

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE *ex rel.* NEW MODELS
6155 Mori Street
McLean, Virginia 22101,

and

TIMOTHY CRAWFORD
6165 Mori Street
McLean, Virginia 22101,

Relators,

vs.

JENNIFER BRUNNER, OHIO
SECRETARY OF STATE :
180 E. Broad Street
Columbus, Ohio 43215,

Respondent.

Case No.

10-0415

Original Action in Prohibition

COMPLAINT FOR WRIT OF PROHIBITION

John H. Burtch (0025815)

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Timothy Crawford*

Richard Cordray (0038034)

OHIO ATTORNEY GENERAL

30 East Broad Street, 17th Floor

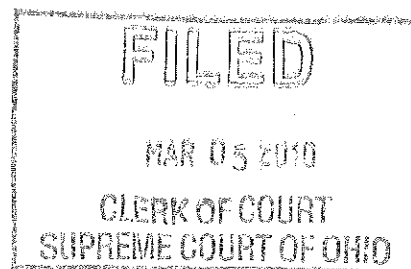
Columbus, Ohio 43215

(614) 466-4320 telephone

(614) 466-5087 fax

Counsel for Respondent

Ohio Secretary of State Jennifer Brunner



This action is brought in the name of the State of Ohio on the relation of New Models and Timothy Crawford (“Relators”), who are petitioning this Court for a Writ of Prohibition against Respondent Ohio Secretary of State Jennifer Brunner (“Secretary”). The allegations in the Complaint are supported by the Affidavit of Timothy Crawford, below.

INTRODUCTION

1. Relators seek a writ of prohibition directing the Secretary to cease and desist from attempting to enforce certain void subpoenas against them and from attempting to compel them to appear to testify in Ohio at a deposition and to produce documents. Because the Secretary is without subpoena power over Relators and patently and unambiguously is without authority to issue these subpoenas commanding Relators to appear before her and testify at a deposition or to produce documents, or to take any action to enforce the subpoenas, a writ of prohibition should issue.

JURISDICTION

2. This court has original jurisdiction over this action pursuant to Article IV, Section 2(B)(1)(d) of the Ohio Constitution.

PARTIES

3. Relator New Models (“New Models”) is a not-for-profit 501(c)(4) corporation that provided funding to LetOhioVote.org (“Let Ohio Vote”), the ballot issue committee designated under R.C. 3519.02 to represent the petitioners in a Referendum Petition seeking to refer certain portions of Amended Substitute House Bill No. 1 to the Ohio voters for their approval or rejection at the election in

November of 2010. New Models is incorporated in the Washington, D.C. and has its principal place of business at 6155 Mori Street, McLean, Virginia, 22101.

4. Relator Timothy Crawford ("Mr. Crawford") is the President of New Models and is a citizen of Virginia residing at 6165 Mori Street, McLean, VA 22101.

5. Respondent Jennifer Brunner is the Ohio Secretary of State and the chief elections officer of the State of Ohio.

FACTUAL ALLEGATIONS

6. On February 17, 2010, the Secretary issued a press release announcing that she had opened a "campaign-finance investigation regarding LetOhioVote.org." (A true and accurate copy of the press release is attached as Exhibit 2 and made a part hereof.¹)

7. In the press release, the Secretary states:

- a. that as the state's chief elections officer, she "is responsible for overseeing campaign finance filings for statewide ballot issues";
- b. that she "is investigating the source of funding for LetOhioVote.org," a ballot issue committee;
- c. that "the law is clear that what is spent for proposed ballot issues must be reported" and that using "a 'straw-person' out-of-state corporation to hide the real sources of funding not only violates the public trust, it looks like concealment, which is against the law."
- d. that, according to LetOhioVote.org's 2009 annual campaign finance report, it raised \$1.55 million, all from New Models;

¹ The press release is also available on the Secretary of State's website at <http://www.sos.state.oh.us/SOS/PressReleases/2010/2009-02-17.aspx> (last checked on March 5, 2010).

