

IN THE SUPREME COURT OF OHIO

State ex rel. CENTER FOR MEDIA : CASE NO: 2023-0270
AND DEMOCRACY, *et al.*, :
: Appellees, :
: vs. :
THE OFFICE OF ATTORNEY : On appeal from Franklin County
GENERAL DAVID YOST, : Court of Appeals, 10th Appellate District
: Court of Appeals Case No. 20AP-554
Appellant. :

APPELLEES' EMERGENCY MOTION FOR AN ORDER TO REFRAIN FROM
DESTRUCTION OF EVIDENCE AT ISSUE IN APPEAL

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Counsel for Appellant

EMERGENCY MOTION FOR AN ORDER TO REFRAIN FROM DESTRUCTION OF EVIDENCE AT ISSUE IN APPEAL

Appellees Center for Media and Democracy and David Armiak hereby respectfully request that this Court order Appellant Ohio Attorney General David Yost to instruct his staff to preserve and refrain from destruction of emails, text messages, and other documents, whether stored in personal devices and accounts or official ones, that may be responsive to the discovery requests at issue in this appeal. No such order should be necessary, as this obligation arose as soon as the requests were served, and measures to collect and preserve potentially responsive documents should have been taken automatically. But attempts by Appellees' counsel to confirm this with Appellant's counsel have been unsuccessful. To the contrary, testimony obtained in Case No. 2022-0977 (also captioned *State ex rel. Center for Media and Democracy, et al., v. Yost*) suggests that at least some of AG Yost's staff have engaged in a regular, unsupervised practice of deleting their correspondence with the outside groups at issue, and that this continued well after that correspondence was ordered by the court below to be produced. Accordingly, the Appellees ask that this Court affirmatively order the Appellant to take preservation measures immediately, and that the requested order be given temporary effect while the Court awaits the Appellant's response to this motion. A memorandum in support is attached.

Respectfully submitted,

/s/Jeffrey P. Vardaro
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**MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR AN ORDER TO
REFRAIN FROM DESTRUCTION OF EVIDENCE AT ISSUE IN APPEAL**

As fully described in the briefing in this appeal, the Tenth District Court of Appeals magistrate issued an order in September 2021, directing the Appellant to, *inter alia*, produce documents pursuant to the discovery requests of the Appellees, including by conducting electronic searches of the personal and official email accounts of staff members of the Appellant who communicated with the Republican Attorneys General Association (RAGA) and/or its sister group, the Rule of Law Defense Fund (RLDF). The Appellant filed a motion to set aside this order, but did not ask for a stay of any kind. The court of appeals denied this motion to set aside in February 2023. The Appellant filed an appeal to this Court, but did not move for a stay of its discovery obligations in the court below or in this Court.

The Appellant was obligated to take steps to preserve any records within the scope of the requests, at the latest, as soon as they were served in March 2021. *See, e.g., RFC Capital Corp. v. EarthLink, Inc.* (10th Dist.), 2004-Ohio-7046, ¶ 90 (holding that court could infer malfeasance or gross neglect from party’s failure to collect responsive documents from employee while discovery request was pending); *Kemper Mortg., Inc. v. Russell* (S.D. Ohio), 2006 U.S. Dist. LEXIS 20729, *4-5 (discussing duty under analogous federal rules to preserve any record that is “reasonably likely to be requested during discovery and/or is the subject of a pending discovery request” and noting this obligation arises irrespective of any court order (citation omitted)).

There is no authority for the idea that a party can dispense with this obligation as to any documents it *objects* to providing in discovery. Such a rule would be an invitation to mischief, as responding parties could object to all discovery, destroy all responsive records while motions practice is pending on the objections, and defeat virtually any form of litigation. But even if there were such a rule, it would not apply here, where the Appellant’s objections were promptly

overruled by the magistrate and again by the court of appeals panel. Destroying records that were specifically ordered to be collected and produced (either to the Appellees or *in camera*) would veer well beyond mere spoliation and into the realm of contempt.

Accordingly, there should be no need for a motion of this kind. But in January 2023, more than a year after the magistrate's order, the Appellant's director of business government, Kevin Servick, testified in a deposition in a related case, Case No. 2022-0977. He confirmed that he was one of the members of AG Yost's staff who communicated with RAGA, that these communications were conducted on a fairly regular basis, that he kept these communications on his personal email account, and that far from taking any steps to preserve them since the issuance of discovery requests in this case, he continued to regularly, permanently delete all of these communications from his account. (Servick Dep., filed in Case No. 2022-0977, pp. 8-19, and attached hereto). There is no doubt that Mr. Servick's communications with RAGA fell within the scope of the discovery ordered by the court below. (App. Op. at ¶¶ 13-14, 30 (describing scope of requests, including requests for RAGA-related e-mail communications from 2019 to the present of all staff who, like Servick, communicated with RAGA)).

