

IN THE SUPREME COURT OF OHIO

MATTHEW HUFFMAN, PRESIDENT OF THE OHIO SENATE,	:	CASE NO. 2024-0563
	:	
	:	
Appellant,	:	
	:	On Appeal from the Tenth District Court of
v.	:	Appeals, Franklin County
	:	Court of Appeals Case No. 24AP000060
COLUMBUS CITY SCHOOL DISTRICT, <i>et</i>	:	
<i>al.</i> ,	:	
	:	
Plaintiffs-Appellees.	:	
	:	

APPELLEES' MEMORANDUM IN OPPOSITION TO JURISDICTION

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I. STATEMENT OF THE CASE

This jurisdictional appeal arises from litigation that challenges the constitutionality of Ohio’s school voucher scheme codified at R.C. 3310.01 to 3310.17 and referred to as the “EdChoice Scholarship Program.” Appellant, Mathew Huffman, President of the Ohio Senate (“Appellant” or “Senator Huffman”), is not a party to the underlying litigation but possesses discoverable information and received a subpoena for his oral deposition from Plaintiffs-Appellees.

Senator Huffman moved to quash the subpoena, asserting “legislative privilege.” The Franklin County Court of Common Pleas granted his motion in part, prohibiting an oral deposition but permitting Appellees to propound a limited number (20) of written questions to him. Senator Huffman appealed before any questions were propounded, and Appellees are stayed from propounding any questions until after the outcome of this appeal.

The Order appealed from does not infringe on Senator Huffman’s legislative privilege and, in fact, it commands the opposite, stating that any questions which infringe on his legislative privilege would be improper. Consequently, there is no order to review which compels the disclosure of privileged information, and the Tenth District Court of Appeals correctly dismissed Senator Huffman’s appeal on jurisdictional grounds for lack of a final appealable order. He now contends that this Court should accept a jurisdictional appeal under S.Ct.Prac.R. 5.02(A)(1), as involving a “substantial constitutional question,” or under S.Ct.Prac.R. 5.02(A)(3), as involving a “question of public or great general interest.” He claims this Court should decide the scope of the “Speech or Debate Clause” of the Ohio Constitution despite the absence of an order compelling a privileged disclosure or any analysis from the lower courts regarding the application of the legislative privilege doctrine to any particular discovery question posed to him.

Senator Huffman curiously claims “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.” (Appellant’s Memo. at p. 3.) According to the Senator, any “off the record communications related to H.B. 110” are privileged including any information about “the performance of his legislative duties.” (*Id.* at p. 1). Claiming to be a textualist, he cites *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.” (Appellant’s Memo. at p. 8.) But when the short and unambiguous provision of the Ohio Constitution that governs when Legislators may be questioned about matters other than the speeches and debates of the Legislature is concerned, he suddenly loses that commitment to the text. He argues the language “for any speech, or debate, in either house, they shall not be questioned elsewhere” does not actually mean “any speech, or debate,” but *instead* means any conversations he has had with anyone, at any time, on any topic. How he finds that “meaning” in that language is anybody’s guess. Does it mean he cannot be questioned about his mental processes? It certainly doesn’t say that. Does it mean he cannot be questioned about whether lobbyists for school vouchers have suggested legislative language to him? It doesn’t seem to say that. Does it mean he cannot be questioned about whether he has a personal financial interest in the subject of legislation he has pushed to adoption? Once again, it is hard to find that meaning in the language of the Ohio Constitution he claims to rely on.

Appellees have never indicated any interest in questioning Senator Huffman about the speeches and debates he has been engaged in at the Ohio Legislature. Since nobody in the Ohio Legislature has the nerve to debate with Senator Huffman, who rules with an iron hand, there are no debates to ask him about. His speeches tend to be given to reporters at the hundreds of

interviews he gives about his favorite topics, though perhaps not so much when he is asked about the dark money contributions from First Energy which he is reported to have received. *See Tobias, Huffman downplays ties to dark-money group*, The Plain Dealer (May 19, 2024).

