electionlawgroup.com>; 'Abha Khanna' <akhanna@elias.law>; 'Ben Stafford' <bstafford@elias.law>; 'Jyoti Jasrasaria' <jjasrasaria@elias.law>; 'Spencer Klein' <sklein@elias.law>; 'Raisa Cramer' <rcramer@elias.law>; 'dclinger@electionlawgroup.com' <dclinger@electionlawgroup.com>; Ashley Merino <amerino@organlegal.com>; 'benc@cooperelliott.com' <benc@cooperelliott.com>; 'chipc@cooperelliott.com' <chipc@cooperelliott.com>; Michael Walton <Michael.Walton@OhioAGO.gov>; 'Dornette, W. Stuart' <dornette@taftlaw.com>; 'bryan@taftlaw.com' <bryan@taftlaw.com>; 'pwilliamson@taftlaw.com' <pwilliamson@taftlaw.com>; Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Allison Daniel <Allison.Daniel@OhioAGO.gov>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; 'jebenstein@aclu.org' <jebenstein@aclu.org>; 'Freda Levenson' <flevenson@acluohio.org>; 'athomas@aclu.org' <athomas@aclu.org>; 'David Carey' <dcarey@acluohio.org>; Thomson, Alex <AJThomson@cov.com>; Bridget Coontz <Bridget.Coontz@OhioAGO.gov>
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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

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Additionally, we can't agree to Paragraph 17 as to the public agency/public officials. We will agree to follow the normal records retention policies that are applicable to the information. Thank you.



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

Office of Ohio Attorney General Dave Yost

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Julie.Pfeiffer@OhioAGO.gov

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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All, Attached please find edits by the parties represented by the Ohio Attorney General. The edit regards the Ohio Public Records Law. The public agency/public official respondents would be required to disclose documents if the Ohio Public Records Law required it. This agreement would not override that obligation. Please let me know if you have any questions. Thanks!



Julie M. Pfeiffer

Assistant Section Chief – Constitutional Offices

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Office Number: 614-466-2872

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<john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

All,
The Commission is amenable to the proposed order as revised below.
Best,
Erik

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All,
The LWVO Petitioners' revisions are acceptable to the Neiman Petitioners, as well. We would just note that there appears to be a typo on page 6 ("maerial" instead of "material").

Best,
Harleen

Harleen Gambhir

Associate
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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

David, those revisions are acceptable to us. Phil



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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Alyssa,

Attached to this email are the LWVO Petitioners' proposed edits to the PO, which are made on top of the Neiman Petitioners' edits. Please let us know if these are acceptable the other parties in this action. We can be available to meet and confer, if necessary.

Regards,
David

David Denuyl

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Sent: Friday, April 01, 2022 9:08 AM

To: Phil Strach <phil.strach@nelsonmullins.com>; Harleen Gambhir <hgambhir@elias.law>; Don McTigue <dmtigue@electionlawgroup.com>; Abha Khanna <akhanna@elias.law>; Ben Stafford <bstafford@elias.law>; Jyoti Jasrasaria <jjasrasaria@elias.law>; Spencer Klein <sklein@elias.law>; Raisa Cramer <rcramer@elias.law>; dclinger@electionlawgroup.com; Erik J. Clark <ejclark@organlegal.com>; amerino@organlegal.com; benc@cooperelliott.com; chipc@cooperelliott.com; Julie Pfeiffer <Julie.Pfeiffer@ohioago.gov>; Michael Walton <michael.walton@ohioago.gov>; Dornette, W. Stuart <dornette@taftlaw.com>; bryan@taftlaw.com; pwilliamson@taftlaw.com; Jonathan.Blanton@OhioAGO.gov; Allison.Daniel@ohioAGO.gov; Denuyl, David S <DDenuyl@cov.com>; Smith, James (Jay) <jmsmith@cov.com>; Fram, Robert <rfram@cov.com>; Fu, Yale <yfu@cov.com>; Sharma, Anupam <asharma@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Brown, Donald <dwbrown@cov.com>; Suwanda, Sarah <ssuwanda@cov.com>; Thomson, Alex <AJThomson@cov.com>; Gethers, Stuart <SGethers@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Lamb, Janelle <JLamb@cov.com>; jebenstein@aclu.org; Freda Levenson <flevenson@acluohio.org>; athomas@aclu.org; David Carey <dcarey@acluohio.org>; Thomson, Alex <AJThomson@cov.com>

Cc: Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

EXTERNAL

Good Afternoon,

Could counsel for the remaining parties kindly let us know your position on the protective order with Bennett Petitioners changes, so that we may file this promptly with the court?

Particularly, if the League Petitioners could let us know your position we would appreciate it. We have not received documents from the League. If you do not plan on producing documents, and/or object to the protective order, please let us know a time today that we can meet and confer on the issue so that we may seek resolution.

Best,
Alyssa



ALYSSA RIGGINS **SENIOR ASSOCIATE**
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Sent: Friday, April 1, 2022 11:17 AM
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Cc: Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>
Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Harleen,

Those changes are acceptable to us. We look forward to the production and agree that it is subject to the provisions of the protective order even though it has not yet been entered by the court.

Thanks.