In light of Mr. Servick's disturbing testimony, Appellees' counsel contacted Appellant's counsel, seeking to confirm that they had instructed the Appellant's staff to preserve all documents within the scope of the still-pending discovery requests. With no response forthcoming, Appellees' counsel reiterated the request. On June 15, 2023, Appellant's counsel replied by refusing to provide any information besides the vague assertion, "We comply with all duties and obligations pursuant to the discovery rules as set forth in the Ohio Civil Rules of Procedure," and the additional retort, "We decline your offer to oversee this Office's processes and procedures." (See attached correspondence). Putting aside the unnecessarily dismissive tone,

such a vague assertion that the attorney general's office is following the law is not sufficient to allow the Appellees to confirm whether or not the Appellant has taken the steps needed to preserve documents during the pendency of this appeal. In fact, contrary to the implication of Appellant's counsel's correspondence, the duties and obligations at issue in this motion do not arise from the Rules of Civil Procedure, but from Ohio's common law and precedent and the inherent authority of its courts. The civil rules contain only a passing reference to the obligation to preserve electronic records, in Rule 37(F), and its staff comment notes, "This rule does not attempt to address the larger question of when the duty to preserve electronically stored information is triggered. That matter is addressed by case law and is generally left to the discretion of the trial judge." Civ.R. 37(F), staff comment to July 1, 2008, amendment.

Even if the rules were applicable and specific enough to make Appellant's counsel's assertion meaningful, there would still be good cause for an affirmative order like the one the Appellees request here. Many of the documents being requested, per Mr. Servick's testimony, appear to remain within the unsupervised control of individual attorney general's office employees on their personal devices and email accounts, and, at least as of Mr. Servick's January 2023 deposition, it is clear that either these employees were not instructed regarding their obligation to refrain from destroying documents that might respond to the magistrate's request, or whatever instruction given was not effective.

In light of Appellant's counsel's blunt refusal to provide any further information assuring the Appellees that the evidence they have spent the last two-plus-years seeking in discovery will still exist in the event this Court permits that discovery to go forward, the Appellees ask that this Court immediately order the Appellant to take all necessary measures to preserve all documents on its own systems and those of the applicable staff that may respond to the requests covered by

the order the Appellant is appealing. Given that every day that goes by without such instruction increases the likelihood that more of these documents will be deleted, the Appellees ask that this motion be resolved on an emergency basis and that the requested order be given temporary effect while the Court awaits and considers the Appellant's response to this motion.

Respectfully submitted,

/s/Jeffrey P. Vardaro
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Attorneys for Appellees

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June 2023, a copy of the foregoing Emergency Motion for an Order to Refrain from Destruction of Evidence at Issue in Appeal was served by email upon the following:

Benjamin M. Flowers
Michael J. Hendershot
Julie Pfeiffer
Ann Yackshaw
Office of Attorney General Dave Yost
benjamin.flowers@OhioAGO.gov
michael.hendershot@OhioAGO.gov
Julie.Pfeiffer@OhioAGO.gov
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Counsel for Appellant

Melissa A. Holyoak
Christopher A. Bates
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chrisbates@agutah.gov
Counsel for Amici Curiae Utah, et al.

/s/Jeffrey P. Vardaro
Jeffrey P. Vardaro (0081819)

Subject: RE: Re[4]: State ex rel: Center for Media & Democracy v. Yost and associated prohibition action
From: "Julie Pfeiffer" <Julie.Pfeiffer@ohioago.gov>
Sent: 6/15/2023 11:55:38 AM
To: "Jeff Vardaro" <jvardaro@gitteslaw.com>; "Elizabeth Smith" <Elizabeth.Smith@ohioago.gov>; "fgittes@gitteslaw.com" <fgittes@gitteslaw.com>; "Emily Westenhouser" <ewestenhouser@gitteslaw.com>;
CC: "Benjamin Flowers" <Benjamin.Flowers@ohioago.gov>; "Michael Hendershot" <Michael.Hendershot@ohioago.gov>; "Ann Yackshaw" <Ann.Yackshaw@ohioago.gov>; "Allison Daniel" <Allison.Daniel@ohioago.gov>;

Mr. Vardaro,

We comply with all duties and obligations pursuant to the discovery rules as set forth in the Ohio Civil Rules of Procedure. We decline your offer to oversee this Office's processes and procedures. Thank you.



