

IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE  
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

PAMELA MOSES,	)	
	)	
Plaintiff,	)	Case No. CT-1579-19
	)	Division I
v.	)	
	)	Judge Felicia Corbin-Johnson
MARK GOINS, TRE HARGETT, and	)	Judge Suzanne S. Cook
JONATHAN SKRMETTI, in their official	)	Judge Barry Tidwell
capacities,	)	
	)	
Defendants.	)	

NOTICE OF RENEWAL OF MOTION TO COMPEL  
AND REQUEST FOR HEARING

Plaintiff Pamela Moses respectfully submits this Notice renewing her Motion to Compel and requesting the Panel set the Motion for hearing as soon as is practically possible. Plaintiff has noticed several depositions in this case but is being materially prevented from preparing for those depositions and completing discovery more generally by Defendants' delay tactics.

To this day, Defendants have refused to specify or even generally describe what searches—if any—they have done for responsive documents and data. Instead of offering Plaintiff any information to help her try to understand what appear to her to be deficient discovery responses, Defendants have simply told Plaintiff that there are no further relevant documents to be produced. Plaintiff, however, has no reason to trust Defendants' *ipse dixit* assertion and assessment of relevancy, especially having witnessed Defendants' counsel argue at the most recent hearing on Plaintiff's Motion to Compel that "her requests for discovery into the process that the defendants used [for felony disenfranchisement] just isn't relevant to the scope of her claims." (Transcript of Motion to Compel Hearing (June 24, 2024) at 18:3-5, attached as **Exhibit 1**). And even if

Defendants' counsel had not made such strained relevancy arguments at the hearing regarding information which is *critical* to Plaintiff's three remaining claims, Plaintiff's concerns about the sufficiency of Defendants' discovery responses would still not have been quelled, considering Defendants' interrogatory responses and the content of Defendants' limited productions suggest that Defendants possess additional relevant documents. By continuing to brush off Plaintiff's repeated requests for information about the parameters of their defensive discovery efforts, Defendants have left Plaintiff with no choice but to once again seek the Panel's intervention.

To refresh and update the Panel on the circumstances surrounding the Motion to Compel, Plaintiff submits the following:

- At the June 24, 2024 hearing on Plaintiff's Motion to Compel, Plaintiff raised what she believed to be fundamental deficiencies with Defendants' discovery responses, to which Defendants responded with arguments which one member of the Panel described as "delay tactics" and "procedural issues that . . . the Panel has moved on from." (Transcript, **Ex. 1**, at 34:22-24, 47:6-24).
- In lieu of proceeding to rule on whether Defendants were deficient with their responses to any of Plaintiff's interrogatories or requests for production, the Panel ordered Defendants to verify and, if appropriate, supplement their responses to Plaintiff's interrogatories and requests for production, although the Panel stayed Defendant Skrmetti's discovery obligations pending the resolution of his Motion for Judgment on the Pleadings. (Order (June 24, 2024)).
- On July 2, 2024, Defendants requested search terms from Plaintiff:

Following the Three-Judge Panel's June 24, 2024 Order, Defendants, the Secretary of State and Coordinator of Elections, are working to supplement their discovery responses. Because the plaintiff has asserted that the discovery previously produced is incomplete in light of her requests, **please**

**provide us with the plaintiff's proposed search terms** and proposed databases to search that she contends would lead to a more complete production.

(Email from Robert W. Wilson to John E. Haubenreich et al., attached as **Exhibit 2** (emphasis added).)

- On July 8, 2024, after having re-reviewed Defendants' discovery responses and prior productions, Plaintiff informed Defendants that Plaintiff would circulate proposed search terms to Defendants in the next day or two.
- On July 9, 2024, Defendant Goins and Defendant Hargett served Plaintiff with: (i) Supplemental Objections and Responses to Plaintiff's First and Second Sets of Interrogatories; and (ii) Second Supplemental Objections and Responses to Plaintiff's First Set of Requests for Production of Documents.
- On July 10, 2024, Plaintiff sent Defendants proposed search terms and proposed document repositories. (Email from John E. Haubenreich to Robert W. Wilson et al., attached as **Exhibit 3**).
- Among other things, Plaintiff also requested that Defendants identify when they issued a litigation hold related to the case, and which custodians' communications are on hold.
- On July 24, 2024, after failing to respond for two weeks, Defendants replied that they were still considering Plaintiff's proposals and that they could not provide a timeframe for communicating to Plaintiff their position regarding her requests. (Robert W. Wilson to John E. Haubenreich et al., attached as **Exhibit 4**)
- On July 30, 2024, almost three weeks after Plaintiff sent proposed search terms at Defendants' request, Defendants reported:

After discussion, **our clients' position is that all relevant documents have been produced and that no additional documents are subject to**

**Plaintiff's discovery requests in this matter.** Additionally, please find attached the Response to Plaintiff's Supplemental Submission that was filed this afternoon.

(Email from Robert W. Wilson to John E. Haubenreich et al., attached as **Exhibit 5** (emphasis added).)

In sum, after asking for search terms, Defendants (1) delayed responding; (2) refused to even negotiate or discuss the search terms they requested; and (3) refused to run any searches. Moreover, Defendants conspicuously refused to respond to the question regarding a litigation hold and document preservation.

