

**IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO**

<b>CHRISTINA COLLINS, <i>et al.</i>,</b>	)	CASE NO. 23-CV-6611
	)	
<i>Plaintiffs,</i>	)	JUDGE KAREN HELD PHIPPS
	)	MAGISTRATE JENNIFER HUNT
vs.	)	
	)	
<b>MIKE DEWINE., <i>et al.</i>,</b>	)	
	)	
<i>Defendants.</i>	)	
	)	

---

**PLAINTIFFS’ MOTION FOR DISQUALIFICATION OF THE OHIO ATTORNEY  
GENERAL’S OFFICE AS COUNSEL FOR DEFENDANTS**

Plaintiffs Christina Collins, Michelle Newman, the Board of Education of the Toledo City School District, and Stephanie Eichenberg (“Plaintiffs”), pursuant to the Ohio Rules of Professional Conduct, this Court’s October 3, 2023 Order, and this Court’s inherent authority to disqualify counsel for violations of the Ohio Rules of Professional Conduct, respectfully move this Court for either: (1) an order disqualifying the entire Ohio Attorney General’s Office from representing Defendants Mike DeWine and the State of Ohio (collectively, “Defendants”) in this matter, or (2) an order requiring Julie M. Pfeiffer (“Counsel Pfeiffer”), the Section Chief, Constitutional Offices Section of the Ohio Attorney General’s Office, to submit her emails related to this matter from September 29, 2023 through the present to the Court for an *in camera* review so the Court can determine which specific personnel from the Ohio Attorney General’s Office should be disqualified from this matter.

As explained more fully in the attached Memorandum in Support of this Motion, which is incorporated herein, Chief Counsel and Ethics Officer for the Ohio Attorney General’s Office, Bridget Coontz (“Counsel Coontz”), and Counsel Pfeiffer violated Prof. Cond. R. 1.7 by collaborating in a conflicted, dual representation of former plaintiffs and Defendants in the *same*

*litigation.* To make matters worse, to secure the representation of Christina Collins, Teresa Fedor, Kathleen Hofmann, Tom Jackson, Meryl Johnson, Antoinette Miranda, and Michelle Newman in their capacities as members of the Ohio State Board of Education (“dismissed state-board plaintiffs”), Counsel Coontz assured the Court that the Ohio Attorney General’s Office was well-equipped to handle any ethical issues that may arise as a result of its dual representation and had already set up an ethics screen. As this Court now knows, Counsel Coontz’s assurances turned out to be inaccurate at best and intentionally misleading at worst.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that this Court either: (1) enter an order disqualifying the *entire* Attorney General’s Office from representing Defendants in this action, or (2) conduct an *in camera* review of Counsel Pfeiffer’s emails related to this matter to determine which specific counsel from the Attorney General’s Office should be disqualified.

Madeline H. Gitomer (PHV-26886-2023)  
Sarah R. Goetz (PHV-27083-2023)  
Benjamin Seel (PHV-27111-2023)  
Jeffrey Dubner (PHV-27135-2023)  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, DC 20043  
(202) 383-0794 (phone)  
mgitomer@democracyforward.org  
sgoetz@democracyforward.org  
bseel@democracyforward.org  
jdubner@democracyforward.org

/s/ Amanda Martinsek  
Amanda Martinsek (0058567)  
Katherine M. Poldneff (0088529)  
Gregory C. Djordjevic (0095943)  
ULMER & BERNE LLP  
1660 W. 2nd St., Suite 1100  
Cleveland, Ohio 44113  
(216) 583-7000 (phone)  
(216) 583-7001 (facsimile)  
amartinsek@ulmer.com  
kpoldneff@ulmer.com  
gdjordjevic@ulmer.com

Alvin E. Mathews, Jr. (0038660)  
ULMER & BERNE LLP  
65 E. State Street, Suite 1100  
Columbus, Ohio 43215-4213  
(614) 229-0000 (phone)  
(614) 229-0045 (facsimile)  
amathews@ulmer.com

