

OHIO ELECTIONS COMMISSION
21 WEST BROAD STREET
COLUMBUS, OHIO 43215
CIVIL SUBPOENA

STEVE DRIEHAUS
-vs-
SUSAN B. ANTHONY LIST

Case No. 2010-E-084, 2010-E-096

FOR CLERK USE ONLY:

TO: Thomas McClusky (Name)
801 G Street, NW (Address)
Washington DC 20001 (City-State-Zip)

Receipt # _____
(cost) (deposit)
CLERK \$ _____ \$ _____
FR. CO. SHERIFF \$ _____ \$ _____
FOREIGN SHERIFF \$ _____

YOU ARE HEREBY COMMANDED TO:

- ATTEND AND GIVE TESTIMONY AT A (TRIAL) (HEARING) (DEPOSITION) ON THE DATE, TIME AND AT THE PLACE SPECIFIED BELOW.
- ATTEND AND PRODUCE (DOCUMENTS) (TANGIBLE THINGS) AT A (TRIAL) (HEARING) (DEPOSITION) ON THE DATE, TIME AND AT THE PLACE SPECIFIED BELOW.
- PRODUCE AND PERMIT INSPECTION AND COPYING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY DESIGNATED DOCUMENTS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.
- PRODUCE AND PERMIT INSPECTION AND COPYING, TESTING OR SAMPLING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY TANGIBLE THINGS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.
- PERMIT ENTRY UPON THE FOLLOWING DESCRIBED LAND OR OTHER PROPERTY, FOR THE PURPOSES DESCRIBED IN CIVIL RULE 34(A)(3), ON THE DATE AND AT THE TIME SPECIFIED BELOW.
DESCRIPTION OF LAND OR OTHER PREMISES: _____

DAY Friday DATE October 22, 2010 TIME 9 a.m.

PLACE Offices of Cohen Milstein, 1100 New York Avenue, NW, Suite 500 West, Washington DC 20005

DESCRIPTION OF ITEMS TO BE PRODUCED: See Exhibit A

THE STATE OF OHIO

Franklin County, ss
To the Sheriff of _____ County, Ohio Greetings:
YOU ARE HEREBY COMMANDED TO SUBPOENA THE ABOVE NAMED PERSON.

WITNESS MY HAND AND SEAL OF SAID COURT THIS _____ DAY OF _____ 20____
MARYELLEN O'SHAUGHNESSY, CLERK OF THE COURT OF COMMON PLEAS.

BY: [Signature] Signature of: (Deputy Clerk/Attorney for (Plaintiff) (Defendant) .

REQUESTING PARTY INFORMATION:

NAME: Christopher D. Stock, 1 W 4th Street, Suite 1513, Cincinnati, Ohio 45202
(Attorney for (Plaintiff) Defendant) or (Plaintiff) or (Defendant) (Other: Specify _____)

ATTORNEY CODE: Ohio Bar No. 0075443 TELEPHONE NUMBER: 513-621-0267

NOTE: READ ALL INFORMATION ON THE REVERSE SIDE OF THIS SUBPOENA.

WHITE-ORIGINAL -- CANARY-WITNESS -- PINK-FOR YOUR RECORDS -- GOLD-RETURN OF SERVICE

Civ.R. 45(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.

Civ.R. 45(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 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) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ.R.26(B)(3) or (4), 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.

Civ.R. 45(E) Sanctions

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

***** RETURN OF SERVICE *****

I received this subpoena on _____, and served the party named on the reverse hereof by _____ on _____

I was unable to complete service for the following reason: _____

Sheriff's Fees

Service _____
Mileage _____
Copy _____
Total _____

(Signature of Serving Party)

Circle One: Deputy Sheriff Attorney
 Process Server Deputy Clerk
 Other _____

OHIO ELECTIONS COMMISSION

STEVE DRIEHAUS :
:
:
Complainant, :
: **Case Nos. 2010-E-084, 2010-E-096**
v. :
:
:
SUSAN B. ANTHONY LIST : **Ohio Civil Subpoena – Exhibit A**
:
:
Respondent. :

REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 45(A)(1)(b)(iii) of the Ohio Rules of Civil Procedure and Ohio Administrative Code § 3517-1-09(C), you are commanded to produce all documents set forth in the following Request for Production of Documents. Due to the expedited nature of the proceedings herein, copies of the documents requested shall be produced at the offices of Cohen Milstein Sellers & Toll PLLC (attn: Paul M. De Marco and Christopher D. Stock), 1100 New York Avenue, NW, Suite 500 West, Washington, DC 20005, on or before 12:00 pm, Wednesday, October 20, 2010.

DEFINITIONS

1. "Commission" means the Ohio Elections Commission.
2. "Communication" means the transmission of information orally, in writing, electronically, or in some other form and includes correspondence, exchanges of written or record information, face-to-face meetings, and electronic, facsimile or telephone communications.
3. "Document" and "documents" have the broadest sense that Rule 34 of the Ohio Rules of Civil Procedure allows and encompasses any draft, original and all non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of all writings including letters,

correspondence, memoranda, legal pleadings, calendars, diaries, travel records, summaries or other records of telephone conversations or interviews, telegrams, notes, reports, compilations, notebooks, work papers, graphs, charts, blueprints, books, pamphlets, brochures, circulars, manuals, instructions, ledgers, drawings, sketches, photographs, films and sound reproductions, sales literature, advertising literature, promotional literature, agreements or minutes of meetings.

