

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'
REPLY IN SUPPORT OF MERITS BRIEF**

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INTRODUCTION

In their opening merits brief, Petitioners League of Women Voters of Ohio, *et al.* clearly set forth how Respondents’ engineering of two non-compliant districts—Congressional Districts 1 and 15—resulted in an unduly partisan Revised Plan in violation of Article XIX, Section 1(C)(3)(a). In responding, Respondents launch into a flurry of *non-sequiturs* and even go so far as to suggest that Article XIX’s bar on partisan gerrymandering does not apply to the Revised Plan. Their response fails to seriously engage with the factual and legal points of Petitioners’ opening brief and should not be credited by this Court.

Rather than engage with the merits of Petitioners’ arguments, Respondents offer a discourse on compactness scores in the abstract, unrelated to their impact on the partisan skew of congressional districts at issue in this case. They invite a debate about the compactness scores of the statewide congressional plan as a whole, ignoring the clear and specific violations in Congressional Districts 1 and 15. And even these diversionary arguments turn out to be baseless. Their silence on the critical facts and issues actually at play in this litigation is a dispositive concession.

Respondents try to sidestep the problem of these egregious districts by contending that they were actually *permitted* to gerrymander—that a remedial map drawn by the Commission (as distinct from the General Assembly) is unconstrained by any limitations on partisan gerrymandering. In the words of Senate President Huffman, uttered in the context of the General Assembly redistricting dispute, “We can kind of do what we want.”¹ Their textual argument in favor of such lawlessness is unsupported by the Ohio Constitution and is frivolous.

¹ *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-1727, ¶ 13 (O’Connor, C.J., concurring) (citing Anna Staver, *Who’s Matt Huffman? The Lima man running the show at the Ohio Statehouse*, Columbus Dispatch (May 20, 2022),

Respondents top off their strategy of obfuscation and delay by then engaging in well-worn defense tactics known to all litigators: to ask for further discovery to forestall a decision. Respondents do so while ignoring the fact that they have already had seven weeks to conduct discovery—and despite the fact that Petitioners provided full and prompt compliance with the discovery that *was* propounded (a point they have never disputed).

Respondents are continuing to bank on their reliable defy-and-delay strategy. They believe that they can continue to flagrantly disregard the Ohio Constitution, this Court, and the will of Ohio voters with complete impunity. And they are banking on the (incorrect) notion that this Court cannot specifically identify just what has to be done to correct the Revised Plan.

Petitioners do not ask this Court to enact a map at this juncture. Instead, Petitioners identify the non-compliant features of the challenged map—which a constitutionally compliant map *cannot* have. Petitioners itemize—with particularity—the defects in the Revised Plan as regards Congressional Districts 1 and 15 and articulate the specific lines that must not be crossed to remedy these districts in the further amendment of that plan. These are features that the Court can, and should, include in a remedial order within its authority under Article XIX.

Petitioners therefore respectfully request that the Court (i) identify those constitutional defects in Congressional Districts 1 and 15, and (ii) instruct Respondents as to what a further revised plan *cannot* do. And to increase the odds that Respondents will spend their time effectively, in Section IV below, Petitioners further request that this Court provide Respondents with specific guidance as to how they should proceed during that time.

<https://www.dispatch.com/story/news/2022/05/19/meet-matt-huffman-the-lima-republican-who-runs-ohio/7269099001>).

ARGUMENT

I. THE “UNDULY REQUIREMENTS” OF SECTION 1(C)(3) APPLY TO THE REVISED PLAN ENACTED BY THE COMMISSION PURSUANT TO ITS REMEDIAL AUTHORITY UNDER SECTION 3(B)(2).

A. Respondents Improperly Seek to Revise the Text of Article XIX, Section 3(B)(2).

1. Section 3(B)(2) Plainly Requires the Commission to Remedy the Defects Identified by This Court in the Previous Plan.

The Section 3 remedial process of Article XIX requires the General Assembly and—should they fail—the Commission to pass or adopt a district plan that “remedi[ies] any legal defects in the previous plan identified by the court but shall include no other changes to the previous plan other than those made in order to remedy those defects.” Ohio Const., art. XIX § 3(B)(1)–(2).

The language in Section 3 is unqualified. When acting pursuant to its remedial authority, the Commission must “remedy *any* legal defects in the previous plan.” *Id.* § 3(B)(2) (emphasis added). Section 3 does not provide—or even suggest—that the Commission need only fix defects under the constitutional restrictions that would have applied had the Commission performed its duty under the original process and enacted a plan by October 31, 2021. *See id.* § 1(B).² Rather, Section 3 provides that the remedial body—be it the General Assembly or the Commission—must fix “*any*” and all legal defects identified by the Court, regardless of who created the original plan, or which Section 1 provision operated when they did so. *See id.* § 3(B)(1)–(2) (emphasis added).