- e. that she has issued subpoenas to LetOhioVote.org, New Models, and others reported to be connected to New Models, commanding them to submit to depositions and to produce certain records in connection with the investigation; and
- f. that campaign finance laws require those behind statewide ballot issue efforts “to say who they are.”

8. On or about February 16, 2010, Brian Shinn, Assistant General Counsel and Chief Elections Counsel for the Secretary, mailed two subpoenas to CT Corporation System, the registered agent of New Models in Virginia, via certified mail. The subpoenas were addressed to the “Custodian of Records” of New Models and Timothy Crawford, respectively, and were received on February 18, 2010.

9. True and accurate copies of the subpoenas are attached as Exhibit 1 and made a part hereof.

10. Both of the subpoenas command the subpoenaed party to appear before the Secretary to testify as a witness at a deposition on March 5, 2010, at the Office of the Ohio Secretary of State.

11. Both of the subpoenas also command the subpoenaed party to produce all documents specified in Exhibit A to the subpoena. (See Exhibit 1, Attachment A).

12. The subpoena to New Models included a copy of Part C and D of Rule 45 of the Ohio Rules of Civil Procedure.

13. Both of the subpoenas threaten the subpoenaed party with criminal punishment for noncompliance. More specifically, they state that “Failure to appear and refusal to testify pursuant to this subpoena is a violation of Ohio Revised Code Section 3599.37, a misdemeanor of the first degree.” R.C. 3599.37

prohibits any person “having been subpoenaed or ordered to appear before a grand jury, court, board, or officer in a proceeding or prosecution upon a complaint, information, affidavit, or indictment for an offense under an election law” from failing to appear, refusing to answer a question pertinent to the matter under inquiry or investigation, or refusing to produce documents.

14. Upon information and belief, the Secretary also served subpoenas on LetOhioVote.org and several of its members.

CLAIM FOR WRIT OF PROHIBITION²

15. Relators restate the allegations in paragraphs 1 through 19 as if fully restated herein.

16. New Models is incorporated in Washington, D.C. and has its principal place of business at 6155 Mori Street, McLean, Virginia 22101. Thus, New Models is a citizen of Washington, D.C. and the state of Virginia.

17. Mr. Crawford resides in and is a citizen of the state of Virginia.

18. The Secretary does not have subpoena power over citizens of Washington, D.C. or the state of Virginia. Therefore, she is without authority to issue subpoenas in Virginia, to compel residents of Washington, D.C. or Virginia to appear in Ohio for a deposition, to command residents of Washington, D.C. or Virginia to produce documents in Ohio, or to seek to enforce subpoenas against such residents.

19. The Secretary has general authority to investigate the administration of election laws and to report violations of the same to the attorney general or prosecuting attorney. R.C. 3501.05(N)(1).

20. In the performance of her lawful duties, the Secretary is authorized to administer oaths, issue subpoenas, summon witnesses, compel the production of documents, and fix the time and place for hearing on any matters relating to the administration of enforcement of the election laws. R.C. 3501.05.

21. Notwithstanding the Secretary's general authority to investigate potential violations of election laws, the Secretary has no authority to investigate alleged violations of certain campaign finance laws in Chapter 3517, namely 3517.08 to 3517.13, 3517.17, 3517.18, 3517.20 to 3517.22, 3599.03, or 3599.031 of the Revised Code (hereafter collectively referred to as the "Campaign Finance Statutes"). R.C. 3501.05(N)(2).

22. Rather, under R.C. 3501.05(N)(2), whenever the Secretary has or should have knowledge of a failure to comply with one of the Campaign Finance Statutes, she is required to report that failure by filing a complaint with the Ohio Elections Commission, which has exclusive jurisdiction to investigate and adjudicate alleged violations of these Campaign Finance Statutes. See *State ex rel.*

² In addition to the jurisdictional issues raised in this original action for a writ of prohibition, the subpoenas implicate Relators' federal constitutional rights, including their First Amendment rights to freedom of speech and association. Relators reserve the right to assert any federal constitutional claims they may have in federal court.

