

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

OHIO ORGANIZING COLLABORATIVE, *et al.*,

Plaintiffs,

v.

JON HUSTED, *et al.*,

Defendants.

Case No. 2:15 CV 1802

Judge Watson

Magistrate Judge King

REQUESTS FOR PRODUCTION TO ALL DEFENDANTS

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiffs Ohio Organizing Collaborative, Jordan Isern, Carol Biehle, and Bruce Butcher (“Plaintiffs”) hereby serve the following requests for production upon Secretary Jon Husted, in his official capacity as the Secretary of State for Ohio; and Mike DeWine, in his official capacity as Attorney General of Ohio (collectively, “Defendants”). Responses are to be served to Perkins Coie LLP, 700 13th Street N.W., Suite 600, Washington, D.C. 20005, to the attention of Rhett P. Martin, and other counsel who have made an appearance, within thirty (30) days of receiving these requests. Each request is subject to the Definitions and Instructions that precede the specific requests for production.

DEFINITIONS

Except as specifically defined below, the terms used in these requests shall be construed and defined in accordance with the Federal Rules of Civil Procedure, wherever applicable. Any terms not defined shall be given their ordinary meaning.

1. “Absentee Ballot” means any ballot obtained and cast by a voter pursuant to Ohio Code § 3509.01.

2. “Any” and “all” mean “any and all.”

3. “Communication” means any transfer of information of any type, whether written, oral, electronic, or otherwise, and includes transfers of information via email, report, letter, text message, voicemail message, written memorandum, note, summary, and other means.

4. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).

5. “Directives” means any directives issued by the Secretary of State to implement the Election Law legislation, and includes but is not limited to Directives 2014-06, 2014-14, 2014-15, 2014-17, 2014-18, 2014-26, and 2014-30.

6. “Document” is synonymous in meaning and scope to the term “document” as used under Federal Rule of Civil Procedure 24 and the phrase “writings and recordings” as defined in Federal Rule of Evidence 1001, and includes, but is not limited to, any computer discs, tapes, and printouts, emails, databases, and any handwritten, typewritten, printed, electronically recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

7. “DRE” means direct recording electronic voting machine.

8. “Early In-Person” means voting whereby a registered voter casts a ballot at his or her county board of elections or an alternative location to vote prior to Election Day pursuant to Ohio Rev. Code § 3509.01(B)(2)-(3) and includes those changes enacted in the Election Law Legislation, including all rules, regulations, and Directives concerning Early In-Person Voting.

9. “Election Law Legislation” means any proposed or enacted legislation concerning early voting, same-day registration, identification requirements to vote, polling hours (including discretion to keep the polls open after hours), and other legislation that could impact voter registration and voting directly or indirectly and includes, but is not limited to, S.B. 200, S.B. 205, S.B. 216, and S.B. 238.

10. “Employee” means any person who receives payment in connection with performing duties related to the offices of the Governor, the Secretary of State, the Attorney General, or any of the county Boards of Elections.

11. “Golden Week” means the initial seven day period of the former thirty-five (35) day early in-person absentee voting period during which voters could both register and cast their ballots on the same day, which was eliminated by S.B. 238.

12. “Including” means “including but not limited to.”

13. “Person” means not only natural persons, but also firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, trusts, groups, and organizations; federal, state, or local governments or government agencies, offices, bureaus, departments, or entities; other legal, business, or government entities; and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof or any combination thereof.

14. “Provisional Ballots” mean those ballots cast by a voter pursuant to Ohio Code § 3505.181.

15. “Relating to,” “regarding,” or “concerning” and their cognates are to be understood in their broadest sense, and shall be construed to include pertaining to, commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing, or constituting.

16. “S.B. 200” means Senate Bill 200, which was passed by both Senate and House, and then signed into law by the Governor on December 19, 2013.

17. “S.B. 205” means Senate Bill 205, which was passed by both Senate and House, and then signed into law by the Governor on February 21, 2014.

18. “S.B. 216” means Senate Bill 216, which was passed by both Senate and House, and then signed into law by the Governor on February 28, 2014.

19. “S.B. 238” means Senate Bill, which was passed by both Senate and House, and then signed into law by the Governor on February 21, 2014.

20. “Voter” means any registered voter in Ohio and all persons who may properly register to vote by the close of discovery in this case.

21. “You” and “your” means Defendants and all of their employees, agents, and representatives.