*Counsel for Plaintiffs*

**MEMORANDUM IN SUPPORT OF MOTION FOR DISQUALIFICATION OF THE  
OHIO ATTORNEY GENERAL'S OFFICE AS COUNSEL FOR DEFENDANTS**<sup>1</sup>

Dual representations in the same litigation are strictly prohibited under Prof. Cond. R. 1.7. The reason for this is obvious: even when an ethical wall is in place, the opportunity for attorneys at the same firm or institution representing adverse clients in the same action to share information regarding the litigation is pervasive. Here, the Attorney General's Office not only violated Prof. Cond. R. 1.7, it also misled the Court so that the Court would grant the Motion to Substitute and permit dual representation. Although disqualification is a harsh remedy, as set forth more fully below, it is warranted here due to the egregious misconduct of the Attorney General's Office.

To start, the dismissal of the dismissed state-board plaintiffs could have been achieved through a Civil Rule 12(B)(6) motion or special counsel appointed by the Attorney General's Office. Instead, Counsel Coontz *chose* to assume the representation by filing the Motion to Substitute.<sup>2</sup> When the Court requested that Counsel Coontz address how the clear conflict of interest would be addressed by the Attorney General's Office, Counsel Coontz explained, in

---

<sup>1</sup> An order disqualifying counsel is immediately appealable. *See, e.g., Wilhelm-Kissinger v. Kissinger*, 129 Ohio St.3d 90, 2011-Ohio-2317, ¶ 8 (2011) (“We have previously held that a decision granting a motion to disqualify opposing counsel is a final, appealable order that a party deprived of counsel can appeal immediately.”). Consequently, from Plaintiffs’ perspective, there is a critical interplay between the ruling on this Motion and the status of their request for preliminary injunctive relief. If the Court grants this Motion, and Defendants appeal the Court’s order disqualifying their counsel, Defendants could actually benefit because the temporary injunctive relief entered by this Court would lapse while this Court is divested of jurisdiction due to Defendants’ appeal. Plaintiffs plan to file their Reply in Support of their Request for Preliminary Injunctive Relief shortly, which will make Plaintiffs’ request for preliminary injunctive relief ripe for adjudication. Thus, if this Court is inclined to grant this Motion, Plaintiffs respectfully request that the Court vacate Magistrate Hunt’s order requiring the parties to submit findings of fact and conclusions of law, and rule on Plaintiffs’ request based on the briefing before the Court, as well as the evidence and testimony from the October 2, 2023 preliminary injunction hearing. An order entering the preliminary injunctive relief sought by Plaintiffs will ensure that the status quo is preserved if Defendants appeal an order granting this Motion.

<sup>2</sup> During the October 3, 2023 hearing, referring back to the arguments the Attorney General's Office made in their Motion to Substitute Counsel, Counsel Coontz inexplicably questioned whether loyalty to her clients and screening needed to be followed. If there is any doubt that Counsel Coontz knew that the dismissed state-board plaintiffs were her clients, she stated in her September 29, 2023 email to Plaintiffs’ counsel, “[I] will save you the trouble of seeking a protective order, as I have no intention of making this any worse than you already have. *My clients* obviously believed that their conversations with you were privileged. I am not going to ask them about those conversations and have [*sic*] intention of seeking them out.” *See Exhibit A*, September 29, 2023 Email from Counsel Coontz to Plaintiffs’ counsel (emphasis added).

painstaking detail, that the Attorney General’s Office can—and, in fact, *had already*—“set up an ethics screen[s]” to cleanse any conflict. Reply ISO the Ohio AG’s Office’s Mot. to Sub. at 4 (“Reply”). In its Entry Granting in Part the Motion of Attorney General To Substitute the Attorney General as Counsel for Plaintiffs (the “September 29 Order”), the Court took Counsel Coontz at her word: “*Counsel Coontz has assured the Court that there are comprehensive screening mechanisms in place in order to comply with the ethical requirements imposed by the Rules of Professional Conduct.*”