² Further, even assuming *arguendo* that Article XIX, Section 1(B) applies, it would only apply if the map received “at least two members of the commission who represent each of the two largest political parties represented in the general assembly.” Getting two opposing parties to vote in favor of a map is one way in which gerrymandering is curtailed in the initial process for enacting a map. Here, none of the Democratic members of the Commission voted in favor of the map, so on its face, Section 1(B) is not applicable.

Indeed, the language of Section 3 underscores the focus on the need to fix “all” identified defects. Section 3(B)(2) makes plain that a remedial plan adopted by the Commission “shall include no other changes to the previous plan *other than those made in order to remedy those defects.*” *Id.* § 3(B)(2) (emphasis added). In other words, when acting pursuant to its Section 3 remedial authority, the Commission can do nothing but remedy the legal defects identified by the Court—leaving no doubt that it must do just that. *See id.*

Here, the Court identified two “legal defects” in the First Enacted Plan—violations of Section 1(C)(3)(a) and (b), *i.e.*, the Unduly Requirements. *Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89, ¶ 5. Thus, under the plain language of Section 3(B)(2), the Commission was required to adopt a plan that remedied the very defects identified by the Court. *See id.* ¶ 99 (“By the plain language of Article XIX, Section 3(B), both the General Assembly and the reconstituted commission, should that be necessary, are mandated to draw a map that comports with the *directives of this opinion.*”); *see also* Ohio Const., art. XIX § 3(B)(2). And because the only changes that the Commission was authorized to make were “those made *in order to remedy those defects,*” *see* Ohio Const., art. XIX § 3(B)(2) (emphasis added), it defies logic for Respondents to argue that the Commission was not required to enact a plan that complies with Section 1(C)(3)(a) and (b), when in fact that is plainly *all* that was required.

2. Respondents Concede the Breadth of the Commission’s Remedial Duty Under Section 3(B)(2)—Even As They Dispute It.

Respondents initially acknowledge that the language in Section 3(B)—requiring remediation of any “legal defects in the previous plan”—could apply to “either a general assembly remedial plan . . . or a Commission remedial plan.” Resp. Br. of Huffman, McColley, LaRe, & Cupp, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, No. 2021-1193 (May 12, 2022), at 13 (hereinafter “Resp. Br.”). Yet they then contend that this same language

requires each respective remedial body to address only the reasons why its *own* map was invalidated. *Id.* (“The Section 3 language requires the relevant map-drawing authority whose plan was invalidated to address the reasons why *its* map was invalidated, and only those reasons.” (emphasis added)). This tortured interpretation is tethered to neither text nor logic.

It bears emphasis that Section 3 provides identical instructions to both the General Assembly and to the Commission when either body is acting pursuant to its remedial authority: each respective body must fix “any” defects identified by the Court in the invalidated plan. Ohio Const., art. XIX § 3(B)(1)–(2). This language in no way suggests that the Commission, as the operative remedial body, need only address the invalidated map’s legal defects if it enacted the map in the first place. *See id.* Nor does its repetition in Section 3(B)(1) and (2) support that construction. On the contrary, the repetition of this identical language underscores the point that whatever body is charged with remedying a defective plan must address all defects identified by the Court, however they were enacted in the first instance.

B. Petitioners Do Not Seek to Convert the Commission into the General Assembly Under Section 1 or Ask this Court to Rewrite the Ohio Constitution.

Respondents contend that Petitioners have adopted an interpretation that rewrites Section 1 to “substitute” the “Commission” for “general assembly.” Resp. Br. at 10–11. And they rely on *State ex rel. Maurer v. Sheward*, 71 Ohio St.3d 513, 644 N.E.2d 369 (1994), for that proposition. Such reliance is misplaced.

In *Sheward*, the plaintiff argued that the General Assembly’s authority to regulate the governor’s power to grant “pardons” under Section 11 of Article III extended to commutations—despite the fact that Section 11 provides the governor the power to “grant reprieves, commutations, *and* pardons.” *Id.* at 520 (emphasis added). The Court rejected that argument, finding, *inter alia*, that the repeated references to the different clemency powers in “the same

small section” did not support an interpretation whereby the term pardons *included* commutations. *Id.* at 521.

That holding, however, has no bearing here. Petitioners do not seek to change the scope of Section 1(C)(3) or the constraints on the enactment of a map in the first instance. As noted above, they merely seek to enforce the provisions of Section 3(B)(2) as written.

C. Erasing the Obligation to Address the Unduly Requirements When the Commission Is Tasked with Remedying Defects Identified by the Court Would Lead to Perverse Incentives.

In 2018, Ohioans enacted Article XIX and, in particular, Section 1(C)(3) to curb the partisan gerrymandering that had plagued Ohio for the past decade. Respondents’ contention that the Commission, under Section 3, need not remedy the existing Section 1(C)(3) defects in the First Enacted Plan would lead to a perverse incentive undermining that reform. Critically, under Respondents’ scheme, the majority party would be incentivized to pass an unduly partisan plan, knowing full well that the Court would invalidate it, and hand off the remedial task of drawing a revised plan to the Commission—thereby avoiding the court-ordered remedy and insulating any revised plan from judicial review. Such a perverse outcome would completely undermine the purpose of Article XIX, vitiate this Court’s judicial oversight of Article XIX violations, *see* Ohio Const., art. XIX § 3(A), and violate Ohioans’ right to a full and complete remedy, *id.*, art. I § 16.