INSTRUCTIONS

1. You shall produce materials and serve responses and any objections on Plaintiffs’ counsel within 30 days after service of the requests for production.

2. If you object to any part of a request, set forth the basis of your objection and respond to all parts of the request to which you do not object.

3. With respect to any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the claim of privilege.

4. In responding to these document requests, produce all documents available to you or subject to your access or control. Documents requested include those in your actual or constructive possession or control, as well as that of your attorneys, investigators, experts, and anyone else acting on your behalf.

5. Documents are to be produced as they are kept in the ordinary course of business. Accordingly, documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

6. Each request and subparagraph thereof is to be answered separately. If there are no documents responsive to a particular request, so indicate.

7. Each document produced should be categorized by the number of the document request in response to which it is produced.

8. If any otherwise responsive document was, but is no longer, in existence or in your possession, custody, or control, identify the type of information contained in the document, its current or last known custodian, the location/address of such document, and the identity of all persons having knowledge or who had knowledge of the document, and also describe in full the circumstances surrounding its disposition from your possession or control.

9. These requests for production are continuing in nature, up to and during the course of trial. Materials sought by these requests for production that become available after you serve your responses must be disclosed to counsel for Plaintiffs by supplementary response or responses.

10. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, you are under a duty to promptly amend your responses to these requests for production if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

11. If you contend that it would be unreasonably burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available to you without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents, including identification of persons consulted, description of files, records and documents reviewed, and identification of each person who participated in the gathering of such documents, with specification of the amount of time spent and the nature of work done by such person; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

12. The singular form of a noun or pronoun includes the plural form, and the plural form includes the singular.

13. The connective “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of a document request all responses that otherwise might be construed to be outside its scope.

14. A reference to an entity in these requests shall be construed to include its officers, directors, partners, members, managers, employees, representatives, agents, consultants, or anyone acting on its behalf.

15. These document requests apply to the period from January 1, 2008, through the present, unless otherwise limited or expanded by a particular request.

16. All documents are to be produced in electronic form. To the extent documents can be accurately represented in black and white, they should be produced in single-page Tagged Image File Format (“TIFF”), together with any related field-delimited load files (e.g., Concordance DAT, CSV, OPT, LOG). Each TIFF document shall be produced with an image load file in standard Opticon (*.log) format that reflects the parent / child relationship and also includes begin Bates number; end Bates number; begin Attachment Bates number; end Attachment Bates number; custodian; date sent (for e-mail messages); date modified (for email and non-email messages where information is available); author (for email and non-email messages); and subject (for e-mail messages). The TIFF images shall also be accompanied by extracted text or, for those files that do not have extracted text upon being processed (such as hard copy documents), optical character recognition (“OCR”) text data; such extracted text or OCR text data shall be provided in document level form and named after the TIFF image. Documents that contain redactions shall be OCR’d after the redaction is applied to the image, and the OCR will be produced in place of extracted text at the document level. Notwithstanding the foregoing, the parties may negotiate a separate production format (including native format) for any documents that are not reasonably producible or readable as standard image files, such as audio files or large spreadsheets.

17. For documents produced in TIFF format that originated in electronic form, metadata shall be included with the data load files described above, and shall include (at a minimum) the following information: file name (including extension); original file path; page count; creation date and time; last saved date and time; last modified date and time; author;

custodian of the document (that is, the custodian from whom the document was collected or, if collected from a shared drive or server, the name of the shared drive or server); and MD5 hash value. In addition, for email documents, the data load files shall also include the following metadata: sent date; sent time; received date; received time; “to” name(s) and address(es); “from” name and address; “cc” name(s) and address(es); “bcc” name(s) and address(es); subject; names of attachment(s); and attachment(s) count. All images and load files must be named or put in folders in such a manner that all records can be imported without modification of any path or file name information.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1. Provide all records regarding how many confirmations of residence notices were issued pursuant to Ohio’s statewide voter maintenance registration program in 2011, 2012, and 2014 including all records discussing or containing information regarding how voters were selected to receive a confirmation of residence notice, response rates, and voters removed from the roster of registered voters due to failure to respond to such mailing. This request includes, without limitation, all records that contain, or that would assist a reasonable person in deciphering, a breakdown of such data by county, municipality, age, race, ethnicity, gender, and/or partisan affiliation.