Julie M. Pfeiffer

Section Chief, Constitutional Offices
Office of Ohio Attorney General Dave Yost
Office Number: 614-466-2872
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Julie.Pfeiffer@OhioAGO.gov

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From: Jeff Vardaro <jvardaro@gitteslaw.com>
Sent: Thursday, June 15, 2023 11:04 AM
To: Elizabeth Smith <Elizabeth.Smith@OhioAGO.gov>; fgittes@gitteslaw.com; Emily Westenhouser <ewestenhouser@gitteslaw.com>
Cc: Benjamin Flowers <Benjamin.Flowers@OhioAGO.gov>; Michael Hendershot <Michael.Hendershot@OhioAGO.gov>; Julie Pfeiffer <Julie.Pfeiffer@OhioAGO.gov>; Ann Yackshaw <Ann.Yackshaw@OhioAGO.gov>; Allison Daniel <Allison.Daniel@OhioAGO.gov>
Subject: Re[4]: State ex rel: Center for Media & Democracy v. Yost and associated prohibition action

Counsel, I'm calling your attention to the email below, as we have not gotten a response. I would have appreciated a prompt answer to my questions, but in its absence, we will begin

preparing a motion to the same effect.

Jeff Vardaro, Attorney
The Gittes Law Group
723 Oak Street
Columbus, OH 43205
(614) 222-4735
(614) 221-9655 - fax
jvardaro@gitteslaw.com

----- Original Message -----

From "Jeff Vardaro" <jvardaro@gitteslaw.com>
To "Elizabeth Smith" <Elizabeth.Smith@ohioago.gov>; "fgittes@gitteslaw.com" <fgittes@gitteslaw.com>; "Emily Westenhouser" <ewestenhouser@gitteslaw.com>
Cc "Benjamin Flowers" <Benjamin.Flowers@ohioago.gov>; "Michael Hendershot" <Michael.Hendershot@ohioago.gov>; "Julie Pfeiffer" <Julie.Pfeiffer@ohioago.gov>; "Ann Yackshaw" <Ann.Yackshaw@ohioago.gov>; "Allison Daniel" <Allison.Daniel@ohioago.gov>
Date 6/9/2023 10:51:03 AM
Subject Re[3]: State ex rel: Center for Media & Democracy v. Yost and associated prohibition action

Counsel,

It occurred to us in drafting our merit brief that we should check in on a logistical issue. As you are likely aware, we learned during the deposition of Mr. Servick in the separate action that he has been deleting RAGA and RLDF-related items from his personal emails on a regular basis. We do not believe this is consistent with your office's obligations to preserve records that are the subject of not just pending discovery requests, but also an order from the magistrate in the 10th District as of September 2021 and the 10th District's February 2023 panel decision that is currently being appealed.

Can you confirm that staff whose correspondence is implicated in the discovery requests at issue in the appeal have been instructed not to delete correspondence, whether in their official or personal accounts, that would be responsive to the discovery and public records requests at issue, pending a decision from the Supreme Court in the appeal (and/or prohibition action)? Assuming this is the case, please let us know the date these instructions were distributed and provide a copy so we can confirm the scope of it. If no such instruction has been given, we would ask that one be issued immediately to limit any further prejudice.

Very truly yours,

Jeff Vardaro

IN THE SUPREME COURT OF OHIO

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State ex rel. Center :
for Media and :
Democracy, et al., :

Relators, :

vs. : Case No. 2022-0977

The Office of Attorney :
General David Yost, :

Respondent. :

- - - - -

DEPOSITION OF KEVIN SERVIC
VIA VIDEOCONFERENCE

- - - - -

Witness Located at Attorney General's Office,
Constitutional Offices Section
30 East Broad Street, 16th Fl.
Columbus, OH 43215-3428
January 27, 2023, 11:51 a.m.

- - - - -

Spectrum Reporting LLC
400 S. Fifth Street, Ste. 201
Columbus, Ohio 43215
614-444-1000 or 800-635-9071
www.spectrumreporting.com

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

The Gittes Law Group
723 Oak Street
Columbus, OH 43205-1011
By Jeffrey P. Vardaro, Esq.
(Via videoconference)

ON BEHALF OF DEFENDANT:

Attorney General's Office
Constitutional Offices Section
30 East Broad Street, 16th Fl.
Columbus, OH 43215-3428
By Heather L. Buchanan, Esq.
Julie M. Pfeiffer, Esq.
Michael A. Walton, Esq.
(Via videoconference)

ALSO PRESENT (Via videoconference):

David Armiak
Arn Pearson

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Friday Morning Session

January 27, 2023, 11:51 a.m.

