

IN THE SUPREME COURT OF OHIO

Ohio Senate President Matthew Huffman,

Appellant,

v.

Columbus City School District, et al.,

Appellees.

On Appeal from the Tenth District Court of
Appeals, Franklin County

Court of Appeals Case No. **24-AP-000060**

**APPELLANT OHIO SENATE PRESIDENT MATTHEW HUFFMAN'S
MEMORANDUM IN SUPPORT OF JURISDICTION**

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I. **THIS CASE RAISES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST.**

This appeal involves a substantial constitutional question and is a case of public and great general interest. Article II, Section 12 of the Ohio Constitution provides that:

Senators and Representatives, during the session of the general assembly, and in going to, and returning from the same, shall be privileged from arrest in all cases, except treason, felony, or breach of the peace; ***and for any speech, or debate, in either house, they shall not be questioned elsewhere.***

(Emphasis added). This appeal raises significant – and, to date, unanswered – questions about the scope of the constitutional protections provided to the Ohio General Assembly’s members that “***for any speech, or debate, in either house, they shall not be questioned elsewhere,***” which is commonly referred to as the Speech and Debate Clause.

Here, Appellees seek to compel by subpoena Ohio Senate President Matthew Huffman (“President Huffman”)—a non-party to the underlying litigation—to be questioned about the performance of his legislative duties. In particular, despite President Huffman’s attempts to quash the subpoena, the trial court has permitted Appellees to question President Huffman about “the identities of entities and individuals” with whom President Huffman had “off the record communications related to H.B. 110 [the state operating budget for the 134th Ohio General Assembly].” Decision and Entry of the Court of Common Pleas, Franklin County, C.P. Case No. 22CV-67, dated December 21, 2023 (the “Order”), Appendix C at 10.

If the trial court’s decision is allowed to stand, President Huffman’s constitutional protection to “not be questioned elsewhere” will be forever lost by the very act of Appellees submitting the questions. Perhaps more importantly, precedent ignoring this constitutional protection provided to members of the Ohio General Assembly will open a proverbial Pandora’s box to creative special interest attorneys and chill legislators’ ability to freely perform their duties required of them under the Ohio Constitution. For these reasons more fully explained below, this

appeal presents a substantial constitutional question and an issue of public and great general interest.

Respectfully, the underlying question in this case could not be more clear. The Speech and Debate Clause enshrines the understanding of the Ohio Constitution’s drafters regarding the need for elected representatives’ autonomy and protection from undue interference in their legislative functions. This is consistent with the separation of powers prescribed by the Ohio Constitution because “each of the three grand divisions of the government must be protected from encroachments by the others, so far that its integrity and independence may be preserved.” *Fairview v. Giffie*, 73 Ohio St. 183, 187, 76 N.E. 865 (1905).

It is critically important that legislators be free to vote their conscience and fulfill the other duties of their office without being “questioned elsewhere”—which is precisely why the Ohio Constitution forbids it. *See* Ohio Constitution, Article II, Section 12. In this new era of attempted legislating-by-litigating, other states are grappling with this same issue. The Supreme Court of Iowa two months ago found the Iowa Constitution “contains a legislative privilege that protects legislators from compelled document production and that the privilege extends to communications with third parties where the communications relate directly to the legislative process of considering and enacting legislation.” *Smith v. Iowa Dist. Ct. for Polk Cnty.*, 3 N.W.3d 524, 527 (Iowa Feb. 23, 2024).

The constitutional principle underlying the Speech and Debate Clause ensures that legislators can engage in open discourse regarding prospective and pending legislation without fear of being sued or harassed by compelled questioning for their legislative acts. *See, e.g., McCarthy v. Pelosi*, 5 F.4th 34, 38 (D.C. Cir. 2021) (analyzing the federal Speech and Debate Clause and indicating that its central purpose “is to protect the ‘independence and integrity of the legislature.’”), quoting *United States v. Johnson*, 383 U.S. 169, 178 (1966). Indeed, “[t]he

separation-of-powers doctrine therefore precludes the judiciary from asserting control over ‘the performance of duties that are purely legislative in character and over which such legislative bodies have exclusive control.’” *City of Toledo v. State*, 2018-Ohio-2358, 154 Ohio St. 3d 41, 47, 110 N.E.3d 1257, 1264; *see also State ex rel. Johnson v. Ohio State Senate*, 2022-Ohio-1912, 168 Ohio St. 3d 640, 642–43, 200 N.E.3d 1077, 1080 (“[T]he courts cannot...dictate how the General Assembly should carry out its constitutional responsibilities.”).

Thus, for the Speech and Debate Clause to achieve these fundamental goals, it must be interpreted as creating a testimonial privilege protecting legislators from compelled questioning about their legislative acts by civil litigants, in the absence of any credible allegation of illegal activities.¹ *Johnson*, 383 U.S. at 178 (“The Clause does so by preventing ‘intimidation of legislators by the Executive and accountability before a possibly hostile judiciary.’”), quoting *Gravel v. United States*, 408 U.S. 606, 617 (1972).

The lower courts’ decisions in this case contradict these principles. Significantly, notwithstanding the Ohio Constitution’s clear language, the Tenth District’s decision would allow President Huffman “to be questioned” by Appellees about “the identities of entities and individuals” who President Huffman had “off the record communications related to H.B. 110 [the state operating budget for the 134th Ohio General Assembly].” Yet the actual content of Appellees’ questions are irrelevant; the legislative privilege is a testimonial privilege that is not premised on the content of the questions. The Tenth District’s decision granting Appellees’ motion to dismiss would force President Huffman to go through the proverbial motions of receiving the questions, objecting to them, and awaiting a future order from the trial court before appealing a second time.

¹ To be sure, there may be instances where a state legislator would be acting outside of their legislative activities and, therefore, not protected by the legislative privilege. But here, the Court need not address the outer boundaries of the legislative privilege because the trial court clearly required questions related to “the passing of H.B. 110” and there is no allegation of any procedural deficiency or wrongdoing. *See* Appendix C, at 10.

See Appendix B, at 3-4. Yet the mere act of Appellees’ questioning will violate the legislative privilege by diverting policymakers’ time and resources, no matter the ultimate determination of any objections. As the United States Supreme Court recognized when analyzing the federal Speech and Debate Clause, the legislative privilege “would be of little value if [legislators] could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader.” *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951).

In short, the Ohio Constitution protects legislators like President Huffman from being forced “to be questioned” at all. By concluding otherwise, both the trial court and the Tenth District have denied President Huffman a provisional remedy and allowed Appellees to infringe on the Speech and Debate Clause’s protections.

