

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. CITIZENS :  
NOT POLITICIANS ET AL., : Case No. 2024-1200  
:   
Relators, :   
:   
v. : Original Action in Mandamus  
:   
OHIO BALLOT BOARD ET AL., : Expedited Elections Case  
:   
Respondents. :   
:

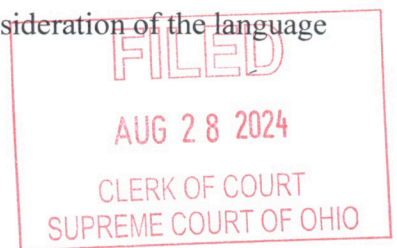
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~~AMENDED~~ ANSWER OF RESPONDENTS SENATOR PAULA HICKS-HUDSON  
AND REPRESENTATIVE TERENCE UPCHURCH

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We offer this pro se filing, pursuant to Rule 12.08(B), in response to the Relators' Complaint against the Ballot Board and the title and language it approved for use on the ballot with regard to what will be known as Issue 1 this November. We are: (1) Senator Paula Hicks-Hudson, member of the Ohio Ballot Board and State Senator for the 11th District of the Ohio Senate and (2) Representative Terrence Upchurch, member of the Ohio Ballot Board and State Representative for the 20th District of the Ohio House of Representatives.

We are individually named in this action in mandamus in our official capacity as Members of Respondent Ohio Ballot Board. We are also the two Democratic members on the Board. We constitute the only votes opposing the ultimate motion to adopt the Issue 1 language as presented by Respondent Secretary of State LaRose and amended by Respondent Senator Theresa Gavarone. We have real concerns about the process by which the language was adopted and the truthfulness behind the Secretary of State's honest and fair consideration of the language



proposed by the ballot issue committee, and we believe that our input in this matter, and our responses, are relevant to this litigation. Our interests diverge from those of the other members of the Ballot Board.

Because of this, we sent a letter to Attorney General Yost on Friday, August 23, 2024, requesting outside counsel to represent us. *See Ex. A.* In the letter we highlighted that we had no conversations with any representative from the Attorney General's office about the substance, response, status, or strategy in this litigation. We also highlighted that we did not hear a clear decision, in writing or in voicemail, until after we had learned that, unbeknownst to us, and without any input from or conversation with us, an Answer was filed, purportedly on our behalf and in our name, on Monday, August 26, 2024 by the Ohio Attorney General.

In fact, after the Answer was filed with the Court, the Attorney General's Director of Outside Counsel informed us that neither the Majority nor the Minority caucuses were consulted in this litigation, and that the Attorney General's position is that only the Chair (the Secretary of State) needed to be consulted as the Ballot Board speaks through the Chair. This is despite the fact that Ohio statute sets up the makeup of the Ballot Board and explicitly proscribes that it be bipartisan and made up of both chambers in the Ohio legislature. *See R.C. 3505.061(A)* ("The Ohio ballot board... shall consist of the secretary of state and four appointed members. No more than two of the appointed members shall be of the same political party. One of the members shall be appointed by the president of the senate, one shall be appointed by the minority leader of the senate, one shall be appointed by the speaker of the house of representatives, and one shall be appointed by the minority leader of the house of representatives."); *see also R.C. 3505.061(D)* ("The secretary of state shall be the chairperson of the board, and the secretary of state or the secretary of state's representative shall have a vote equal to that of any other member.").

Nonetheless, the Attorney General appears to be taking a legally incorrect position that one member of the Ballot Board (the Secretary of State) trumps every other member's voice on the Board.

It is absurd that the State's Attorney General would file an Answer to this honorable Court before notifying us that it would be denying our request for outside counsel representation. This deliberate political maneuver is not only in contravention to prior precedent, but it exhibits our underlying assertion that a conflict of interest is present and that outside counsel is necessary in order for our interests to be adequately represented in this matter. Further, the decision of the Attorney General's office to file an Answer on behalf of named Respondents, without even conversing with them, violates the Ohio Rules of Professional Responsibility. *See* Prof.Cond.R. 1.2, Prof.Cond.R. 1.4, and Prof.Cond.R. 1.7.

One of two things has to be true: either we should receive an outside counsel appointment so that our interests—which diverge from those of the Secretary of State—are adequately represented in this litigation; or the Attorney General is the sole representative who had an obligation under the Ohio Rules of Professional Responsibility to communicate with us, seek input from us, and consider our interests before filing an Answer purportedly on our behalf. We are both members of the Ballot Board with evidence, insight, and information, and we were named explicitly in our official capacities in this litigation.