The Trial Court relied primarily on *City of Dublin v. State*, 138 Ohio App. 3d 753, N.E.2d 232 (10th Dist.) and imposed severe limitations on Appellees' ability to question Senator Huffman, who was originally served with a subpoena for a deposition more than a year ago. These limitations include: (1) no live questioning, only written questions; (2) no questioning about any topics that infringe on the legislative privilege; and (3) no more than 20 questions in total. Appellees have repeatedly offered to schedule the deposition on written questions at a time and place convenient for Senator Huffman; to date, he has refused to suggest any such times or places and, after the Tenth District dismissed his appeal, he sought a stay pending the outcome of his appeal to this Court.

The Tenth District's thorough decision dismissing this appeal noted that the case for appellate jurisdiction here is even weaker than the one asserted in *Dublin* because, in that case, there was an order which actually compelled a privileged disclosure; here, however, "the order appealed from permits appellees to submit questions but stops short of compelling appellant to answer." *Columbus City School Dist. v. State*, 10th Dist. Franklin No. 24AP-60, 2024-Ohio-1217, ¶ 9. Concluding that it was premature to determine the issue of legislative privilege at this time, the Court of Appeals correctly found that the order appealed from was well short of a final appealable order and dismissed Senator Huffman's interlocutory appeal. Accordingly, this Court should decline to accept jurisdiction because Senator Huffman's appeal does not raise a substantial constitutional question and it is not one of public or great general interest, or it should summarily affirm the dismissal.

II. THIS CASE DOES NOT RAISE A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS NOT ONE OF PUBLIC OR GREAT GENERAL INTEREST

For a constitutional question to be “substantial,” it needs to be, in the words of the North Carolina Supreme Court (construing a similar provision in that state’s constitution), “real and substantial rather than superficial and frivolous.” *State v. Colson*, 163 S.E.2d 376 (N.C. 1968). In this case, the purported “substantial constitutional question” is both superficial and frivolous, because the language of Article II, Section 12, of the Ohio Constitution is perfectly unambiguous and clear. That section says, in pertinent part, “for any speech, or debate, in either house, [Senators and Representatives] shall not be questioned elsewhere.” To apply this section, a court need simply ask: (1) are any questions being asked of a Senator or Representative, and (2) do those questions relate to any speech or debate in either house of the Legislature? That language does not permit a variety of interpretations. Consequently, when Senator Huffman argues that this language prevents him being questioned about matters other than a speech or debate in the Legislature, the question he raises is far from substantial. Yet that is precisely what he argues in this request.

As to Senator Huffman’s argument that this appeal presents a matter of great or general public interest, it is difficult to see any public interest at all in whether Senator Huffman is presented with less than two dozen written questions—it is only of interest to the parties to the underlying litigation. This is not a question which arises frequently (or at all, other than this instance). The rest of the members of the Legislature have not sought to intervene in support of this appeal, despite Senator Huffman’s assertion that all of them will be impeded in their functioning if Plaintiffs-Appellees are permitted to address these questions to Senator Huffman.

All that the Court is presented with here is a premature appeal of an interlocutory discovery matter. This Court should deny jurisdiction and leave the well thought-out decision of the Tenth District in effect.

III. STATEMENT OF FACTS AND PROCEDURE

On January 4, 2022, Plaintiffs-Appellees began the underlying litigation by filing their initial Complaint in the Franklin County Court of Common Pleas. Over a year ago, on March 22, 2023, Appellees served a subpoena (the “Subpoena”) for Senator Huffman’s deposition at offices across from the state capitol building. On April 26, 2023, Senator Huffman filed a Motion to Quash the Subpoena arguing, among other things, that legislative privilege prohibited his deposition.

After briefing was complete, on December 21, 2023, the Trial Court issued an interlocutory order (the “Order”) which granted in part Senator Huffman’s Motion to Quash the Subpoena. The Trial Court summarized the discovery sought as: “(1) his personal knowledge of how public schools in Ohio are funded by the legislature; and (2) his personal involvement with private schools.” (Order, p. 6.) It concluded that “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.” (*Id.*) It concluded that “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.” (*Id.*) Trial Court prohibited the oral deposition but permitted Appellees to propound 20 written deposition questions to Senator Huffman, limited as follows: “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.” (emphasis supplied) (Order, p. 10).