4. "Document" and "documents" also include also include any type of electronic data, regardless of media used, format, or device employed to create, store or access the document, which means the original (or identical duplicate when the original is not available), and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of mechanical, facsimile, electronic, magnetic, digital, or other programs whether private or commercial, programming notes or instructions, activity listings of electronic mail receipts and/or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs, outlines, electronic mail, operating systems, source code of all types, PRF files, batch files, ASCII files, and any and all miscellaneous media on which they reside, and regardless of whether said electronic data exists in an active file, deleted file or file fragment. Electronic data includes any and all items stored on computer memories, hard disks, floppy disks, CD-ROM, Bernoulli Boxes and their equivalent, magnetic tape of all types, microfiche, punched cards, punched tape, computer chips including, but not limited to EPROM, PROM, RAM and ROM on or in any other vehicle for digital data storage and/or transmittal. The term electronic data also includes the file, folder tabs and/or containers and labels appended to or associated with, any physical storage device associated with each original and/or copy. The term electronic data also includes all Electronic

Bulletin Board Services and electronic mail ("E-mail") including all levels of access, sub-boards and conferences and all information contained therein.

5. "Employee" means current and former officers, directors, executives, managers, sales personnel, secretaries, clerical staff, factory workers, messengers, or any other person employed by Respondent.

6. "Identify" or "identity," when referring to a communication, means to state the date of the communication, its type (e.g., letter, telephone call, electronic mail computer message or face-to-face meeting), the identity and role of each participant, its place, the identity of each document constituting or reflecting the communication, and the substance of the communication in detail.

7. "Identify" or "identity," when referring to a document (including drafts), means to state its title, its date, its author, the persons to whom it was directed (including "cc" and "bcc" recipients), the type of document (e.g., letter, memorandum, chart, etc.), and its principal topics. If any such document is no longer in your possession or subject to your control, state what disposition was made of it, and identify its current location, including the location of each copy, and identify the persons with possession or custody.

8. "Identify" or "identity," when referring to a meeting, means to state the identity of the persons in attendance, the date and place of the meeting, the organizer or sponsor of the meeting and the substance in detail of every responsive communication occurring at or in connection with the meeting.

9. "Identify" or "identity," when referring to a natural person, a corporation or other entity (whether connected with a description of documents or otherwise) means to set forth a name and if a corporation or other entity, its principal place of business or if an individual, the

present or last known home address and telephone number, job title and employer, address of employment at the times in question, and the present or last known employer and business address and telephone number. With respect to former employees, officers, directors or agents, please state the last known address.

10. "Identify" or "identity," when referring to an understanding, agreement, pattern, practice or scheme, means to state the identity of the participants and all persons with knowledge; when it was entered into; and its terms; and to identify all documents relating thereto.

11. "Meeting" means any assembly, convocation, encounter, or contemporaneous presence of two or more persons for any purpose, whether planned, arranged, scheduled or not; and whether face-to-face, by telephone, or other means of communication.

12. "Or" is used in its inclusive sense, as an equivalent to "and/or."

13. "PPACA" means the Patient Protection and Affordable Care Act.

14. "Person" means any natural person, corporation, partnership, proprietorship, joint venture, association, governmental entity (including, without limitation, any governmental agency or political subdivision of any government), any group or any other form of public or private business or legal entity.

15. "Relating to," "regarding," or "concerning" means refer to, discuss, describe, reflect, deal with, pertain to, analyze, evaluate, estimate, constitute, study, survey, project, assess, record, summarize, criticize, report, comment, or otherwise involve, in whole or in part.

TIME PERIOD

Except where otherwise indicated, these document requests cover the time period from January 1, 2009 through October 19, 2010, and the term "time period" refers to that span of time.

To the extent that a response to a particular document request differs from one part of the time period to another, specify the part of the time period for which each part of the document is applicable.

INSTRUCTIONS

1. These document requests shall be deemed to be continuing in nature so that if defendant, its directors, officers, employees, agents, representatives, or any person acting or purporting to act on behalf of Defendant discover any document previously requested or required to be produced, defendant shall make such document available. Such document shall be served on Complainant's counsel within three days after its discovery. The date the document came into Respondent's possession shall be specified as well as the identity of the person who furnished the document, along with a description of the circumstances and explanation as to why the document was not furnished at the time of the original request.

2. Please produce documents in such fashion as to identify the department, branch or office in whose possession it was located and, where applicable, the natural person in whose possession it was found and the business address of each document's custodian(s).

3. Please produce documents in the same order in which they are kept in the ordinary course of business along with the files, folders, containers or labels associated with such documents.

