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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and INDIGENOUS IDAHO ALLIANCE, *Plaintiffs*, v. RAÚL LABRADOR, in his capacity as the Attorney General for the State of Idaho, *Defendant*.	)	Case No.: 1:23-CV-00323-DKG **PLAINTIFFS' OPPOSITION TO NON-PARTY IDAHO STATE REPRESENTATIVE BARBARA EHARDT'S MOTION TO QUASH THIRD PARTY SUBPOENA DUCES TECUM, FOR PROTECTIVE ORDER, AND FOR EXPENSES**

INTRODUCTION

Plaintiffs Lourdes Matsumoto, Northwest Abortion Access Fund ("NWAAF"), and Indigenous Idaho Alliance ("IIA") (collectively Plaintiffs) seek narrowly tailored information from Barbara Ehardt, Idaho State Representative for District 33A ("Movant") who co-sponsored Idaho House Bill 242 ("H.B. 242") and Idaho House Bill 98 ("H.B. 98"), now codified as Idaho Code § 18-623. The requested information will help demonstrate that Idaho Code § 18-623 is unconstitutional, particularly as to Plaintiffs' interstate travel claim. The information sought is not subject to legislative privilege or legislative immunity. The information sought pertains exclusively to factual, non-legislative matters, including information and communications between Ms. Ehardt and various third-party lobbyists regarding Idaho Code § 18-623. As the Defendant in this case knows, Plaintiffs have sought such information without success from other parties to the communications Ms. Ehardt's assertion of state legislative privilege is therefore without merit. Further, the information sought is not overbroad, unduly burdensome, or expensive. Plaintiffs respectfully request that this Court deny Movant's motion to quash.

BACKGROUND

Idaho Code § 18-623 (the "Abortion Travel Ban"), was signed into law on April 5, 2023, by Governor Brad Little, and went into effect on May 5, 2023. It provides:

> An adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion, as described in section 18-604, Idaho Code, or obtains an abortion-inducing drug for the pregnant minor to use for an abortion by recruiting, harboring, or transporting the pregnant minor within this state commits the crime of abortion trafficking.

Idaho Code § 18-623(1). The statute also says that it is "an affirmative defense to a prosecution . . . that a parent or guardian of the pregnant minor consented to trafficking of the minor." *Id.* §

18-623(2). "Any person who commits the crime of abortion trafficking . . . shall be punished by imprisonment in the state prison for no less than two (2) years and no more than five (5) years." *Id.* § 18-623(5).

Plaintiffs sued the Idaho Attorney General, Raúl Labrador, alleging that the Abortion Travel Ban violated their First Amendment, due process, and interstate and intrastate travel rights. Complaint [Dkt. 1]. Plaintiffs moved for a preliminary injunction on the First Amendment and due process claims, which this Court granted after finding a likelihood of success on the merits. *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032, 1064, 1066 (D. Idaho 2023), *aff'd in part, rev'd in part and remanded*, 122 F.4th 787 (9th Cir. 2024). The Court largely denied Defendant's motion to dismiss, allowing the First Amendment, due process, and interstate travel claims to proceed. *Id*. at 1067, 1069. The Ninth Circuit affirmed the preliminary injunction as to the statute's "recruiting" provision of the Abortion Travel Ban. *Matsumoto*, 122 F.4th at 816.

The parties have proceeded with discovery. On November 30, 2025, Plaintiffs served Movant with a subpoena duces tecum seeking documents and testimony regarding communications she had and documents she received related to the drafting and passage of the Abortion Travel Ban, initially H.B 242 and H.B. 98. It requests the following documents:

1. All documents sent to and received from any lawmaker concerning potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98.
2. All documents relating to potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98, including any meeting notes, memoranda, or minutes concerning H.B. 242 and H.B. 98.
3. All documents sent to and received from Right to Life of Idaho concerning potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98.
4. All documents sent to and received from National Right to Life concerning potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98.