Counsel Coontz’s representation turned out to be inaccurate. Specifically, on October 3, 2023, she emailed Counsel Pfeiffer, inadvertently copying the Court, regarding how best to attack Plaintiffs’ claims in an upcoming submission. Stated differently, after summarily dismissing her clients’ claims, Counsel Coontz switched sides in clear violation of Prof. Cond. R. 1.7. To make matters worse, Counsel Coontz’s email and her statements at the October 3, 2023 emergency hearing revealed that the Attorney General’s Office’s purportedly sophisticated screening process had never been invoked—and that, to the contrary, Counsel Coontz’s representations in that regard were apparently a sham deployed to coax the Court into granting the Motion to Substitute. It appears that this was all a concerted strategy to enable the Attorney General to unilaterally extinguish the dismissed state-board plaintiffs’ claims against Defendants, the Attorney General’s *other clients*. Given this extraordinary course of conduct, disqualification of the entire Attorney General’s Office is warranted. Alternatively, the entire Attorney General’s Office should recuse, and the Attorney General’s Office should appoint special counsel to represent the Defendants.

Should the Defendants prevail in opposing the disqualification of the entire Attorney General’s Office, Plaintiffs request that the Court conduct an *in camera* review to determine if any non-conflicted members of the Attorney General’s Office remain. In performing an *in camera*

review, the Court should examine all relevant documents and communications created after September 29, 2023, to determine whether the Attorney General’s Office undertook *any effort* to implement any sort of ethical screen either before or after the Court, relying on the Attorney General’s representations, ruled that that office should be substituted as attorney for the now dismissed state-board plaintiffs.<sup>3</sup> Such review will be critical in determining the extent of the taint, the identity of the tainted Attorneys General and the scope of the requisite remedy.

**I. RELEVANT BACKGROUND**

On September 27, 2023, the Attorney General’s Office, represented by Counsel Coontz, filed the Motion to Substitute, requesting that this Court substitute Counsel Coontz as counsel for now dismissed state-board plaintiffs. That same day, the Court issued an expedited briefing order. The Attorney General’s Office’s Reply in Support of the Motion to Substitute unmistakably represented that Counsel Coontz’s representation would be separate from Counsel Pfeiffer’s representation of Defendants and that ethical screening would be implemented:

So, what happens when a conflict arises between Ohio Attorney General client agencies and officials? When that happens, as Ethics Counsel, the undersigned sets up an ethics screen between the lawyers whose clients conflict. The screen directs the attorneys to restrict communications in one another’s presence and requires that physical and electronic files be inaccessible to either side. It also sets up a different reporting structure for the attorneys involved. The screen is distributed to all attorneys and supervisors involved in the case, as well as the AGO’s IT and Records Management teams, who assist in securing electronic and hard copy files when necessary.

Addressing the Court’s concern about this case, *the undersigned already set up an ethics screen in the event the Motion is granted and a conflict arises. . . .*

Reply Br. at 3-4 (emphasis added).

---

<sup>3</sup> To date, in addition to Counsel Coontz and Counsel Pfeiffer, Assistant Attorneys General Stephen Tabatowski and Phillip Kelly have each entered their appearance as counsel of record. They too should be disqualified from representing the Defendants. Presumably, the Michael Walton working in the Attorney General’s Office—the intended recipient of the mis-sent email that revealed this issue—must also be disqualified, as Counsel Coontz would not have been attempting to email him if he was not working with her and Counsel Pfeiffer on this case.

Based on the law presented by the parties and the representations made by the Attorney General's Office, the Court granted in part the Motion to Substitute, deciding that "[i]n response to considerations of a potential conflict of interest, with members of the Attorney General's office appearing on both sides in this matter, Counsel Coontz has assured the Court that there are comprehensive screening mechanisms in place in order to comply with the ethical requirements imposed by the Rules of Professional Conduct." September 29 Order at 3. The Attorney General's Office undoubtedly received and reviewed the Court's decision, as on September 29, 2023, the very day the decision was rendered, the Attorney General's Office, represented by Counsel Coontz, immediately filed Rule 41(A) Dismissal Notices on behalf of the dismissed state-board plaintiffs—including Plaintiffs Christina Collins and Michelle Newman—extinguishing all claims filed in this action in their capacity as elected members of the State Board of Education.