This case is one of substantial public and general importance. The passing of any legislation necessarily requires extensive communication, including legislators’ conversations amongst each other and with constituents, executive branch officials, interested parties, and policy experts. Such communications are integral to the legislative process. They allow for candid dialogue, the exploration of diverse perspectives, the freedom to test ideas and discuss alternatives, and the forging of compromises. All of these conversations occur as part of the legislative process and are protected. *Pelosi*, 5 F.4th at 39 (the federal Speech and Debate Clause’s terms “expressly prohibit questioning of ‘Senators or Representatives’ in connection with legislative acts.”).² Yet they could fall within the ambiguous scope of so-called “off the record” communications under the trial court’s order here. And again, the Tenth District’s order would deny President Huffman the ability to protect his legislative privilege, even though violations of that privilege are certainly impending.

² Importantly, applying the Speech and Debate Clause as written does not create any lack of transparency in Ohio’s legislative system. As President Huffman explained below, Appellees may freely seek records or other sources of information—but they cannot engage in judicially-compelled questioning of legislators regarding their legislative decision making.

This Court should grant jurisdiction to resolve these important constitutional questions, protect the legislative process, and prevent the chilling effect that will occur if the lower courts' decisions are allowed to stand.

II. STATEMENT OF THE FACTS AND CASE.

The underlying litigation before the trial court involves a constitutional challenge to Ohio's school funding system. Appellees challenge the constitutionality of the Ohio General Assembly's expansion of the EdChoice Scholarship Program, codified at R.C. Chapter 3310, *et seq.* They claim that Amended Substituted House Bill 110 ("H.B. 110") failed to fund a "thorough and efficient system of common schools throughout the state" as required by Ohio Constitution, Article VI, Section 2. Appellees further allege that the diversion of funds from public to private schools denies public school students the equal protection of the law in violation of Ohio Constitution Article I, Section 2.

Significantly, President Huffman is not a party to the underlying action. In fact, he is not even mentioned in the Complaint. Moreover, Appellees do not assert any alleged infirmities in the legislative process. Rather, Appellees assert a facial challenge that Ohio's school funding system fails to meet the requirements of the Ohio Constitution's "thorough and efficient" and "equal protection" clauses.

On March 22, 2023, Appellees served President Huffman with a subpoena—in the Senate Building hallway just outside of the Senate President's office—commanding his attendance at a deposition on April 26, 2023. On April 26, 2023, President Huffman moved to quash the subpoena, arguing (among other issues) that the Speech and Debate Clause of Article II, Section 12 of the Ohio Constitution creates a testimonial privilege protecting legislators from judicially-compelled questioning.

On December 21, 2023, the trial court issued the Order on President Huffman’s Motion to Quash. It granted President Huffman’s motion in part, finding the Speech and Debate Clause’s legislative privilege applicable and modifying the subpoena to prohibit questioning of President Huffman regarding his legislative acts. The trial court correctly recognized that the legislative privilege attaches to “meetings, processes, conversations, and documents which are an integral part of the deliberative and communicative process by which legislators participate in legislative or committee proceedings.” Appendix C at 3-4.³ The Order nonetheless contradicts this principle by compelling President Huffman to answer questions that “request the identities of entities and individuals, and other information, related to off the record communications about the passing of H.B. 110 between those entities and individuals, and Huffman.” *Id.* at 10.

President Huffman filed an interlocutory appeal on January 22, 2024 to challenge the portion of the Order requiring him to answer written deposition questions about the passage of H.B. 110. He argued that this portion of the Order infringes on the legislative testimonial privilege provided by the Speech and Debate Clause. Huffman also argued that the Order was final and reviewable because (1) the court denied a provisional remedy, and (2) President Huffman *cannot* be afforded a meaningful remedy after final judgment because the privilege will have already been violated. *See* R.C. 2505.02(B)(4); *see also* *Grove v. Northeast Ohio Nephrology Assoc., Inc.*, 9th Dist. No. 22585, 164 Ohio App.3d 829, 2005-Ohio-6914, 844 N.E.2d 400, ¶ 9 (“[A]ppealing subsequent to a final judgment would not be meaningful because the...privilege would have

³ Ohio courts have recognized that the Speech and Debate Clause “is clearly not limited to speeches on the floor.” *City of Dublin v. State*, 138 Ohio App. 3d 753, 759, 742 N.E.2d 232, 236 (10th Dist. 2000). Likewise, with respect to the federal Speech and Debate Clause, federal courts have made clear that its protections “range beyond just the acts of speaking and debating.” *Pelosi*, 5 F.4th at 38.

already been compromised.”). Appellees moved to dismiss, and the parties fully briefed both the motion to dismiss and the merits briefing.

On March 29, 2024, the Tenth District Court of Appeals issued a decision granting Appellees’ motion to dismiss President Huffman’s appeal. *See* Appendix B. The court of appeals also entered a judgment entry that day. *See* Appendix A. Specifically, the court of appeals held that the Order is not a final appealable order. *See* Appendix B at 5. The court reasoned that “the order appealed from permits appellees to submit questions but stops short of compelling appellant to answer.” *Id.* According to the court, once Appellees have presented their depositions questions, President Huffman “may again move to quash, and the trial court will have the opportunity to review [Huffman’s] concerns in the context of the questions being posed.” *Id.* Then, if the court directs President Huffman to disclose privileged information, he “may again pursue an appeal.” *Id.*

President Huffman’s appeal from the Tenth District’s Decision and Judgment Entry is timely under Supreme Court Rule of Practice 7.01(A)(1). He appeals because the Ohio Constitution, by its plain language, protects him from being “questioned elsewhere” for his legislative activities. *See* Ohio Constitution, Article II, Section 12. The Tenth District’s decision fails to protect this privilege.

III. CONCISE ARGUMENT IN SUPPORT OF EACH PROPOSITION OF LAW.

Proposition of Law I: The legislative privilege of the Speech and Debate Clause of Article II, Section 12 of the Ohio Constitution protects legislators from being questioned by civil litigants regarding the performance of their legislative duties.

The Speech and Debate Clause is unambiguous. Article II, Section 12 of the Ohio Constitution provides that:

Senators and Representatives, during the session of the general assembly, and in going to, and returning from the same, shall be privileged from arrest in all cases, except treason, felony, or breach of the peace; ***and for any speech, or debate, in either house, they shall not be questioned elsewhere.***

(Emphasis added). The highlighted portion, otherwise known as the Speech and Debate Clause, creates an unqualified privilege, prohibiting legislators from being questioned about their legislative conduct.

The importance of this language is clear. The Speech and Debate Clause does not require President Huffman to jump through the additional hoops suggested by the Tenth District Court of Appeals. Appendix B, at 5. The mere act of Appellees' questioning is prohibited under the circumstances presented here.