5. All documents sent to and received from Idaho Chooses Life, or its agents, employees, or attorneys, or David Ripley concerning potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98.
6. All documents sent to and received from David Ripley concerning potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98.
7. All documents sent to and received from the Alliance Defending Freedom, or its agents, employees, or attorneys, concerning potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98.
8. All documents sent to and received from the Bopp Law Firm; or its agents, employees, or attorneys; James Bopp, Jr.; Richard E. Coleson; Jeffrey P. Gallant; or Joseph D. Maughon concerning potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98.
9. All documents sent to and received from Cooper & Kirk, PLLC; or its agents, employees, or attorneys including but not limited to Megan M. Wold, concerning potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98.
10. All documents including drafts, relating to Abortion Trafficking Legislation in Idaho or in any other jurisdiction.
11. All materials submitted to, received from, or exchanged with any agent, employee, or attorney of the Idaho Attorney General's Office concerning potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98.
12. All materials submitted to, received from, or exchanged with any other Idaho state agency or government employee concerning potential or conceptual state-level legislation relating to interstate "abortion trafficking" and H.B. 242 and H.B. 98.

Thus, the Plaintiffs' requests plainly seek third-party information, not Ms. Ehardt's internal or legislative communications. This Court should deny Ms. Ehardt's motion to quash in all respects.

LEGAL STANDARD

Federal Rule of Civil Procedure 45 authorizes a party to seek potentially relevant information through subpoena to a third-party who possesses such information. Fed. R. Civ. P. 45; *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 409 (C.D. Cal. 2014). "The same broad scope of discovery set out in Rule 26 applies to the discovery that may be sought pursuant to Rule 45." *Id.* (citation omitted). "Under the general relevance requirements set forth in Rule 26(b), the subpoena may command the production of documents

that are 'nonprivileged' and are 'relevant to any party's claim or defense.'" *Dale Evans Parkway 2012, LLC v. Nat'l Fire & Marine Ins. Co.*, No. EDCV15979JGBSPX, 2016 WL 7486606, at *3 (C.D. Cal. Oct. 27, 2016) (citation omitted). "The party seeking to quash a subpoena has the 'burden of persuasion.'" *Soto v. Castlerock Farming & Transp., Inc.*, 282 F.R.D. 492, 504 (E.D. Cal. 2012) (citation omitted). Rules 45(d)(3)(A)(iii) and (iv) authorize a Court to quash a subpoena only where it "requires disclosure of privileged or other protected matter, if no exception or waiver applies" or where it "subjects a person to undue burden."

ARGUMENT

I. Legislative Privilege and Legislative Immunity Do Not Apply to the Requested Information.

The subpoena served on Ms. Ehardt is narrowly tailored and seeks only external communications with third parties that are directly relevant to Plaintiffs' claims. Plaintiffs have been unable to obtain this information from any other source despite diligent efforts, and the subpoena does not call for an inquiry into Ms. Ehardt's internal deliberative process or motivations as a legislator. Under these circumstances, the legislative privilege and legislative immunity do not apply.

Legislative immunity protects lawmakers from suit or liability for their legislative acts. *Kaahumanu v. County of Maui*, 315 F.3d 1215, 1220-22 (9th Cir. 2003). It is not at issue in this motion to quash because Ms. Ehardt is not being subjected to suit or liability. Legislative privilege is a qualified protection that shields legislative communications or materials from disclosure only where legislators are "acting in the sphere of legitimate legislative activity." *See,*

e.g., Tenney v. Brandhove, 341 U.S. 367, 376 (1951); *Puente Ariz. v. Arpaio*, 314 F.R.D. 664, 671 (D. Ariz. 2016) (recognizing state-legislative privilege in discovery).

State legislative privilege is not absolute. *United States v. Gillock,* 445 U.S. 360, 374 (1980). In *Gillock*, the Court rejected a state senator's claim of legislative privilege, ruling that important federal interests override a state legislator's common law privilege. *Id.* at 373. The Court further explained that state legislative privilege is limited because it is grounded only in federal common law, not the U.S. Constitution's Speech or Debate Clause, which protects only federal legislators. *Id.* at 374. Therefore, in federal cases, the state legislative privilege is narrower and weaker than its federal counterpart because it lacks the constitutional foundation and absolute protections enjoyed by Members of Congress. *See id.* a 366-67 (noting that the "speech and debate" protection for federal legislators derives from explicitly constitutional text and does not extend to state officials); *see also Tenney*, 341 U.S. at 367 (recognizing that state legislative immunity and privilege rest on common-law principles rather than constitutional mandate).

State legislative privilege is also narrow under Idaho law. The Idaho Constitution provides only a temporal protection and protection for argument, debate, and activity in the Legislature. Idaho Const. art. III, § 7 ("Senators and Representatives, in all cases, . . . shall not be liable to any civil process during the session of the legislature, nor during the ten days next before the commencement thereof; nor shall a member, for words uttered in debate in either house, be questioned in any other place.").