There is a clear conflict between our interests, as Democratic members of the Ballot Board who are separately named respondents, and those of the Republican members of the Ballot Board. The Democratic members of the ballot board made multiple motions, statements, and made multiple legal arguments during the proceedings of the Ballot Board itself, and raised multiple concerns about the legality of not only the language presented by the Secretary of

State's office, but regarding the process undertaken during the course of its presentation and adoption. As you will see in our Answer below, we also vehemently disagree with many of the answers provided by the Answer filed by the Attorney General's office.

The Attorney General's deliberate and unilateral actions have forced us to file this pleading pro se, because at this point, we do not have the time to challenge the Attorney General's decision to deny us outside counsel representation. We are individually named as Respondents in this matter, and we will continue to file our own pleadings, regardless of the Attorney General's improper moves, unless and until the Court instructs us otherwise. Therefore we, Respondents Senator Paula Hicks-Hudson and Representative Terrence Upchurch, in our official capacities as Members of the Ohio Ballot Board, answer pro se the Relators' Complaint as follows:

### **INTRODUCTION**

1. The undersigned Respondents admit the allegations contained in Paragraph 1.
2. The undersigned Respondents admit the allegations contained in Paragraph 2.
3. As to Paragraph 3 of the Complaint, the undersigned Respondents admit with respect to the first sentence of Paragraph 3 of the Complaint. The remainder of the Paragraph constitutes the Relator's beliefs regarding their litigation, and the undersigned Respondents have insufficient personal knowledge to admit or deny the assertion.
4. The undersigned Respondents admit the allegations contained in Paragraph 4.
5. The undersigned Respondents admit the allegations contained in Paragraph 5.
6. As to Paragraph 6 of the Complaint, the undersigned Respondents admit that the Ballot Board as a whole refused Relators' requests. Further answering, the undersigned members of the Ballot Board were overruled in their attempt to ensure the adopted ballot

language is simple, straightforward, and mirrors the tenor, length, and subject matter of the ballot language adopted by the Ballot Board for the 2015 and 2018 proposed amendments that established the current redistricting process.

7. As to Paragraph 7 of the Complaint, the undersigned Respondents admit the Ballot Board as a whole violated its Constitutional duty, but the undersigned Respondents clarify that they personally voted against the language and voiced concerns during the course of the Ballot Board meeting. The undersigned Respondents further admit that the chosen ballot title is inaccurate, biased, argumentative, and misrepresents the proposed Amendment's procedures for removing commissioners who fail to comply with their duties.
8. The undersigned Respondents admit the allegations contained in Paragraph 8.
9. The undersigned Respondents admit the allegations contained in Paragraph 9.

#### **NATURE OF THE ACTION AND JURISDICTION**

10. The undersigned Respondents admit the allegations contained in Paragraph 10.
11. As to Paragraph 11 of the Complaint, the undersigned Respondents admit the allegations contained in its first two sentences. The last sentence is Relators' request to this honorable Court and the undersigned Respondents have no personal knowledge or information to admit or deny the statement, but are supportive of the request.
12. The undersigned Respondents admit the allegations contained in Paragraph 12.
13. The undersigned Respondents admit the allegations contained in Paragraph 13.
14. The undersigned Respondents admit the allegations contained in Paragraph 14.

#### **PARTIES**

15. The undersigned Respondents admit the allegations contained in Paragraph 15.
16. The undersigned Respondents admit the allegations contained in Paragraph 16.

17. The undersigned Respondents admit the allegations contained in Paragraph 17.
18. The undersigned Respondents admit the allegations contained in Paragraph 18.
19. The undersigned Respondents admit the allegations contained in Paragraph 19.
20. The undersigned Respondents admit the allegations contained in Paragraph 20.
21. The undersigned Respondents admit the allegations contained in Paragraph 21.
22. The undersigned Respondents admit the allegations contained in Paragraph 22.
23. The undersigned Respondents admit the allegations contained in Paragraph 23. Further answering, the undersigned Respondents clarify that R.C. 3505.061(A) and 3505.061(D) mandate the bipartisan makeup of the Ballot Board and set forth that the Chair of the Ballot Board is but one vote, equal to that of the other members.
24. The undersigned Respondents admit the allegations contained in Paragraph 24.

#### **LEGAL FRAMEWORK**

25. The undersigned Respondents admit the allegations contained in Paragraph 25.
26. The undersigned Respondents admit the allegations contained in Paragraph 26.
27. The undersigned Respondents admit the allegations contained in Paragraph 27.
28. The undersigned Respondents admit the allegations contained in Paragraph 28.
29. The undersigned Respondents admit the allegations contained in Paragraph 29.
30. The undersigned Respondents admit the allegations contained in Paragraph 30.
31. The undersigned Respondents admit the allegations contained in Paragraph 31.

