

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LIBERTARIAN PARTY OF OHIO, et al.
Plaintiffs,

and

ROBERT HART, et al.,
Intervener-Plaintiffs,

Case No. 2:13-cv-00953

v.

**JUDGE WATSON
MAGISTRATE JUDGE KEMP**

JON HUSTED,
in his Official Capacity as Ohio
Secretary of State,
Defendant,

STATE OF OHIO,
Intervener-Defendant,

and

GREGORY FELSOCI,
Intervener-Defendant.

_____ /

PLAINTIFFS' MOTION TO SUPPLEMENT RECORD
TO SUPPORT PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs respectfully move to supplement the evidentiary record in this matter with Exhibit 1 (Motion to Dismiss and Response of Respondent Terry Case, Case No. 2015G-004 (Ohio Elections Commission, May 8, 2015)), and Exhibit 2 (Motion to Dismiss [filed by Kasich/Taylor for Ohio, et al.], Case No. 2015G-004(Ohio Elections Commission, May 8, 2015). Both documents were filed with the Ohio Elections Commission on May 8, 2015 on behalf of

Terry Casey and the Kasich/Taylor for Ohio Campaign (hereinafter "the Kasich Campaign"), respectively. Plaintiff-Earl (through counsel) received copies of these documents on May 19, 2015.

These documents establish that the Ohio Republican State Central and Executive Committee (hereinafter "the Ohio Republican Party") on November 19, 2014, December 22, 2014, December 29, 2014, and February 24, 2015, made payments of \$100,000, \$100,000, \$50,000 and \$50,000, respectively, to the law firm of Zeiger, Tigges & Little (hereinafter "the Zeiger firm"). *See* Motion to Dismiss and Response of Respondent Terry Casey, Case No. 2015G-004 (Ohio Elections Commission, May 8, 2015) at 5 (Exhibit 1); Motion to Dismiss [filed by Kasich/Taylor for Ohio, et al.], Case No. 2015G-004 (Ohio Elections Commission, May 8, 2015) at 10 and attachment (Exhibit 2).

Although both documents carefully avoid stating that the payments made by the Ohio Republican Party to the Zeiger firm represented payments for the Zeiger firm's representation of Gregory Felsoci and Terry Casey, they both necessarily imply just that. They both argue that because the Ohio Republican Party belatedly reported these payments as campaign expenditures, the Kasich Campaign need not have earlier reported the amounts owed by Casey as in-kind contributions. The argument's premise, of course, is that the Ohio Republican Party eventually paid for precisely what Casey and the Kasich Campaign had bought.

According to the Secretary of State's web page, the November 19, 2014 payment of \$100,000 to the Zeiger firm was first reported by the Ohio Republican Party on December 12,

2014 as part of the Ohio Republican Party's "post-general 2014" report.¹ The remaining payments were reported to the Secretary of State as part of the Ohio Republican Party's "pre-primary 2015" report on April 23, 2015.²

Good cause exists for supplementing the record because this evidence contradicts testimony given by Matt Borges and Terry Casey. Borges testified in this Court on March 17, 2014 that the Ohio Republican Party was not involved in Felsoci's protest of Plaintiff-Earl. Casey, meanwhile, testified at his deposition on August 28, 2014 that he alone was responsible for paying Felsoci's lawyers. *See* Doc. No. 241-1 at PAGEID # 6233. Casey further claimed at his deposition that he would seek contributions from "interested" persons, but did not have anyone in mind. *Id.* at 6237-38. Casey also asserted that he did not know whether anyone would ever contribute money to help him pay the Zeiger firm. *Id.* at 6240.

That the Ohio Republican Party would begin making six figure payments to the Zeiger firm to cover Casey's bill within days of the conclusion of the November 2014 general election is strong evidence of its prior coordination with Casey. One might be forgiven for refusing to believe that the Ohio Republican Party just "all of a sudden," days after the election was over (and, importantly, after this Court had completed its proceedings), decided to retire Terry Casey's \$300,000 debt. The only realistic conclusion is that this Court was correct from the beginning; the Ohio Republican Party orchestrated and was deeply involved in the protest. *See* Doc. No. 80 at PAGEID # 2148-49 ("To state the obvious, Felsoci's testimony, as well as other evidence in

¹ *See* http://www2.sos.state.oh.us/pls/cfqry/f?p=119:44:213217160519028::NO::P44_RP_ID,P44_LIS TTYPE:179795911,simple (last visited May 19, 2015).

the record, supports an inference that operatives or supporters of the Ohio Republican Party orchestrated the protest that Felsoci signed.").