II. THE REVISED PLAN DOES NOT COMPLY WITH SECTION 1(C)(3).

A. Respondents Effectively Concede that the Revised Plan Unduly Favors the Republican Party.

Petitioners’ claims rest on a two-step analytic framework grounded in this Court’s decision in *Adams*. League of Women Voters of Ohio Pet’rs’ Merits Br., *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, No. 2021-1193 (May 5, 2022) at 19–21 (hereinafter

“Pet’rs’ Br.”). First, Petitioners demonstrated that the Revised Plan clearly *favors* the Republican Party, and for two reasons: (i) the Revised Plan represents a gross departure from proportionality; and (ii) it is skewed in favor of the Republican Party under established measures of partisan bias. *Id.* at 22–27. Second, Petitioners demonstrated that this favoritism is *undue* because it is not required by the neutral line-drawing criteria of Article XIX. To the contrary, the statewide bias in the Revised Plan largely derives from the creation of two non-compact districts, Congressional Districts 1 and 15, that strategically split and combine counties for partisan advantage. *Id.* at 27–41.

1. The Revised Plan Plainly *Favors* the Republican Party.

At step one of the analysis, Respondents do not dispute that the Revised Plan grossly deviates from proportionality. Dr. Warshaw demonstrated that the Revised Plan affords a grossly disproportionate share of congressional seats to the Republican Party, relative to its statewide vote share. (EXPERT_0188, Supp. 9.) The disparate effect of the Revised Plan, moreover, was manifest across three distinct election sets. Dr. Warshaw concluded that in the average election, Republicans are likely to win about 12 out of Ohio’s 15 congressional seats, or 75–80%, which is far in excess of their 55% statewide vote share in recent elections. (EXPERT_0188, Supp. 9; EXPERT_0196, Supp. 17.)

In addition, Dr. Warshaw found that four well-established methods of measuring partisan bias all confirm that the Revised Plan favors the Republican Party. (EXPERT_0190–97, Supp. 11–18.) Specifically, Dr. Warshaw concluded that under all four metrics—efficiency gap, declination, mean-median difference, and symmetry bias in the vote-seat curve—the partisan bias of the Revised Plan is generally indistinguishable from that of the previously invalidated First Enacted Plan, and also that both plans are more biased and more pro-Republican than the

overwhelming majority of historical plans nationwide. (EXPERT_0189, Supp. 10.)

Respondents have not challenged Dr. Warshaw's findings.

As additional evidence of this undisputed favoritism, Dr. Imai explained that compared to his 5,000 simulated plans, the Revised Plan transformed Democratic-leaning districts into toss-up seats, while at the same time converting slightly Republican-leaning districts into safe Republican districts. (IMAI_005-07, Supp. 84-86.)

2. This Favoritism Is “Undue” Because of Compactness Violations and Unnecessary Splitting of Counties.

Respondents do not dispute that the Revised Plan's partisan favoritism is driven in large part by the non-compact contours of Congressional Districts 1 and 15, as well as by the unnecessary splitting of counties and communities of interest in those two districts. Indeed, Respondents do not even attempt to defend the contours of those districts, which were engineered for partisan advantage and in no way required by Ohio's political geography. Nor do they dispute that correcting those two obvious defects would materially address the Revised Plan's violation of Section 1(C)(3).

B. Respondents Do Not Dispute that Congressional District 15 Is Drawn to Unduly Favor the Republican Party.

Petitioners have submitted evidence demonstrating that the Revised Plan creates a safe Republican district covering voters in Franklin County who should instead find themselves in a safe Democratic district. Pet'rs' Br. at 29-34. Evidence that the manipulation of Congressional District 15 unduly shifts one full seat to the Republican Party stands un rebutted.

Specifically, Respondents do not dispute that Congressional District 15 prevents the emergence of a second Democratic-leaning district in and around Franklin County. The Revised Plan achieves this goal by (i) combining Democratic-leaning areas of Franklin County with Republican counties to the west in Congressional District 15; and (ii) dividing voters in

Delaware County, just to the north of Franklin County, into Republican-leaning Congressional Districts 4 and 12, whereas Dr. Imai's simulations generally keep Delaware County intact as part of an additional Democratic-leaning district. (IMAI_011–13, Supp. 90–92.)

Nor do Respondents dispute that Congressional District 15 is amongst the least compact districts in the nation, as shown by both its Reock score (0.28) and its Polsby-Popper score (0.14)—whether compared to districts over the past 200 years or simply by reference to the 2020 election cycle. (EXPERT_0197–99, Supp. 18–20.) They similarly do not dispute that under Dr. Imai's simulated plans, the average Polsby-Popper district compactness score for the precincts falling within Congressional District 15 is 55% higher than the compactness score of Congressional District 15 under the Revised Plan, or that more than 98.9% of the simulated plans assign these precincts to a district that is, on average, more compact than Congressional District 15. Pet'rs' Br. at 32–33.