On October 3, 2023, four days after filing the Dismissal Notices, Counsel Coontz inadvertently copied the Court on a communication intended for Counsel Pfeiffer and another attorney at the Attorney General's Office, Michael Walton. That email stated:

Before I forget, we could do a specific conclusion of fact that the uncodified language which eliminated ODE was not enjoined. And a conclusion of law that as of October 3, 2023 ODE ceased to exist.

Counsel Coontz's email reflects that, contrary to her representations to the Court that the Attorney General's Office would implement an ethical screening procedure, after filing her clients' voluntary Dismissal Notices, Counsel Coontz in fact offered strategic advice on behalf of Defendants to her former opposing counsel, Counsel Pfeiffer.

## **II. STANDARD FOR DISQUALIFICATION**

Trial courts have the "inherent authority to supervise members of the bar appearing before it and this necessarily includes the power to disqualify counsel in specific cases" such as when "an

attorney cannot, or will not, comply with the [Rules of Professional Conduct] when representing a client.” *Morgan v. N. Coast Cable Co.*, 63 Ohio St. 3d 156, 161, 586 N.E.2d 88, 92 (1992); *Fried v. Abraitis*, 8th Dist. Cuyahoga No. 103070, 61 N.E.3d 545, 2016-Ohio-934, ¶ 11, *citing Royal Indemn. Co. v. J.C. Penney Co.*, 27 Ohio St.3d 31, 501 N.E.2d 617 (1986), and *Mentor Lagoons, Inc. v. Rubin*, 31 Ohio St.3d 256, 510 N.E.2d 379 (1987). Trial courts have wide discretion in exercising that authority. *Id.*, *citing Royal Indemn.*

### **III. LAW AND ARGUMENT**

Even though the Attorney General’s Office filed Notices extinguishing the dismissed state-board plaintiffs’ claims, Counsel Coontz nevertheless has an ongoing duty of loyalty to the dismissed clients, and the Attorney General’s Office specifically advised the Court that it would put ethical screening procedures in place, which Counsel Coontz and Counsel Piffeffer clearly did not honor. This serious conflict of interest can only be cured by recusal of the entire Attorney General’s Office and the appointment of special counsel.

#### **A. The Attorney General’s Office Waived Its Privilege**

As a preliminary matter, Counsel Coontz’s insistence at the emergency hearing that the October 3 email remained privileged is incorrect. The email revealed that Counsel Coontz’s representation to the Court that she had “already set up an ethics screen” was at best misleading and at worst fraudulent. Reply at 4. “The attorney-client privilege ‘does not permit a litigant to commit fraud upon a court.’” *Owens-Corning Fiberglas Corp. v. Am. Centennial Ins. Co.*, 74 Ohio Misc. 2d 247, 256, 660 N.E.2d 812, 818 (Ohio Com. Pl. 1995) (quoting *Watson, supra*, 243 Va. at 141, 413 S.E.2d at 638); *cf. Coulson v. Coulson*, 5 Ohio St. 3d 12, 15, 448 N.E.2d 809, 812 (1983) (“It is generally agreed that ‘[a]ny fraud connected with the presentation of a case to a court is a fraud upon the court, in a broad sense.’” (quoting 11 Wright & Miller, Federal Practice and



Procedure (1973) 253, § 2870)). An email that reveals that counsel has misled the Court is not shielded by the privilege, particularly where the Court relied on the misrepresentation.