4. In responding to these requests, please specifically respond to each request, produce documents separately, and designate the Document Request(s) to which each document responds. **The response should indicate the Bates number of the documents that are responsive to the particular Document Request, so that counsel can determine which documents are responsive to each Document Request.**

5. All electronic documents shall be produced in their original electronic form on a CD with all metadata intact.

6. In responding to these requests, you are to include documents (1) obtained from witnesses who gave information to any court, governmental agency or investigatory body; (2) that constitute, refer to or relate to summaries of testimony or other statement in connection with any court, governmental agency or investigatory body proceedings or investigations; or (3) obtained on your behalf by counsel in preparing for testimony or interviews before any court, governmental agency or investigating body.

7. Unless otherwise indicated, the documents to be produced include all documents prepared, sent, dated or received, or those which otherwise came into existence any time during the time period.

8. If you claim any privilege for any document, please provide a detailed privilege log that contains at least the following information for each document that you have withheld:

- a. the date of the document and any different date when it was prepared;
- b. each author of the document;
- c. each person who prepared or participated in the preparation of the document;
- d. each person who received the document;
- e. each person to whom the document or a copy thereof was sent and each actual recipient of the document or a copy thereof;
- f. the present location of the document and all copies thereof;
- g. each person having custody or control of the document and all copies thereof;
- h. the subject matter of the document;
- i. the medium of the document (*e.g.*, paper or electronic), the type of

document (*e.g.*, letter, memorandum, presentation), the length of the document, as well as the existence of any attachments, if they are also being withheld under a claim of privilege;

- j the specific privilege asserted or other particular reason you rely upon for not producing the document or information; and
- k sufficient further information concerning the document and the circumstances thereof to explain the claim of privilege and to permit the Court to adjudicate the validity of your claim.

9. Notwithstanding the assertion of any objection to production based on a claim of privilege, any document to which an objection is raised containing non-objectionable matter which is relevant and material to a request must be produced, but that portion of the document for which the objection is asserted may be withheld or redacted provided that the above-requested identification is furnished.

10. Each document requested herein is requested to be produced in its entirety and without deletion or excisions, regardless of whether you consider the entire document to be relevant or responsive to these requests. If you have redacted any portion of a document, you should stamp the word "redacted" on each page of the document which you have redacted. Redactions should be indicated on the Privilege Log.

11. If any document described in this request was, but no longer is, in your possession, or subject to your custody or control, or in existence, state whether:

- a. it is missing or lost;
- b. it has been destroyed;
- c. it has been transferred, voluntarily or involuntarily, to others; or
- d. it has been disposed of otherwise.

In each instance, explain the circumstances surrounding such disposition and identify the person(s) directing or authorizing same, and the date(s) thereof. Identify each document by

listing its author, his or her address, type (e.g., letter, memorandum, telegrams, chart, photograph, etc.), date, subject matter, present location(s) and custodian(s), and state whether the document (or copies) are still in existence.

12. With respect to any category of documents, the production of which you contend is in some way burdensome or oppressive, state the specific reasons for the objection.

13. If you fail to respond to any document request based on the claim that the document requested has been destroyed or otherwise discarded, identify that document and explain the circumstances which led to the destruction or discarding.

REQUESTS TO PRODUCE

1. Please produce all documents, testimony, affidavits, information or other evidence in your possession that either supports or refutes the following statement made by the Susan B. Anthony List: "Shame on Steve Driehaus! Driehaus voted FOR taxpayer-funded abortion."

2. Please produce all documents, testimony, affidavits, information or other evidence in your possession that either supports or refutes the following statement made by the Susan B. Anthony List: Congressman Driehaus "voted for a health care bill that includes taxpayer-funded abortion...."

3. Please produce all documents, testimony, affidavits, information or other evidence in your possession that either supports or refutes the following statement made by the Susan B. Anthony List: "It is a fact that Steve Driehaus has voted for a bill that includes taxpayer funding of abortion."

4. Please produce all documents, testimony, affidavits, information or other evidence in your possession that either supports or refutes the following statement made by the Susan B.

Anthony List: Congressman Driehaus “ordered Lamar Companies not to put up billboards until the matter was settled by the Ohio Elections Commission....”

5. To the extent not produced in connection with Requests 1-4, please produce any other documents, testimony, memoranda, affidavits, information or other evidence in your possession that relate to the Susan B. Anthony List’s claim that the PPACA includes provisions for federal funding of abortions.

6. Please produce all documents, communication (including all letters, e-mails, voice mails, memoranda, notes, and/or other recordings of communication either internally or with any other person or party, including, but not limited to, the Susan B. Anthony List), testimony, memoranda, affidavits, information or other evidence in your possession that, in any way, relate to Steve Driehaus, including, but not limited to, his congressional campaign, his voting record, his personal dealings, his party affiliation, his position on health care reform and/or the PPACA, and/or his past public statements.

7. Please produce all letters, e-mails, voice mails, memoranda, notes, recordings, or other communication between the Family Research Council (or any of its members, directors, employees, officers or other affiliates) and the Susan B. Anthony List (or any of its members, directors, employees, officers or other affiliates) that relate to health care reform legislation and/or the PPACA.