- - - - -

S T I P U L A T I O N S

- - - - -

It is stipulated by counsel in attendance that the deposition of Kevin Servick, a witness herein, called by the Relators for cross-examination, may be taken at this time by the notary pursuant to notice and subsequent agreement of counsel, that said deposition may be reduced to writing in stenotypy by the notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the notary is waived.

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I N D E X

Examination By	Page
Mr. Vardaro - Cross	5

(No exhibits were marked.)

1 THE REPORTER: Before I swear in the
2 witness, would counsel please identify yourself
3 for the record, state who you represent, and
4 express your stipulation that this deposition may
5 take place with a remote administration of the
6 oath and remote reporting of the deposition.
7 Let's begin with the noticing attorney.

8 MR. VARDARO: This is Jeff Vardaro. I
9 represent the relators. The relators are here
10 separately in multiple separate locations, and we
11 do so stipulate.

12 MS. BUCHANAN: And this is Heather
13 Buchanan representing the respondent, the office
14 of the Ohio Attorney General Dave Yost. And we
15 also stipulate to the taking of this deposition
16 remotely.

17 - - - - -

18 KEVIN SERVICK

19 being first duly sworn, testifies and says as
20 follows:

21 CROSS-EXAMINATION

22 BY MR. VARDARO:

23 Q. Could you state your name for the
24 record.

1 A. Kevin Servick.

2 Q. All right. Mr. Servick, you indicated
3 in an affidavit in this case that you searched for
4 all of your records in the topic areas of
5 communications with representatives of the
6 Republican Attorneys General Association, the Rule
7 of Law Defense Fund, the Center for Law and Policy
8 and the Rule of Law Endowment, correct?

9 A. That is accurate.

10 Q. Okay. Could you tell me what sources
11 of records you searched?

12 A. Absolutely. The first search I
13 conducted was through the Outlook email system
14 that we use, and I searched through my Gmail, my
15 personal Gmail account, as well as my phone for
16 any text messages.

17 Q. Any other sources besides the two email
18 addresses and your phone?

19 A. No.

20 Q. Okay. And did you conduct those
21 searches by keyword or by some other means?

22 MS. BUCHANAN: Objection to the form.

23 You can answer.

24 A. I searched by keyword for those.

1 Q. Okay. What keywords did you use?

2 A. I used the verbatim that was included
3 in the request of those organizations. I also --
4 I mean, I'm somewhat familiar with the ending of
5 their email. For example, the Rule of Law Defense
6 Fund is RLDF.org, so I searched those as well,
7 both for Republican AGs and for Rule of Defense
8 Fund.

9 I did not search for the Center for Law
10 and Policy. And the final one that you had -- I
11 did not search the "at" for the email. And the
12 final one you had mentioned I had never heard of
13 before, so I was not familiar with what their
14 email addresses would come as. So I did a search
15 through the search functions through Gmail and
16 Outlook. And then also searched my text messages
17 for any contact from people that I knew, worked
18 for, those organizations.

19 Q. Okay. Did you use any other means to
20 search other than using those keywords that you
21 just described?

22 A. I did not.

23 Q. Okay. Did you search for emails to and
24 from any particular individual people?

1 A. Yes.

2 Q. What people?

3 A. Peter Bisbee, David Johnson, Johnny
4 Koremenos or Koremenos.

5 Q. How did you choose those particular
6 people?

7 A. Those three individuals are ones that I
8 am aware of that work for those entities that you
9 identified in your affidavit -- or in your search
10 for our office.

11 Q. Was there anything that you found in
12 response -- like did the keywords result in any
13 hits?

14 A. They did not.

15 Q. Okay. So there's nothing that you
16 found that you -- or the Attorney General's Office
17 decided not to produce because it was, in their
18 view, not a record or not a public record?

19 MS. BUCHANAN: Objection to the form.

20 You can answer.

21 A. I did not submit any records to our
22 office for review.

23 Q. Okay. Did you -- how are you aware of
24 the domain of the emails of RLDF and RAGA?

1 A. I have received emails in the past.

2 Q. Okay. And on what account?

3 A. At my Gmail account.

4 Q. Okay. And in what capacity?

5 A. What do you mean by "capacity"?

6 Q. What -- what was your job at the time
7 that you received those emails from those
8 organizations in the past?

9 A. There -- I had two different roles.
10 One is I was managing the campaign in 2018 for now
11 Attorney General Dave Yost. I had also received
12 emails during my time in my current role as the
13 director of business government and senior advisor
14 to the Attorney General.