II. The Proper Standard is the *Bethune-Hill* Five-Factor Balancing Test, Not the Extraordinary Circumstances Standard Movant Relies Upon.

Movant's blanket assertion of legislative privilege is improper and unsupported.[1] As courts have recognized, "the state legislative privilege is a qualified one…when a plaintiff proceeds against the State and seeks evidence to vindicate important public rights guaranteed by federal law." *Puente Ariz.*, 314 F.R.D. at 671 (alteration in original) (quoting *Bethune–Hill v. Va. State Bd. of Elections*, 114 F.Supp.3d 323, 336 (E.D. Va. 2015)). Movant wrongly relies on *Lee v. City of Los Angeles*, 908 F.3d 1175 (9th Cir. 2018) for her assertion that Plaintiffs must show "extraordinary circumstances" to justify any intrusion into the legislative privilege. [Dkt. 98, pg. 4]. The extraordinary circumstances test is inapplicable here because it arises in a different context and is not used to assess state legislative privilege in federal cases involving the vindication of important public rights. Instead, the proper framework is the *Bethune-Hill* five-factor balancing test, which specifically addresses when state legislative privilege must yield, and Plaintiffs meet each of its factors.

In *Lee*, the Ninth Circuit considered whether legislative privilege protected Los Angeles City Council legislators from being deposed for a case asserting a federal equal protection challenge to a 2012 city redistricting ordinance. There, the plaintiffs sought testimony regarding the legislators' roles, motivations, and deliberations as to specific racial motivation and intent regarding the ordinance. The Ninth Circuit held that the plaintiffs in *Lee* failed to present a sufficient factual record to overcome legislative privilege because the plaintiffs did not identify sufficient evidence that racial considerations *predominated* the city's redistricting process

[1] Movant also alleges that the subpoena was deficient, but Movant has had plenty of notice. Plaintiffs informed the Attorney General's office that they would be seeking to depose Representative Ehardt, and that office has an electronic copy of the subpoena, as noted in Exhibit 2 to the Motion to Quash. Dkt. 98-3. Based on the December 4, 2025 meet and confer with Plaintiffs' counsel and counsel for the Attorney General's office, Representative Ehardt has been well aware that the subpoena commands her for deposition. The cover letter to the subpoena served on Representative Ehardt also mentions a deposition. If the court finds that the subpoena is nevertheless deficient, Plaintiffs are agreeable to serve a new subpoena on Movant.

overall. Because of this failure, the court concluded that the factual record fell short of justifying the "substantial intrusion" into the legislative process that the depositions would entail. *See Lee*, 908 F.3d at 1187 (noting plaintiffs' failure to make the showing necessary to overcome legislative privilege).

At best, *Lee* stands for the narrow proposition that the plaintiffs in that specific case did not sufficiently overcome legislative privilege to depose local officials regarding their specific racial motivations. Subsequent cases have clarified that *Lee* does not create a categorical bar to discovery. In *Whitford v. Gill,* 331 F.R.D. 375 (2019), vacated on other grounds by *Whitford v. Vos,* 2019 U.S.App. LEXIS 28869 (7th Cir. July 11, 2019), plaintiffs sought to depose the state assembly speaker. While acknowledging the imposition on the speaker, the court also noted the importance of the issues at stake and the fact that the speaker was a key figure in the events at issue. In distinguishing *Lee*, the *Whitford* court noted that "the court in *Lee* did not hold that a gerrymandering claim can never overcome legislative privilege, only that "the factual record in [that] case [fell] short of justifying the substantial intrusion into the legislative process."" *Whitford*, 331 F.R.D. at 378 (alteration in original; citation omitted).Similarly, in *Gypsum Resources, LLC v. Clark County,* No. 2:19-cv-00850, 2022 WL 1695125 at *7 n.13 (D. Nev. Nov. 15, 2022), the court recognized that "the holding in *Lee* does not foreclose the Court's authority to require such testimony."

