UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
FRANKFORT

CIVIL ACTION NO. 3:26-CV-00035-CHB-EBA

SAMANTHA WIGGINTON, *et al.*, PLAINTIFF,

V. **ORDER**

COMMONWEALTH OF KENTUCKY, *et al.*, DEFENDANTS.

*** *** *** ***

This matter is before the Court on the University of Kentucky's (UK's) motion seeking an Order quashing or modify Plaintiffs' Notice of Rule 30(B)(6) deposition of UK, and Plaintiffs' Rule 45(a)(4) Notice of Intent to Serve Subpoena *Duces Tecum*. [R. 105]. The matter is fully briefed, [R. 109; R. 116], and therefore, it is ripe for review. For the reasons that follow, the undersigned will grant the University of Kentucky's motion to quash. [R. 105]. There is no pending motion before the undersigned on the dispute with the LRC. However, the undersigned will outline the parties' positions, discuss the relevant law, and will direct the parties to submit any motion regarding the dispute within seven days of entry of this Order.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves an ongoing controversy surrounding Kentucky State University (KSU), Kentucky's 1890 land-grant institutional, as well as the Commonwealth's only public Historically Black College or University (HBCU). [R. 45 at pg. 1]. The Plaintiffs, consisting of a class of 12 KSU students and alumna, allege they have been discriminated against historically, and most recently by Senate Bill 185 (SB 185), which was enacted during the 2026 legislative session by the Kentucky General Assembly. [*Id*. at pg. 6]. District Judge Claria Horn Boom summarized the historical background of KSU as it relates to the ongoing controversy and discussed SB 185 in

detail. [*See* R. 45]. For brevity's sake, the undersigned will outline a short factual and procedural background relevant to the underlying disputes.

The Plaintiffs assert eight causes of action based on allegations that Kentucky continues to implement policies traceable to its former system of de jure segregation, resulting in "continuing inequitable effects" that "threaten KSU's mission, programs, faculty, facilities, funding capacity, land-grant activities, and administration." [*Id*. at pg. 30].

With their complaint, Plaintiffs requested a temporary restraining order, which Judge Boom denied. [*See* R. 45]. In that Memorandum Opinion and Order, Judge Boom also directed the parties to file a joint status report indicating whether the Plaintiffs continue to seek preliminary injunction, and, if so, whether the parties seek limited discovery on the preliminary injunction. [*Id*. at pg. 50]. Plaintiffs indicated that they still sought a preliminary injunction and following the parties' joint status report, [R. 48], Judge Boom entered a scheduling Order limited to discovery on the Plaintiff's preliminary injunction. [R. 49]. Subsequently, limited discovery ensued.

Since the entry of Judge Boom's scheduling Order, there have been several discovery disputes. The current disputes before the Court regard the Plaintiffs' attempt to obtain discovery from several non-parties to the action. Specifically, Plaintiffs seek discovery they argue is essential to establish a 42 U.S.C. § 1983 claim for violations of the Fourteenth Amendment's Equal Protection Clause under *Village of Arlington Heights v. Metropolitan Housing Development Corp*., 429 U.S. 252 (1977), and a 42 U.S.C. § 1983 claim premised on violations of the Fourteenth Amendment's Equal Protection Clause under *United States v. Fordice*, 505 U.S. 717 (1992).

LEGAL STANDARD

I.

Pursuant to Rule 26(b)(1), unless otherwise limited, "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional

to the needs of the case … Information within this scope of discovery need not be admissible in evidence to be discoverable." FED. R. CIV. P. 26(b)(1). Courts have broadly construed this language "to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). While not without limits, the Sixth Circuit has consistently held that "'[t]he scope of discovery is within the sound discretion of the trial court, and a ruling by the trial court limiting or denying discovery will not be cause for reversal unless an abuse of discretion is shown.'" *France v. Lucas*, 836 F.3d 612, 631 (6th Cir. 2016) (quoting *S.S. v. E. Ky. Univ.*, 532 F.3d 445, 451 (6th Cir. 2008)).