15 Q. And what happened to those emails --
16 let's talk -- I'm not worried about the campaign
17 ones before you became a member of Mr. Yost's
18 official office. But what happened to the emails
19 that you sent and received between when you
20 started working at the AG's office and when you
21 did that search?

22 A. Sure. So when I receive an email from
23 really anybody, you know, I make a determination
24 if it is something that is germane to my role in

1 my official capacity. If those -- the content of
2 the email is of, you know, public information or
3 something that is a record of the office. And
4 then, you know, I make a determination if I can
5 keep it -- if I should keep it or delete it.

6 In the case with the emails that I
7 continuously delete, you know, they're not of any
8 substantial value to me. There's no information
9 in them that I find particularly useful after, you
10 know -- you know, I -- the conduct or, you know,
11 that takes place.

12 The information -- the information I
13 get in an email is typically, you know, an
14 invitation to a conference call or event with no
15 other information included.

16 Q. Okay. So you're saying you deleted
17 them?

18 A. I delete them.

19 Q. Okay. So you -- do you have an
20 estimate of how many emails you deleted from RAGA
21 or RLDF since you became an employee of the AG's
22 office?

23 A. I do not.

24 Q. Okay.

1 A. I might get one a week.

2 Q. Okay. Do you communicate with RAGA or
3 RLDF in any other form besides email and text
4 message?

5 A. At times they'll call me --

6 Q. Okay.

7 A. -- or I'll call them.

8 Q. How about any other written form?

9 A. No.

10 Q. Okay. You don't communicate with them
11 through something called the briefing room?

12 A. I am unfamiliar with what that is.

13 Q. Okay.

14 A. So the answer is no.

15 Q. Okay. Do -- can you tell me how long
16 it took to do those keyword searches that you just
17 described?

18 A. I probably spent 15 minutes just going
19 through making sure.

20 Q. Okay. And did you -- what did you
21 actually -- like what parts of your email did you
22 actually search? And I'll be more specific.

23 Did you search your deleted messages
24 folder?

1 A. Yes.

2 Q. Okay. Do you use the iManage platform
3 at work?

4 A. I do not.

5 Q. Okay. Do you -- did you -- do you --
6 what do you use to organize your electronic
7 documents that are not emails and text messages?
8 Do you keep them on the F drive?

9 A. I keep them on my computer, on my hard
10 drive.

11 Q. Okay. And you're able to search that
12 by keyword as well, correct?

13 A. Correct.

14 Q. And it's no more or less difficult than
15 searching for keywords on your email --

16 MS. BUCHANAN: Objection.

17 MR. VARDARO: I'm sorry, I'm not done
18 asking the question. You can object when I'm
19 done.

20 MS. BUCHANAN: I'm sorry.

21 Q. The Outlook, the Gmail, your text
22 message on your phone, you can use essentially the
23 same method of searching your computer file --
24 your hard drive files, correct?

1 MS. BUCHANAN: Objection to the form.

2 You can answer.

3 A. In my rudimentary understanding of
4 search, I would say that's accurate.

5 Q. Okay. Did you do a search of your hard
6 drive for RAGA or RLDF, the kinds of keywords that
7 you were talking about earlier?

8 A. I did not.

9 Q. Okay. So you have not searched to see
10 whether, for instance, you saved an attachment to
11 an email to your hard drive or anything like that?

12 A. Correct.

13 MR. VARDARO: Okay. I know we actually
14 only have a half an hour to do this, but I need to
15 take about a five-minute break and I'll be right
16 back.

17 MS. BUCHANAN: Okay.

18 (A recess is taken.)

19 Q. So, Mr. Servick, I want to go back.
20 You said you had searched your deleted items. Is
21 your Outlook set up to delete items faster than
22 the -- from -- permanently delete items from your
23 deleted items folder faster than like the default
24 setting?

1 MS. BUCHANAN: Objection to the form.

2 You can -- you can answer.

3 A. I do not know the answer to that
4 question.

5 Q. Okay. Do you -- when you delete --
6 I'll just go back to like if you got an email from
7 RAGA and you made an individual determination that
8 it was not a record of the Attorney General's
9 Office, if -- when you delete it, did you do
10 anything other than just hit delete?

11 A. I go to my, you know, deleted folder
12 and clean everything out. My Gmail tends to be --
13 you know, I've had it for several years. It's
14 kind of full. It's running out of space. So I
15 tend to delete kind of in the course of, you know,
16 a week, you know, the promotional items, the
17 deleted emails to kind of try to stay consistent
18 with that.