Therefore, the qualified application of legislative privilege should be assessed not through the "extraordinary circumstances" test as Movant claims, but through a five-factor balancing test identified in *Bethune-Hill*. In that case, the court identified a method for determining whether legislative privilege must yield by weighing (i) the relevance of the

evidence sought to be protected; (ii) the availability of other evidence; (iii) the seriousness of the litigation and the issues involved; (iv) the role of government in the litigation; and (v) the purposes of the privilege. *Bethune–Hill v. Va. State Bd. of Elections*, 114 F.Supp.3d 323, 336 (E.D.Va.2015). Although the Ninth Circuit has not explicitly adopted the *Bethune-Hill* five-factor balancing test, district courts in the Ninth Circuit, including those cited above, have consistently applied it to assess whether state legislative privilege must yield in federal cases. *Gypsum Resources, LLC,* 2022 WL 1695125 at *7 n.13. These cases demonstrate that trial courts routinely balance the qualified nature of legislative privilege against the need for evidence to vindicate important federal rights, such as the one present in this case. The five factors weigh in favor of disclosure of the requested information here.

III. The *Bethune-Hill* Five-Factor Test Weighs in Favor of Disclosure.

To the extent Representative Ehardt seeks to shield her communications with third-parties on non-legislative matters, those materials fall outside the scope of legislative privilege and do not weigh in favor of her claim under the *Bethune-Hill* five-factor balancing test as explained below. All five factors weigh in favor of disclosure of the information requested in this case.

A. The Information Sought is Relevant.

The information Plaintiffs seek falls well within the broad scope of discovery permitted under the Federal Rules, which allows parties to obtain any nonprivileged material relevant to their claims or defenses. A relevant matter is "any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case." *Soto v. City of Concord*, 162 F.R.D. 603, 610 (N.D. Cal. 1995) (quoting *Oppenheimer Fund, Inc. v. Sanders*,

437 U.S. 340, 351 (1978)). "[T]he question of relevancy should be construed 'liberally and with common sense' and discovery should be allowed unless the information sought has no conceivable bearing on the case." *Id.*, at 610 (citation omitted). "District courts have broad discretion to determine relevancy." *Cleaver v. Transnation Title & Escrow, Inc.*, No. 1:21-CV-00031-BLW, 2022 WL 623251, at *2 (D. Idaho Mar. 2, 2022) (citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)).

The limited information Plaintiffs seek here is plainly relevant, particularly to their right-to-travel claim. Plaintiffs intend to show that the Abortion Travel Ban's "primary objective" was to impede travel, specifically the travel of trusted adults who assist young people in reaching lawful abortion care in another state. The information requested from Ms. Ehardt will shed light on what information legislators considered when deciding to enact the law. In the equal protection context, "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Thus, "[t]he legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decision making body, minutes of its meetings, or reports." Id. at 268. The inquiry in the right to travel context is similar—Movant may have circumstantial and direct evidence of the primary purpose of the law being to restrict travel.

B. The Information Plaintiffs Seek is Not Available by Other Means.

Plaintiffs have diligently sought to obtain the information requested from Ms. Ehardt through other available sources, including third parties and publicly available records. Plaintiffs have issued subpoenas to Right to Life Idaho and the National Right to Life Committee, and

those non-parties have filed motions to quash. The motions to quash are still pending, and the entities may not possess all the communications or materials uniquely held by Ms. Ehardt. More specifically, Ms. Ehardt may have personal knowledge and direct access to communications with third parties that are relevant to Plaintiffs' claims and that are not otherwise documented or preserved elsewhere. The subpoena here also requests some information that would not be in the possession of the Right to Life of Idaho and the National Right Life. Accordingly, the subpoena directed at Representative Ehardt targets the information that is unavailable form other sources, satisfying the second *Bethune-Hill* factor regarding other means of discovery.

Movant relies on cases where the plaintiffs already had extensive discovery from other sources or failed to exhaust other proper traditional methods of discovery to gather the information sought without getting information from a source that might implicate legislative privilege. First, in *Puente Arizona v. Arapio* [Dkt. 98 p.4], the plaintiffs subpoenaed the Arizona legislature and a former state senator for documents and communications relating to two challenged statutes, and the legislators invoked legislative privilege. *314 F.R.D. at 666*. Focusing on the second factor of the *Bethune-Hill* balancing test, the court upheld the legislators' claims of legislative privilege because the plaintiffs had extensive traditional sources of legislative history related to the challenged statutes and this material was sufficient to support finding about legislative intent. The State in that case also represented that it had produced "literally thousands of emails" in in response to plaintiffs' subpoenas and public records requests. *Id.* at 672-73. Based on this substantial availability of evidence from other sources, the court found that the second factor of the *Bethune-Hill* test weighed against plaintiffs in that case. *Id* at 672.