Moreover, Rule 45 permits a party to issue a subpoena commanding a non-party to produce documents. FED. R. CIV. P. 45(a)(1). A Court must quash a subpoena that "requires disclosure of privilege or other protected matter[s] … or subjects a person to undue burden." FED. R. CIV. P. 45(d)(3)(a)(iii)-(iv). The movant bears the burden of persuading the court that a subpoena should be quashed. *See Baumgardner v. Louisiana Binding Serv.*, No. 1:11-CV-794, 2013 WL 765574, at *1 (S.D. Ohio Feb. 28, 2013). Whether a subpoena is unduly burdensome depends on the facts of the case and "court[s] must weigh the relevance of the requested material against the burden of producing the material." *Schnatter v. 274 Grp.,* 343 F.R.D. 325, 330 (W.D. Ky. 2022) (citing *E.E.O.C. v. Ford Motor Credit Co.*, 26 F.3d 44, 47 (6th Cir. 1994)). Non-party status is a factor the Court should consider. *Id*. Courts should also consider "'such factors as relevance, the need of the party for the documents, the breadth of the document requested, the time period covered by it, the particularity with which the documents are described and the burden imposed.'" *In re: Mod. Plastics Corp.,* 890 F.3d 244, 251 (6th Cir. 2018) (quoting *Am. Elec. Power Co., Inc. v. United States*, 191 F.R.D. 132, 136 (S.D. Ohio 1999)). The Court must balance the need of discovery

against the burden being imposed. *Id*. Additionally, the subpoenaing party must take reasonable steps to avoid imposing an undue burden. FED. R. CIV. P. 45(c)(1).

Regarding the Rule 30(b)(6) challenges, "[t]here is some disagreement among the federal courts as the exact meaning of the 'reasonable particularity' requirement of rule 30(b)(6)." *Mitchell v. Arnold*, No. 3:20-CV-530-DJH, 2023 WL 7711478, at *5 (W.D. Ky. Nov. 15, 2023). However, courts in this District have held that "[t]he test for reasonable particularity is whether the request places the party upon reasonable notice of what is called for and what is not." *Woods v. Standard Fire Ins. Co*., 589 F.Supp.3d 675, 684 (E.D. Ky. 2023) (quoting *Alvey v. State Farm Fire & Cas. Co*., No. 5:17-CV-23-TBR-LLK, 2018 WL 826379, at *7 (W.D. Ky. Feb. 9, 2018)).

II.

Legislative immunity derives from the federal Constitution's Speech or Debate Clause, which states in relevant part that, "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." U.S. CONST. ART. I, § 6, cl. 1. The Supreme Court has long interpreted this Clause to grant legislators "*absolute* immunity from liability under § 1983 for their legislative activities." *Bogan v. Scott-Harris*, 523 U.S. 44, 49, 118 S.Ct. 966, 140 L.Ed.2d 79 (1998) (citing, *inter alia*, *Kilbourn v. Thompson*, 103 U.S. 168, 202–04, 26 L.Ed. 377 (1880) (emphasis added)). Without doubt, federal common law extends this absolute legislative immunity to state legislators. *See generally, Bradley v. Mallory*, 871 F.2d 1087 (6th Cir. 1989); *Tenney v. Brandhove*, 341 U.S. 367 (1951).

Further, the Supreme Court has instructed courts to interpret this grant of absolute immunity "broadly to effectuate its purposes." *United States v. Johnson*, 383 U.S. 169, 180 (1966). As the Supreme Court has recognized, the Clause "is framed in the broadest terms," and so does not "prevent only prosecutions based upon the content of speech." *Id.* at 182–83, 86 S.Ct. 749 (internal quotation omitted). Rather, "[a]bsolute legislative immunity attaches to all actions taken

'in the sphere of legitimate legislative activity.'" *Bogan*, 523 U.S. at 54, 118 S.Ct. 966 (quoting *Tenney*, 341 U.S. at 376, 71 S.Ct. 783).