#### **FACTS**

32. The undersigned Respondents admit the allegations contained in Paragraph 32.
33. The undersigned Respondents admit the allegations contained in Paragraph 33.
34. The undersigned Respondents admit the allegations contained in Paragraph 34.

35. The undersigned Respondents admit the allegations contained in Paragraph 35.
36. The undersigned Respondents admit the allegations contained in Paragraph 36.
37. As to Paragraph 37 of the Complaint, the undersigned Respondents admit that the ballot board meeting was scheduled for August 16 to adopt ballot language and that in advance of the meeting, the Amendment's proponents proposed ballot language for the Ballot Board's consideration. The undersigned Respondents further admit that the outcome of the drafted language mirrors the approach taken by the Ballot Board in 2015 and 2018 to concisely summarize proposed amendments that established politician-controlled processes to draw state legislative and congressional districts, respectively. However, the undersigned Respondents cannot speak to the specific intent and state of mind of the drafters of the language.
38. The undersigned Respondents admit the allegations contained in Paragraph 38.
39. The undersigned Respondents admit the allegations contained in Paragraph 39.
40. The undersigned Respondents admit the allegations contained in Paragraph 40.
41. The undersigned Respondents admit the allegations contained in Paragraph 41.
42. The undersigned Respondents admit the allegations contained in Paragraph 42.
43. The undersigned Respondents admit the allegations contained in Paragraph 43.
44. The undersigned Respondents admit the allegations contained in Paragraph 44, and clarify that the undersigned Respondents constitute the "other Ballot Board members" referred to in the first sentence.
45. The undersigned Respondents admit the allegations contained in Paragraph 45.
46. The undersigned Respondents admit the allegations contained in Paragraph 46.

**COUNT I - ARTICLE XVI AND MANDAMUS - BALLOT LANGUAGE**

47. The statement contained in Paragraph 47 is not one of substantive or legal assertion for the case and therefore does not require a response from the undersigned Respondents.

Insofar as this Court does require a response, the above responses are likewise restated.

48. The undersigned Respondents admit the allegations contained in Paragraph 48.

49. The undersigned Respondents admit the allegations contained in Paragraph 49.

50. The undersigned Respondents admit the allegations contained in Paragraph 50.

51. The undersigned Respondents admit the allegations contained in Paragraph 51.

52. The undersigned Respondents admit the allegations contained in Paragraph 52.

53. The undersigned Respondents admit the allegations contained in Paragraph 53.

54. The undersigned Respondents admit the allegations contained in Paragraph 54.

55. The undersigned Respondents admit the allegations contained in Paragraph 55.

56. The undersigned Respondents admit the allegations contained in Paragraph 56.

57. The undersigned Respondents admit the allegations contained in Paragraph 57.

58. The undersigned Respondents admit the allegations contained in Paragraph 58.

59. The undersigned Respondents admit the allegations contained in Paragraph 59.

60. The undersigned Respondents admit the allegations contained in Paragraph 60.

61. The undersigned Respondents admit the allegations of the first sentence in Paragraph 61.

With regard to the second sentence, the undersigned admit the underlying assertion and note that while the language does reference 15 members serving on the commission, it does not explicitly state the total numerical composition of the commission. It is possible that this lack of clarity is intentional.

62. The undersigned Respondents admit the allegations contained in Paragraph 62.



63. The undersigned Respondents admit the allegations contained in Paragraph 63.
64. The undersigned Respondents admit the allegations contained in Paragraph 64.
65. The undersigned Respondents admit the allegations contained in Paragraph 65.
66. The undersigned Respondents admit the allegations contained in Paragraph 66.
67. The undersigned Respondents admit the allegations contained in Paragraph 67.
68. The undersigned Respondents admit the allegations contained in Paragraph 68.
69. The undersigned Respondents admit the allegations contained in Paragraph 69.
70. The undersigned Respondents admit the allegations contained in Paragraph 70.
71. The undersigned Respondents admit the allegations contained in Paragraph 71.
72. The undersigned Respondents admit the allegations contained in Paragraph 72.
73. The undersigned Respondents admit the allegations contained in Paragraph 73.
74. The undersigned Respondents admit the allegations contained in Paragraph 74.
75. The undersigned Respondents admit the allegations contained in Paragraph 75.
76. The undersigned Respondents admit the allegations contained in Paragraph 76.
77. The undersigned Respondents admit the allegations contained in Paragraph 77.
78. The undersigned Respondents admit the allegations contained in Paragraph 78.
79. The undersigned Respondents admit the allegations contained in Paragraph 79, except for the statement “Relators address only the most legally deficient language below,” which reflects the Relators’ legal opinion. The undersigned Respondents assert there are many instances of legally deficient language and all are relevant to this litigation.
80. As to Paragraph 80 of the Complaint, the undersigned Respondents admit that the language quoted is the first section of the ballot language.