ANSWER:

REQUEST FOR PRODUCTION NO. 2. Provide all documents, records, reports, lists, statistics, summaries, analyses, or other communications discussing, regarding, or concerning Absentee Ballots, broken out by individual county and including all records that contain, or that

would assist a reasonable person in deciphering, a breakdown of such data by municipality, age, race, ethnicity, gender, and/or partisan affiliation. This request includes but is not limited to:

- a. the total number of Absentee Ballot applications mailed, both those applications solicited and those unsolicited by voters, including mailing addresses;
- b. the total number of Absentee Ballots cast;
- c. the total number of Absentee Ballots counted;
- d. the reasons for rejecting or failing to count any Absentee Ballots.

ANSWER:

REQUEST FOR PRODUCTION NO. 3. Provide all documents, records, reports, lists, statistics, summaries, analyses, or other communications discussing, regarding, or concerning Provisional Ballots, broken out by individual county and polling location and including all records that contain, or that would assist a reasonable person in deciphering, a breakdown of such data by municipality, age, race, ethnicity, gender, and/or partisan affiliation. This request includes but is not limited to:

- a. the total number of Provisional Ballots cast;
- b. the total number of Provisional Ballots counted,
- c. the reasons for rejecting or failing to count any Provisional Ballots.

ANSWER:

REQUEST FOR PRODUCTION NO. 4. Provide all documents, records, reports, lists, statistics, summaries, analyses, or other communications discussing, regarding, or concerning Early In-Person ballots, broken out by individual county and polling location and including all records that contain, or that would assist a reasonable person in deciphering, a breakdown of such data by municipality, age, race, ethnicity, gender, and/or partisan affiliation. This request includes but is not limited to:

- a. the total number of Early In-Person ballots cast;
- b. breakdown of Early In-Person ballots cast by day and polling location;
- c. any information on time required to cast Early In-Person ballots, by location and day.

ANSWER:

REQUEST FOR PRODUCTION NO. 5. Provide all documents or other materials that were used, considered, consulted, or created in connection with developing or implementing Directives 2014-06, 2014-14, 2014-15, 2014-17, 2014-18, 2014-26, and 2014-30 or any individual components thereof.

ANSWER:

REQUEST FOR PRODUCTION NO. 6. Provide all data, documents, records, reports, studies, and/or analyses of the costs incurred by the State in each of 2008, 2010, 2012 and 2014 for:

- a. Printing of Absentee Ballots;
- b. Mailing of Absentee Ballots;
- c. Pre-paid postage for returning Absentee Ballots;
- d. Incremental costs of processing Absentee Ballots during the final week of voter registration;
- e. Training of poll workers, including but not limited to the preparation and distribution of training materials;
- f. Projected and actual cost savings associated with excluding from the mailing of unsolicited Absentee Ballot applications those categories of voters excluded by Directive 2014-15, including all data, documents, records, reports, studies, and/or analyses regarding Directive 2014-15's impact on turnout and voting rates among those excluded from the mailing of unsolicited Absentee Ballot applications;
- g. Communication, outreach, advertisement, and promotion of awareness for voters with respect to voting, including but not limited to poll locations, precinct information, voting hours, same day registration periods, early voting periods, voter identification requirements, changes in voter identification requirements, requirements for absentee ballots, and requirements for provisional ballots.

ANSWER:

REQUEST FOR PRODUCTION NO. 7. Provide all documents for each of 2008, 2010, 2012 and 2014 regarding DRE machines, including but not limited to:

- a. Acquisition, maintenance and servicing costs;
- b. Personnel costs, including training and operation;
- c. Distribution of DRE machines across counties and poll locations;
- d. Incremental costs per additional DRE machine per poll location;

- e. Statistics or other information on machine malfunction, breakdown rates, or other technical service issues, complaints, or problems;
- f. Projected and actual cost savings from reducing the number of DRE machines under S.B. 200, and Directives 2014-14 and 2014-26.

ANSWER:

REQUEST FOR PRODUCTION NO. 8. Provide all data documents, records, reports, studies, and/or analyses regarding voting and same day registration during Golden Week. This request includes but is not limited to:

- a. the number of those who voted and the number of those who voted and registered on the same day during Golden Week, broken out by individual county and polling location and including all records that contain, or that would assist a reasonable person in deciphering, a breakdown of such data by municipality, age, race, ethnicity, gender, and/or partisan affiliation;
- b. the costs incurred by the State for staffing and operating poll locations during Golden Week, including but not limited to personnel costs for extended voting hours and days, and any other costs specifically associated with providing same-day registration and early voting.

