

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' MOTION TO DISMISS

Plaintiffs-Appellees, Columbus City School District, Cleveland Heights-University Heights City School District, Richmond Heights Local School District, Lima City School District, Barberton City School District, Dayton City School District, Jeffrey Donnelly and Eve McPherson, Parents and Next Friends of Malcom McPherson and Fergus Donnelly, Minors, Matthew Hales and Catherine Crawford-Hales, Parents and Next Friends of Savanna Hales and Chase Hales, Minors, and the Ohio Coalition for Equity and Adequacy of School Funding (collectively, "Plaintiffs-Appellees"), by and through undersigned counsel, and pursuant to S.Ct.Prac.R. 4.01 and Civ.R. 12(B), respectfully move for dismissal of this appeal for the specific reason that Plaintiffs-Appellees have withdrawn their Subpoena to Appellant, Matthew Huffman ("Appellant" or "Sen. Huffman"); therefore, this appeal is moot.

A Memorandum in Support is attached hereto for the Court to consider along with the attached exhibits.

[signature on following page]

Respectfully submitted,

/s/ Mark I. Wallach

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and

/s/ Maria Fair

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Counsel for Plaintiffs-Appellees, Columbus City School District, Cleveland Heights-University Heights City School District, Richmond Heights Local School District, Lima City School District, Barberton City School District, Dayton City School District, Jeffrey Donnelly and Eve McPherson, Parents and Next Friends of Malcom McPherson and Fergus Donnelly, Minors, Matthew Hales and Catherine Crawford-Hales, Parents and Next Friends of Savanna Hales and Chase Hales, Minors, and the Ohio Coalition for Equity and Adequacy of School Funding

MEMORANDUM IN SUPPORT

Parties to an appeal in the Supreme Court of Ohio may seek an order or other relief by filing a motion which states “with particularity the grounds on which it is based.” S.Ct.Prac.R. 4.01. The Ohio Rules of Civil Procedure also supplement the Supreme Court of Ohio’s Practice Rules “unless clearly inapplicable.” S.Ct.Prac.R. 12.01(A)(2)(b). A defense of lack of jurisdiction over the subject matter, Civ.R. 12(B)(1), or failure to state a claim upon which relief can be granted, Civ.R. 12(B)(6), may be made by motion. “Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction on the subject matter, the court shall dismiss the action.” Civ.R. 12(H).

Appellees seek dismissal of this appeal pursuant to Civ.R. 12(B) because it is moot. As shown below, the underlying litigation has been pending for nearly three years but is approaching its conclusion. The discovery deadline has passed, summary judgment motions are pending, and trial is scheduled for this November—in less than three months. Plaintiffs-Appellees recently withdrew the subject Subpoena (defined below). Consequently, dismissal is appropriate because there is no controversy left to decide between the parties to this appeal.

Plaintiffs-Appellees initiated the underlying litigation by filing a Complaint in the Franklin County Court of Common Pleas on January 4, 2022. Sen. Huffman is not a party to the underlying litigation but has filed various briefs and appeals concerning a discovery subpoena (the “Subpoena”) that Plaintiffs-Appellees served on him on March 22, 2023 for his oral deposition. A true, accurate and complete copy of Plaintiffs-Appellees’ Notice of Deposition of Matthew Huffman filed in the Trial Court with the Subpoena is attached hereto as **Exhibit A**.

Sen. Huffman moved to quash the Subpoena. The Trial Court granted his motion in part and denied it in part, permitting Plaintiffs-Appellees to propound no more than twenty (20) written

deposition questions to Sen. Huffman. He appealed before any questions were propounded and, to date, Plaintiffs-Appellees have not propounded any deposition questions to him. The Tenth District Court of Appeals dismissed Sen. Huffman's appeal from that order as not a final, appealable order, and this appeal ensued.

On July 31, 2023, the Trial Court entered an order amending the case schedule and setting the trial date for November 4, 2024. A true, accurate and complete copy of the Amended Case Scheduling Order is attached hereto as **Exhibit B**.

On November 15, 2023, the Trial Court entered an order extending the fact discovery deadline to March 22, 2024. A true, accurate and complete copy of the Order granting an extension of the discovery deadline is attached hereto as **Exhibit C**. The now expired discovery deadline and current trial date remain intact.