The intent of the framers of the 1851 Ohio Constitution who adopted the Speech and Debate Clause is controlling here. *State v. Jackson*, 102 Ohio St.3d 380, 2004-Ohio-3206, 811 N.E.2d 68, ¶ 14. To determine intent, one must begin by "looking at the language of the provision itself." *Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 146 Ohio St.3d 356, 2016-Ohio-2806, 56 N.E.3d 950, ¶ 16; *see also City of Rocky River v. State Employment Relations Bd.*, 43 Ohio St.3d 1, 15, 539 N.E.2d 103 (1989). "Where the meaning of a provision is clear on its face, [a court] will not look beyond the provision in an attempt to divine what the drafters intended it to mean." *Id.*

When construing the Ohio Constitution, a court should apply the same rules of construction that apply in construing statutes. *Toledo City Sch. Dist. Bd. of Edn.*, at ¶ 16, citing *Miami Cty. v. Dayton*, 92 Ohio St. 215, 223, 110 N.E. 726 (1915). Words used in the Ohio Constitution that are not defined therein must be taken in their usual, normal, or customary meaning. *State ex rel. Herman v. Klopffleisch*, 72 Ohio St.3d 581, 584, 651 N.E.2d 995 (1995); *see also* R.C. 1.42. If the meaning of a provision cannot be ascertained by its plain language, a court may look to the purpose of the provision to determine its meaning. *See Castleberry v. Evatt*, 147 Ohio St. 30, 67 N.E.2d 861 (1946), paragraph one of the syllabus.

Following these principles and using the standard tools of constitutional interpretation, several conclusions necessarily follow: First, the mere act of questioning intrudes on the protections of the Speech and Debate Clause. *See* Ohio Constitution, Article II, Section 12 (“Senators ... shall not be questioned elsewhere.”). Second, the “speech” and “debate” protected are much broader than formal remarks on the floor of the Ohio House or Ohio Senate. The drafters of the 1851 Ohio Constitution could have clearly written “on the floor of either house,” but they did not, and for good reason. The legislative process involves much more than just “floor speeches.” *See, e.g., Doe v. McMillan*, 412 U.S. 306, 332, 93 S.Ct. 2018, 36 L.Ed.2d 912, n.1 (1973) (Blackmun, H., concurring in part) (recognizing that the “breadth of coverage of the [federal] Speech or Debate Clause must be no less extensive than the legislative process it is designed to protect.”). The very purpose of the Speech and Debate Clause is to ensure ““wide freedom of speech, debate, and deliberation without intimidation or threats from the Executive Branch,’...or ... the judiciary.” *Id.*, quoting *Gravel*, 408 U.S. at 616.⁴

Notably, a semicolon precedes the last clause of the term of Article II, Section 12 – “...breach of the peace; and for any speech, or debate, in either house, they shall not be questioned elsewhere.” (Emphasis on semicolon). The semicolon suggests that the 1851 Drafters intended that the conditions of the first clause of Article II, Section 12 not apply to the Speech and Debate Clause. “The grammatical rule that clauses separated by a semicolon should be related in thought but must be independent in that each clause is complete in itself is satisfied.” *See In re Miller's Est.*, 160 Ohio St. 529, 540–41, 117 N.E.2d 598, 605 (1954); *see also State v. Frost*, 2019-Ohio-

⁴ Although the issues raised herein need only be decided by reference to the Ohio Constitution’s Speech and Debate Clause, the United States Supreme Court has recognized the wide scope of what constitutes legislative conduct in interpreting the U.S. Constitution’s Speech and Debate Clause. *See Gravel*, 408 U.S. at 616 (“The Speech or Debate Clause was designed to assure a co-equal branch of the government wide freedom of speech, debate, and deliberation without intimidation or threats...It thus protects Members against prosecutions that directly impinge upon or threaten the legislative process.”).

3540, ¶ 36 (Fayette Cty.) (“So too would the placement of semicolons rather than commas; semicolons denote separate and distinct elements or thoughts, whereas commas are used to separate items in a series or list.”). Thus, the qualifying language in the first clause “during the session of the general assembly” should not apply to the Speech and Debate Clause.

But should the Court elect to read the clauses together, the phrase “[d]uring the session of the general assembly” covers the period between the opening of the Ohio General Assembly and adjournment *sine die*. Specifically, Article II, Section 8 of the Ohio Constitution provides that “[e]ach general assembly shall convene in first regular session on the first Monday of January in the odd-numbered year, or on the succeeding day if the first Monday of January is a legal holiday, and in second regular session on the same date of the following year.” The session of the Ohio General Assembly then continues “until adjournment *sine die* of that General Assembly at sometime within such two-year period.” *State ex rel. Horner v. Anderson*, 41 Ohio St. 2d 166, 168, 324 N.E.2d 572, 574 (1975). Between the date of convening and the date of *sine die*, any “speech” or “debate” would take place “during the session” of the Ohio General Assembly.⁵

Allowing the proceedings below to continue could have a far-reaching chilling effect on Ohio’s legislators. Of course, compelling legislators to testify about their legislative communications would allow them to be questioned (in violation of the Speech and Debate Clause) about their confidential discussions, negotiations, and deliberations with other legislators and

⁵ Article III, Section 21 of the Ohio Constitution also uses similar language – “during such session” – when describing the time within which the Ohio Senate must confirm gubernatorial appointments and clearly does so referring to the time between convening and *sine die* adjournment. It provides that “[i]f an appointment is submitted *during a session* of the General Assembly, it shall be acted upon by the Senate during such session of the General Assembly, except that if such session of the General Assembly adjourns *sine die* within ten days after such submission without acting upon such appointment, it may be acted upon at the next session of the General Assembly.” (Emphasis added).

constituents that necessarily contribute to legislators’ decision-making processes. One can easily imagine the future mischief this precedent would invite.

Nonetheless, the Tenth District held that President Huffman cannot yet appeal the Order because *after* Appellees present him questions, he may again move to quash, the trial court may then rule on specific questions, and he may then pursue yet another appeal. *See* Appendix B, at 5 (recognizing that “this matter may ‘end up back in front of this court in a matter of days’”), quoting Appellant’s Memo Contra. Mot. to Dismiss, at 11 n.5. Respectfully, this would result in harms that the Speech and Debate Clause specifically protects against, regardless of how any future appeal is decided. Protecting legislators from compelled questioning ensures that they can freely express their views and negotiate without fear of external interference. It also ensures that legislators can focus on the issues facing their constituents and the State of Ohio without spending time in deposition for each legislative decision made. “The privilege would be of little value if [legislators] could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader.” *Tenney*, 341 U.S. at 377 (analyzing the federal Speech and Debate Clause).