ANSWER:

REQUEST FOR PRODUCTION NO. 9. Provide all studies, reports, statistics and analyses, on voter fraud, non-citizen voting, or non-citizen voter registration, and the data underlying such studies, reports, statistics and analyses.

ANSWER:

REQUEST FOR PRODUCTION NO. 10. Provide all documents, reports, studies, statistics, and communications discussing the length and/or frequency of lines formed at polling locations by voters waiting to cast ballots in the 2008, 2010, 2012 and 2014 elections, and any measures or policies that were implemented, discussed, or developed to address the length and/or frequency of such lines, including any studies, analyses, or discussion of the impact of using DRE machines on either wait times or average time required to cast a ballot.

ANSWER:

REQUEST FOR PRODUCTION NO. 11. Provide any documents, studies, surveys, reports, analyses or data discussing or regarding the number of Ohio residents who may lack proof of personal identification sufficient to either obtain an Absentee Ballot or to cast a regular, non-Provisional Ballot on Election Day.

ANSWER:

REQUEST FOR PRODUCTION NO. 12. Provide all communications or other documents or records regarding efforts to reach, to inform, to educate, or to communicate with voters regarding the timing and requirements for voter registration, absentee voting, and voting laws in general.

ANSWER:

REQUEST FOR PRODUCTION NO. 13. All documents, communications or other records regarding any of the following as it relates to voters: (a) the use of same-day registration and voting, including predictions of the effects of its repeal and any analysis of the same; (b) the use of early voting, including predictions of the effects of its reduction and any analysis of the same; and (c) S.B. 205's and S.B. 216's requirements for casting and having counted Absentee and Provisional Ballots, including predictions of the effects of its implementation and any analysis of same.

ANSWER:

REQUEST FOR PRODUCTION NO. 14. All communications between or among any employees, staff, agents, vendors, or consultants of the Governor's Office and the office of the Secretary of State, and between the office of the Secretary of State and any county Boards of Elections, regarding or related to the impact that the Election Law Legislation or any individual component of the legislation, or any of the Directives are likely to have or has had on voters.

ANSWER:

REQUEST FOR PRODUCTION NO. 15. Provide all documents, communications, materials, or other records related to the training, instruction, and direction of poll workers or election judges regarding any changes in the processing, evaluation, and counting of Absentee or Provisional Ballots pursuant to the Election Law Legislation or the Directives.

ANSWER:

REQUEST FOR PRODUCTION NO. 16. Provide all documents related to every meeting that you attended regarding the development or implementation of the Directives 2014-06, 2014-14, 2014-15, 2014-17, 2014-18, 2014-26, and 2014-30 or any individual components thereof, including but not limited to meeting agendas, notes, and minutes.

ANSWER:

REQUEST FOR PRODUCTION NO. 17. Provide all documents previously produced in Case No. 2:14-cv-00404, *Ohio State Conference of the NAACP, et al. v. Husted, et al.*

ANSWER:

REQUEST FOR PRODUCTION NO. 18. Provide all documents, communications or other records identified in any answer in response to the Plaintiffs' Interrogatories.

ANSWER:

DATED: July 6, 2015.

Respectfully submitted,

/s/ Donald J. McTigue
Donald J. McTigue (0022849)
Trial Attorney
J. Corey Colombo (0072398)
McTigue McGinnis & Colombo LLC
545 East Town Street
Columbus, OH 43215
Telephone: (614) 263-7000
Facsimile: (614) 263-7078
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com

Marc E. Elias
Bruce V. Spiva
Elisabeth C. Frost
Rhett P. Martin
Perkins Coie LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211

MElias@perkinscoie.com
BSpiva@perkinscoie.com
EFrost@perkinscoie.com
RMartin@perkinscoie.com

Joshua L. Kaul
Perkins Coie LLP
1 East Main Street
Madison, WI 53703-5118
Telephone: (608) 294-4007
Facsimile: (608) 663-7499
JKaul@perkinscoie.com

Attorneys for Plaintiffs

Certificate of Service

I hereby certify that the foregoing was electronically filed with the U.S. District Court, Southern District of Ohio, on July 6, 2015 and served upon all parties of record via the court's electronic filing system.

/s/ Donald J. McTigue
Donald J. McTigue (0022849)

General Information

Court	United States District Court for the Southern District of Ohio; United States District Court for the Southern District of Ohio
Federal Nature of Suit	Civil Rights - Voting[441]
Docket Number	2:15-cv-01802