Ohio Democratic Party v. Blackwell, 111 Ohio St.3d 246, 2008-Ohio-5202, 855 N.E.2d 1188, at ¶16.

23. The Secretary's duties before reporting a failure to comply are expressly set forth in the Revised Code. She is first required to examine the filed campaign finance statements for compliance, and then, if she deems the statement to be noncompliant, to afford the violator an opportunity to correct the violation. R.C. 3517.11.

24. Based on the Secretary's statements to the media, the Secretary is attempting to use the limited subpoena power granted to her under R.C. 3501.05—limited in that it may only be used in the performance of her lawful duties—for the improper purpose of seeking to prove that Let Ohio Vote and its supporters, including New Models, have violated the Campaign Finance Statutes.

25. More specifically, the Secretary is attempting to obtain evidence to prove that Let Ohio Vote and its supporters, including New Models, have concealed contributions in violation of R.C. 3517.13, one of the Campaign Finance Statutes over which the Ohio Elections Commission has exclusive jurisdiction.

26. By issuing the subpoenas in furtherance of her effort to prove that Let Ohio Vote violated the Campaign Finance Statutes, the Secretary has exercised quasi-judicial power. Further, any acts the Secretary takes in furtherance of or in connection with enforcing the subpoenas would constitute an exercise of quasi-judicial power.

27. Because the Secretary has no authority to investigate potential violations of the Campaign Finance Statutes, she is patently and unambiguously without authority to issue subpoenas, to compel testimony, to command production of documents, or to seek to enforce the subpoenas in furtherance of an investigation into whether Let Ohio Vote or Relators violated those Statutes.

28. Relators have no adequate remedy at law.

29. The subpoenas are overly broad and unduly burdensome in that they require the production of information that could not conceivably be related to the Secretary's investigation of Let Ohio Vote, which is listed in the caption of the subpoenas. The subpoenas are unlimited in temporal or subject matter scope, demand information on all contributions to and financial records of New Models, and call for all information related to New Model's employees – which would include information protected from disclosure under both State and Federal privacy laws.

30. The subpoenas are invalid on their face in that they were served without the required witness fees or mileage for subpoenaing a witness who resides outside the county as required by Civ.R. 45, and served outside this State, upon persons who are not subject to jurisdiction in this State, and purport to require the production of documents and personal appearance in this State.

WHEREFORE, Relators pray for judgment against Respondent Ohio Secretary of State Jennifer Brunner, and that the Court:

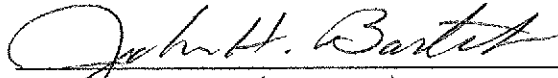
A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such

declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders;

- B. Issue a Peremptory Writ of Prohibition directing Respondent Secretary of State Jennifer Brunner to cease and desist from attempting to enforce the invalid subpoenas, from threatening criminal prosecution for noncompliance with the subpoenas, or from attempting to compel Relators to appear to testify at a deposition or to produce documents;
or
- C. Issue an Alternative Writ of Prohibition staying enforcement of the invalid subpoenas and staying the depositions and document production scheduled for March 5, 2010 until this Court renders a final decision on Relators' Complaint, and then issue a permanent Writ of Prohibition directing Respondent Secretary of State Jennifer Brunner to cease and desist from attempting to enforce the invalid subpoenas, from threatening criminal prosecution for noncompliance with the subpoenas, or from attempting to compel Relators to appear to testify at a deposition or to produce documents;
- D. Exercise its plenary power and declare the subpoenas void *ab initio*;
- E. Award Relators their costs and expenses incurred in bringing this action, including reasonable attorney fees; and

F. Grant such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted,



John H. Burtch (0025815)
Counsel of Record

Rodger L. Eckelberry (0071207)

Robert J. Tucker (0082205)