On August 15, 2024, Plaintiffs-Appellees gave notice that their Subpoena to Sen. Huffman has been withdrawn and filed a Notice of Withdrawal in the Trial Court.¹ A true, accurate and complete copy of the Notice of Withdrawal is attached hereto as **Exhibit D**.

Generally, litigants retain control over decisions concerning whether or not to seek discovery and may withdraw or modify a subpoena at any time prior to the deposition. *See* Civ.R. 45(A)(2)-(3) and (B). Indeed, nowhere in the Civil Rules is a party prohibited from withdrawing a subpoena; rather, the Rules restrain the subpoenaed party's failure to comply with the subpoena. *See* Civ.R. 37(D); Civ.R. 45(E). It is, therefore, appropriate for an appellee to seek dismissal when they are the plaintiffs in the underlying litigation and the subject matter of the appeal is not an affirmative claim but rather a moot discovery matter initiated by them in the underlying litigation.

¹ Plaintiffs-Appellees have no intention of issuing another subpoena to Sen. Huffman or otherwise calling him as a witness at trial.

Here, Plaintiffs-Appellees recently withdrew their Subpoena to Sen. Huffman, so there is no longer a controversy between them. “Courts do not review cases that no longer present live controversies.” *M.R. v. Niesen*, 167 Ohio St.3d 404, 2022-Ohio-1130, 193 N.E.3d 548, ¶ 10 (citation omitted) (concluding that the exceptions to the mootness doctrine did not save the appeal of a speech-restraining TRO from dismissal because the TRO expired and it was unlikely that the issue would repeat itself between the “same” parties). In the case *sub judice*, the exceptions to the mootness doctrine do not apply. It is beyond unlikely that the issues argued by Appellant will be repeated because Plaintiffs-Appellees withdrew the Subpoena after the Trial Court’s fact-discovery deadline passed and the case is near its conclusion.

Based on the foregoing, Plaintiffs-Appellees respectfully request this Honorable Court to dismiss this appeal as moot.

Respectfully submitted,

/s/ Mark I. Wallach

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CERTIFICATE OF SERVICE

I certify that on August 19, 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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Counsel for Appellant

/s/ Mark I. Wallach
Mark I. Wallach (0010948)

EXHIBIT A

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DISTRICT,
ET AL.,

Plaintiffs,

vs.

STATE OF OHIO, ET AL.,

Defendants.

CASE NO. 22CV000067

JUDGE JAIZA N. PAGE

**PLAINTIFFS' NOTICE OF
DEPOSITION OF MATTHEW
HUFFMAN**

Plaintiffs give notice that they will take the deposition of Matthew Huffman upon oral examination.

Said deposition shall take place at 41 South High Street, Huntington Center, 21st Floor, Columbus, Ohio 43215 beginning at 11:00 a.m. on Wednesday, April 26, 2023, shall be recorded by video and stenographic means before a notary public or some other officer authorized by law to administer oaths, and shall continue from day to day until complete.

Plaintiffs reserve the right to amend and/or supplement this Notice.

Respectfully submitted,

/s/ Mark I. Wallach

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Attorneys for Plaintiffs

PROOF OF SERVICE

I hereby certify that on this 30th day of March, 2023, a copy of the foregoing was filed electronically.

Notice of this filing will be sent to all parties, by operation of the Court's electronic filing system and/or electronic mail, as indicated below:

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and

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Attorneys for Defendants

/s/ Mark I. Wallach

One of the Attorneys for Plaintiffs

Subpoena - Civil

COLUMBUS CITY SCHOOL DISTRICT, ET AL.,

-VS/AND

Plaintiff/Petitioner

Case No. 2022-CV-000067

(Example: 11CV0142345)

STATE OF OHIO, ET AL.