In addition, Respondents do not dispute that Congressional District 15 unduly and unnecessarily splits a grand total of five counties, far more than any other district in the Revised Plan, in order to create a safe Republican district. *Id.* at 33–34. This splitting of multiple counties in the service of partisan aims is manifestly undue and in violation of Section 1(C)(3)(a) and (b). Respondents do not even attempt to justify the splicing and dicing required to create this “Frankenstein” district.

C. Respondents Do Not Dispute that Congressional District 1 Is Drawn to Unduly Favor the Republican Party.

A similar pattern exists with respect to Congressional District 1. Petitioners submitted evidence demonstrating that the Revised Plan converts what would otherwise be a Democratic-leaning seat in Hamilton County into a toss-up district. It does so by joining Democratic-leaning

areas of Hamilton County with Warren County in Congressional District 1. *Id.* at 35–41.

Respondents have not addressed this evidence.

In particular, Respondents do not dispute that as a result of (i) the forced pairing of politically dissimilar areas of Hamilton County and Warren County in Congressional District 1, and (ii) the cracking of Democratic voters in Hamilton County into Congressional Districts 1 and 8, the Revised Plan places voters in Hamilton County into a much less Democratic-leaning district than would otherwise be expected. (IMAI_008–11, Supp. 87–90.)

Nor do Respondents dispute Dr. Warshaw’s finding that Congressional District 1’s Reock score is in the bottom quartile for all congressional districts over the past 200 years and that its Polsby-Popper score is “well below the average” across that same time frame. (EXPERT_0199, Supp. 20.) Respondents similarly do not dispute that under Dr. Imai’s simulated plans, the average Polsby-Popper district compactness score for the precincts falling within Congressional District 1 is 42% higher than the compactness score of Congressional District 1 under the Revised Plan, or that all of the simulated plans assign these precincts to a district that is, on average, more compact than Congressional District 1. Pet’rs’ Br. at 37–38. Similarly, Respondents do not dispute that Congressional District 1 unduly splits communities of interest in and around Cincinnati, dividing the Black community of that metropolitan area in order to submerge specific Democratic-leaning precincts into rural Warren County, which is connected via a narrow corridor. (EXPERT_0091, Supp. 43.)

D. Respondents Do Not Dispute that Fixing Congressional Districts 1 and 15 Would Materially Reduce the Undue Republican Advantage in the Revised Plan.

Petitioners submitted evidence that if the constitutional defects in Congressional Districts 1 and 15 were corrected, the resulting plan would create 1.5 additional Democratic-leaning seats. Pet’rs’ Br. at 28, 44–45. This calculus is based on the loss of one full Democratic-leaning seat in

Franklin County and the conversion of what should be a Democratic-leaning seat in Hamilton County into a toss-up district.

Given the expected Republican seat share of at least 75% under the Revised Plan, as determined by Dr. Warshaw (EXPERT_0188, Supp. 9; EXPERT_0196, Supp. 17), this 1.5-seat shift among Ohio's 15 seats would reduce the undue Republican advantage by 10 percentage points, to a seat share of approximately 65%. Respondents do not dispute the material remedial impact of specific changes to those districts on the constitutionality of the statewide plan.

E. Respondents' Broad Brush Attacks on Compactness Metrics Fall Flat.

1. Respondents' Discussion of Compactness Metrics Fatally Omits Any Reference to the Effect of Non-Compactness On Partisan Bias In Congressional Districts 1 and 15.

While failing to address Petitioners' principal claims, Respondents devote three full pages of their brief to a discussion of compactness measures in the academic literature. At no point, however, do Respondents acknowledge the connection between non-compactness and partisan bias. Instead, their brief discusses compactness as if Petitioners' claim were somehow merely that the district lines in the Revised Plan as a whole are insufficiently compact. That is not Petitioners' contention. What matters under the Ohio Constitution are non-compact borders *drawn for partisan advantage*. It is that specific effect of non-compactness in particular districts that reveals and creates an "undue" partisan favoritism in the redistricting plan as a whole.

In this case, Petitioners have focused on (i) partisan bias in the overall plan (ii) that is the product of non-compact lines (and unnecessary splits) in two specific districts that were engineered for partisan gain. In terms of compactness, then, what matters is the relative compactness of Congressional Districts 1 and 15, compared to other districts in Ohio, to districts nationwide, and to districts in the simulated plans. As discussed above, such comparisons do not reveal "minor differences in compactness scores," Resp. Br. at 19—rather, they confirm that

Congressional Districts 1 and 15 are clear outliers in terms of compactness, regardless of which metric is utilized.