Baker & Hostetler, LLP

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rtucker@bakerlaw.com

*Counsel for Relators New Models and
Timothy Crawford*

AFFIDAVIT

STATE OF VIRGINIA

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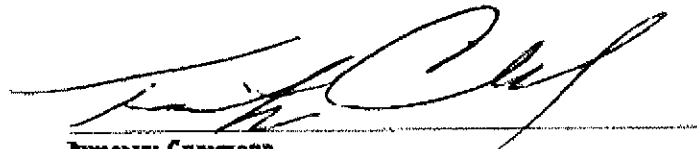
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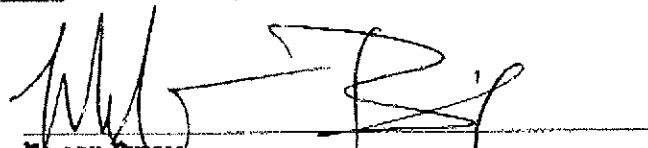
COUNTY OF FAIRFAX

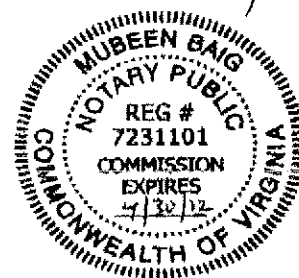
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I, **TIMOTHY CRAWFORD**, being first duly sworn according to law, depose and state that I have read the foregoing Complaint for Writ of Prohibition and the statements contained in the Complaint, which are incorporated and made a part of this Affidavit as if completely rewritten herein, are true based on my personal knowledge, and I am competent to testify to same.


TIMOTHY CRAWFORD

Sworn to and subscribed before me on this 05 day of March, 2010.

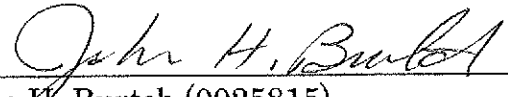

Notary Public



PRAECIPE TO CLERK

Please serve the foregoing Complaint for Writ Prohibition on the Respondent named in the Complaint as follows:

HON. JENNIFER BRUNNER
Ohio Secretary of State
180 East Broad Street
Columbus, Ohio 43215



John H. Burtch (0025815)

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Complaint for Writ of Prohibition was served by electronic mail this 5th day of March, 2010 upon the following:

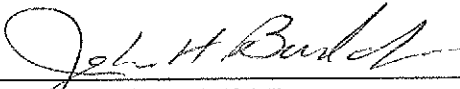
Brian Shinn
bshinn@sos.state.oh.us

Aaron D. Epstein
Aaron.Epstein@ohioattorneygeneral.gov

Damian Sikora
Damian.Sikora@ohioattorneygeneral.gov

Richard N. Coglianese
Richard.Coglianese@ohioattorneygeneral.gov

Pearl Chin
Pearl.Chin@ohioattorneygeneral.gov



John H. Burtch (0025815)



**Service of Process
Transmittal**

02/18/2010

CT Log Number 516173758



TO: E. Mark Braden
Baker & Hostetler LLP
1050 Connecticut Avenue, N.W., Washington Square, Ste. 1100
Washington, DC 20036

RE: Process Served in Virginia

FOR: New Models (Domestic State: DC)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	RE: LetOhioVote.org // To: New Models
DOCUMENT(S) SERVED:	Subpoena Duces Tecum, Attachment
COURT/AGENCY:	None Specified Case # None Specified
NATURE OF ACTION:	Subpoena - Banking Records - Pertaining to New Models and LetOhioVote.org
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Glen Allen, VA
DATE AND HOUR OF SERVICE:	By Certified Mail on 02/18/2010 postmarked on 02/16/2010
APPEARANCE OR ANSWER DUE:	03/05/2010 at 2:00 p.m.
ATTORNEY(S) / SENDER(S):	Brian E. Shinn, Assistant General Counsel Office of the Secretary of State 180 E. Broad St. 15th Floor Columbus, OH 43215 (614) 728-5639
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 799443310740
SIGNED:	C T Corporation System
PER:	Tinika Baylor
ADDRESS:	4701 Cox Road Suite 301 Glen Allen, VA 23060
TELEPHONE:	804-217-7255