Defendant/Petitioner

☐ SCPO

The State of Ohio, Franklin County, ss

To: ☐ Attorney ☒ Process Server Christopher Wolfe ☐ Sheriff of _____ County, Ohio Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, To wit:

☒ Person ☐ Business

Huffman

1 Capitol Square, Second Floor

Last Name / Business Name

Street Address

Matthew

Address Line 2

First Name

Address Line 3

Columbus

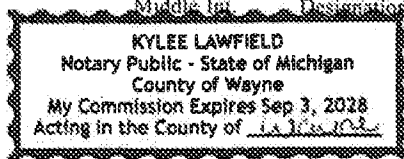
OH

43215

City

State

Zip Code



Middle Init. Designation

KYLEE LAWFIELD

Notary Public - State of Michigan
County of Wayne

My Commission Expires Sep 3, 2028
Acting in the County of Franklin

To be and appear before the Court of Common Pleas of the County of Franklin, General Division, 345 South High Street, Columbus, Ohio 43215, OR at 41 South High Street Huntington Center, 21st Floor, Columbus, OH 43215 on the 26 day of April 2023, at 11 o'clock A.m. of said day in courtroom # N/A to:

- ☒ ATTEND AND GIVE TESTIMONY AT A TRIAL, HEARING OR DEPOSITION ON THE DATE, TIME AND AT THE PLACE SPECIFIED ABOVE.
- ☐ ATTEND AND PRODUCE DOCUMENTS, ELECTRONICALLY STORED INFORMATION OR TANGIBLE THINGS AT A TRIAL, HEARING OR DEPOSITION ON THE DATE, TIME AND AT THE PLACE SPECIFIED ABOVE.
- ☐ PRODUCE AND PERMIT INSPECTION AND COPYING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED ABOVE, OF ANY DESIGNATED DOCUMENTS OR ELECTRONICALLY STORED INFORMATION THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.
- ☐ PRODUCE AND PERMIT INSPECTION AND COPYING, TESTING OR SAMPLING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED ABOVE, OF ANY TANGIBLE THINGS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.
- ☐ PERMIT ENTRY UPON THE FOLLOWING DESCRIBED LAND OR OTHER PROPERTY, FOR THE PURPOSES DESCRIBED IN CIV. R. 34(A)(3), ON THE DATE AND AT THE TIME SPECIFIED ABOVE.

DESCRIPTION OF LAND OR OTHER PREMISES: Roetzel & Andress Columbus Office

DESCRIPTION OF ITEMS TO BE PRODUCED:

Mark I. Wallach

1375 E 9th St, Cleveland, OH 44114/216. 377.2855

10948

Attorney

Address/Phone # (Required)

Supreme Court #

Choose One:

☒ Plaintiff

☐ Defendant

☐ Other (Specify):

WITNESS my hand and seal of said court Maryellen O'Shaughnessy, Clerk of Court of Common Pleas

Maryellen O'Shaughnessy

SHERIFF FEES

RETURN OF SERVICE

Service _____

I received this subpoena on 3/16/23

Mileage _____

by in-person visit at the Ohio Statehouse

Copy _____

I was unable to complete service for the following reason:

Total _____

Signature of Serving Party

Check one: ☐ Deputy Sheriff ☐ Attorney ☒ Process Server ☐ Deputy Clerk

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.
2. (a) A person commanded to produce under divisions (a)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.
(b) Subject to division (d)(2) of this rule, a person commanded to produce under divisions (a)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.
3. On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
 - (a) Fails to allow reasonable time to comply;
 - (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
 - (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
 - (d) Subjects a person to undue burden.
4. Before filing a motion pursuant to division (c)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (c)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.
5. If a motion is made under division (c)(3)(c) or (c)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

CIVIL RULE 45 (D) DUTIES IN RESPONDING TO SUBPOENA.

1. A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
2. If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
3. A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in civ. R. 26(b)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.
4. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
5. If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT B

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DISTRICT,) CASE NO. 22 CV 000067
et al.,)
) JUDGE JAIZA N. PAGE
Plaintiffs,)
)
vs.) **ORDER GRANTING EXTENSION OF**
) **AMENDED CASE SCHEDULE**
STATE OF OHIO, *et al.*,)
)
Defendants.)
)

Pursuant to Civ.R. 6(B), Plaintiffs' Motion for Extension is granted. The Court adopts the
the proposed case schedule set forth below:

Fact Discovery Deadline	November 30, 2023
Expert Reports-Party with Burden	January 5, 2024
Expert Reports-Party without Burden	February 23, 2024
Expert Discovery Deadline	March 22, 2024
Dispositive Motion Deadline	June 7, 2024
Final Pretrial	October 2, 2024 at 1:00 p.m.
Trial	November 4, 2024 at 9:00 a.m.

IT IS SO ORDERED.

