

ORIGINAL

IN THE SUPREME COURT OF OHIO

CHARLES E. WILSON, et al, :
 :
 Relators, : Case No. 2012-0019
 :
 v. :
 : Original Action
 OHIO GOVERNOR JOHN R. KASICH, :
 et al., :
 :
 Respondents :

**RESPONSE OF NON-PARTIES RAYMOND DIROSSI AND HEATHER MANN TO
 RELATORS' MOTION FOR ORDER FOR COMPLIANCE WITH
 PRIVILEGE LOG REQUIREMENTS**

LLOYD PIERRE-LOUIS (0068068)

**Counsel of Record*

Wesp/Barwell/Pierre-Louis Co., LLC
 6400 Riverside Drive, Suite D
 Columbus, Ohio 43017
 (614) 341-7576 (ext. 4)
 (614) 388-5963 fax
 lpl@wesplaw.com

FILED
 JAN 19 2012
 CLERK OF COURT
 SUPREME COURT OF OHIO

JOHN H. BURTCH (0025815)

**Counsel of Record*

E. MARK BRADEN (0024987)
 ROBERT J. TUCKER (0082205)
 Baker & Hostetler, LLP
 65 East State Street, Suite 2100
 Columbus, Ohio 43215
 (614) 228-1541
 (614) 462-2616 fax

DENNIS E. MURRAY, JR. (0038509)

Murray & Murray Co., LPA

111 East Shoreline Dr.
 Sandusky, Ohio 44870
 (419) 624-3000
 (419) 624-0707 -- fax
 DMJ@murrayandmurray.com

jburtch@bakerlaw.com
 ebraden@bakerlaw.com
 rtucker@bakerlaw.com

*Outside Counsel for Respondents Governor
 John Kasich, Senate President Thomas E.
 Niehaus, and Auditor David Yost and Counsel
 for Non-Parties Raymond DiRossi and Heather
 Mann*

Counsel for Relators

RICHARD N. COGLIANESE (0066830)

**Counsel of Record*

MICHAEL J. SCHULER (0082390)
 ERIN BUTCHER-LYDEN (0087278)
 Assistant Attorneys General
 Constitutional Offices Section
 30 East Broad Street, 16th Floor
 Columbus, Ohio 43215
 (614) 466-2872

MICHAEL DeWINE
 Ohio Attorney General

AARON D. EPSTEIN (0063286)
 PEARL M. CHIN (0078810)
 Assistant Attorneys General
 Constitutional Offices Section
 30 E. Broad Street, 16th Floor
 Columbus, Ohio 43215

(614) 728-7592 fax
richard.coglianesse@ohioattorneygeneral.gov
michael.schuler@ohioattorneygeneral.gov
erin.butcher@ohioattorneygeneral.gov

*Counsel for Respondent
Ohio Secretary of State Jon Husted*

Aaron.epstein@ohioattorneygeneral.gov
Pearl.chin@ohioattorneygeneral.gov
(614) 466-2872
(614) 728-7592 fax

*Counsel for Respondent
Ohio Governor John Kasich*

JEANNINE R. LESPERANCE (0085765)
RENATA STAFF (0086922)
Assistant Attorneys General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Jeannine.lesperance@ohioattorneygeneral.gov
Renata.staff@ohioattorneygeneral.gov
(614) 466-2872
(614) 728-7592 fax

*Counsel for Respondent
Ohio Auditor of State Dave Yost*

JEANNINE R. LESPERANCE (0085765)
SARAH PIERCE (0087799)
Assistant Attorneys General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Jeannine.lesperance@ohioattorneygeneral.gov
sarah.pierce@ohioattorneygeneral.gov
(614) 466-2872
(614) 728-7592 fax

*Counsel for Respondent President of the Ohio
Senate Thomas E. Niehaus and Non-Party The
Ohio House of Representatives*

**RESPONSE OF NON-PARTIES RAYMOND DIROSSI AND HEATHER MANN TO
RELATORS' MOTION FOR ORDER FOR COMPLIANCE WITH
PRIVILEGE LOG REQUIREMENTS**

Non-parties Raymond DiRossi and Heather Mann ("Mr. DiRossi and Ms. Mann") file this response to Relators' Motion for Order for Compliance with Privilege Log Requirements. Mr. DiRossi and Ms. Mann also incorporate the arguments made by non-party the Ohio House of Representatives in response to Relators' Motion.

First, Mr. DiRossi and Ms. Mann have not been served with a copy of Relators' Motion. Though Relators served counsel for Mr. DiRossi and Ms. Mann, they served counsel in their capacity as counsel for Respondents Kasich, Niehaus and Yost. The certificate of service does not indicate Mr. DiRossi or Ms. Mann have been served, through counsel or otherwise. Because Mr. DiRossi and Ms. Mann have not been served with a copy of this Motion, it is improper.

Regardless, Relators' Motion should be denied. Mr. DiRossi and Ms. Mann were both served with a subpoena on Tuesday afternoon, January 10, 2012, requiring production of an extensive array of documents within 24 hours by Wednesday, January 11, 2012 at 3pm. The subpoenas requested a broad range of documents that could not be reviewed and produced within the limited 24-hour period. As such, the subpoenas failed to provide a reasonable time for compliance and subjected them to undue burden under Civ.R. 45. Mr. DiRossi and Ms. Mann served their objections to the subpoenas on January 11, 2012 indicating as such. (*See Relators' Motion at Ex. 1*). Thus, Mr. DiRossi and Ms. Mann assert they were under no obligation to produce any documents, or provide any privilege log.