19 Q. Okay. So if we look at your deleted --
20 I'm not saying that we're going to do this, but if
21 we looked at your deleted items folder for your
22 Outlook for the Attorney General's Office right
23 now, it would have nothing in it that's older than
24 a week or so?

1 A. I'm not sure. The -- you know, for the
2 emails that you've been specifying about, you
3 know, RAGA or RLDF, I've never received any of
4 those emails to my Outlook account.

5 Q. You only get those on your Gmail?

6 A. Correct.

7 Q. Okay. Even if it's like inviting your
8 boss Dave Yost to an event or something like that
9 or a conference call, it comes to your Gmail,
10 correct?

11 A. Correct.

12 Q. Okay. And then so if we looked at your
13 Gmail deleted items folder, it would have nothing
14 in it that's older than a week or so?

15 A. I can't recall the last time I did it.

16 Q. Okay. Are you denying that what you're
17 actually doing is going into your Gmail deleted
18 items folder and specifically deleting all of the
19 RAGA and RLDF items?

20 MS. BUCHANAN: Object. Are you
21 finished?

22 MR. VARDARO: I'm done with the
23 question. I'm sorry. You can object.

24 MS. BUCHANAN: Okay. Sorry, I thought

1 you were in the middle.

2 Yes, objection to the form.

3 You can answer.

4 A. Would you mind clarifying? I just want
5 to make sure I heard that correctly.

6 Q. Yeah. So there's two ways to
7 permanently delete things on Gmail that I'm aware
8 of. One is just you can just clear out and empty
9 your deleted items folder and then it will be gone
10 permanently. Or you can individually, sort of
11 double delete things. You delete it, it goes in
12 your deleted items folder, and then you can click
13 that particular email again to permanently delete
14 it.

15 And I'm asking you whether, to your
16 recollection, you were doing that to the RLDF and
17 RAGA emails or whether you're just basically
18 emptying your trash?

19 A. Oh, I just empty my trash.

20 Q. Okay. And in terms of text -- do you
21 get text messages from anyone from RAGA or RLDF?

22 A. I do.

23 Q. What happened to the text messages that
24 you've gotten during the time frame when you were

1 an employee of the Attorney General's Office?

2 A. I delete those when I feel like I don't
3 need to reference them anymore.

4 Q. Okay. Do you delete all of your old
5 text messages or just the ones from RAGA and RLDF?

6 A. Typically just the ones -- I shouldn't
7 say typically. I do delete the RAGA ones and I
8 delete ones that are getting large or old.

9 Q. Okay. Have you deleted items like
10 that -- text messages and emails like that since
11 doing the search that you described in your
12 affidavit?

13 MS. BUCHANAN: Objection to any
14 testimony beyond the scope of his search in this
15 request. So I'm going to instruct -- that's
16 beyond the scope of the questions that the Court
17 permitted.

18 MR. VARDARO: It's not beyond the scope
19 of the questions, because it goes into how the
20 Attorney General's Office organizes its electronic
21 communications, which is one of the permitted
22 topics.

23 A. I delete texts as I see I don't need
24 them.

1 Q. Okay.

2 A. So since -- to answer your question,
3 from July, I believe is when the public records
4 request came in, I have not changed how I operate
5 in deleting messages.

6 Q. Okay. You are aware prior to July that
7 there was an ongoing lawsuit in the 10th District
8 Court of Appeals about whether or not RAGA and
9 RLDF communications are or are not public records,
10 correct?

11 MS. BUCHANAN: Objection. That
12 question goes beyond the scope of the permitted
13 testimony today.

14 MR. VARDARO: It is once again a
15 question about how the office maintains its
16 electronic communications.

17 MS. BUCHANAN: It was a question about
18 testimony in a prior unrelated litigation, not
19 about the maintenance of records of this office
20 now.

21 MR. VARDARO: Again, I think the
22 criteria that are used to keep or not keep emails
23 and the knowledge that is needed in order to do
24 that is at the core of how an office organizes its

1 records, and I will ask the witness to answer the
2 question.

3 MS. BUCHANAN: And I'm instructing the
4 witness not to answer questions about subjects
5 beyond the scope of the permitted topics.