The Trial Court correctly determined that, although privileged matters are not discoverable under Civ.R. 26(B)(1), Appellant cannot use the doctrine of legislative privilege to completely

shield himself from discovery in the underlying litigation. Senator Huffman, however, did not wait for Appellees to propound the written questions and, instead, on January 23, 2024, he filed an appeal to the Tenth District Court of Appeals. On February 2, 2024, Appellees filed a Motion to Dismiss Senator Huffman’s appeal for lack of jurisdiction. On March 29, 2024, the Tenth District entered a decision (the “Decision”) which carefully considered whether the Order was final and appealable and concluded it is not, granting Appellees’ Motion to Dismiss: “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.” *Columbus City School Dist. v. State*, 10th Dist. Franklin No. 24AP-60, 2024-Ohio-1217, ¶ 10. Its Judgment Entry states: “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.”

In rendering its Decision, the Tenth District straightforwardly applied R.C. 2505.02(B) and *State v. Glenn*, 165 Ohio St.3d 432, 2021-Ohio-3369, and determined that Appellant failed to make a “‘colorable claim’ that the trial court’s ‘order directs him to disclose information that might be protected’ by legislative privilege.” *Columbus, supra* at ¶ 6, quoting *Glenn* at ¶ ¶ 13, 20. The Tenth District notes that the Order “does not direct appellant to disclose any information at this point and, therefore, fails the threshold requirement.” *Id.* “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.” *Id.* at ¶ 7. “In these circumstances, we conclude the present appeal is premature.” *Id.* at ¶ 8 (collecting cases). “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.” *Id.* at ¶ 10.

On April 23, 2024, Senator Huffman filed the foregoing Notice of Appeal from the Tenth District’s Decision and filed a Memorandum in Support of Jurisdiction (the “Memorandum”) which asserts the following propositions of law in support of jurisdiction: (1) “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”; (Appellant’s Memo. at p. 7), and (2) “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.” (*Id.* at p. 12.)

As shown in the following sections, Senator Huffman’s propositions of law ignore and distort the factual findings and legal conclusions of the lower courts and fail to establish jurisdiction or good bases for this appeal.

IV. ARGUMENTS AGAINST APPELLANT’S PROPOSITIONS OF LAW

A. **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.**

When appeal of a discovery order is premised on infringement of a privilege, an appellant must assert a *colorable* claim of privilege to avoid dismissal. *See Burnham v. Cleveland Clinic*, 151 Ohio St.3d 356, 2016-Ohio-8000, 89 N.E.3d 536, ¶¶ 3, 29 (the appeal must be “plausibly alleged” and make a “colorable claim” that the information subject to discovery is privileged); *see also State v. Cunningham*, 11th Dist. Portage No. 2021-P-0047, 2021-Ohio-4051, ¶ 8 (citations omitted) (“A ‘colorable claim’ means ‘a plausible claim that may reasonably be asserted, given the facts presented.’”). Otherwise, any interlocutory order may be made final by merely alleging

violation of privilege no matter how far-fetched or unsupported by the law. *See, e.g., Smith v. Chen*, 142 Ohio St.3d 411, 2015-Ohio-1480, 31 N.E.3d 633, ¶ 8. Senator Huffman fails to assert a “colorable claim” because the Order clearly does not compel disclosure of legislatively privileged information protected by the Ohio Constitution.

1. The Order Comports With the Text and Intent of the Speech or Debate Clause.

In Ohio, the doctrine of legislative privilege is derived from the Speech or Debate Clause of the Ohio Constitution, which limits it to statements made during sessions of the General Assembly, i.e., those made on the floor “*in either house.*” Passed within the Constitution of 1851, the Speech or Debate Clause is clearly worded and has never been amended. It provides: “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.” Article II, Section 12, Ohio Constitution (emphasis supplied).