Unlike the plaintiffs in *Puente,* Plaintiffs here have been unable to obtain legislator-third-party communications through any other method and do not have ample discovery available to them due to Defendant producing minimal material in response to Plaintiffs' extensive and proper discovery requests. Moreover, unlike the plaintiffs in *Lee* who went directly to legislators before attempting to obtain relevant information from third-party sources, Plaintiffs here first requested some of the information sought via subpoenas to Right to Life Idaho and the National Right to Life Committee, but those entities have objected, and those disputes are currently being litigated.

The discovery sought is proportional to the needs of the case because it is narrowly tailored to communications concerning a single piece of legislation, limited by both subject matter and timeframe. *See* Fed. R. Civ. P. 26(b)(1). For example, as early as 2022, the National Right to Life Committee publicly proposed draft legislation nearly identical to Idaho's Abortion Travel Ban, making Plaintiffs' request for communications dating back to January 1, 2021, reasonable and not overbroad as other entities may have also been discussing such legislation then. Representative Ehardt is likely to possess direct and circumstantial evidence relevant to Plaintiffs' right-to-travel claim. This may be reflected in her communications, including her decision to cede her time during a House State Affairs Committee meeting to Idaho Right to Life's lobbyist, Megan Wold. Press Release, National Right to Life (June 15, 2022), National Right to Life Committee Proposes Legislation to Protect the Unborn Post-Roe, https://nrlc.org/communications/national-right-to-life-committee-proposes-legislation-to-protect-the-unborn-post-roe/; *Matsumoto*, 122 F.4th at 795.

Because Plaintiffs have so far been unable to secure the information sought through other means, some of the information sought will only be in Representative Ehardt's possession, and it is critical to developing Plaintiffs' interstate travel claim, the second factor of the *Bethune-Hill* test weighs in favor of disclosure of the information sought.

C. The Litigation and the Issues Involved are Serious.

Plaintiffs' Complaint alleges serious issues of constitutional law, and the Supreme Court has held that the state legislative privilege must give way when important federal constitutional interests are at stake. *Gillock*, 445 U.S. at 361. This limitation strikes the necessary balance to protect legislators from unnecessary intrusion into their core duties, but also ensures that those challenging unconstitutional laws can obtain the evidence they need to assert and defend their constitutional rights.

It is beyond dispute that Plaintiffs' allegations are serious. Here, even Defendant agrees that the issues in this case are important. The Court has a vital stake in safeguarding individual constitutional rights, and as such, that stake supersedes the comity-based rationale for legislative privilege. *See Gillock*, 445 U.S. at 361. As such, the seriousness of the litigation and the issues involved in this case weigh in favor of disclosure.

D. The Role of the Government in the Litigation

The fourth factor evaluates the role of the government in the litigation. Although every constitutional challenge involves some form of state participation, this factor asks the court to look past the existence of "state action" and determine instead whether "the legislature – rather than the legislators – are the target of the remedy and legislative immunity is not under threat." *Bethune-Hill*, 114 F. Supp. 3d at 341. In *Commitee for a Fair & Balanced Map v. Illinois State*

Board of Elections, No. 1:11-cv-5065, 2011 U.S. Dist. LEXIS 117656 (N.D. Ill. Oct 12, 2011), the individual legislators were not targeted by a private plaintiff seeking damages, and the same is true in the present case. *Id.* at 22.

Here, the Idaho Attorney General is the sole defendant in this case. Representative Ehardt is a non-party state lawmaker who has evidence related to third-party information she received during the introduction of H.B. 242 and H.B. 98. In *Committee for a Fair & Balanced Map*, the court held that common law does not provide "an absolute immunity for non-party state lawmakers that protects them from producing documents in federal redistricting cases. Instead, non-parties' privilege claims are best analyzed under the doctrine of legislative privilege." *Id.* at *24.

E. The Purpose of the State Legislative Privilege

The fifth factor considers the purpose of the privilege. The privilege guards legislators from the burdens of compulsory process and protects their independence. The court must be wary of any intrusion which subjects legislators to unnecessary and burdensome disclosure requirements and detracts from their representative functions. While the "detraction" purpose of the privilege may militate against disclosure, it is still necessary to distinguish between the effects of various discovery requests upon legislative functions. *Committee. for a Fair & Balanced Map,* at *23. Plaintiffs do not seek any information that the state legislative privilege is designed to protect because the information sought does not "intrude upon the legitimate legislative activities" of the legislators. *Id*.