OFFICE OF THE SECRETARY OF STATE
STATE OF OHIO

SUBPOENA DUCES TECUM
R.C. 3501.05(N) & (CC)

STATE OF OHIO)
)
COUNTY OF FRANKLIN) SS

IN RE: LetOhioVote.org

To Tim Crawford
 6165 Mori Street
 McLean, VA 22101

☒ **YOU ARE HEREBY SUBPOENAED** pursuant to R.C. 3501.05(N) and (CC), et al., to appear in the Office of the Secretary of State to testify as witness in a deposition in the above entitled matter and not depart without leave. Failure to appear pursuant to this subpoena may subject you to criminal prosecution pursuant to R.C. 3599.37. Your appearance is required on the 5th of March, 2010 at 3:00 P.M. at:

The Office of the Ohio Secretary of State
180 E. Broad Street, 15th floor
Columbus, OH 43215

☒ **YOU ARE HEREBY SUBPOENAED** to produce and permit inspection, copying, testing or sampling of the documents or objects specified in Attachment A hereto.

RETURN INFORMATION TO:

☒ **YOU ARE HEREBY REQUIRED** to contact the following person to confirm the time of your testimony:

Ohio Secretary of State – Attention: Brian E. Shinn, Assistant General Counsel & Chief Elections Counsel
180 E. Broad St, 15th floor
Columbus, OH 43215
(614) 728-5639

Section 2335.06 of the Ohio Revised Code provides that witnesses are entitled to receive \$12.00 for each full day's attendance and \$6.00 for each half day's attendance, plus ten cents per mile traveled to and from his place of residence outside of Franklin County proper. Such fees are taxed as costs and mailed to the witness upon payment of the costs.

Brian E. Shinn, Assistant General Counsel
Attorney Name

180 E. Broad St. 15th floor – Columbus, OH 43215
Address

Brian E. Shinn
Signature

Ohio Secretary of State February 16, 2010
Representing Date

Issued: _____
Return: _____
Served by: _____
Date Served: _____

Failure to appear and refusal to testify pursuant to this subpoena is a violation of Ohio Revised Code Section 3599.37, a misdemeanor of the first degree.

Subpoena of Tim Crawford

Attachment A: List of documents to be produced

As used herein, "document" shall have the broadest possible meaning under the Ohio Rules of Civil Procedure and includes the original, each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) and (if the original is not in existence or subject to the control of the recipient of this subpoena) each copy, regardless of origin or location, of any handwritten, typewritten, printed, recorded, transcribed, punched, taped, tape recorded, photocopied, photostatic, "telex", filmed, microfilmed or otherwise prepared matter, however produced or reproduced, which is in the possession, custody or control of the recipient of this subpoena, including, but not limited to, all papers, letters, correspondence, catalogs, advertisements, telegrams, telexes, cables, memoranda, or minutes of meetings of conversations (personal or telephonic), desk pads, calendars, diaries, telephone pads, travel and expense records, reports, summaries, surveys, analyses, ledgers, journals and other formal or information books of record or account, bulletins, instructions, agreements, legal documents, billing records, telephone toll records, drafts, notebooks, worksheets, attorneys' and accountants' invoices, audits and audit records, purchase orders, accounting worksheets, time records, canceled checks, vouchers, check stubs and writing of every description, including drawings, graphs, charges, photographs, films, recordings, transcriptions of recordings, computer tapes and printouts, and other data or compilations from which information can be obtained and translated, if necessary, by the recipient of this subpoena through detection devices into reasonably usable form.