The Speech or Debate Clause does not insulate members of the Legislature from ever being questioned in court or a deposition about their legislation or their *personal* involvement in the topic of that legislation. It merely protects them from arrest during the General Assembly’s sessions and prevents them from being questioned about speeches or debates in the Legislature. If the framers intended to extend legislative privilege to *all* statements made by legislators concerning a piece of legislation, i.e., statements made both *in* and *outside* of either House, the framers would not have used the phrase “in either house” and would not have limited the privilege to *speech or debate*. A broad interpretation of this constitutional provision would not benefit the public. The historical underpinnings of Ohio’s second constitution, the Constitution of 1851—which stripped power from the General Assembly and gave it to the people—support a narrow and textual interpretation.

2. **Ohio Case Law is Correct and There is No Reason to Revisit the Dublin Case.**

Ohio courts have not interpreted the Speech or Debate Clause as granting legislators an absolute and unqualified privilege. *See City of Dublin v. State*, 138 Ohio App. 3d 753, 742 N.E.2d 232 (10th Dist. 2000). The Trial Court was correct to rely on *Dublin* rather than federal case law to reach its decision. The Ohio Constitution is “a document of independent force,” and Ohio Courts “are not bound to walk in lockstep with the federal courts when it comes to the Court’s interpretation of the Ohio Constitution.” *State v. Smith*, 162 Ohio St.3d 353, 2020-Ohio-4441, 165 N.E.3d 1123, ¶ 28, quoting *Arnold v. City of Cleveland*, 67 Ohio St.3d 35, 42 (1993). Senator Huffman relies on distinguishable federal cases that involved a federal cause of action, unlike here where the claims are challenges to Ohio statutory law for violations of the Ohio Constitution. The lower courts correctly rejected cases interpreting the rather different U.S. Constitution and instead considered *City of Dublin v. State*, 138 Ohio App. 3d 753, 742 N.E.2d 232 (10th Dist. 2000).

Dublin involved a constitutional challenge to H.B. 283, a budget bill which reduced or eliminated municipalities’ authority over public rights-of-way by public utilities and telecommunications operators. *Dublin* at 756. The appellees-municipalities made various discovery requests to the appellant-state for “the source or basis of the language of the disputed enactments” which included requests concerning the private conversations between legislators and conversations between legislators, and with their staff and third parties, and a request to take the oral deposition of an Ohio senator. *Id.* The state objected and moved to quash and for a protective order, and the municipalities moved to compel. *Id.* The trial court held that legislators had an “absolute privilege protecting them from having to testify about their legislative conduct.” *Id.* at 757. It quashed the oral deposition but compelled responses by the state for “information about meetings held off the public record by legislators or their staff with corporate representatives.” *Id.* It concluded that the information compelled was “not ‘integral to the legislative process’ and thus

fell outside the scope of legislative privilege.” *Id.* The Tenth District Court of Appeals dismissed the state’s appeal of the discovery order summarizing the extent of the privilege as follows:

Generally, it has been held that legislative privilege extends 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. **Legislative privilege does not extend, however, to all conduct related to the legislative process.** 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. *Dublin* at 759 (citations and quotation marks omitted) (emphasis supplied).

The *Dublin* court concluded that the lower court’s discovery order was appropriate because it was tailored to serve both integrity of the legislative process and the rights of litigants in the judicial process. *Id.* at 760. It holds that “requiring legislators to divulge the identity of corporate representatives with whom they have had private, off-the-public-record meetings does not represent an infringement upon an ‘integral part of the deliberative and communicative processes’ of the legislative branch, and is not, therefore, violative of legislative privilege.” *Id.*

There is nothing about the case *sub judice* which justifies revisiting *Dublin*. As in that case, the Trial Court here tailored its Order and reasoned that Senator Huffman may possess relevant information outside the scope of the legislative privilege not integral to the legislative process and, thus, discoverable. It noted the rule of *Dublin* is “legislative privilege is not a privilege to refuse to disclose, but rather, a privilege barring the use of statements made during the legislative process as evidence.” *Dublin* at 759 (citation omitted). Consequently, here, as in *Dublin*, the Trial Court’s Order is necessary and tailored to the circumstances and permits only those questions to be propounded which do not implicate legislative privilege. *See League of Women Voters v. Ohio Redistricting Comm.*, 168 Ohio St.3d 522, 2022-Ohio-1727, 200 N.E.3d 197, ¶ 13 (O’Connor, C.J., concurring) (commenting on Senator Huffman’s statements to the media); *League of Women*

Voters v. Ohio Redistricting Comm., 164 Ohio St.3d 1457, 2021-Ohio-3607, 174 N.E.3d 805 (compelling oral deposition of Senator Huffman and other legislators).