Even if the privilege could be said to be held by the Attorney General's Office apart from Counsel Coontz, the obvious failure of the Attorney General's Office to follow the detailed protocol the Attorney General's Office assured the Court it had already put in place warrants applying the same rule to the Attorney General's assertion of privilege. *Talismanic Properties, LLC v. Tipp City, Ohio*, 309 F. Supp. 3d 488, 495 (S.D. Ohio 2017) (the City and its counsel were determined to have waived attorney-client privilege and work product protection with regard to four inadvertently produced emails); *LifeBio, Inc. v. Eva Garland Consulting, LLC*, No. 2:21-CV-722, 2023 WL 3258586, at \*3 (S.D. Ohio May 4, 2023) (privilege may be waived by the behavior of a client or attorney that is inconsistent with the maintenance of the privilege).

**B. The Entire Ohio Attorney General's Office Should Be Disqualified**

During the briefing of the Motion to Substitute, the Attorney General's Office correctly observed that Prof. Cond. R. 1.11 governs how government officers and employees must handle conflicts of interest. In relevant part, Comment [2] to Prof. Cond. Rule 1.11 states that "Rule 1.10 [imputation] is not applicable to the conflicts of interest addressed by this rule... [b]ecause of the special problems raised by imputation within a government agency, division (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers." Ohio Prof. Cond. Rule 1.11, Comment [2].

Here, where the Attorney General's Chief Counsel and Ethics Officer made representations about screening on which the Court explicitly relied, it was not just prudent but required. And where screening is used to ameliorate a conflict of interest, the screening devices must be

employed as soon as the disqualifying event occurs and strictly followed. *Kala v. Aluminum Smelting & Ref. Co.*, 1998-Ohio-439, 81 Ohio St. 3d 1, 11, 688 N.E.2d 258, 267. Here it is evident that timely screening was not undertaken or strictly followed.

Moreover, even timely screening might not have been sufficient here. Although Prof. Cond. R 1.11 generally permits the implementation of ethical screening to ameliorate imputed conflicts of interest involving government officers or employees, in Opinion 2019-09, the Ohio Board of Professional Conduct recognized that government lawyers cannot rely upon client assignment and screening when clients are *directly adverse* to one another in the same proceeding:

The State of Ohio is a client of the county prosecuting attorney for purposes of analyzing conflicts of interest with statutory clients. A conflict of interest under Prof. Cond. R. 1.7(a) and arising from the prosecutor office's concurrent representation of the state and another public client, may be ameliorated through specific client assignment of assistant county prosecutors and meaningful and effective screening. *The client assignment and screening of assistant county prosecutors is not an option when the prosecutor's office is obligated to represent directly adverse clients in the same proceeding.*

Ohio Bd. Adv. Op 2019-09 (Oct. 4, 2019) (emphasis added). As the Board concluded, "In most cases, this type of conflict requires the prosecutor's office to decline or discontinue representation and utilize outside or special counsel." *Id.* Therefore, in a situation involving a lawyer for a government officer or agency, the retention or appointment of outside or special counsel is required because the ongoing dual representation would be strictly prohibited under Prof. Cond. R. 1.7(c)(2). Ohio Bd. Adv. Op. 2007-04 (June 8, 2007). The Legislature provided for exactly this circumstance in R.C. 109.07 allowing the attorney general to "appoint special counsel to represent the state in civil actions, criminal prosecutions, or other proceedings in which the state is a party or directly interested." *See DeRolph v. State*, 94 Ohio St. 3d 40, 42, 760 N.E. 2d 351 (2001). Here, Counsel Coontz's October 3, 2023 email exemplifies why, practically speaking, lawyers

representing government officers or employees cannot resolve a conflict of interest involving representation of directly adverse clients in the same proceeding by screening.

Neither can the Attorney General's Office reasonably argue that it no longer owed the dismissed state-board plaintiffs a duty of loyalty. The obvious problem of representing opposite sides of the same case is highlighted in Comment [1] to Prof. Cond. R. 1.9, which states:

After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this rule. Under this rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. *Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent, confirmed in writing.* See Comment [9]. Current and former government lawyers must comply with this rule to the extent required by Rule 1.11.

Ohio Prof. Cond. Rule 1.9, Comment [1] (emphasis added).