In contrast, state legislators enjoy only a *qualified* legislative *privilege* against having to provide records or testimony concerning their legislative activity, which can be overcome in extraordinary circumstances, *e.g.*, where important federal interests are at stake. *Mich. State A. Philip Randolph Inst. v. Johnson*, No. 16-cv-11844, 2018 U.S. Dist. LEXIS 87623, at *11 (E.D. Mich. Jan. 4, 2018). The privilege can be overcome where important federal interests are at stake. *Id.* Federal common law governs the existence of legislative privilege in this case. See Fed. R. Evid. 501 (In federal question cases, "[t]he common law--as interpreted by United States courts in the light of reason and experience--governs a claim of privilege unless" the United States Constitution, a federal statute, or rules prescribed by the Supreme Court provide otherwise.).

In their respective position statements, the LRC argues that it is entitled to legislative immunity which bars the discovery sought by the Plaintiffs. Speaker Osborne agrees with the LRC's position but additionally argues that *if* the Court finds that legislative *immunity* does not apply in this case, that the discovery sought is still barred by legislative *privilege*. For the reasons detailed below, legislative privilege bars the discovery sought in this case.

ANALYSIS

1. *Motion to Quash*

UK has filed a motion to quash or modify Plaintiffs' Notice of Rule 30(B)(6) deposition of UK and Plaintiffs' Rule 45(a)(4) Notice of Intent to Serve Subpoena *Duces Tecum*. [R. 105]. UK is one of several governmental non-parties that Plaintiffs have served with discovery requests. UK makes several arguments for why the Court should grant its motion to quash. [*See* R. 105-1].

Failure to Comply with Scheduling Order

First, UK argues that its motion to quash should be granted because the Plaintiffs' subpoena failed to comply with Judge Boom's Order. [*Id*. at pg. 2]. Specifically, Judge Boom's Scheduling Order stated that the parties were allowed to conduct discovery only "related to Plaintiffs' request for a preliminary injunction, which shall not count against the parties' allotted discovery under the Federal Rules." [R. 49 at g. 2]. Further, Judge Boom outlined the number of discovery requests that the parties were allowed to conduct, in relevant part, as follows:

> The parties are permitted to serve up to fifteen (15) requests for production, fifteen (15) interrogatories, and fifteen (15) requests for admissions per side. Responses to written discovery are due within fourteen (14) days of service, which may be served electronically on counsel of record. Responsive documents are to be produced no later than twenty-one (21) days from service of the request.

[*Id*.]. UK argues that despite Judge Boom's directive, Plaintiffs' subpoena contains more document requests while affording UK less time to respond. [R. 105-1 at pg. 2]. Additionally, UK argues that despite their contention that the discovery requests are tailored to the preliminary injunction issues, "the number and scope of Plaintiffs' document requests and Rule 30(b)(6) topics do not reflect any real tailoring." [*Id*.].

In their Notice of Rule 30(b)(6) deposition of UK and Rule 45(a)(4) notice of intent to serve subpoena *duces tecum*, Plaintiffs identify 20 30(b)(6) deposition topics and 20 requests for production of documents. [R. 93]. The Plaintiffs also requested production by September 14, 2026, only 17 days after the notice was filed. [*Id*.]. The Plaintiffs clearly disregarded Judge Boom's directives and limitations on discovery in this case. Thus, for that reason alone, the undersigned will grant UK's motion to quash. [R. 105].

Need for Discovery is Outweighed by Burden Imposed

UK argues that the motion to quash should be granted because "Plaintiffs' need for the subpoenaed discovery from UK is far outweighed by the burden imposed." [R. 105-1 at pg. 4]. Upon review of the Plaintiffs' notice, [R. 93], the undersigned finds that it fails to be tailored to

the limited discovery required by Judge Boom's Scheduling Order and that Plaintiffs need for the discovery is outweighed by the burden imposed upon UK.