The posture of the underlying litigation is also highly relevant here. President Huffman is not a named defendant in the lawsuit. Nor do the Appellees’ constitutional challenges hinge on questions about the legislative process. Thus, this Court need not decide whether a legislator could *ever* be required to respond to written deposition questions. Rather, President Huffman’s appeal asserts that Appellees may not intrude into the conversations of a non-party legislator when that non-party’s activities are not and could not be determinative of the issues actually before the court. Respectfully, either H.B. 110 facilitates an Ohio educational system that is “thorough and efficient” and provides “equal protection,” or it does not. Nothing that Appellees may seek from President Huffman would alter that analysis. His appeal to this Court asserts that he can properly

raise these issues with an appellate court—as he did below—without having to jump through the extra hoops required by the Tenth District.

Proposition of Law II: Because the act of questioning a legislator regarding performance of his duties intrudes on the legislative privilege, an order allowing such questioning denies a provisional remedy and is therefore immediately appealable.

Ohio law permits an interlocutory appeal where an order denies a “provisional remedy” and both of the following apply:

- (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.
- (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

R.C. 2505.02(B)(4). Additionally, R.C. 2505.02(A)(3) defines a provisional remedy as “a proceeding ancillary to an action, including, but not limited to...discovery of privileged matter[.]”

Here, President Huffman asserts that the Speech and Debate Clause of Article II, Section 12 of the Ohio Constitution creates a testimonial privilege protecting legislators from compelled questioning about their legislative acts in the absence of any credible allegation of illegal activities. Of course, once President Huffman is compelled to answer questions about his legislative acts, his testimonial privilege will be forever lost. The proverbial bell cannot be unrung. To be clear, and as President Huffman argued below, an order requiring discovery of a privileged legislative matter falls well within R.C. 2505.02(B)(4) and is immediately appealable.

Separately, and equally important here, *the mere act of being questioned* violates the legislative privilege, whether President Huffman ultimately answers the questions or not. As explained above, the legislative privilege “would be of little value” if legislators “could be subjected to the cost and inconvenience and distractions” at Appellees’ discretion. *See Tenney*, 341 U.S. at 377. A key purpose of the Clause is to ensure that legislators can focus on the issues

facing their constituents, rather than spending the public's time and resources responding to litigants about their constitutionally-protected decision-making. *See id.*; *Pelosi*, 5 F.4th at 39 (the federal Speech and Debate Clause “prohibit[s] questioning ... in connection with legislative acts”).

The Tenth District's decision runs directly counter to these principles. Again, as explained above, the decision below would require President Huffman to “be questioned” in contravention of Article II, Section 12. Only then, *subsequent* to this violation of the Speech and Debate Clause, could President Huffman object, await another order from the trial court, and possibly appeal yet again. Appendix B, at 3-4. But that outcome contravenes the protections of the Ohio Constitution by ensuring that President Huffman will “be questioned elsewhere” for fulfilling his legislative duties.

By allowing Appellees to question President Huffman, the Order denies a provisional remedy. For the purposes of whether he will “be questioned elsewhere” in contravention of the Speech and Debate Clause, the Order “determine[d] the action with respect to the provisional remedy” sought. R.C. 2505.02(B)(4)(a). And Huffman *cannot* be afforded a meaningful or effective remedy by a later appeal, either after final judgment or even within a few weeks. *See* R.C. 2505.02(B)(4)(b). The constitutional harm will have already occurred.

This appeal meets all of the requirements of R.C. 2505.02(B)(4). Because the act of questioning a legislator regarding performance of his duties intrudes on the legislative privilege, an order allowing such questioning denies a provisional remedy. The Order is immediately appealable.

IV. CONCLUSION.

This case raises substantial constitutional questions and is of great public and general interest. It involves the Ohio Constitution's key protection of the legislative process. The lower

courts' decisions contravene that protection. If allowed to stand, they will have a chilling effect on Ohio's legislators moving forward.

For the reasons set forth above, this Court should grant jurisdiction and reverse the judgment of the court of appeals.

Respectfully submitted,

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Counsel for Appellant
Ohio Senate President Matthew Huffman

APPENDIX A

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Columbus City School District et al.,	:	
Plaintiffs-Appellees,	:	
v.	:	No. 24AP-60 (C.P.C. No 22CV-000067)
State of Ohio et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellees,	:	
[Ohio Senate President Matthew Huffman,:	:	
Non-Party/Appellant].	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on March 29, 2024, we conclude the order appellant has appealed is not a final appealable order. Accordingly, this court lacks jurisdiction over the instant appeal, and this appeal is dismissed. Any outstanding appellate court costs are waived.

BOGGS, DORRIAN, & EDELSTEIN, JJ. concur.

/S/ JUDGE
Judge Kristin Boggs

Tenth District Court of Appeals

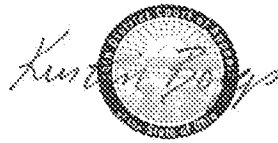
Date: 03-29-2024

Case Title: COLUMBUS CITY SCHOOL DISTRICT ET AL -VS- STATE OF OHIO ET AL

Case Number: 24AP000060

Type: JEJ - JUDGMENT ENTRY

So Ordered

A handwritten signature in cursive script, appearing to read "Kristin S. Boggs", is written over a circular, textured seal. The seal has a dark, possibly embossed or stamped appearance with some illegible text around its perimeter.

/s/ Judge Kristin S. Boggs

Court Disposition

Case Number: 24AP000060

Case Style: COLUMBUS CITY SCHOOL DISTRICT ET AL -VS-
STATE OF OHIO ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 24AP0000602 [REDACTED] 980000
Document Title: 02-02-2024-MOTION TO DISMISS - COLUMBUS
CITY SCHOOL DISTRICT
Disposition: 3201

APPENDIX B

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Columbus City School District et al., :
Plaintiffs-Appellees, :
v. : No. 24AP-60
(C.P.C. No 22CV-000067)
State of Ohio et al., : (ACCELERATED CALENDAR)
Defendants-Appellees, :
[Ohio Senate President Matthew Huffman, :
Non-Party/Appellant]. :

D E C I S I O N

Rendered on March 29, 2024

McCarthy, Lebit, Crystal & Liffman Co. LPA, Mark I. Wallach, and Larence R. Acton; Weston Hurd LLP, Maria Fair, and Alexandra C. Eckrich, for appellees Columbus City School Dist. et al.

Shumaker, Loop & Kendrick, LLP, Mark D. Wagoner, and David F. Axelrod, for non-party/appellant Matthew Huffman.

ON MOTION TO DISMISS

BOGGS, J.