Defendants' tactics have brought this case to a standstill for over 8 months. With a trial date approaching, expert reports underway, and depositions set to begin shortly, it is clear that Defendants are doing everything possible to avoid good-faith participation in the discovery process and to prevent Plaintiff from developing her claims.

### **Discovery Requests for the Panel's Decision**

In an effort to streamline and accelerate this process, Plaintiff only requests resolution of the following Requests for Production:

7. Please produce any and all memoranda, presentations, notes, research, communications, or other documents related to the ineligibility of persons to register and/or vote by virtue of being convicted of a felony.

8. Please produce any and all memoranda, presentations, notes, research, communications, or other documents related to T.C.A. § 40-29-105(c)(2)(B) or T.C.A § 40-29-204.

9. Please produce any and all memoranda, presentations, notes, research, communications, or other documents related to the 1986 drafting, debate, and/or passage of Public Act Chapter No. 906 (codified at T.C.A. § 40-29-105(c)(2)(B)).

11. Please produce any and all memoranda, presentations, notes, research, communications, or other documents related to the 2006 drafting, debate, and/or passage of Public Act Chapter No. 860 (codified at T.C.A § 40-29-204).

13. Please produce any and all communications discussing people's (or any individual person's) ineligibility to register and/or vote by virtue of conviction of a felony, including internally within the Secretary of State's office; with County Election Administrators and/or Commissioners/Commissions; with District Attorney Generals and/or their offices; with officials or staff at any other Tennessee agency or department; with any out-of-state agency responsible for supervision or relevant record keeping; and/or with third parties.

17. Please produce all communications (including emails, text messages, and other forms of communication as defined above) regarding or related to the allegations in the Second Amended Complaint, any defenses you may raise thereto, your Answer, and/or your affirmative defenses.

25. Please produce all documents reflecting research, studies, and analysis conducted or considered by you or the Tennessee General Assembly to evaluate the impact of voting eligibility and/or ineligibility on offender outcomes, recidivism, and/or public safety.

### **Requested Relief**

To keep this case on track for the scheduled March 2025 trial date, Plaintiff requests that the Panel order Defendants to:

(1) Submit an affidavit to the Panel certifying what Defendants have done to comply with their discovery obligations thus far, including: (a) what litigation hold Defendant put in place, if any; (b) a list of the searches Defendants have conducted heretofore; (c) when those searches were conducted; (d) the document repositories searched; (e) the custodians searched; (f) the search terms used; and (g) the time frames applied.

(2) Produce privilege logs in connection with all the privilege objections asserted in Defendants' discovery responses.

(3) Conduct searches for responsive documents in—at a minimum—the following custodians' email mailboxes: Defendant Hargett, Defendant Goins, Jessica Lim, Beth Henry-Robertson, Zachery Pratt, D.J. Hall, Lena Russomanno, Andrew Dodd, Lou Alsobrooks, Spenser Jones, and Steve Griffy;

(4) Conduct searches for responsive documents in appropriate document repositories, including but not limited to Defendants' and their employees' network storage/drives, Defendants'

and their employees' cloud storage (if any), Defendants' and their employees' individual computers, and Defendants' and their employees' hard copy files; and

(5) Produce responsive documents and data, including appropriate metadata.

Respectfully submitted,

/s/ John E. Haubenreich

John E. Haubenreich, # 029202  
The Protect Democracy Project  
2020 Pennsylvania Avenue NW, #163  
Washington, DC 20006  
Telephone: (202) 360-8535  
John.Haubenreich@protectdemocracy.org

/s/ R. Stanton Jones

Stanton Jones (*pro hac vice*)  
Elisabeth Theodore (*pro hac vice*)  
Seth Engel (*pro hac vice*)  
Catherine McCarthy (*pro hac vice*)  
ARNOLD & PORTER KAYE SCHOLER LLP  
601 Massachusetts Ave NW  
Washington, D.C. 20001  
(202) 942-5000  
Stanton.Jones@arnoldporter.com  
Elisabeth.Theodore@arnoldporter.com  
Seth.Engel@arnoldporter.com  
Catherine.McCarthy@arnoldporter.com

Michael Mazzullo (*pro hac vice*)  
Matthew Peterson (*pro hac vice*)  
ARNOLD & PORTER KAYE SCHOLER LLP  
250 West 55<sup>th</sup> Street  
New York, New York 100019  
(212) 836-8000  
Michael.Mazzullo@arnoldporter.com  
Matthew.Peterson@arnoldporter.com

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document has been served via email and the Court's electronic filing system on August 8, 2024, as follows:

Robert W. Wilson  
Senior Assistant Attorney General  
Office of the Attorney General and Reporter  
40 South Main Street, Suite 1014  
Memphis, TN 38103-1877  
(901) 543-9031  
Robert.Wilson@ag.tn.gov

Dawn Jordan  
Special Counsel  
Office of Tennessee Attorney General  
P.O. Box 20207  
Nashville, TN 37202-0207  
(615) 741-6440  
Dawn.Jordan@ag.tn.gov

Zachary L. Barker  
Assistant Attorney General  
Public Interest Division  
Office of Attorney General  
P.O. Box 20207  
Nashville, TN 37202-0207  
Zachary.Barker@ag.tn.gov

*Counsel for Defendants*

/s/ John E. Haubenreich