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Ohio Senate President seeks to avoid questioning in private school voucher lawsuit

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The president of the Ohio Senate further explained in newly filed court documents why he believes he shouldn't have to answer questions related to a court challenge of the state's private school voucher program, as program challengers asked an appeals court to dismiss his arguments.

Senate President Matt Huffman is appealing a decision by a Franklin County judge that compelled him to submit written answers in a lawsuit challenging the constitutionality of the state's private school voucher program, which currently allows virtually any student in the state to move from a public school in their district to a private school with state-sponsored subsidies.

In a brief filed with the 10th District Court of Appeals late last week, Huffman expanded upon his argument that his legislative position protects him from answers deposition questions about "information protected by the legislative privilege of the speech and debate clause" of the Ohio Constitution.

"Specifically, 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 judicially-compelled questioning for their legislative acts," Mark Wagoner, an attorney from the **Shumaker, Loop & Kendrick** law firm, wrote on behalf of Huffman in recent court documents.

The brief argued a lower court order that kept Huffman from having to submit to an in-person deposition but required a written one instead violated "testimonial privilege" for the legislative leader, and that separation of powers between the three branches of government "prohibits judicially-compelled questioning of state legislators about their legislative activities."

In the long-term, Huffman said the purpose of the constitutional clause he says protects him in this case sits on tenuous ground if a deposition is allowed.

"The ability of agitated parties and overzealous civil litigators to harass and berate any legislator under color of a court order defeats the very purpose of the Speech and Debate Clause," court documents stated.

Of particular affront to Huffman's constitutional rights as a legislator, according to his lawyers, are questions that "request the identities of entities and individuals, and other information, related to off the record communications about the passing of (House Bill) 110 between those entities and individuals, and Huffman."

"By its very terms, (the Speech and Debate Clause) creates an unqualified privilege, prohibiting legislators from being questioned about their legislative conduct," attorneys wrote.

House Bill 110 held the state budget for the 2022-2023 fiscal year, and expanded the maximum amount for the scholarship and eliminated a 60,000 cap on private school scholarships. The scholarship amount was raised from \$4,650 to \$5,500 for K-8 students and from \$6,000 to \$7,500 for high-schoolers.

The changes also phased out the qualification that students "generally must be enrolled in either a school operated by their resident districts or a community school" to be eligible for a scholarship and expanded the scholarship to include "qualifying high school students not enrolled in public school, siblings, students in foster or kinship care or other placements, and students who received but no longer qualify for the Autism or Jon Peterson scholarship," according to the HB 110 analysis by the Legislative Service Commission.

The vouchers would be further expanded in the next state budget, with a change boosting eligibility to households earning up to 450% of the federal poverty line, or \$135,000 for a family of four, making eligibility nearly universal for all Ohioans.

The previous and the latest budget involved much negotiation to get passage. Huffman said in the brief to the appeals court that 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."

"All of these conversations occur as part of the legislative process and should be protected," attorneys for Huffman wrote. "Yet they could fall within the ambiguous scope of 'off the record' communications under the trial court's order."

Further, Huffman says he is not listed as a party in the lawsuit, and the court challenge to Ohio's voucher program doesn't "assert any alleged infirmities in the legislative process."

"Respectfully, either H.B. 110 facilitates an Ohio educational system that is 'thorough and efficient' and provides 'equal protection,' or it does not," Huffman's attorneys argued. "Nothing that Appellees may seek from President Huffman would alter that analysis."

#### **EdChoice challengers ask for dismissal**

The school districts who are asking a Franklin County court to rule the private school voucher program unconstitutionally unequal wants the appeals court to brush off Huffman's attempts to avoid questioning.

"Why does Senator Huffman assume that the Speech or Debate Clause of the Ohio Constitution means anything other than what it says," they posed in a separate brief to the court.

The districts argue that the constitutional clause that protects legislators "merely protects them from arrest during the general assembly's sessions and prevents them from being questioned about speeches or debates in the Legislature."

"This constitutional provision does not purport to insulate members of the Ohio Legislature from ever being questioned in court or a deposition about legislation adopted by the Legislature, or about their personal involvement in the topic of that legislation," attorneys Mark Wallach and Maria Fair wrote.

The brief also points to Huffman's various comments and answers to news media, along with legislative videos discussing pending matters, as an argument that he does discuss legislation "which he has prevailed on the legislature to adopt."

"It is, apparently, only when Senator Huffman is served with a lawful subpoena to testify in a matter of great importance to the state of Ohio that he becomes allergic to being questioned," the lawyers for the school districts stated.

The appeals court has not set a schedule for the case, but it has been assigned to an "accelerated" calendar, according to the court record as the Franklin County Common Pleas Court awaits a decision.

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