{¶ 1} On February 2, 2024, plaintiffs-appellees, Columbus City School District et al., filed the instant motion to dismiss contending this court lacks jurisdiction over the December 21, 2023 order appealed by non-party/appellant, Matthew Huffman, President of the Ohio Senate. Appellant filed a response to the motion to dismiss arguing the discovery order is final and appealable under R.C. 2505.02(B)(4), and appellees filed a

reply. Upon review of the parties' arguments, we conclude the order is not final and appealable.

{¶ 2} Ohio's courts of appeal have jurisdiction "to review and affirm, modify, or reverse judgments or final orders." Ohio Constitution, Article IV, Section 3(B)(2). If a trial court's order is not final and appealable, a reviewing court has no jurisdiction to review the matter and the appeal must be dismissed. *In re Special Grand Jury Investigation*, 10th Dist. No. 17AP-446, 2018-Ohio-760, ¶ 6.

{¶ 3} "The general rule is that all orders in a case must be reviewed in a single appeal after final judgment." *State v. Glenn*, 165 Ohio St.3d 432, 2021-Ohio-3369, ¶ 10. "[D]iscovery orders, which are generally interlocutory in nature," are not immediately appealable. *Karr v. Salido*, 10th Dist. No. 21AP-672, 2022-Ohio-2879, ¶ 9. However, R.C. 2505.02 provides a "limited exception" to this general rule. *Glenn* at ¶ 10. Under R.C. 2505.02(B)(4), an appellate court has jurisdiction to review, affirm, modify, or reverse an "order that grants or denies a provisional remedy," which is defined as "a proceeding ancillary to an action" and includes a proceeding for "discovery of privileged matter." R.C. 2505.02(B)(4) and (A)(3). However, this limited exception only applies if both of the following circumstances are satisfied:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

R.C. 2505.02(B)(4)(a) and (b).

{¶ 4} Whether a discovery order warrants an interlocutory appeal is evaluated on a "case-by-case" basis. *Glenn* at ¶ 28. The appellant has the "burden of establishing the appellate court's jurisdiction over an interlocutory appeal." *Id.* at ¶ 22.

{¶ 5} In this case, the underlying action involves appellees' challenge to the constitutionality of the Ohio General Assembly's expansion of the EdChoice Scholarship Program, codified in R.C. Chapter 3310. On March 22, 2023, appellees served appellant, who is the President of the Ohio Senate and is not a party to the action, with a subpoena for

a deposition. Appellant filed a motion to quash arguing, among other issues, that legislative privilege prohibited the deposition. After further briefing, the trial court issued on December 21, 2023 the instant order granting appellant's motion to quash in part and modifying the subpoena pursuant to Civ.R. 45(C). Specifically, the trial court modified the subpoena to remove the requirement that appellant attend an in-person oral deposition and to instead permit appellees to submit no more than 20 "written deposition" questions to appellant. (Dec. 21, 2023 Decision & Entry at 10.) The order specifies, "[t]hese written deposition questions shall be limited to matters that do not implicate legislative privilege, but may request the identities of entities and individuals, and other information, related to off the record communications about the passing of H.B. 110 between those entities and individuals, and [appellant]." *Id.* at 10. The order further allows appellees to seek reconsideration of the order should appellant's answers to the written deposition questions demonstrate an in-person oral disposition is likely to provide additional relevant information that is not obtainable elsewhere and not protected by the legislative privilege.

{¶ 6} On this record, appellant has failed to establish this order is final and appealable. First, "the threshold requirement for an order to be appealable under R.C. 2505.02(B)(4) is that the order must grant or deny a provisional remedy." *Glenn* at ¶ 12. Appellant argues the order qualifies as a provisional remedy since it involves discovery of privileged matter. In assessing whether he is correct, we need only decide whether the appellant made a "colorable claim" that the trial court's "order directs him to disclose information that might be protected" by legislative privilege. *Glenn* at ¶ 13, 20. In this case, the trial court order in pertinent part modifies the subpoena to state the plaintiffs "may" submit deposition questions of a certain nature and specifies that information should not implicate legislative privilege. (Decision & Entry at 10.) The order does not direct appellant to disclose any information at this point and, therefore, fails the threshold requirement.

{¶ 7} Even if, for sake of argument, we were to find appellant presents a "colorable claim" that the trial court's order directs the disclosure of information protected by legislative privilege, appellant nevertheless has not shown that the order "in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy." R.C. 2505.02(B)(4)(a). At this point in the proceedings, whether appellees will decide to submit

deposition questions to appellant, the content of those potential questions, appellant's actions upon receipt of those questions, and the trial court's future determinations as to the deposition questions all have yet to be determined.

{¶ 8} In these circumstances, we conclude the present appeal is premature. *See e.g. Autumn Health Care of Zanesville, LLC v. DeWine*, 10th Dist. No. 14AP-593, 2015-Ohio-2655, ¶ 7 (determining that, to the extent the trial court's order compelled the non-party appellants to attend depositions, "the record is insufficiently developed to establish whether the testimony to be elicited at the depositions would involve the disclosure of privileged information" and, therefore, the order did not constitute a final and appealable order under R.C. 2505.02(B)(4)(a)); *Citibank, N.A. v. Hine*, 4th Dist. No. 17CA3598, 2017-Ohio-5537, ¶ 15 (following *Autumn Health Care* in circumstances where the record was insufficiently developed to establish that the appellant's deposition would result in the disclosure of any privileged materials and noting "[c]ounsel may object to questions posed * * * [and] the trial court can determine the applicability of any privilege[,] and "[a]fter the trial court has issued its rulings, the requirements of R.C. 2505.02(B)(4) may be satisfied."); *Riggs v. Richard*, 5th Dist. No. 2006CA00234, 2007-Ohio-490, ¶ 21-22 (holding that an order denying the appellants' motion for protective order was not a final, appealable order where "[w]hat information is being sought and whether it would be protected by the [asserted] privilege, whether it is subject to exception, or waived has not been sufficiently developed by the record in the case sub judice" and explaining "[t]o properly address whether the communications or material sought is subject to the [asserted] privilege, it is, at a minimum, necessary to ask the questions first and for the privilege rule to be invoked. After such has occurred, the trial court then can, at hearing, determine if, in fact, privileged matters may be disclosed."); *Buffmyer v. Cavalier*, 5th Dist. No. 03COA067, 2004-Ohio-3303, ¶ 17-18 (determining order denying Civ.R. 45(C)(3) motion to quash or modify a subpoena was not a final appealable order since "[w]hether or not the matters sought by appellee would violate the [asserted] privilege is not sufficiently developed by the record in its present state. * * * [I]n order to properly address the issues raised by Civ.R. 45(C)(3), it is at a minimum necessary to ask the questions and for the privilege rule to be invoked. The trial court can then, at hearing, determine if in fact privileged matters may be disclosed.").