Also, Relators misstate that Mr. DiRossi and Ms. Mann responded with a blanket assertion of privilege over all of the materials sought by Relators' subpoenas. As Exhibit 1 to

Relators' Motion indicates, Mr. DiRossi and Ms. Mann objected generally to the subpoenas on the grounds that they required the disclosure of information protected by the attorney-client privilege, and then identified with specific objections which of the topics listed in Exhibit A to the subpoenas would require the production of documents protected by the attorney-client privilege.

Despite the objections to the subpoenas, and in the interests of cooperation given the expedited nature of this case, on January 11, 2012, Mr. DiRossi and Ms. Mann reviewed their information and produced documents potentially responsive to the subpoenas they were able to locate given the very limited timeframe. Mr. DiRossi and Ms. Mann also agreed to provide Relators with a copy of a majority of the production they made in response to a public records request from the Ohio Campaign for Accountable Redistricting ("OCAR"), which would likely contain a lot of the information Relators sought in the subpoenas. But, the subpoenas did not provide ample time for Mr. DiRossi and Ms. Mann to again review the thousands of documents to identify which ones were responsive to the specific requests in the subpoenas, or to segregate documents related solely to Congressional redistricting as opposed to reapportionment. Relators' counsel indicated that they already had a full copy of the public records production, and, thus, there was no need to provide these documents again.

Relators' counsel served identical subpoenas on Mr. DiRossi and Ms. Mann again on January 16, 2012. Mr. DiRossi and Ms. Mann were unclear as to the purpose and nature of the subpoenas and likewise objected to these new subpoenas. (*See* Relators' Motion at Ex. 4). Relators' counsel indicated that they simply wanted to know whether Mr. DiRossi and Ms. Mann were adopting the privilege log prepared by Mr. Lenzo and served upon Relators on Saturday, January 14, 2012. (Relators' Motion at Ex. 4). This privilege log was created after a subpoena

was served upon Mr. Lenzo requesting the production of documents from the OCAR public records request that were withheld on the grounds of privilege.

In response to the question from Relators' counsel, counsel for Mr. DiRossi and Ms. Mann indicated that any of the privileged documents contained in the public records production should be contained on the privilege log prepared by Mr. Lenzo. (*Id.*). But, Mr. DiRossi and Ms. Mann were not given ample time in the subpoenas to again review all their documents, identify which ones were responsive, identify any privileged materials, and create their own separate privilege log. And, because they served objections regarding the subpoenas, they were under no obligation to do so.

The creation of a privilege log separately by Mr. DiRossi and Ms. Mann would be largely duplicative of the one created by Mr. Lenzo and would be unduly burdensome. And, Mr. DiRossi and Ms. Mann incorporate the arguments made by the Ohio House of Representatives in response to Relators' Motion that the privilege log prepared by Mr. Lenzo for the documents withheld from Mr. DiRossi and Ms. Mann's production in response to the OCAR public records request satisfies the requirements of Civ.R. 45. Again though, Mr. DiRossi and Ms. Mann, through counsel, undertook efforts to work with Relators' counsel to reach a resolution of the issue. Counsel for Mr. DiRossi and Ms. Mann requested that Relators identify the specific documents on the privilege log provided by Mr. Lenzo they had concerns about, and agreed they would attempt to provide some additional information on the narrowed documents, if possible without revealing privilege, to allow Relators to make a privilege challenge. But, Relators' indicated they could not narrow their request and seek additional information on all of the documents identified in the privilege log.

For these reasons, non-parties Raymond DiRossi and Heather Mann request that Relators' Motion for Order for Compliance with Privilege Log Requirements be denied.

Respectfully Submitted,



JOHN H. BURTCH (0025815)

**Counsel of Record*

E. MARK BRADEN (0024987)

ROBERT J. TUCKER (0082205)

Baker & Hostetler, LLP

65 East State Street, Suite 2100

Columbus, Ohio 43215

(614) 228-1541

(614) 462-2616 fax

jburtch@bakerlaw.com

mbraden@bakerlaw.com

rtucker@bakerlaw.com

*Counsel for Non-Parties Raymond DiRossi and
Heather Mann*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on this 19th day of January 2012, by electronic mail and U.S. mail, postage prepaid, upon the following:

LLOYD PIERRE-LOUIS
**Counsel of Record*
Wesp/Barwell/Pierre-Louis Co., LLC
6400 Riverside Drive, Suite D
Columbus, Ohio 43017
lpl@wesplaw.com

DENNIS E. MURRAY, JR.
Murray & Murray Co., LPA
111 East Shoreline Dr.
Sandusky, Ohio 44870
DMJ@murrayandmurray.com

Counsel for Relators

RICHARD N. COGLIANESE
**Counsel of Record*
MICHAEL J. SCHULER
ERIN BUTCHER-LYDEN
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
richard.coglianese@ohioattorneygeneral.gov
michael.schuler@ohioattorneygeneral.gov
erin.butcher@ohioattorneygeneral.gov

Counsel for Respondent
Ohio Secretary of State Jon Husted

AARON D. EPSTEIN
PEARL M. CHIN
Assistant Attorneys General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Aaron.epstein@ohioattorneygeneral.gov
Pearl.chin@ohioattorneygeneral.gov

Counsel for Respondent
Ohio Governor John Kasich

JEANNINE R. LESPERANCE
RENATA STAFF
Assistant Attorneys General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Jeannine.lesperance@ohioattorneygeneral.gov
Renata.staff@ohioattorneygeneral.gov

Counsel for Respondent
Ohio Auditor of State Dave Yost

JEANNINE R. LESPERANCE
SARAH PIERCE
Assistant Attorneys General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
Jeannine.lesperance@ohioattorneygeneral.gov
sarah.pierce@ohioattorneygeneral.gov

*Counsel for Respondent President of the Ohio
Senate Thomas E. Niehaus and Non-Party The
Ohio House of Representatives*


Robert J. Tucker (0082205)