At the emergency hearing, Counsel Coontz attempted to justify her actions on the premise that her Plaintiff-clients never should have filed their suit in the first place, and thus her representation of them created no obligation to them in this case under the Rules of Professional Conduct. Even assuming that this position had merit as to the five original Plaintiffs who Counsel Coontz fully dismissed from the case (and Plaintiffs are aware of no reason that it would), it clearly does not as to Plaintiffs Collins and Newman, who remain Plaintiffs in this litigation. Counsel Coontz represents or represented Plaintiffs Collins and Newman; on behalf of Attorney General Dave Yost, she dismissed a portion of their claims; she then worked on behalf of their adversary to oppose their remaining claims *in the very same case where she appeared on their behalf*. To be clear, this quagmire is of the Attorney General's Office's own making. Counsel Coontz has an obligation to "avoid all actual and potential conflicts of interest so as not to dilute [her] independent

loyalty to each client.” *Disciplinary Counsel v. Jacobs*, 109 Ohio St.3d 252, 2006-Ohio-2292, ¶ 8 (2006). The Attorney General’s Office could have sought the dismissal of the dismissed state-board plaintiffs in at least two ways that would not have created *any* potential conflict of interest. First, the Attorney General’s Office could have made the arguments set forth in the Motion to Substitute in a motion to dismiss under Ohio Rule of Civil Procedure 12(B)(6) via Counsel Pfeiffer. Second, the Attorney General’s Office could have appointed special counsel pursuant to R.C. 109.07, and special counsel could have filed the Motion to Substitute. Instead, Counsel Coontz *chose* to file the Motion to Substitute, assure the Court that Attorney General’s Office is well-equipped to handle any ethical issues that may arise as a result of the dual representation, represent that a screen was already in place, dismiss the dismissed board-member plaintiffs, and then advise Counsel Pfeiffer about what arguments to make *against her former clients*. Instead of taking steps to avoid a conflict of interest, Counsel Coontz *created one*.

This is not a case where an attorney in an unrelated part of the Attorney General’s Office worked for a party in some long-ago capacity before they joined the Office. *Cf. Hand v. Houk*, No. 07-cv-846, 2019 WL 2754312, at \*3-5 (S.D. Ohio July 2, 2019) (denying motion to disqualify Attorney General’s Office where his previous expert later became employed by a section of the Office not involved in is case). This is a case where the Attorney General’s Chief Counsel and Ethics Officer, in collaboration with the Chief of the Constitutional Offices Section, participated on behalf of both Plaintiffs and their adversary in the space of a week. Given the gravity of this situation, the only remedy that can completely purge the conflict created by the Attorney General’s Office is the disqualification of the entire office and the appointment of special counsel.

**C. Should the Attorney General’s Office Oppose Recusal of Its Entire Office and the Appointment of Special Counsel to Represent the Defendants, the Court Should Conduct an *In Camera* Review to Determine What Effort Was Made Attorney General’s Office to Implement Screening**

If the Attorney General’s Office refuses to recuse itself and appoint special counsel, Plaintiffs request that the Court conduct an *in camera* review to determine if any non-conflicted members of the Attorney General’s Office remain. According to law, the Court’s *in camera* review should include an examination of any and all relevant documents and communications created after September 29, 2023, to determine whether the Attorney General’s Office undertook any effort to implement an ethical screen procedure after the Court ruled that Counsel Coontz should be substituted as counsel for the now dismissed state-board plaintiffs, and to determine what lawyers within the Attorney General’s Office may proceed without conflict. *Cf. Gordon v. Dadante*, No. 1:05-CV-2726, 2009 WL 10689678, at \*6 (N.D. Ohio June 30, 2009) (ordering an attorney to “provide copies in camera of any signed letters of representation and billing invoices and/or evidence of payment received in connection with his involvement in [a] matter” in order to determine “why he should not be disqualified from representation of *any* party to [the] action”). This may also necessitate inquiry into documents and communications created prior to September 29, 2023, to the extent they shed light on the accuracy and circumstances of Counsel Coontz’s initial representation that she had “already set up an ethics screen.” Reply at 4.