6 MR. VARDARO: Mary, could you please
7 instruct the witness to answer the question?

8 THE REPORTER: You are so instructed to
9 answer the question.

10 MS. BUCHANAN: Thank you. And I'm
11 instructing the witness not to answer.

12 Q. Mr. Servick, are you going to follow
13 your counsel's instruction not to answer the
14 question?

15 A. Yes.

16 Q. Okay. Can you -- have you been
17 provided with any written instruction from the
18 Attorney General's Office, and I'm excluding
19 instruction from your legal counsel, but have you
20 been provided any instruction about how to
21 determine whether or not an email has to be kept
22 or whether it could be deleted?

23 A. I am familiar with our record retention
24 policy.

1 Q. Okay. Other than the actual official
2 record retention policy, have you been given any
3 memo or instruction or training about how to make
4 an individual determination of whether or not a
5 document is a record before deleting it?

6 A. The only training I've received or
7 instruction is what's contained in our record
8 retention policy.

9 Q. Okay. Have you ever been instructed by
10 David Yost or by anyone else in the Attorney
11 General's Office that it would be best to delete
12 RAGA and RLDF emails as they -- as you're done
13 with them?

14 MS. BUCHANAN: Objection to the form.
15 You can answer.

16 A. No.

17 Q. Have you ever had any discussion like
18 that with Mr. Yost?

19 MS. BUCHANAN: Objection to the form.
20 You can answer.

21 A. Not that I recall.

22 Q. Okay. Have you ever had any discussion
23 with anyone about your practice of deleting RAGA
24 and RLDF emails within the week or so of receiving

1 them?

2 A. No.

3 Q. Okay.

4 A. And just to clarify if I may. You
5 know, within the week or so, there are times where
6 I have received, say an invitation. I don't
7 delete until after that event when I no longer
8 find it necessary to keep.

9 Q. Okay. And so you attend RAGA events?

10 MS. BUCHANAN: Objection to the form.

11 You can answer.

12 A. I have.

13 Q. Okay. What's the last one that you can
14 remember attending?

15 MS. BUCHANAN: Objection to the form.

16 I think this is getting beyond the
17 scope of the permitted testimony.

18 MR. VARDARO: Well, it's specifically
19 addressed to his answer to the question, which is
20 about how long he would tend to keep an email
21 about RAGA. And this is just like a foundational
22 example.

23 Q. Like give me an example of the last one
24 that you can remember attending.

1 MS. BUCHANAN: Have you established
2 that it's before the date of the request and
3 within the time frame of the request?

4 Q. Is it different for each RAGA event,
5 like how long before each event that you get
6 invited to it, or is it about the same for most of
7 them?

8 MS. BUCHANAN: Objection to the form.
9 You can answer.

10 A. I don't recall exactly how much lead
11 time we have prior to an event. Typically we
12 have, I would say a month to six weeks before the
13 invitation comes.

14 Q. Did you attend any RAGA events this
15 summer?

16 MS. BUCHANAN: Objection. That is way
17 beyond the scope of the permitted testimony.

18 MR. VARDARO: That's the specific time
19 frame when he was doing the search and so that's
20 what I'm asking about.

21 MS. BUCHANAN: Why don't you be more
22 specific about the time frame if it was before --

23 MR. VARDARO: Do you recall -- I'm
24 sorry, Heather, I don't mean to interrupt you,

1 but, again, the speaking objections are cutting
2 into my extremely limited time to do this
3 deposition. So I get what you're talking about.

4 Q. The time frame of the search that you
5 conducted was sometime in the area of July; is
6 that right?

7 A. Correct.

8 Q. And do you recall whether or not you
9 attended any RAGA events in that general time
10 frame, June, July, August?

11 A. I did attend an event in the summer.

12 Q. Okay. What was the event?

13 A. I'm trying to recall. It may have been
14 late -- late August, early September, I believe.

15 Q. Okay. And was it an event you attended
16 in person?

17 MS. BUCHANAN: Well, objection. He's
18 established that's beyond the scope of the date of
19 the request.

20 MR. VARDARO: Just trying to jog his
21 memory as to when he might have been invited to it
22 and what the nature of the invitation would be,
23 and whether there were any other documents that
24 would have accompanied it. I mean, these are -- I

1 would appreciate it if you would stop interfering
2 with my line of questioning. We could be done
3 with this deposition by now.

4 MS. BUCHANAN: Counsel, I understand
5 that, but we -- the Court was very clear about the
6 scope of these depositions. And testimony about
7 anything he did beyond the date of your public
8 records request is not within that scope.