Respondents' various assertions about the compactness of other districts in the Revised Plan, *see* Resp. Br. at 18 n.8, are all beside the point. The fact that the Revised Plan includes selected districts with high compactness scores is immaterial; if anything, the relatively high scores of Congressional District 3 emphasized by Respondents merely reveal how effectively the Revised Plan packs Democrats within Franklin County for partisan gain. *Id.* As noted, Respondents do not present any evidence indicating that Congressional Districts 1 and 15 are somehow compact; instead, they point to evidence that *other districts* in the Revised Plan (none of them in dispute) are compact, which cannot excuse the non-compactness of Congressional Districts 1 and 15. *Id.*

2. Compactness Measures Like Reock and Polsby-Popper Are Widely Accepted and Can Be Used to Show the Outlier Status of Congressional Districts 1 and 15.

Courts routinely use compactness scores presented by litigants to evaluate individual districts and analyze their compactness. In particular, “compactness scores are most useful to show relative compactness, by comparing one district to alternative or benchmark versions of that district, or comparing scores to the statewide or nationwide average.” *Covington v. North Carolina*, 316 F.R.D. 117, 140–41 (M.D.N.C. 2016), *aff'd*, 137 S.Ct. 2211, 198 L.Ed.2d 655 (2017) (citing *Bush v. Vera*, 517 U.S. 952, 960, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996)).

Respondents' attempt to discredit all compactness assessment scores, including the standard scores used by courts, is unavailing. *See* Resp. Br. at 17.

Petitioners here provide “widely used” compactness measures like Reock and Polsby-Popper to show the outlier status of Congressional Districts 1 and 15 in terms of compactness. *Covington*, 316 F.R.D. at 154 n.33 (relying on Reock scores and citing *Karcher v. Daggett*, 462

U.S. 725, 756 n.19, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983) (Stevens, J., concurring)). Courts across the country have endorsed this approach and used compactness scores to analyze electoral districts' compactness. *See League of Women Voters of Fla. v. Detzner*, 179 So.3d 258 (Fla. 2015) (using Polsby-Popper, Convex Hull, and Reock scores to analyze individual districts for compactness as compared to other statewide districts and benchmark districts); *Bethune-Hill v. Va. State Bd. of Elections*, 368 F.Supp.3d 872 (E.D.Va. 2019) (using Polsby-Popper and Reock scores to compare challenged districts to districts in past statewide plans and non-challenged districts in the same plan).

Dr. Imai and Dr. Warshaw use the Polsby-Popper and/or Reock metrics because they are widely relied upon in compactness analyses. (IMAI_019, Supp. 98 (Imai describing the Polsby-Popper measure as a “commonly-used quantitative measures of district compactness”); Expert_0197, Supp. 18 (Warshaw describing the Polsby-Popper and Reock methods as “two commonly used compactness metrics to evaluate the compactness of the plans”).)

Respondents cite Virginia, Missouri, and Pennsylvania cases that concern the imposition of an abstract, bright-line test for compactness. *See* Resp. Br. at 18. As noted above, Petitioners' objection here does not require the identification or use of any bright-line threshold of compactness. Rather, Petitioners' claims require comparisons of Congressional Districts 1 and 15 in relative terms to the compactness of other districts in Ohio, across the country, and in the simulated plans—uses for which both the Polsby-Popper and Reock metrics are well suited.

3. The Non-Compactness of Congressional Districts 1 and 15 Is Undeniable Regardless of the Metrics Used To Confirm That Fact.

Metrics are just one way to show that Congressional Districts 1 and 15 are non-compact. Even on their face, it is clear that both districts fail to qualify as compact. Indeed, courts have relied on a distinct, common-sense approach, called the “eyeball approach” or “interocular test”

to determine compactness. *Vera*, 517 U.S. at 960; *Covington*, 316 F.R.D. at 141. While not a precise science, “the Supreme Court has repeatedly relied upon such assessments to determine if a district is ‘bizarre’ or ‘irregular.’” *Covington*, 316 F.R.D. at 141. Given the splice of barely adjacent Hamilton County and Warren County in Congressional District 1 and the elongated shape of Congressional District 15 (or as Representative Huffman calls it, the “Frankenstein district”), both districts are clearly irregular, with District 15 veering into the bizarre. Pet’rs’ Br. at 2–3.

F. Respondents’ Criticisms of Petitioners’ Experts Fall Flat.

1. Respondents’ Argument that Petitioners Seek to Subject the Revised Plan to a “Beauty Contest” with Other Maps Is a Red Herring.

Petitioners have made no suggestion that the Court should enact any alternative plan prepared by Dr. Imai or any other expert. Nor do Petitioners ask the Court to pick a winner from amongst competing plans in a “beauty contest.” Resp. Br. at 16. Rather, Petitioners reference Dr. Imai’s simulated plans and Example Plan to help illustrate how the *undue* favoritism in the Revised Plan was achieved through the drawing of non-compact districts. Specifically, comparisons of Congressional Districts 1 and 15 in the Revised Plan against their respective corresponding districts in Dr. Imai’s alternative plans clearly demonstrate that the unnecessary and non-compact contours of those districts in the Revised Plan result in their undue favoritism of the Republican Party. *See* Pet’rs’ Br. at 29–41.