{¶ 9} We note that although the parties debate the applicability of *Dublin v. State*, 138 Ohio App.3d 753 (10th Dist.2000), *Dublin* is consistent with, but does not control, the outcome here. Unlike the instant case, *Dublin* involved a trial court discovery order that “actually compelled” certain information to be disclosed. *Id.* at 758. Faced with that order, this court reviewed whether the sought-after information was privileged to support an interlocutory appeal pursuant to R.C. 2505.02(B)(4). Finding the information in that case was not privileged, this court determined the trial court order was not final and appealable and dismissed the case. Here, because the order appealed from permits appellees to submit questions but stops short of compelling appellant to answer, we do not proceed to determine the issue of legislative privilege at this juncture.

{¶ 10} “In short, the uncertainty surrounding what the trial court would consider satisfactory compliance with its order suggests that the order would be better reviewed after the situation has fully unfolded.” *Glenn* at ¶ 26. This uncertainty will lessen considerably once appellees have presented their deposition questions. Depending on the content of those questions, appellant may again move to quash, and the trial court will have the opportunity to review appellant’s concerns in the context of the questions being posed. If the trial court directs appellant to disclose information protected by legislative privilege, appellant may again pursue an appeal. We acknowledge appellant’s concern that this matter may “end up back in front of this court in a matter of days.” (Memo Contra Mot. to Dismiss at 11, fn 5.) However, appellant’s potential ability to quickly appeal following our dismissal does not influence our present jurisdiction as determined under the R.C. 2505.02(B) requirements.

{¶ 11} Considering all of the above, we conclude the December 21, 2023 order is not a final appealable order on the facts of this case. Accordingly, this court lacks jurisdiction over the instant appeal.

Motion granted; appeal dismissed.

DORRIAN and EDELSTEIN, JJ., concur.

APPENDIX C

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DIST., *et al*,

Plaintiffs,

-VS-

STATE OF OHIO, *et al.*,

Defendants.

Case No. 22 CV 67

Judge Page

DECISION AND ENTRY ON NON-PARTY SENATE PRESIDENT MATTHEW HUFFMAN’S MOTION TO QUASH

This case is before the Court on the Motion of Non-Party Senate President Matthew Huffman to Quash Plaintiffs' Subpoena, filed on April 26, 2023. The issue before the Court is whether the Plaintiffs may depose Senate President Matthew Huffman (Huffman) on his knowledge of school funding in Ohio and his involvement in the enactment and expansion of the EdChoice Program through Amended Substituted House Bill 110 (H.B. 110).

For the reasons set forth in this opinion, the Court grants in part Huffman's motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

The facts of this case have been summarized in depth both in the parties' briefs and in the Court's prior decisions. (See Decision and Entry on Defendants' Motion to Dismiss, Dec. 16, 2022; Decision and Entry on Defendants' Motion for Judgment on the Pleadings, Dec. 16, 2022).

Relevant to this motion, the Plaintiffs served Huffman with a subpoena on March 22, 2023, to appear and be deposed in this case on April 26, 2023. (Huffman’s Motion to Quash Appendix A). On April 26, 2023, Huffman filed the instant motion to quash. The Plaintiffs have opposed the motion, and additionally filed a motion for leave to file a sur-reply on July 18, 2023. That motion was not opposed by Huffman and is hereby **GRANTED**.

II. LEGAL STANDARD

Trial courts are afforded significant discretion in deciding discovery issues, including ruling on a motion to quash. *Erickson v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. Franklin No. 16AP-74, 2017-Ohio-1572, ¶ 23 (Applying the abuse of discretion standard on appeal to trial courts' discovery decisions.); *Bickel v. Cochran*, 10th Dist. Franklin No. 14AP-439, 2014-Ohio-5862, ¶ 9 (Motions to quash are generally reviewed under the abuse of discretion standard.); *But see Id.* (When a subpoena is resisted because of a privilege, the standard of review is *de novo*.).

Civ.R. 26(B)(1) designates the scope of discovery as follows:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Civ.R. 26(B)(1) (Amended July 1, 2022); *Dineen v. Pelfrey*, 10th Dist. Franklin No. 21AP-547, 2022-Ohio-2035, ¶ 21; *See also Dehlendorf v. City of Gahanna*, 10th Dist. Franklin No. 14AP-379, 2015-Ohio-3680, ¶ 41 (Reciting the pre-amendment standard for the scope of discovery as any matter, not privileged, which is relevant to the subject matter involved in the pending action.). Documents sought to be subpoenaed must have some relevance and be reasonably necessary. *Martin v. Budd Co.*, 128 Ohio App. 3d, 115, 713 N.E.2d 1128, * 119 (9th Dist.1998).

If a motion is filed under Civ.R. 45(C)(3)(c) or (d), 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(C)(5);

Future Communs., Inc. v. Hightower, 10th Dist. Franklin No. 01AP-1175, 2002-Ohio-2245, ¶ 17-18 (The initial obligation to demonstrate an undue burden is on the subpoena’s proponent.).

III. ANALYSIS

Huffman makes several arguments in support of his motion to quash. First, he argues that the legislative privilege within the Ohio Constitution’s Speech and Debate Clause bar his deposition. Second, he submits that his individual views about the EdChoice program are not relevant to whether its enactment or expansion are constitutional. Third, he contends that there are less invasive means of obtaining the desired testimony.

Each of these arguments shall be addressed in turn.

A. PRIVILEGE

Huffman first argues that the Ohio Constitution’s Speech and Debate Clause shields him from deposition in this case. The Plaintiffs respond that any legislative privilege is not absolute and point to several recent instances where Huffman and other legislators were deposed.

The Ohio Constitution’s Speech and Debate Clause (the “Ohio Speech and Debate Clause”) states

Senators and representatives, during the session of the general assembly, and in going to, and returning from the same, shall be privileged from arrest, in all cases, except treason, felony, or breach of the peace, and for any speech, or debate, in either house, they shall not be questioned elsewhere.