Phil



PHILLIP J. STRACH PARTNER

phil.strach@nelsonmullins.com

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Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Dear Counsel,

The Neiman Petitioners agree to the proposed protective order, subject to the minor edits in the attached document. Please let us know whether you agree to the changes. If so, we will provide responsive documents today, subject to the mutual understanding that the terms of the edited protective order will apply to those documents, even though the order will not yet have been entered by the Court.

Best,
Harleen

Harleen Gambhir

Associate

Elias Law Group LLP

10 G St NE Ste 600
Washington DC 20002

202-968-4665
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(she/her)

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Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>

Subject: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

Dear Counsel,

Please find attached Respondents Huffman and Cupp's First Set of Document Requests to Petitioners. Anticipating that Petitioners' may want a protective order governing responsive materials, we have attached a draft protective order as well.

Best,
Alyssa



ALYSSA RIGGINS SENIOR ASSOCIATE

alyssa.riggins@nelsonmullins.com

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EXHIBIT 7

Thomson, Alex

From: Fu, Yale
Sent: Friday, April 8, 2022 1:05 PM
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Cc: Lamb, Janelle; Gupta, Rishi; Suwanda, Sarah; Arent, Madison P; Brown, Donald; Denuyl, David S; Fram, Robert; Gethers, Stuart; Listengourt, Denis; Goldrosen, Juliana; González, Joshua; Hovard, James; Plumer, Kimberly; Sharma, Anupam; Smith, James (Jay); Stanton, David; Thomson, Alex; Freda Levenson; David Carey; 'athomas@aclu.org'; 'jebenstein@aclu.org'; 'kmiller1@aclu.org'; 'MPerez@aclu.org'; Tess Sabo
Subject: RE: Service of Discovery - Case No. 2022-0303; League of Women Voters, et al. v. LaRose, et al.

Counsel,

LWVO Petitioners are producing to all Respondents production volumes LWVO_WARSHAW_001, LWVO_IMAI_001, and LWVO_IMAI_002.

Materials in these productions are designated as CONFIDENTIAL and HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY pursuant to the Protective Order and should be treated accordingly. All materials in these productions designated as HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY qualify as trade secrets under the definition in R.C. 1333.61(D).

All documents in LWVO_IMAI_001 are designated as CONFIDENTIAL, and all documents in LWVO_IMAI_002 are designated as HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY. All documents in LWVO_WARSHAW_001 within the subfolder designated as CONFIDENTIAL are CONFIDENTIAL and all documents within the subfolder designated as HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY are HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY.

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Regards,
Yale

Yale Fu

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Cc: Lamb, Janelle <JLamb@cov.com>; Gupta, Rishi <RRGupta@cov.com>; Suwanda, Sarah <SSuwanda@cov.com>; Arent, Madison P <Marent@cov.com>; Brown, Donald <dwbrown@cov.com>; Denuyl, David S <DDenuyl@cov.com>; Fram, Robert <rfram@cov.com>; Gethers, Stuart <SGethers@cov.com>; Listengourt, Denis <DListengourt@cov.com>; Goldrosen, Juliana <JGoldrosen@cov.com>; González, Joshua <JGonzalez@cov.com>; Hovard, James <JHovard@cov.com>; Plumer, Kimberly <KPlumer@cov.com>; Sharma, Anupam <asharma@cov.com>; Smith, James (Jay) <jmsmith@cov.com>; Stanton, David <dstanton@cov.com>; Thomson, Alex <AJThomson@cov.com>; Freda Levenson <flevenson@acluohio.org>; David Carey <dcarey@acluohio.org>; 'athomas@aclu.org'; 'jebenstein@aclu.org'; 'kmiller1@aclu.org'; 'MPerez@aclu.org'; 'Tess Sabo' <tsabo@acluohio.org>

Subject: RE: Service of Discovery - Case No. 2022-0303; League of Women Voters, et al. v. LaRose, et al.

Counsel,

LWVO Petitioners are producing to all Respondents production volume LWVO_WARSHAW_002. LWVO Petitioners are not including any materials designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY in this production.

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As noted in LWVO Petitioners' RFP responses, additional responsive data and files can be accessed through the following public sources: the text of SB258, the Commission's website at <https://redistricting.ohio.gov/maps>, and the website hosting the open-source software package redist at <https://cran.r-project.org/package=redist>.

Regards,
Yale

Yale Fu

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Subject: Service of Discovery - Case No. 2022-0303; League of Women Voters, et al. v. LaRose, et al.

[EXTERNAL]

Good afternoon Counsel,

Attached please find:

- Petitioners' Objections and Responses to Respondents Huffman and Cupp's First Set of Document Requests
- Petitioners' First Set of Requests for Production and Interrogatories to Respondents

Regards,

Tess Sabo

Paralegal

ACLU of Ohio

tsabo@acluohio.org

(614) 586-1972 ext. 2013

Pronouns: She, her, hers



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CERTIFICATE OF SERVICE

I, Freda J. Levenson, hereby certify that on this 3rd day of June 2022, I caused a true and correct copy of the foregoing to be served by email upon the counsel below:

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Counsel for Respondents House Speaker Robert Cupp, Senate President Matt Huffman, Senator Robert McColley, and Representative Jeffrey LaRe

Erik J. Clark, ejclark@organlegal.com

Counsel for Respondent Ohio Redistricting Commission

/s/ Freda J. Levenson
Freda J. Levenson (0045916)

Counsel for Petitioners