JUDGE JAIZA N. PAGE

Approved and submitted by:

/s/ Mark I. Wallach

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Lawrence R. Acton (0090019)
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and

/s/ Maria Fair

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Counsel for Plaintiffs Columbus City School District, Cleveland Heights-University Heights City School District, Richmond Heights Local School District, Lima City School District, Barberton City School District, Jeffrey Donnelly and Eve McPherson, Parents and Next Friends of Malcom McPherson and Fergus Donnelly, Minors, and the Ohio Coalition for Equity and Adequacy of School Funding

CERTIFICATE OF SERVICE

I certify that on June 27, 2023, a copy of the foregoing was filed electronically. Parties may access this filing through the Court's system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

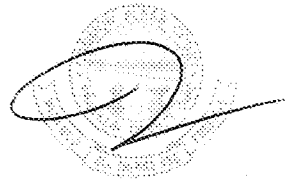
/s/ Mark I. Wallach

Mark I. Wallach (0010948)

Franklin County Court of Common Pleas

Date: 07-31-2023
Case Title: COLUMBUS CITY SCHOOL DISTRICT ET AL -VS- STATE OF OHIO ET AL
Case Number: 22CV000067
Type: AMENDED CASE SCHEDULING 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: 22CV0000672023-06-2799760000
Document Title: 06-27-2023-MOTION TO EXTEND TIME -
PLAINTIFF: COLUMBUS CITY SCHOOL DISTRICT
Disposition: MOTION GRANTED

EXHIBIT C

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL
DISTRICT, *et al.*,

Plaintiffs,

v.

STATE OF OHIO, *et al.*,

Defendants.

:
:
:
:
:
:
:
:
:
:
:

Case No. 22CV000067

JUDGE JAIZA N. PAGE

ORDER

Pursuant to Civ. R. 6(B), the State Defendants' Motion for changing the fact discovery deadline to March 22, 2024 is GRANTED. All other current deadlines remain the same.

IT IS SO ORDERED.

JUDGE JAIZA N. PAGE

Approved and submitted by:

DAVE YOST (0056290)
Ohio Attorney General

/s/ Jessica I. Oldham

JESSICA I. OLDHAM (0081381)

Trial Attorney

DANIEL R. FORSYTHE (0081391)

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Counsel for State Defendants

Franklin County Court of Common Pleas

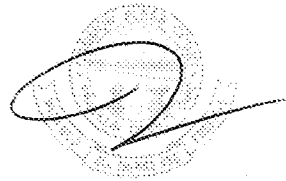
Date: 11-15-2023

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: 22CV0000672023-11-1499980000
Document Title: 11-14-2023-MOTION TO EXTEND TIME -
DEFENDANT: STATE OF OHIO
Disposition: MOTION GRANTED

EXHIBIT D

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COLUMBUS CITY SCHOOL DISTRICT,	)	CASE NO. 22 CV 000067
<i>et al.</i> ,	)	
	)	JUDGE JAIZA N. PAGE
Plaintiffs,	)	
	)	
vs.	)	<u>NOTICE OF WITHDRAWAL OF</u>
	)	<u>SUBPOENA TO MATTHEW</u>
STATE OF OHIO, <i>et al.</i> ,	)	<u>HUFFMAN</u>
	)	
Defendants.	)	
	)	

Plaintiffs give notice that the subpoena served on Matthew Huffman on March 22, 2023 is withdrawn and his deposition upon written questions is cancelled.

Respectfully submitted,

/s/ Mark I. Wallach

Mark I. Wallach (0010948)

Lawrence R. Acton (0090019)

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Counsel for Plaintiffs, Columbus City School District, Cleveland Heights-University Heights City School District, Richmond Heights Local School District, Lima City School District, Barberton City School District, Dayton City School District, Jeffrey Donnelly and Eve McPherson, Parents and Next Friends of Malcom McPherson and Fergus Donnelly, Minors, Matthew Hales and Catherine Crawford-Hales, Parents and Next Friends of Savanna Hales and Chase Hales, Minors, and the Ohio Coalition for Equity and Adequacy of School Funding

CERTIFICATE OF SERVICE

I certify that on August 15, 2024, a copy of the foregoing was filed electronically. Parties may access this filing through the Court's system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. A copy was also sent by regular U.S. mail and by email as follows:

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/s/ Mark I. Wallach

Mark I. Wallach (0010948)