



August 27, 2024

The Honorable Dave Yost  
Office of the Attorney General  
30 E. Broad St., 14th Floor  
Columbus, OH 43215

Dear Attorney General Yost,

As you are aware, Senator Paula Hicks-Hudson and Representative Terrence Upchurch are two individuals named in their official capacity as members of respondent Ohio Ballot Board and are the only two Minority caucus members on the Board. In addition, Senator Hicks-Hudson and Representative Upchurch constituted the only votes opposing the ultimate motion to adopt the language presented by the Secretary of State, as amended by Senator Gavarone. On Friday, August 23, 2024, the undersigned members, leaders of the Ohio Senate and Ohio House Minority Caucuses, sent you a letter requesting an outside counsel appointment.

On the morning of Monday, August 26, 2024, your Director of Outside Counsel, Shawn Busken, called counsel for the Ohio Senate and House Minority caucuses stating that he was “calling in response to the letter that was sent to the Attorney General about the ballot board case” and requesting a call back. When the call was returned and the House Minority Counsel spoke with Mr. Busken, he relayed that it was your office’s position that the Ballot Board speaks *only* through the Chair, Secretary of State Frank LaRose, and that *only* the Secretary of State was consulted about this matter and the litigation. House Counsel noted that the Minority members of the Ohio House and Ohio Senate were not consulted for input into the case. He confirmed to Counsel that nobody except the Chair, not even the named members of the Senate Majority nor the House Majority were consulted, nor were they asked if they had any information and input for the Answer. Finally, Mr. Busken confirmed that your office would be denying our request for outside counsel representation.

On that same day, our caucus counsels received an email from Constitutional Offices Section Chief Julie Pfeiffer containing an Answer to the Complaint filed against the Ballot Board and naming each individual member of the Ballot Board in their official capacity. This email was the first time Ms. Pfeiffer had contacted counsel for the undersigned in this matter. Neither Ms. Pfeiffer nor anyone else in your office had a conversation with the parties about the litigation. Your office did not seek any input from Senator Hicks-Hudson or Representative Upchurch, the

undersigned or their counsel, and no consultation regarding the case or the fact that the State would be responding (and how). In essence, your office filed an Answer without any idea of what relevant information, evidence, or arguments the individual members of the Ballot Board—named as defendants in this case—possessed. The undersigned were completely and intentionally left out from any client communications up to that point.

We remind you that the Ohio Rules of Professional Responsibility, to which you and every attorney in your office that represents the State in this matter are bound, expressly prohibits this exact type of intentional and explicit politically-motivated action. In addition, when a conflict of interest is present, attorneys are required to have their clients sign waivers recognizing and accepting the representation, despite the conflict of interest. We have neither been asked, nor signed, such a waiver. Rule 1.7 states the following:

#### **RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS**

(a) A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:

(1) the representation of that client will be directly adverse to another current client;

(2) there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests.

(b) A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division (a) of this rule, unless all of the following apply:

(1) the lawyer will be able to provide competent and diligent representation to each affected client;

(2) each affected client gives informed consent, confirmed in writing;

(3) the representation is not precluded by division (c) of this rule.

(c) Even if each affected client consents, the lawyer shall not accept or continue the representation if either of the following applies:

(1) the representation is prohibited by law;

(2) the representation would involve the assertion of a claim by one client against another client represented by the lawyer in the same proceeding.

Our request remains that the undersigned be assigned outside counsel, and specifically request Cooper Elliot law firm, to represent us in this matter. Our interests substantially diverge from those of the Majority members of the Ballot Board. Our request is similar to requests made, and granted by your office, in prior matters such as the redistricting cases. It is wholly appropriate for the undersigned to be granted outside counsel in this matter, and your explicit actions prove our assertions even further: not consulting with us before filing, not requesting input from us on the matter, not even providing us a copy of the complaint itself or a draft of your Answer for review,

and not providing us information or consultation as is required by the rules guiding professional responsibility of all Ohio attorneys.

In addition, we believe your actions have violated additional rules from the Professional Code of Responsibility, including Rules 1.2 and 1.4. Those rules state:

**RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY  
BETWEEN CLIENT AND LAWYER**

(a) Subject to divisions (c), (d), and (e) of this rule, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer does not violate this rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision as to a plea to be entered, whether to waive a jury trial, and whether the client will testify.

...

(d)(1) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

**RULE 1.4: COMMUNICATION**

(a) A lawyer shall do all of the following:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) comply as soon as practicable with reasonable requests for information from the client;

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Ohio Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

...

Because to date, you have not granted the undersigned outside counsel before unilaterally filing the Answer in this matter, we request, pursuant to Rule 1.4 and under your duties as counsel, the following information:

- Copies of any and all correspondence (including but not limited to email, text message, instant messenger, all voicemails, and all written correspondence) that you sent to any or all of the named Defendants;
- All drafts of the Answer in their original form;
- Copies of all evidence you have collected from all named Defendants in this matter, whether or not you may or will use the evidence at trial; and
- Copies of all legal research documentation you have conducted on this matter, to include all cases reviewed and all memorandum prepared for your use or review, or the use or review of any attorney or client in this matter.

We ask for this information on an ongoing basis. Further, we request advanced notification of and inclusion in every client meeting and call that your office has with any or all of the named Defendants regarding this matter.

In addition, we renew our request for the outside counsel appointment, as stated in our letter from August 23, 2024. If we do not receive this outside counsel appointment, we will be pursuing our available legal avenues. We are shocked by the miscarriage of justice, and the intentional and politically-motivated actions by your office in this matter, which we believe constitute violations of the Ohio Rules of Professional Responsibility by yourself and the attorneys from your office that signed this Answer.

Respectfully,



Nickie J. Antonio  
Minority Leader  
Senate District 23



C. Allison Russo  
Minority Leader  
Ohio House District 7

cc: Shawn Busken, shawn.busken@OhioAGO.gov