Plaintiffs seek documents that contain fact-based information that must be disclosed. The legislative privilege "does not apply . . . to 'documents containing factually based information

used in the decision-making process or disseminated to legislators or committees, such as committee reports and minutes of meetings,' or 'the materials and information available [to lawmakers] at the time a decision was made." *Id.*, at *33. Plaintiffs seek non-legislative facts and external communications, and therefore the requests do not undermine the purpose of the privilege.

Additionally, Representative Ehardt has failed to meet her burden to demonstrate that the legislative privilege applies to documents shared with the third parties. She has made no showing that the requests that pertain to these third parties involve individuals who were employees of the Idaho Legislature at the time they shared or received the documents listed in Exhibit A. The information that Plaintiffs seek falls outside the scope of the purpose of legislative privilege. Thus, the fifth factor weighs in favor of disclosure.

IV. Representative Ehardt Has Waived Legislative Privilege to the Extent the Requests Pertain to Third Parties

To the extent Plaintiffs seek communications between Representative Ehardt and third parties, Representative Ehardt has waived the legislative privilege with respect to those communications. Cases assessing state legislators asserting the privilege regarding third-party communications adopt a much lower standard regarding legislative privilege.

For example, in *Turtle Mountain Band of Chippewa Indians v. Howe,* No. 3:22-cv-22, 2023 U.S. Dist. LEXIS 87725 (D.N.D. Feb. 10, 2023), *dismissed as moot in In re N.D. Legis. Assembly*, 2024 U.S. App. LEXIS 20393, plaintiffs sought document production from six subpoenaed current and former members of the Legislative Assembly and a former Legislative Council staff attorney regarding redistricting. In discussing the defendant's privilege claims, the

court stated that "communications between legislators and third parties are generally not protected by the state legislative privilege." *Id.*

Other cases concur. In *Michigan State A. Philip Randolph Institute v. Johnson,* No. 16-cv-11844, 2018 U.S. Dist. LEXIS 87623 (E.D. Mich. Jan. 4, 2018), the plaintiffs brought suit challenging the constitutionality of a state voting law. During discovery, the plaintiffs served four state legislators with subpoenas *duces tecum*, which the legislators sought to quash. The court noted the inconsistent approaches to assertions of state legislative privilege before administering the *Bethune-Hill* five-factor balancing test in the case before it. There, the five factors weighed in favor of quashing the subpoenas. However, the court noted that "communications between legislators or their staff and any third party are not protected by the legislative privilege," *Id.* at *20, and held that "to the extent that the state legislators in this matter have shared any of the documents or information sought by Plaintiffs with third parties that would otherwise have been protected by the legislative privilege, the privilege has been waived, and the legislators must produce those documents along with any non-privileged information responsive to the subpoenas that is within their possession, custody, or control." *Id.* at *21; s*ee also League of Women v. Johnson,* No. 17-14148, 2018 U.S. Dist. LEXIS 86398, at *15 (E.D. Mich. May 23, 2018) ("Communications between legislators or staff members and third parties consulted during the redistricting process are not protected by the legislative privilege"); *Jackson Mun. Airport Auth. v. Bryant,* No. 3:16-cv-246, 2017 U.S. Dist. LEXIS 208649, at *20 ("[C]ommunications between legislators or legislative staff and any third party would *not* be subject to the legislative privilege.") (emphasis in original); *Bethune--Hill,* 114 F. Supp. 3d at 343 ("[A] conversation between legislators and knowledgeable outsiders, such as

lobbyists, to mark up legislation is a session for which no one could seriously claim privilege." (citation omitted)).

In sum, case law supports, civil discovery served on state legislators who have unique access to knowledge sought in cases of high public importance, particularly when the information sought is the result of third-party communications.

CONCLUSION

For these reasons, the documents and information at issue are not protected by legislative privilege. The *Bethune-Hill* five-factor test confirms that any privilege is overcome here, and Plaintiffs are entitled to obtain the requested material from Representative Ehardt. Plaintiffs therefore respectfully request an Order denying Movant's Motion to Quash Third Party Subpoena Duces Tecum, for Protective Order, and for Expenses.

Dated: December 12, 2025

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CERTIFICATE OF SERVICE

I hereby certify that, on December 12, 2025, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will cause a copy to be served upon all counsel of record.

/s/ Wendy J. Olson