Ohio Constitution, Article II, Section 12. Drawing heavily from federal precedent, Ohio law does not limit the scope of this privilege to statements made on the legislative floor. *City of Dublin v. State*, 138 Ohio App. 3d 753, 742 N.E.2d 232, * 758-759 (10th Dist.). However, legislative privilege also does not extend to all conduct related to the legislative process, but attaches only to meetings, processes, conversations, and documents which are an integral part of the deliberative

and communicative processes by which legislators participate in legislative or committee proceedings. *Id.* at 759. “In evaluating whether certain activity or material falls within the legislative privilege, a court must determine whether the activity is essential to the legislature’s deliberations or whether permitting inquiry into the activity would threaten its integrity and independence.” (Internal Quotations Omitted) *Id.*

The Plaintiffs argue that the legislative privilege arising from the Ohio Speech and Debate clause is not absolute, but qualified. They encourage the Court to apply the five-part test laid out in *Rodriguez v. Pataki*, 280 F.Supp. 2d 89, 100-101 (S.D. NY 2003) to determine if a qualified legislative privilege applies. However, the cases relied upon by the Plaintiffs are distinguishable from the present scenario because they involve the application of federal law to legislative privilege for state legislators in a federal question case. *See Glowgower v. Bybee-Fields*, E.D. KY No. 3:21-CV-00012-EBA, 2022 U.S. Dist. LEXIS 158956, * 23-24 (“Federal common law governs claims of legislative privilege for state legislators in federal question cases because neither the federal Speech or Debate Clause nor the state constitution protects state legislators from interference by the federal government.”) and *League of Women v. Johnson*, E.D. Michigan No. 17-14148, 2018 U.S. Dist. LEXIS 86398, * 6-7 (Applying federal law to the issue of legislative privilege for state legislatures in a federal question case.). Though Ohio courts often adopt federal precedent when their own paradigm is lacking, *Glowgower* specifically notes that a state constitution cannot protect state legislators from the federal government. *Glowgower* at 24. Therefore, this precedent is not helpful.

The Plaintiffs also argue that by making public comments about the litigation, Huffman has waived any applicable legislative privilege. However, the Court does not find that the general comments about the litigation highlighted by the Plaintiffs amount to a waiver of legislative

privilege.

The Plaintiffs also point out that in *Bennett v. Ohio Redistricting Comm.*, 164 Ohio St. 3d 1457, 2021-Ohio-3607, 174 N.E. 3d 806¹, the Ohio Supreme Court ordered that Huffman be deposed. Though there is some dispute over the significance of whether he was deposed in that case in his capacity as a member of the Ohio Redistricting Commission, and whether the deposition in this case is sought in Huffman's capacity as a legislator, such a distinction is not borne out in either the parties' briefs or in the Ohio Supreme Court's decision. *Id.* Therefore, the Court is hesitant to rely on it.

Instead, the Court finds the *City of Dublin* case to be instructive. *City of Dublin*, 138 Ohio App. 3d 753. In that case, the plaintiff municipalities' discovery requests to the General Assembly and its staff sought information related to meetings between members of the state and other parties and included a request to depose an Ohio senator. *Id.* at 756. The state filed a motion to quash. Citing an absolute legislative privilege, the trial court did not allow the municipalities to depose the state senator. The trial court did allow the municipalities to propound a limited number of written interrogatories to the state to discover the identities of corporate representatives with whom the state met off the record. Such information was not integral to the legislative process and thus fell outside of legislative privilege. *Id.* at 757.

The 10th District Court of Appeals dismissed the appeal as a non-final order. *Id.* at 760. Integral to the appellate court's decision was its determination that the trial court's order did not implicate legislative privilege. It noted that legislative privilege is not a privilege to refuse to disclose, but rather, a privilege barring the use of statements made during the legislative process

¹ This Ohio Supreme Court Order was also issued in *League of Women Voters of Ohio v. Ohio Redistricting Comm.* and *Ohio Organizing Collaborative v. Ohio Redistricting Comm.*

as evidence. *City of Dublin* at 759, citing *In re Grand Jury Investigation into Possible Violations of Title 18, etc.*, 587 F.2d 589, 597 (3rd Cir.1978). It is designed to protect legislators from harassment or hostile questioning, not to promote secrecy in the legislative process. *Id.*

Here, the “Plaintiffs seek to question Sen. Huffman, inter alia, regarding his personal involvement with various private schools which benefit from the EdChoice program, and his knowledge regarding how public schools are funded by the state legislature.” (Plaintiffs’ Memo. Contra, pg. 9). First, the topic of Huffman’s knowledge about school funding is vague and broad. Because of this, it is unclear whether a deposition on this topic would implicate questioning on privileged information involving the legislative process. Second, information about Huffman’s personal involvement with private schools participating in the EdChoice program could be obtained from Huffman through written interrogatories without subjecting Huffman to the burden of an oral deposition. Though this information does not seem to be related to the legislative process, the Court does not find that deposing Huffman is proportional to the needs of this case when information may be less burdensomely obtained through written interrogatories.

B. RELEVANCE

Next, Huffman argues that his testimony is not relevant to the Plaintiffs’ claims challenging the constitutionality of the EdChoice program. He submits that his individual beliefs and opinions on the EdChoice program are not relevant, and that information on the circumstances surrounding the passage of H.B. 110 is available through the public record. The Plaintiffs respond that the public record does not contain the information they seek, and that only Huffman can testify about his role in passing H.B. 110.

As noted above, information sought in discovery by subpoena must have some relevance and be reasonably necessary to deciding the claims at hand. *Byrd v. Lindsay Corp.*, 9th Dist.

Summit No. 29491, 2020-Ohio-3870, ¶ 8, *citing Martin v. Budd Co.*, 128 Ohio App. 3d 115, 128 Ohio App. 3d 115, 713 N.E.2d 1128, * 119 (9th Dist.1998). Further, a person's status as a non-party is a factor weighing against disclosure. *Doe v. Ohio State Univ.*, S.D. Ohio No. 2:16-cv-171, 2018 U.S. Dist. LEXIS 44029, * 5; *Crow v. Dotson*, 8th Dist. Cuyahoga No. 76674, 2000 Ohio App. LEXIS 5878, * 9-10 (Applying a more rigorous relevance standard to subpoenas of persons who are not parties to the litigation.).

Here, the Plaintiffs are seeking testimony from Huffman on two topics: (1) his personal knowledge of how public schools in Ohio are funded by the legislature; and (2) his personal involvement with private schools. First, Huffman's personal knowledge or opinion on H.B. 110 and public-school funding is not relevant in determining the constitutionality of the EdChoice voucher program because his personal opinion cannot take the place of that of the Ohio General Assembly, which is expressed within their legislation. *Nichols v. Villarreal*, 113 Ohio App. 3d 343, 113 Ohio App. 3d 343, 680 N.E.2d 1259, * 349 (4th Dist.1996) (The opinion of a single legislator does not speak for the entire Ohio general assembly.); *See also League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 167 Ohio St.3d 255, 2022-Ohio-65, 192 N.E.3d 379, ¶ 90 (Recognizing that the views of individual legislators do not determine the meaning of a provision of the Ohio Constitution.) *and In re Bros. Publ. Co., LLC*, 2015-Ohio-454, 27 N.E.3d 542, ¶ 42 (2nd Dist.) (Proscribing little weight to the individual views of a single legislator in interpreting a statute.). The Court does not find that this topic is reasonably relevant or necessary to deciding the Plaintiffs' claims.