81. The undersigned Respondents admit the allegations contained in Paragraph 81. With regard to the last two sentences, the undersigned Respondents clarify that those representatives with the power to draw their own maps have shown a tendency to inoculate themselves from accountability, and that the Minority caucuses of the Ohio House and Senate have stated as much during the last iteration of legislative and congressional redistricting in this State.
82. The undersigned Respondents admit the allegations contained in Paragraph 82.
83. The undersigned Respondents admit the allegations contained in Paragraph 83.
84. The undersigned Respondents admit the allegations contained in Paragraph 84.
85. The undersigned Respondents admit the allegations contained in Paragraph 85.
86. The undersigned Respondents admit the allegations contained in Paragraph 86.
87. As to Paragraph 87 of the Complaint, the undersigned Respondents agree with the Relators' suggested remedy, and insofar as the Court deems a response necessary, admit the allegations contained therein.
88. The undersigned Respondents admit the allegations contained in Paragraph 88.
89. The undersigned Respondents admit the allegations contained in Paragraph 89.
90. The undersigned Respondents admit the allegations contained in Paragraph 90. The undersigned Respondents clarify that they personally did not act "in clear disregard of applicable law and their legal duty," contrary to the actions of the other Ballot Board members.
91. The undersigned Respondents admit the allegations contained in Paragraph 91.

**COUNT II - ARTICLE XVI AND MANDAMUS - BALLOT TITLE**

92. The statement contained in Paragraph 92 is not one of substantive or legal assertion for the case and therefore does not require a response from the undersigned Respondents.

Insofar as this Court does require a response, the above responses are likewise restated.

93. The undersigned Respondents admit the allegations contained in Paragraph 93.

94. The undersigned Respondents admit the allegations contained in Paragraph 94.

95. The undersigned Respondents admit the allegations contained in Paragraph 95.

96. The undersigned Respondents admit the allegations contained in Paragraph 96.

97. The undersigned Respondents admit the allegations contained in Paragraph 97.

98. The undersigned Respondents admit the allegations contained in Paragraph 98.

99. The undersigned Respondents admit the allegations contained in Paragraph 99.

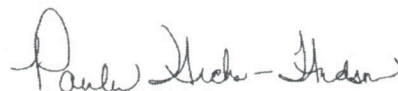
100. The undersigned Respondents admit the allegations contained in Paragraph 100.

101. The undersigned Respondents admit the allegations contained in Paragraph 101.

**RESPONSE TO RELATORS' PRAYER FOR RELIEF**

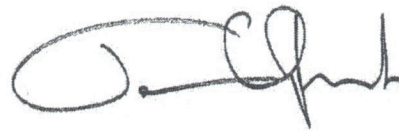
In response to Relators' Prayer for Relief, the undersigned Respondents request that the Court grant the relief requested in Paragraphs 9, 11, and stated in Paragraphs A - D of the Relators' Prayer for Relief. In response to Relators' requests for reasonable costs, the undersigned Respondents deny any obligation to pay Relators' attorneys' fees and costs.

Respectfully submitted,



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Senator Paula Hicks-Hudson (0023199)  
1 Capitol Square, Ground Floor  
Columbus, Ohio 43215



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Representative Terrence Upchurch  
77 S. High Street, 10th Floor  
Columbus, Ohio 43215

*Respondents Pro Se*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2024, the foregoing was filed electronically using the Court's e-filing system. I further certify that the foregoing was served by electronic mail on the following:

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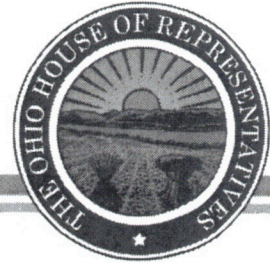
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*Counsel for Respondents,  
reserving the arguments made in this  
pleading*

/s/ Senator Paula Hicks Hudson  
PAULA HICKS HUDSON (0023199)  
Respondent, Pro Se

# **EXHIBIT A**

Letter to Attorney General Yost



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.

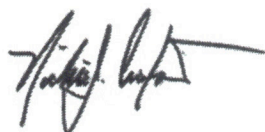
Because to date, you have not granted the undersigned outside counsel before unilaterally filing the Answer in this matter, we request, pursuant to Rule 1.4 and under your duties as counsel, the following information:

- 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