**IV. CONCLUSION**

For the foregoing reasons, the Court should disqualify the entire Ohio Attorney General’s Office from representing Defendants, or alternatively, conduct an *in camera* review to determine if any non-conflicted members of the Attorney General’s Office remain to represent the Defendants.

Madeline H. Gitomer (PHV-26886-2023)  
Sarah R. Goetz (PHV-27083-2023)  
Benjamin Seel (PHV-27111-2023)  
Jeffrey Dubner (PHV-27135-2023)  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, DC 20043  
(202) 383-0794 (phone)  
mgitomer@democracyforward.org  
sgoetz@democracyforward.org  
bseel@democracyforward.org  
jdubner@democracyforward.org

*/s/ Amanda Martinsek*  
Amanda Martinsek (0058567)  
Katherine M. Poldneff (0088529)  
Gregory C. Djordjevic (0095943)  
ULMER & BERNE LLP  
1660 W. 2nd St., Suite 1100  
Cleveland, Ohio 44113  
(216) 583-7000 (phone)  
(216) 583-7001 (facsimile)  
amartinsek@ulmer.com  
kpoldneff@ulmer.com  
gdjordjevic@ulmer.com

Alvin E. Mathews, Jr. (0038660)  
ULMER & BERNE LLP  
65 E. State Street, Suite 1100  
Columbus, Ohio 43215-4213  
(614) 229-0000 (phone)  
(614) 229-0045 (facsimile)  
amathews@ulmer.com

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 5, 2023 a copy of the foregoing was filed with the Court, and served on the following via email:

Julie M. Pfeiffer, Esq.  
Section Chief, Constitutional Offices Section  
Office of Dave Yost, Ohio Attorney General  
30 E. Broad Street, 16th Floor  
Columbus, Ohio 43215  
Julie.pfeiffer@ohioAGO.gov

Bridget C. Coontz, Esq.  
Chief Counsel and Ethics Officer  
Office of Ohio Attorney General Dave Yost  
30 E. Broad Street, 16th Floor  
Columbus, Ohio 43215  
Bridget.coontz@OhioAGO.gov

Michael P. Walton, Esq.  
Staff Attorney for the Honorable Judge Phipps  
Franklin County Court of Common Pleas  
345 South High Street, Floor 7  
Columbus, Ohio 43215  
Michael\_Walton@fccourts.org

*/s/ Amanda Martinsek*  
\_\_\_\_\_  
Amanda Martinsek (0058567)  
*Counsel*

# EXHIBIT A



**From:** Bridget Coontz <Bridget.Coontz@OhioAGO.gov>  
**Sent:** Friday, September 29, 2023 2:56 PM  
**To:** Poldneff, Katherine  
**Cc:** Djordjevic, Greg; Martinsek, Amanda; Mathews, Alvin;  
mgitomer@democracyforward.org; sgoetz@democracyforward.org;  
bseel@democracyforward.org; Jeff Dubner  
**Subject:** RE: Reply in Support, Collins v. DeWine

Good Afternoon,

I have to say, I'm a little taken aback by your email. You brought suit on behalf of clients that you had no authority represent. And now you want to seek a protective order against the Ohio Attorney General's Office which would prevent us from talking to our own clients? Did anyone ever consider Ohio law, their status as public officials, and our Office's statutory obligation to represent these state officials before filing suit? Did you ever advise these folks that your conversations might not be privileged, or did anyone ever consider it? You put my clients in a really bad spot.

I will save you the trouble of seeking a protective order, as I have no intention of making this any worse than you already have. My clients obviously believed that their conversations with you were privileged. I am not going to ask them about those conversations and have intention of seeking them out. However, as we all know they can waive the privilege and if they choose to disclose their communications with you to me, they can. Any such conversations between this Office and the State Board Members are privileged.

In the future, if you seek to represent state officials our office has a process to appoint special counsel. And if any state officials approach you to file a suit similar to this one, consider all of this issues this case raised.