2. Dr. Imai’s Example Plan Does Not Contradict Any of His Simulation Analysis.

Respondents argue that “Dr. Imai’s analysis conflicts with itself” because Dr. Imai “concluded that plans which resulted in more than 8 Republican districts were partisan outliers

that unduly favored Republicans” in his “first report”³ and subsequently submitted an Example Plan “that contains 9 Republican districts.” Resp. Br. at 20.

To be clear, Dr. Imai *never* “concluded that plans which resulted in more than 8 Republican districts were partisan outliers that unduly favored Republicans” in any of his affidavits. Rather, Dr. Imai concluded in his December 9, 2021 affidavit that “any plan that provides for *more than 9* Republican seats is an outlier.” (EXPERT_0006 (emphasis added).) In fact, almost all of Dr. Imai’s 5,000 simulated plans resulted in either 8 or 9 expected Republican districts.⁴ (EXPERT_0013–14.)

3. Dr. Imai’s Use of Compactness Metrics is Consistent and Well Grounded.

Respondents’ argument that Dr. Imai “moves the goalposts” by using one set of compactness metrics in one report and another set of compactness metrics in another similarly fails. *See* Resp. Br. at 19 n.9. Dr. Imai used the same compactness metric (Polsby-Popper) when evaluating the compactness of individual districts in each of his affidavits. (EXPERT_0011; EXPERT_0074; IMAI_013, Supp. 92.)

Nonetheless, Respondents appear to argue that Dr. Imai “moves the goalposts” because he uses both Polsby-Popper and the “Edge-removal compactness test” when assessing the compactness of the First Enacted Plan, but allegedly “cherry picks two districts (1 and 15) and focuses only on Polsby-Popper scores” when assessing the compactness of the Revised Plan. *See* Resp. Br. at 19 n.9.

³ Dr. Imai’s first affidavit addressing congressional redistricting in Ohio dated December 9, 2021 in Case No. 2021-1449 involved analysis of the General Assembly’s First Enacted Plan. (EXPERT_0004.) In connection with this present case, Dr. Imai submitted an affidavit dated April 20, 2022, which involved analysis of the Commission’s Revised Plan.

⁴ Almost 80% of Dr. Imai’s simulated plans resulted in eight expected Republican districts, and 20% of the plans resulted in nine expected Republican districts. (EXPERT_0013–14.)

But Dr. Imai did not “cherry pick” Congressional Districts 1 and 15, and he did not focus on them solely because those districts had low compactness scores. As Dr. Imai explained, he analyzed the compactness of these districts because “[t]he signs of partisan biases in Hamilton and Franklin Counties under the revised plan manifest as highly non-compact districts in these counties.” (IMAI_013, Supp. 92.) Moreover, contrary to Respondents’ suggestion, Dr. Imai does address edge-removal compactness (also called fraction of edges kept) when assessing the compactness of both the First Enacted Plan as a whole (EXPERT_0011) and the Revised Plan as a whole (IMAI_019, Supp. 98).

4. Dr. Imai Never “Gamed” the Math by Selecting a Specific Election Set.

Respondents suggest that Dr. Imai engaged in gamesmanship by “proffering the most extreme pro-democratic position [he could] to the Court in an effort to make the maps passed by the general assembly or the Commission appear like outliers.” Resp. Br. at 22–23. Specifically, Respondents argue that although Dr. Imai used a specific election set to calculate the expected congressional seat share for Republicans and Democrats in Ohio, he had the option to (but did not) choose a different election set that would paint the First Enacted Plan and the Revised Plan in a more favorable light. *Id.*

In fact, Dr. Imai used the same election set used by Respondents in each instance to give them the benefit of the doubt. (EXPERT_0011.) In Dr. Imai’s December 9, 2021 affidavit, he used the set of six statewide federal elections from 2012 to 2020 because that was the election set used by the General Assembly to assess the partisan leanings of the First Enacted Plan. (*Id.*) In Dr. Imai’s April 20, 2022 affidavit, he used the set of nine statewide elections from 2016 to 2020 because that was the election set used by the Commission to assess the partisan leanings of the Revised Plan. (IMAI_004–05, Supp. 83–84.)

5. Dr. Imai’s Simulated Plans Are Constitutionally Compliant.

Respondents contend that Dr. Imai’s simulations are “constitutionally suspect” because they include a 42% Black Voting Age Population (“BVAP”) constraint for Cuyahoga County. Resp. Br. at 20–21 n.10. As explained by Dr. Handley, an analysis of participation rates and voting patterns by race in Cuyahoga County shows that “a 42% BVAP district [in Cuyahoga County] would offer Black voters an effective opportunity to elect their preferred candidates to Congress.” (NEIMAN_EVID_00282.) Accordingly, Dr. Imai implemented a 42% BVAP constraint for Cuyahoga County into his simulation algorithm to ensure compliance with the Voting Rights Act.