1. Any and all bank statements, cancelled checks, deposit slips, and records of any and all funds transfers, or any and all other documents or electronically stored information related to any and all bank accounts held by or controlled by New Models in 2009 and 2010.
2. Any and all documents or electronically stored information related to any and all fundraising solicitations by New Models for 2009 and 2010.
3. Any and all documents or electronically stored information related to any and all funds received by New Models in 2009 and 2010.
4. Any and all documents or electronically stored information related to any and all contributors to New Models in 2009 and 2010.
5. Any and all documents or electronically stored information related to funds transferred between New Models and LetOhioVote.org in 2009 and 2010.
6. Any documents or electronically stored information related to shareholders of New Models in 2009 and 2010.
7. Any and all documents or electronically stored information related to members, officers, employees, or contractors of New Models in 2009 and 2010.
8. Any and all documents or electronically stored information related to subsidiary, affiliate, or parent entities of New Models.

9. Any and all documents or electronically stored information related to any business filing, PAC filing, or tax filing by New Models for 2009 or 2010.
10. Any and all documents or electronically stored information related to the corporate charter or articles of incorporation of New Models.
11. Any and all documents or electronically stored information related to annual reports or annual minutes of New Models in 2009 or 2010.

OFFICE OF THE SECRETARY OF STATE
STATE OF OHIO

SUBPOENA DUCES TECUM
R.C. 3501.05(N) & (CC)

STATE OF OHIO)
)
COUNTY OF FRANKLIN) SS

IN RE: LetOhioVote.org

To Custodian of Records
 New Models
 c/o CT Corporation System, Registered Agent
 4701 Cox Rd., Suite 301
 Glen Allen, VA 23060

☒ **YOU ARE HEREBY SUBPOENAED** pursuant to R.C. 3501.05(N) and (CC), et al., to appear in the Office of the Secretary of State to testify as witness in a deposition in the above entitled matter and not depart without leave. Failure to appear pursuant to this subpoena may subject you to criminal prosecution pursuant to R.C. 3599.37. Your appearance is required on the **5th** of **March, 2010** at **2:00 P.M.** at:

The Office of the Ohio Secretary of State
180 E. Broad Street, 15th floor
Columbus, OH 43215

☒ **YOU ARE HEREBY SUBPOENAED** to produce and permit inspection, copying, testing or sampling of the documents or objects specified in **Attachment A** hereto.

RETURN INFORMATION TO:

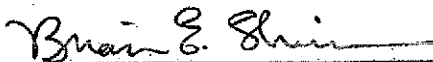
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Ohio Secretary of State – Attention: Brian E. Shinn, Assistant General Counsel & Chief Elections Counsel
180 E. Broad St, 15th floor
Columbus, OH 43215
(614) 728-5639

Section 2335.06 of the Ohio Revised Code provides that witnesses are entitled to receive \$12.00 for each full day's attendance and \$6.00 for each half day's attendance, plus ten cents per mile traveled to and from his place of residence outside of Franklin County proper. Such fees are taxed as costs and mailed to the witness upon payment of the costs.

Brian E. Shinn, Assistant General Counsel
Attorney Name

180 E. Broad St. 15th floor – Columbus, OH 43215
Address


Signature

Ohio Secretary of State February 16, 2010
Representing Date

Issued: _____
Return: _____
Served by: _____
Date Served: _____

Failure to appear and refusal to testify pursuant to this subpoena is a violation of Ohio Revised Code Section 3599.37, a misdemeanor of the first degree.

RULE 45. RULES OF CIVIL PROCEDURE, PARTS C & D:

(C) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued

shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

RULE 45. RULES OF CIVIL PROCEDURE, PARTS C & D:

(C) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued

shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

Subpoena of Custodian of Records, New Models

Attachment A: List of documents to be produced

As used herein, "document" shall have the broadest possible meaning under the Ohio Rules of Civil Procedure and includes the original, each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) and (if the original is not in existence or subject to the control of the recipient of this subpoena) each copy, regardless of origin or location, of any handwritten, typewritten, printed, recorded, transcribed, punched, taped, tape recorded, photocopied, photostatic, "telex", filmed, microfilmed or otherwise prepared matter, however produced or reproduced, which is in the possession, custody or control of the recipient of this subpoena, including, but not limited to, all papers, letters, correspondence, catalogs, advertisements, telegrams, telexes, cables, memoranda, or minutes of meetings of conversations (personal or telephonic), desk pads, calendars, diaries, telephone pads, travel and expense records, reports, summaries, surveys, analyses, ledgers, journals and other formal or information books of record or account, bulletins, instructions, agreements, legal documents, billing records, telephone toll records, drafts, notebooks, worksheets, attorneys' and accountants' invoices, audits and audit records, purchase orders, accounting worksheets, time records, canceled checks, vouchers, check stubs and writing of every description, including drawings, graphs, charges, photographs, films, recordings, transcriptions of recordings, computer tapes and printouts, and other data or compilations from which information can be obtained and translated, if necessary, by the recipient of this subpoena through detection devices into reasonably usable form.

1. Any and all bank statements, cancelled checks, deposit slips, and records of any and all funds transfers, or any and all other documents or electronically stored information related to any and all bank accounts held by or controlled by New Models in 2009 and 2010.
2. Any and all documents or electronically stored information related to any and all fundraising solicitations by New Models for 2009 and 2010.
3. Any and all documents or electronically stored information related to any and all funds received by New Models in 2009 and 2010.
4. Any and all documents or electronically stored information related to any and all contributors to New Models in 2009 and 2010.
5. Any and all documents or electronically stored information related to funds transferred between New Models and LetOhioVote.org in 2009 and 2010.
6. Any documents or electronically stored information related to shareholders of New Models in 2009 and 2010.
7. Any and all documents or electronically stored information related to members, officers, employees, or contractors of New Models in 2009 and 2010.
8. Any and all documents or electronically stored information related to subsidiary, affiliate, or parent entities of New Models.

9. Any and all documents or electronically stored information related to any business filing, PAC filing, or tax filing by New Models for 2009 or 2010.
10. Any and all documents or electronically stored information related to the corporate charter or articles of incorporation of New Models.
11. Any and all documents or electronically stored information related to annual reports or annual minutes of New Models in 2009 or 2010.

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Secretary Brunner Opens Campaign-Finance Investigation Regarding LetOhioVote.Org

2/17/2010

For Immediate Release

Feb. 17, 2010

SECRETARY BRUNNER OPENS CAMPAIGN-FINANCE INVESTIGATION REGARDING LETOHIOVOTE.ORG

COLUMBUS, Ohio – Secretary of State Jennifer Brunner is investigating the source of funding for LetOhioVote.org, the organization behind a proposed referendum to stop Ohio's racetracks from operating video lottery terminals for the Ohio Lottery Commission.

Secretary Brunner, the state's chief elections officer is responsible for overseeing campaign finance filings for statewide ballot issues. In opening the investigation she said, "The law is clear that what is spent for proposed ballot issues must be reported. Using a "straw person" out-of-state corporation to hide the real sources of funding not only violates the public trust, it looks like concealment, which is against the law."

Secretary Brunner has issued subpoenas to LetOhioVote.org and New Models, a Glen Allen, Va.-based corporation, and others reported to be connected to the company to submit to depositions and to produce certain records in connection with the investigation.

According to LetOhioVote.org's 2009 annual campaign finance report, the group reported raising \$1.55 million all from a single source – New Models.

"The public policy behind Ohio's campaign finance laws is that sunshine is the best disinfectant," Secretary Brunner said. "Voters are being asked to pay for a statewide election on a ballot issue for November that will increase the length of the ballot and subject voters to all kinds of advertising. The least we can do is require those behind the effort to say who they are, like campaign finance laws require. The public has a right to know."

LetOhioVote.org currently has a referendum petition before the Secretary of State for the November ballot pending the outcome of signature verification.

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March 2010						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
29	1	2	3	4	5	6
7	8	9	10	11	12	13
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21	22	23	24	25	26	27
28	29	30	31	1	2	3
4	5	6	7	8	9	10

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