The proffered evidence, moreover, is directly relevant because it proves the monetary connection between the Ohio Republican Party and Felsoci's protest of Plaintiff-Charlie Earl. Plaintiffs alleged in Count Seven of their Third Amended Complaint that the Ohio Republican Party and the Kasich Campaign were behind Felsoci's protest. *See* Doc. No. 188 at PAGEID 3829, ¶ 249 ("Casey was at all times during the protest hearing process, beginning on February 21, 2014 and to this day, an agent of the Ohio Republican Party, the Kasich campaign, the DeWine campaign, and/or the Franklin County Republican Party."); PAGEID # 3845-46 (stating Count Seven). Plaintiffs alleged that because the Ohio Republican Party was the functional equivalent of a governmental actor, its conduct had to be judged under the First Amendment. The proffered evidence found in Attachments A and B solidifies the connection between the Ohio Republican Party and the protest. It supports Plaintiffs' First Amendment theory in Count Seven of their Third Amended Complaint.

Plaintiffs were not aware of the proffered evidence until May 19, 2015, when it was delivered by regular mail to Plaintiffs' attorney (who also represents Earl in his administrative challenge filed with the Ohio Elections Commission). This delivery was in response to Plaintiff-Earl's administrative campaign-finance complaint filed on April 14, 2015 with the Ohio Elections Commission against Casey and the Kasich Campaign. Earl alleged in his administrative complaint that by coordinating his (Casey's) activities with the Kasich Campaign, Casey's efforts

² *See*

http://www2.sos.state.oh.us/pls/cfqry/f?p=119:44:213217160519028::NO::P44_RP_ID,P44_LIS_TTYPE:182171623,simple (last visited May 19, 2015).

to dislodge Earl from the ballot constituted an "in-kind" contribution to the Kasich Campaign that violated Ohio law. Casey's and the Kasich Campaign's responses, filed on May 8, 2015 with the Ohio Election Commission, disclosed that the Ohio Republican Party had paid the Zeiger firm for representing Felsoci.

Plaintiffs' plainly did not have this information at the time of the preliminary injunction hearing held on September 29-30, 2014, *see* Docs. No. 248 & 249, nor did they have this evidence when they filed for summary judgment on October 23, 2014. *See* Doc. No. 261 (Plaintiffs' Motion for Summary Judgment). Plaintiffs, moreover, did not have the information when briefing on the cross-motions for summary judgment was completed by Defendant-Secretary on December 8, 2014. *See* Doc. No. 273 (Secretary's Reply to Plaintiffs' Response).

Nor could Plaintiffs have possessed the proffered evidence or any of the information contained therein at these times. The Ohio Republican Party did not report to the Secretary of State its first payment of \$100,000 to the Zeiger firm until December 12, 2014. This was (conveniently) not only well-after the election, but also after the briefing on the cross-motions for summary judgment had been completed.³ The bulk of the payments were not reported to the Secretary until April 23, 2015, nine days after Earl filed his administrative complaint with the Ohio Elections Commission.

³ Intervener-Defendant-Felsoci never supplemented his discovery responses with this important information, even though he knew by November 19, 2014 that the Ohio Republican Party had begun paying his bill. Plaintiffs made a point of reminding Intervener-Defendant-Felsoci of his continuing obligation to supplement discovery. Had he done so, Plaintiffs would have been in a position to bring this evidence to the Court's attention much sooner.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully move to supplement the record with Exhibits 1 & 2.

Respectfully submitted,

s/ Mark R. Brown

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CERTIFICATE OF SERVICE

I certify that copies of this Motion and Exhibits were filed using the Court's electronic filing system and will thereby be electronically delivered to all parties through their counsel of record.

s/ Mark R. Brown

Mark R. Brown