6. There is Nothing “Conflicting And Contradictory” About the Differences Between Dr. Imai’s and Dr. Chen’s Simulation Analyses.

Respondents’ attempts to discredit all simulation evidence—by pointing to a difference in the expected seat share between Dr. Imai’s simulated plans and Dr. Chen’s simulated plans—is similarly meritless. *See* Resp. Br. at 19–20. As Respondents directly acknowledge, Dr. Imai and Dr. Chen each use different election sets in their simulation analyses. *Id.*

Because simulation-based analysis offers the advantage of allowing for apples-to-apples comparisons within each simulation (*see* EXPERT_0009), Dr. Imai and Dr. Chen both offer valid comparisons of their own simulated plans against the Revised Plan. Indeed, despite conducting separate analyses using different algorithms, they both reach the same conclusion that the Revised Plan is a clear outlier favoring the Republican Party in comparison to their respective simulation populations. (Imai_004, Supp. 83; NEIMAN_EVID_00389.)

7. Respondents Misrepresent Additional Features of Dr. Imai’s Analysis.

Respondents argue that “while Dr. Imai may claim that he ran simulated maps and analyzed 5,000 unique plans, his code reveals that there are not 5,000 unique options *for each*

district,” and suggest that Dr. Imai and Petitioners have misled the Court because of this. Resp. Br. at 21 (emphasis added); *see also id.* (“This is far from the picture that Petitioners’ have painted for the Court.”). However, Dr. Imai never claimed that his 5,000 simulated plans must or do in fact include 5,000 unique options for *each district*.

Moreover, Respondents state that “Petitioners argue that the Imai plans are superior to the Second Plan, in part because Imai’s illustrative plan turns districts 11-13 into ‘highly competitive districts.’” Resp. Br. at 21 n.11. Petitioners made no such argument. To the contrary, Petitioners have shown that the Revised Plan “decreases the Democratic advantage of the eleventh, twelfth, and thirteenth most Republican-leaning districts,” turning these districts, which lean Democratic in Dr. Imai’s simulated plans, into highly competitive districts. Pet’rs’ Br. at 23.

III. RESPONDENTS’ DISCOVERY REQUEST IS AN UNWARRANTED EFFORT TO RUN OUT THE CLOCK.

Respondents seek to stall by asserting that time is needed for further discovery. *See* Resp. Br. at 25. But Respondents have had ample time in which to conduct discovery, beginning with the filing of the Complaint in this case on March 22, 2022 through the filing of evidence in support of the merits briefs on April 25, 2022. And in fact, Respondents took full advantage of that opportunity—for they *have conducted discovery*—and Petitioners complied swiftly and comprehensively to all of Respondents’ requests. *See* Aff. Alex Thomson ¶¶ 2–9 (demonstrating that Petitioners started producing documents days after discovery requests were served and produced confidential documents minutes after a protective order was agreed to).

IV. THIS COURT SHOULD DIRECT A REMEDIAL PROTOCOL THAT FORECLOSES A DILATORY PARTISAN PROCESS.

This Court has inherent authority to ensure compliance with its orders. It should do so here.

A. Substantive Features of a Remedial Order.

As set forth in Petitioners' opening merits brief, Pet'rs' Br. at 44, the Court's remedial order should identify specific redlines that a further revised plan must not cross. In particular:

Congressional District 15. Correcting the legal defects in District 15 entails:

- [1] a prohibition on submerging the precincts in the suburbs of Columbus into a non-compact district;
- [2] a prohibition on including those Democratic-leaning precincts in western Franklin County in a district that includes multiple split counties filled with Republican votes; and
- [3] a prohibition on splitting Franklin County more than once.

Congressional District 1. Correcting the legal defects in District 1 entails:

- [1] a prohibition on the inclusion of precincts outside of Hamilton County (including, without limitation, precincts in Warren County) in Congressional District 1; and
- [2] a prohibition on splitting communities of interest in and around Cincinnati.

B. Procedural Features of a Remedial Order.

During the course of responding to this Court's remedial order, Respondents should be directed to follow the following course of action:

- by no later than one week following this Court's order, Respondents should be directed to re-engage with the independent map drawers who have already conducted careful work in connection with the General Assembly litigation;
- within two weeks of this Court's order, the independent map drawers should convene and begin their work of drawing a congressional map that is compliant with this Court's order;
- within three weeks of this Court's order, the independent map drawers should submit their map to the General Assembly for its consideration;

- if the General Assembly fails to enact a remedial map and the task then falls to the Commission pursuant to Section 3(B)(2), the Commission should be directed to meet within one week of the failure of the General Assembly to enact a map;
- beginning with its first meeting, the Commission should discuss the substance of the map drawn by the independent map drawers (and not merely discuss procedural matters);
- all of the meetings of the General Assembly and/or Commission shall be held in public;
- the General Assembly and/or Commission shall not rely on partisan staff to draw a new map;
- the General Assembly and/or Commission shall be permitted to ask this Court for a reasonable extension of time to complete its work for good cause, and shall not invoke this Court's deadlines as a reason that it could not comply with the substantive provisions of this Court's order.