Senator Huffman fails to distinguish *Dublin* from the present case in any meaningful way. He has baldly asserted that *Dublin* should be revisited because it was decided two years after R.C. 2505.02(B) was adopted and was a case of first impression. Neither circumstance would be a reason to upend firmly established legal precedent. He also argued that more recent appeals have been allowed where a party merely claims an infringed privilege, but he failed to cite a single case where an Ohio appellate court decided in an appellant's favor on the basis of legislative privilege.

3. The Order Does Not Encroach on the Ohio Constitution's Separation of Powers.

The Ohio Constitution vests legislative power of the state in a General Assembly consisting of a Senate and House of Representatives. Article II, Section 1 of the Ohio Constitution. Senator Huffman contends the Order is a judicial encroachment upon legislative power. He claims it will open the floodgates to a barrage of subpoenas that will harass Ohio legislators and chill their communications to such a degree that the legislative process will be impacted. Senator Huffman did not make a constitutional separation of powers argument to the Trial Court, and he should not be permitted to assert one for the first time on appeal. *See Stores Realty Co. v. Cleveland Bd. Of Building Standards & Bldg Appeals*, 41Ohio St.2d 41, 322, N.E.2d 629 (1975).

Nevertheless, the Trial Court's Order protects the Legislature. It clearly and correctly determines the extent of their legislative privilege, limiting it to activity that is essential to the Legislature's deliberations or where permitting inquiry into the activity would threaten the integrity and independence of the Legislature. (Order, 3-4.) This follows *Dublin*. The Trial Court determined that "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." (*Id.*, 6.) It found that his personal

involvement with private schools is not implicated by legislative privilege pursuant to *Dublin*. (*Id.*) It concluded that written questions could be propounded on “matters that do not implicate legislative privilege,” and Appellees could “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.*, 10.)

Senator Huffman fails to demonstrate how the Order deviates from *Dublin* and, therefore, he cannot show that affirming it would have a chilling effect upon the deliberative process. It merely upholds the law. Furthermore, it is extremely doubtful that as a result of 20 written deposition questions being propounded upon Senator Huffman in the underlying litigation, anyone would be less likely to freely discuss or debate policy decisions with members of the Legislature out of fear of the consequences. The greater disturbance would be to vacate the Trial Court’s Order. Adoption of the Senator’s broad interpretation of the Speech or Debate Clause would upend long-standing Ohio precedent. In the nearly 24 years since *Dublin* was decided, the Ohio Legislature has not passed any law which either disturbs that ruling or codifies the Senator’s interpretation of the Speech or Debate Clause. Indeed, the text of the Speech or Debate Clause has been the same for over 170 years.

The Ohio Legislature’s actions and inactions suggest that legislative privilege is far narrower than what is urged by Senator Huffman. In 1999, the Legislature passed H.B. 283 which codified an attorney-client, testimonial privilege applicable to caucuses, which protects their members’ communications with employees of either house who serve as legal counsel for the caucuses. *See* R.C. 101.301. If the General Assembly considered the Speech or Debate Clause to embody an absolute and unqualified legislative privilege, it would not have codified an attorney-client privilege between caucus members and the legislative employees serving as their legal

counsel. If legislative privilege were absolute, those private conversations would already have been protected. Legislators and legislative privilege are also not mentioned in R.C. 2317.02, first passed in 2014, which codifies the list of persons and communications that are privileged in Ohio. Accordingly, Senator Huffman cannot claim that the Order encroaches on legislative power.