Thank you,  
Bridget



Bridget C. Coontz  
Chief Counsel and Ethics Officer  
Office of Ohio Attorney General Dave Yost  
Office number: 614-728-2035  
[Bridget.Coontz@OhioAGO.gov](mailto:Bridget.Coontz@OhioAGO.gov)

Confidentiality Notice: This message is intended for use only by the individual or entity to whom or which it is addressed and may contain information that is privileged, confidential and/or otherwise exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by telephone.

---

**From:** Poldneff, Katherine <kpoldneff@ulmer.com>  
**Sent:** Friday, September 29, 2023 2:05 PM  
**To:** Bridget Coontz <Bridget.Coontz@OhioAGO.gov>  
**Cc:** Djordjevic, Greg <gdjordjevic@ulmer.com>; Martinsek, Amanda <amartinsek@ulmer.com>; Mathews, Alvin <amathews@ulmer.com>; mgitomer@democracyforward.org; sgoetz@democracyforward.org; bseel@democracyforward.org; Jeff Dubner <jdubner@democracyforward.org>  
**Subject:** RE: Reply in Support, Collins v. DeWine

Ms. Coontz:

In light of the Court's order, please let us know as soon as possible if Teresa Fedor, Kathleen Hofman, Tom Jackson, Meryl Johnson, and/or Antoinette Miranda will be withdrawing from this case.

We expect that we may receive inquiries from those individuals regarding the court's order or the change in counsel. Do we have your authority to respond to those inquiries to the limited extent of saying that we no longer represent them and they should contact you with questions?

Finally, your motion suggested that you believe none of our communications to date with our former clients have been privileged. For the reasons we explained in our response brief, this is not the case. Because this issue was not addressed in the Court's order, we intend to seek clarification and a protective order from the Court. In the meantime, you should not seek to elicit privileged information from our former clients.

Regards,  
Kathy Poldneff

-----  
Katherine M Poldneff  
Ulmer & Berne LLP  
p 216.583.7362  
c 216.347.0580

---

**From:** Bridget Coontz <[Bridget.Coontz@OhioAGO.gov](mailto:Bridget.Coontz@OhioAGO.gov)>  
**Sent:** Friday, September 29, 2023 11:13 AM  
**To:** [michael\\_walton@fccourts.org](mailto:michael_walton@fccourts.org)  
**Cc:** Djordjevic, Greg <[gdjordjevic@ulmer.com](mailto:gdjordjevic@ulmer.com)>; Martinsek, Amanda <[amartinsek@ulmer.com](mailto:amartinsek@ulmer.com)>; Poldneff, Katherine <[kpoldneff@ulmer.com](mailto:kpoldneff@ulmer.com)>; Mathews, Alvin <[amathews@ulmer.com](mailto:amathews@ulmer.com)>; [mgitomer@democracyforward.org](mailto:mgitomer@democracyforward.org); [sgoetz@democracyforward.org](mailto:sgoetz@democracyforward.org); [bseel@democracyforward.org](mailto:bseel@democracyforward.org); Julie Pfeiffer <[Julie.Pfeiffer@OhioAGO.gov](mailto:Julie.Pfeiffer@OhioAGO.gov)>; Stephen Tabatowski <[Stephen.Tabatowski@OhioAGO.gov](mailto:Stephen.Tabatowski@OhioAGO.gov)>; Phillip Kelly <[Phillip.Kelly@OhioAGO.gov](mailto:Phillip.Kelly@OhioAGO.gov)>  
**Subject:** Reply in Support, Collins v. DeWine

Good Morning,

Attached please find the Ohio Attorney General's Reply in Support of its Motion to Substitute that was just filed with the Court.

Thank you,  
Bridget Coontz



Bridget C. Coontz  
Chief Counsel and Ethics Officer  
Office of Ohio Attorney General Dave Yost  
Office number: 614-728-2035  
[Bridget.Coontz@OhioAGO.gov](mailto:Bridget.Coontz@OhioAGO.gov)

Confidentiality Notice: This message is intended for use only by the individual or entity to whom or which it is addressed and may contain information that is privileged, confidential and/or otherwise exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by telephone.