CONCLUSION

For the foregoing reasons, and those set forth in Petitioners' opening merits brief, this Court should invalidate the Revised Plan and direct the Remedy set forth in Section IV, *supra*.

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CERTIFICATE OF SERVICE

I, Freda J. Levenson, 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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Thomson Affidavit.pdf

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E-Signature 1: Alexander Thomson (AT)

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

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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)**

**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

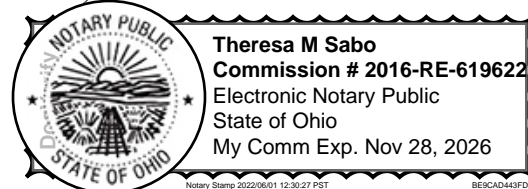
Columbus, Franklin, Ohio

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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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/ Alex Thomson

Alexander Thomson (PHV 25462-2022)

Counsel for League of Women Voters of Ohio Petitioners



EXHIBIT 1

RETRIEVED FROM DEMOCRACYDOCKET.COM

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.

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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*

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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

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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 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'; 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. 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

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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

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Julie.Pfeiffer@OhioAGO.gov

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any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by telephone.

From: Julie Pfeiffer

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
Fax Number: 866-422-9192
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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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From: Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>

Sent: Monday, April 04, 2022 12:13 PM

To: Jonathan Blanton <Jonathan.Blanton@OhioAGO.gov>; Denuyl, David S <DDenuyl@cov.com>; 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 <amerinc@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

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

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: Jonathan Blanton

Sent: Sunday, April 03, 2022 8:05 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

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 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

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
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Sent: Sunday, April 03, 2022 10:40 AM

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<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>; Thomson, Alex <AJThomson@cov.com>; 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

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

Sent: Friday, April 01, 2022 4:23 PM

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<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

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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Sent: Friday, April 01, 2022 1:13 PM

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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

Office Number: 614-466-2872

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Sent: Friday, April 01, 2022 3:41 PM

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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

Office of Ohio Attorney General Dave Yost

Office Number: 614-466-2872

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Sent: Friday, April 01, 2022 3:28 PM

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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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From: Harleen Gambhir <hgambhir@elias.law>

Sent: Friday, April 1, 2022 3:06 PM

To: Phil Strach <phil.strach@nelsonmullins.com>; Denuyl, David S <DDenuyl@cov.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; Erik J. Clark <ejclark@organlegal.com>; Ashley Merino <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

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

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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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Sent: Friday, April 1, 2022 1:43 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

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>

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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



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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



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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

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

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

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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

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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 Petitioners

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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)*
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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:

Julie M. Pfeiffer, julie.pfeiffer@ohioago.gov
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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)
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EXHIBIT 4

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From: Denuyl, David S
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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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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>

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]

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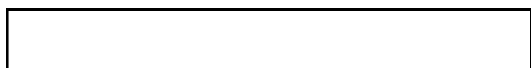
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Subject: RE: Nieman/LWVO v. LaRose; Respondents Huffman and Cupp's First Set of Document Requests to Petitioners

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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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



ALYSSA RIGGINS SENIOR ASSOCIATE

alyssa.riggins@nelsonmullins.com

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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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From: Harleen Gambhir <hgambhir@elias.law>

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

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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
hgambhir@elias.law
(she/her)

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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; jmsmith@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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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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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'; 'kmilller1@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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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 Jasrasaria'; '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

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The Commission has no objections to the revised protective order.

Thank you,

Ashley T. Merino
ORGAN LAW LLP
1330 Dublin Road
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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 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

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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<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

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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 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

Covington & Burling LLP
Salesforce Tower, 415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
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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 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

[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

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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

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>
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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' <alysa.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

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From: Julie Pfeiffer

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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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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Fax Number: 866-422-9192

Julie.Pfeiffer@OhioAGO.gov

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From: Jonathan Blanton

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

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

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 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>, 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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Sent: Sunday, April 03, 2022 10:40 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

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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

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: Friday, April 01, 2022 4:23 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

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

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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

Office Number: 614-466-2872

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Julie.Pfeiffer@OhioAGO.gov

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Sent: Friday, April 01, 2022 3:41 PM

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<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

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

Office of Ohio Attorney General Dave Yost

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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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

Associate
Elias Law Group LLP
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From: Phil Strach <phil.strach@nelsonmullins.com>

Sent: Friday, April 1, 2022 2:20 PM

To: Denuyl, David S <DDenuyl@cov.com>; Alyssa Riggins <alyssa.riggins@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

David, those revisions are acceptable to us. Phil



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

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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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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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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

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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
Associate
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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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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 regist at <https://cran.r-project.org/package=redist>.

Regards,
Yale

Yale Fu

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Arent, Madison P <Marent@cov.com>; Brown, Donald <dwbrown@cov.com>; Denuyl, David S <DDenuyl@cov.com>;
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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,
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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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