4. Ohio's Legislative Process is Not Transparent Despite Appellant's Press Statements.

Senator Huffman contends that all public information about the passage of bills is disclosed in the Committee Reports and Final Analysis published by the Ohio Legislative Service Commission and on the websites of the General Assembly, Office of Budget Management, and The Ohio Channel. He claims that courts may take judicial notice of the information available from those sources. The Trial Court received a copy of the Final Analysis of H.B. 110 and considered the question of transparency surrounding Ohio's legislative process. It resolved the transparency issue by determining he possesses relevant, discoverable information *outside* of the public record. For example, Senator Huffman was quoted by the Statehouse News Bureau as stating that public schools in Ohio are "fully funded." *See Ingles, Public school advocates worry DeWine's budget will take money away from students*, Statehouse News Bureau (Feb. 1, 2023) ("He said traditional public schools are fully funded in DeWine's budget"). If that is an accurate statement of his position, he should explain the basis for his conclusion, as it goes to the heart of the underlying litigation and cannot be answered from public sources.

B. 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.

"It is well-established that an order must be final before it can be reviewed by an appellate court. If an order is not final, then an appellate court has no jurisdiction." *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989). "Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts

of record inferior to the court of appeals within the district * * *.” Article IV, Section 3(B)(2), Ohio Constitution. *See also* R.C. 2505.03(A). Senator Huffman’s appeal was dismissed for lack of jurisdiction because the Order appealed is not a final appealable order pursuant to R.C. 2502.02.

To qualify as final and appealable, an order must satisfy one of the criteria enumerated in R.C. 2505.02(B). Relevance is not a basis for appeal under the statute. Senator Huffman relies on R.C. 2505.02(B)(4) which provides that an order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is:

(4) An order that grants or denies a provisional remedy and to which 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) is inapplicable because the Order does not grant or deny a provisional remedy or determine the action with respect to a provisional remedy, or prevent a judgment in the action in favor of the appealing party with respect to the provisional remedy. “Provisional remedy” is defined, in the pertinent part, as “a proceeding ancillary to an action, including but not limited to, a proceeding for * * * discovery of privileged matter * * *.” R.C. 2505.02(A)(3).

Courts apply a three-part test to determine whether an order is a “final order” under R.C. 2505.02(B)(4): “(1) the order must either grant or deny relief sought in a certain type of proceeding—a proceeding that the General Assembly calls a ‘provisional remedy,’ (2) the order must both determine the action with respect to the provisional remedy and prevent a judgment in favor of the appealing party with respect to the provisional remedy, and (3) the reviewing court must decide that the party appealing from the order 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.” *Kinsey v. Erie Ins. Group*, 10th Dist. Franklin No. 03AP-51, 2004-Ohio-579, ¶ 10, citing *State v. Muncie*, 91 Ohio St.3d 440, 446 (2001). The Trial Court’s Order does not satisfy the *Muncie* test. It does not compel discovery of privileged information because Appellees have not yet propounded any written deposition questions on Senator Huffman, and it does not prevent him from objecting or availing himself of any other procedure to protect communications covered by legislative privilege. *See Dispatch Printing Co. v. Recovery L.P.*, 166 Ohio App. 3d 118, 2006-Ohio-1347, 849 N.E. 297 (10th Dist.), ¶¶ 9-13 (finding no appealable order under section (B)(4) where it did not compel discovery, concluding it “does not provide for unfettered discovery coupled with the danger of being unable to unring the proverbial bell.”); *see also Briggs v. Mount Carmel Health Sys.*, 10th Dist. Franklin No. 07AP-251, 2007-Ohio-5558, ¶ 12 (collecting cases).

The Trial Court’s Order does not compel any discovery at all, let alone discovery of privileged information. The Order also lacks any language indicating the Trial Court intended it to be a final appealable order. Consequently, the proverbial bell has not been rung. Because live questions will not be asked, Senator Huffman is still afforded the protections of judicial review. *See Bolaney v. Maplevue Operating Co., LLC*, Cuyahoga No. 110373 (Apr. 14, 2021) (dismissing interlocutory appeal because discovery order did not implicate privileged information), appeal declined, 164 Ohio St.3d 1405, 2021-Ohio-2742, 172 N.E.3d 175.

V. CONCLUSION

For all of the reasons stated herein, the Court should decline jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 23, 2024, a copy of the foregoing was filed electronically. Parties may access this filing through the Court's system. Notice of this filing was served by email to the following:

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