

Meryl Neiman, et al.,

Petitioners,

v.

Secretary of State Frank LaRose, et al.,

Respondents.

Case No. 2022-0298

Original Action Filed Pursuant to Ohio
Constitution, Article XIX, Section 3(A)

League of Women Voters of Ohio, et al.,

Petitioners,

v.

Secretary of State Frank LaRose, et al.,

Respondents.

Case No. 2022-0303

Original Action Filed Pursuant to Ohio
Constitution, Article XIX

**RESPONDENTS HUFFMAN, CUPP, MCCOLLEY, AND LARE'S RESPONSE TO
PETITIONERS' MOTIONS FOR LEAVE TO FILE REBUTTAL EVIDENCE**

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Legislative Respondents President Huffman, Speaker Cupp, Senator McColley, and Representative LaRe (hereinafter “Legislative Respondents”) file this joint response to Neiman Petitioners’ Motion for Leave to File Rebuttal Evidence and LWVO Petitioners’ Motion for Leave to File Rebuttal Evidence in Support of Petitioners’ Reply Brief, filed on June 1 and June 3, 2022, respectively. The Court should deny Petitioners’ Motions as it is not supported by good cause, and because Petitioners misconstrue Legislative Respondents’ arguments and the record in this case.

I. Petitioners’ Motions Misinterpret Legislative Respondents’ Argument that Petitioners’ Experts were not Subject to Meaningful Discovery.

Petitioners’ Motions both fundamentally misunderstand the nature of Legislative Respondents’ arguments regarding discovery in this case. First, Petitioners’ supplemental evidence is not rebuttal evidence because Legislative Respondents do not dispute the fact that written discovery occurred in this case. Contrary to Petitioners’ Motions, Legislative Respondents *recognize* that written discovery was served in this case. (*Cf.* Neiman Petitioners’ at Motion p 1; LWVO Petitioners’ Motion at p 1). Any contrary assertion is not rooted in fact or even an understanding of the case docket, considering that Legislative Respondents filed the written discovery as part of their evidence on April 25, 2022.

Instead, Legislative Respondents argue that Petitioners’ paid experts have not been subject to cross-examination via depositions, hearings, or other forms of meaningful discovery. *See* Legislative Respondents’ Br. at 15–16. A twenty-five-day discovery period does not give meaningful time to retain experts, have those experts thoroughly review Petitioners’ expert reports and accompanying complicated backup data, and produce a significant response. Such a schedule also does not allow for adequate time to conduct depositions, since depositions would need to take place after adequate evaluation of expert reports, and preparation of rebuttal reports. The twenty-

five-day discovery period here was made even more difficult by the timing: the month of April is the end of the year for most academics and experts that Legislative Respondents hoped to retain could not complete any, or a full scope of work in the time allotted, and in light of final exams and other end of the semester obligations.

Additionally, this is not the first time that Legislative Respondents have taken issue with the limited discovery timeframe provided by the Court as LWVO Petitioners claim. (*See* LWVO Petitioners' Motion at p 1). This issue was fully briefed in Legislative Respondents' Response to Petitioners' Motion for Scheduling Order, where Legislative Respondents specifically requested a full and fair opportunity to achieve meaningful discovery through a reasonable discovery period. (*See* Respondents Huffman and Cupp's Response to Motion for Scheduling Order at pp 6-9 (Mar. 22, 2022)). The Court denied Legislative Respondents' request and implemented the April 25, 2022 evidentiary submission deadline.¹ Legislative Respondents are particularly perplexed by the continued time constraints in the above-captioned consolidated matters in light of the fact that Petitioners have admitted that the 2022 congressional election is underway and cannot be altered. Legislative Respondents' concerns over the limited discovery in this action are not new and are properly before this Court.

¹ Petitioners also claim that Legislative Respondents violated this Court's April 25, 2022 deadline by submitting documents with Legislative Respondents' merits brief. (Neiman Petitioners' Motion at p 1; LWVO Petitioners' Motion at p 1). Not so. Exhibits 1 and 2 to Legislative Respondents' brief are matters of public record that could have merely been cited to, but were provided as exhibits for ease of review. This is no different than Petitioners filing copies of reports or other publicly available materials as appendices to their briefing, as both parties have routinely done. Furthermore, one of the exhibits, a tweet by Attorney Marc Elias was made only days before the briefing deadline. And as this Court has already made clear, it can rely on contemporaneous statements made during the course of this litigation. *See League of Women Voters of Ohio. v. Ohio Redistricting Commission*, Slip Opinion. No. 2022-Ohio-1727 ¶13 (O'Connor, C.J., concurring).

II. Under the Circumstances, Good Cause does not Exist and Petitioners' Motions Should be Denied.

Petitioners' request amounts to nothing more than a request to alter the current scheduling order. Generally, scheduling orders "may be modified only for good cause and with the court's consent" under Rule 16(B)(4) of the Ohio Rules of Civil Procedure. This Court has applied these principles to original actions that set evidentiary deadlines by which all evidence must be filed, requiring leave of Court to file supplemental evidence beyond that date. *See State ex rel. Gil-Llamas v. Hardin*, 164 Ohio St.3d 364, 2021-Ohio-1508, 172 N.E.3d 1998, ¶ 14.

Good cause does not exist to grant Petitioners' requested relief because, as previously explained *supra*, Petitioners fundamentally misinterpret Legislative Respondents' argument that Petitioners' experts were not subject to meaningful discovery. Petitioners' "rebuttal" evidence is mostly duplicative of evidence already submitted to this Court, and the only new evidence Petitioners offer, emails between counsel serving discovery, does not go to the merits of the constitutionality of the Second Plan. Therefore, Petitioners' "rebuttal" evidence is immaterial and unnecessary for the adjudication of this matter.

For the foregoing reasons, Respondents request that the Court deny Petitioners' Motion and disregard Petitioners' supplemental evidence.

Respectfully submitted this the 13th day of June, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of June, 2022, I have served the foregoing document by email:

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