9 Q. Mr. Servick, I'll be real specific.

10 Did you attend a July 17th to 20th RAGA
11 meeting in Palm Beach, Florida this summer?

12 A. No.

13 Q. Okay. How about the summer national
14 meeting in Colorado?

15 A. Yes.

16 Q. Okay. When do you think you were
17 invited to the summer national meeting in
18 Colorado?

19 A. I don't recall.

20 Q. The meeting was at the end of August.
21 Do you think you were invited to that meeting
22 after July?

23 A. After July, so in August?

24 Q. Yeah. I mean, you would have had to

1 book a flight to Colorado, right?

2 A. I don't recall when that invitation
3 came in.

4 Q. Okay.

5 MS. BUCHANAN: And we're --

6 Q. At minimum, it would have had to have
7 been before you booked your flight to Colorado?

8 A. I'm sorry, can you say that again?

9 Q. At minimum, you would have had to have
10 the invitation before you booked your flight to
11 Colorado?

12 A. Yeah, I wouldn't have booked a flight
13 without an invitation.

14 Q. Okay. And you --

15 MS. BUCHANAN: Okay. We're --

16 Q. -- don't book your flights like two
17 weeks before you go, it's usually, what, six or
18 eight weeks in advance or no?

19 MS. BUCHANAN: We're at 30 minutes.

20 A. I -- I don't answer -- or I'm sorry.
21 I don't book my flights that far in
22 advance.

23 Q. Okay. All right. Did you understand
24 all the questions I asked you today?

1 A. I believe so.

2 Q. Okay. Is there anything that you need
3 to add to or correct in your testimony today?

4 A. There's only one point that I want to
5 add, and it's in regards to a search of my
6 computer that you had asked about files.

7 Because I never recalled seeing an
8 email from RAGA or RLDF on my work computer, my AG
9 computer, that is -- that is the reason why I
10 didn't search there. I just wanted to confirm
11 that I had not received anything or download -- I
12 had not received anything. When I confirmed I did
13 not receive anything, I did not feel it was
14 necessary to search my computer.

15 Q. Okay. Anything else you need to add to
16 or correct?

17 A. No.

18 MR. VARDARO: All right. Thanks for
19 your time today, Mr. Servick.

20 THE WITNESS: Thank you.

21 MS. BUCHANAN: All right. Thank you.

22 And we will read and sign. Thank you.

23 (Signature not waived.)

24 - - - - -

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Thereupon, the foregoing proceedings
concluded at 12:24 p.m.

- - - - -

1 State of Ohio : C E R T I F I C A T E
2 County of Franklin: SS

3 I, Mary Bradley, RPR, CRR, a Notary Public in
4 and for the State of Ohio, do hereby certify the
5 within-named Kevin Servick was by me first duly
6 sworn to testify to the whole truth in the cause
7 aforesaid; testimony then given was by me reduced
8 to stenotypy in the presence of said witness,
9 afterwards transcribed by me; the foregoing is a
10 true record of the testimony so given; and this
11 deposition was taken at the time and place as
12 specified on the title page.

13 I do further certify I am not a relative,
14 employee or attorney of any of the parties hereto,
15 and further I am not a relative or employee of any
16 attorney or counsel employed by the parties
17 hereto, or financially interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affixed my seal of office at Columbus,
20 Ohio, on February 3, 2023.

21 

22 _____
23 Mary Bradley, RPR, CRR, Notary Public - State of
24 Ohio. My commission expires September 19, 2024.

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Spectrum Reporting LLC
400 South Fifth Street, Ste. 201
Columbus, OH 43215
800-635-9071 or 614-444-1000
transcripts@spectrumreporting.com



Dated: 04/11/2023

1. I am an employee of Spectrum Reporting LLC ("Spectrum"). I am the record custodian for all documents related to the facts stated herein.
2. The purpose of this statement is to comply with Rule 30(E) of the Ohio Rules of Civil Procedure.
3. On January 27, 2023, a court reporter from Spectrum appeared at the deposition of Kevin Servick in the above-referenced action. At the end of the deposition, the deponent and/or the parties did not waive the right to review and sign the deposition transcript.
4. The deponent was notified directly or through counsel of the time allowed for reviewing the transcript and the procedure for doing so via a letter dated February 3, 2023.
5. The time allowed for review of the transcript has expired, and the deponent has not signed the transcript.

STATEMENT PURSUANT TO RULE 30(E) OF THE OHIO RULES OF CIVIL PROCEDURE REGARDING WITNESS REVIEW OF THE DEPOSITION TRANSCRIPT

Defendants.

The Office of Attorney General David
Yost,

v.

Plaintiffs,
Case No. 2022-0977

State ex rel. Center for Media and
Democracy, et al.,

IN THE SUPREME COURT OF OHIO