As to the Plaintiffs' second topic, they appear to seek information related to private schools that have benefitted from H.B. 110 and the EdChoice program. They seek this information through Huffman, who was allegedly a major proponent of the EdChoice legislation. The Court views this

portion of the Plaintiffs’ subpoena like the situation in *City of Dublin*, where the appellate court allowed the plaintiff municipalities to discover the identities of entities that communicated with the legislature off the record in relation to legislation. *City of Dublin*, 138 Ohio App. 753 at 757. The appellate court determined that this information was at least arguably relevant. *Id.* This Court also finds such information to be relevant and will allow it to be inquired into.

C. UNDUE BURDEN

Huffman’s next argument submits that allowing the Plaintiffs to depose him would cause him an undue burden. The Plaintiffs contend that they have demonstrated a substantial need for Huffman’s testimony under Civ.R. 45(C)(5).

“It is undoubtedly an extreme burden on a legislator to be deposed.” *Plain Local Sch. Dist. Bd. of Educ. v. DeWine*, 464 F. Supp. 3d 915, 919 (S.D.Ohio 2020). However, allowing the submission of written deposition questions lessens this burden. *Id.* Both parties also discuss the *Brunner* test, which requires a court to weigh the following factors before determining whether a high-ranking elected official can be deposed: (1) the substantiality of the case in which the deposition is requested; (2) the degree to which the witness has first-hand knowledge or direct involvement; (3) the probable length of the deposition and the effect on government business if the official must attend the deposition; and (4) whether less onerous discovery procedures provide the information sought. *State ex rel. Ctr. for Media & Democracy v. Off. of AG David Yost*, 2023-Ohio-364, 208 N.E.3d 298, ¶ 40, citing *State ex rel. Summit County Republican Party Exec. Comm. v. Brunner*, 117 Ohio St. 3d 1210, 2008-Ohio-1035, 883 N.E.2d 452, ¶ 3-4.

Here, the substantiality of this case is great. The Plaintiffs’ claims allege that the EdChoice program, one which affects families and schoolchildren across the state, is unconstitutional. It is unclear to what degree Huffman has first-hand knowledge or direct involvement in the controversy

before the Court. As noted above, Huffman's personal knowledge about school funding and conduct in supporting H.B. 110 may not be relevant to the issue of whether H.B. 110 is constitutional. The anticipated length of deposing Huffman is also unclear. Though the Plaintiffs have succinctly stated two or three topics upon which they wish to question Huffman, they have not given any estimate for the time this would take or proposed any temporal limitations on their requested deposition. The Court finds that these two elements weigh against ordering Huffman to be deposed.

On the final *Brunner* element, the Court has already hinted that less onerous methods of discovery exist. Other courts have required legislators and high-ranking government officials to respond to written interrogatories first to determine whether the more burdensome process of deposing them is necessary. *Dewine*, 464 F.Supp. 3d 915, 924 (Allowing the plaintiff to submit no more than twenty written deposition questions in lieu of deposing legislators.); *City of Dublin*, 138 Ohio App. 3d 753, 757, 760 (Dismissing appeal as non-final order after determining that the trial court's procedure in requiring legislators to respond to written interrogatories in lieu of being deposed did not implicate the legislative privilege.).

Accordingly, the Court finds that at this stage of the proceedings, requiring Huffman to submit to an oral deposition would impose an undue burden, and that such a deposition is not warranted under the *Brunner* test. The Court additionally finds that the Plaintiffs have not satisfied the substantial need test of Civ.R. 45(C)(5) when the submission of written deposition questions may provide the Plaintiffs with the information they seek while limiting the burden imposed on Huffman.

D. MOOTNESS

Though Huffman has argued that intervening legislation has rendered the Plaintiffs'

complaint moot, the Court has not decided this issue and does not find the argument persuasive in determining his motion to quash.

IV. CONCLUSION

After considering the parties' briefs and arguments, the Court finds that Huffman's motion to quash is well-taken, and it is **GRANTED IN PART**. Pursuant to Civ.R. Plaintiffs' subpoena is hereby modified as follows:

- Huffman shall not be required to attend an in-person oral deposition.
- The Plaintiffs may submit no more than twenty (20) written deposition questions to Huffman.
- These written deposition questions shall be limited to matters that do not implicate legislative privilege, but may request the identities of entities and individuals, and other information, related to off the record communications about the passing of H.B. 110 between those entities and individuals, and Huffman.
- If the Plaintiffs believe that Huffman's answers to written deposition questions demonstrate that an in-person oral deposition of Huffman is likely to provide additional information, relevant to the Plaintiffs' claims in this case, that is not obtainable elsewhere, and that is not protected by the legislative privilege, the Plaintiffs may request reconsideration of this order.
- The Plaintiffs may wait to propound interrogatories on Huffman until after the Court issues its decision on the pending motion to dismiss filed August 7, 2023.

IT IS SO ORDERED.

Copies to all parties.

Franklin County Court of Common Pleas

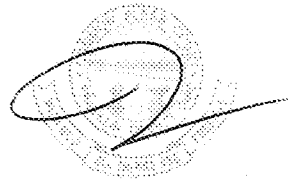
Date: 12-21-2023

Case Title: COLUMBUS CITY SCHOOL DISTRICT ET AL -VS- STATE OF OHIO ET AL

Case Number: 22CV000067

Type: ORDER

It Is So Ordered.

A handwritten signature in black ink is written over a circular, dotted official seal. The signature is a stylized, cursive 'J' followed by a horizontal line.

/s/ Judge Jaiza Page

Court Disposition

Case Number: 22CV000067

Case Style: COLUMBUS CITY SCHOOL DISTRICT ET AL -VS-
STATE OF OHIO ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 22CV0000672023-04-2699950000
Document Title: 04-26-2023-MOTION TO QUASH - NON-PARTY:
MATTHEW HUFFMAN
Disposition: MOTION GRANTED IN PART
2. Motion CMS Document Id: 22CV0000672023-07-1899980000
Document Title: 07-18-2023-MOTION FOR LEAVE TO FILE -
PLAINTIFF: COLUMBUS CITY SCHOOL DISTRICT
Disposition: MOTION GRANTED
3. Motion CMS Document Id: 22CV0000672023-06-2999960000
Document Title: 06-29-2023-MOTION FOR LEAVE TO FILE -
NON-PARTY: MATTHEW HUFFMAN
Disposition: MOTION RELEASED TO CLEAR DOCKET