First, the document requests in Schedule B to UK's subpoena, Request Nos. 1–5 and 18 surround a September 18, 2023, letter alleging a large funding disparity between UK and KSU. [*See* R. 93]. Additionally, Request Nos. 6–8 pertain to institutional funding documentation to examine UK and KSU's funding comparison. Parallel Rule 30(b)(6) Topic Nos. 2–9 are listed in Schedule A to UK's subpoena. [*Id*.]. UK argues that "[first] the referenced letter was not directed to UK. Second, UK neither prepared nor assisted with the letter's preparation. And, third, UK had no involvement in calculating the letter's reported funding disparity." [R. 105-1 at pg. 5].

In response, while Plaintiffs argue that the requested discovery is necessary, they acknowledge that some of their requests lack tailoring and that some of their topics lack reasonable particularity. "Plaintiffs nevertheless accept that the phrase "reasonably could have been used" can require too much speculation." [R. 109 at pg. 9]. Plaintiffs "further withdraw any demand to reconstruct decades of reconciliations to audited statements." [*Id*. at pg. 10]. However, Plaintiffs withdrawal still does not cure the deficiencies of their discovery requests.

The September 2023 letter was between federal agencies and Kentucky's Governor, not UK. As currently stated, the discovery requests regarding this letter should be directed at either the Governor's Office or the Council for Post-Secondary Education as they would have potentially relevant discovery regarding the referenced letter. The burden of asking UK, as a non-party, to produce the discovery requested and to name a representative to sit for a deposition on this issue is far outweighed by the need of Plaintiffs who can obtain the relevant requested information from other sources.

Next, Request No. 13 and Rule 30(b)(6) Topic No. 14 directly reference and concern SB 185. [R. 93]. Specifically, Topic 14 states: "UK's objective knowledge, analyses, data, assistance,

recommendations, or communications concerning 2026 Kentucky Senate Bill 185, its anticipated or actual effects on KSU, implementation measures, degree-program changes, enrollment or admissions limits, financial controls, student harms, and alternatives. This topic does not seek privileged legal advice or any legislator's subjective motive." [*Id.*]. SB 185 concerns KSU, not UK. Asking UK to produce a 30(b)(6) deponent and to produce discovery regarding the effects of SB 185 on KSU is unduly burdensome to UK. SB 185 only makes changes to KSU, not UK. A representative of UK is not the proper deponent to answer questions about any disparate effects that SB 185 has had on KSU. These questions should be directed elsewhere.

Request No. 12 and Rule 30(b)(6) Topic No. 13 seek communications between UK and various state and federal agencies and actors "concerning" KSU funding, governance, and civil rights obligations. [*Id.*]. Again, these discovery topics are misdirected at UK. Further, these requests are overly broad. Essentially, Plaintiffs seek discovery regarding communications with various agencies over a 10-year period. This topic lacks reasonable particularity as required under Rule 30(b)(6). While Rule 30(b)(6) is meant to streamline discovery, this broad topic would serve the opposite of the Rule's intent. *Chaney v. Dollar General Partners*, No. 5:23-CV-200-DCR-MAS, 2024 WL 1251329, at *2 (E.D. Ky. Mar. 21, 2021) (citing *McKesson Corp. v. Islamic Republic of Iran*, 185 F.R.D. 70, 70 (D.D.C. 1999)).

Similarly, Request Nos. 14–17 and Rule 30(b)(6) Topic Nos. 15–17 are also overly broad. Plaintiffs argue that these topics and requests "dump a laundry list of claim elements or preliminary injunction standards into a catch-all description." [R. 105 at pg. 12]. The undersigned agrees. The Plaintiffs did not tailor these topics as required by Judge Boom's Scheduling Order. Nor do the 30(b)(6) topics comply with the rule's reasonable particularity requirement. In all, requiring UK to produce the requested discovery and to produce a deponent to answer the deposition topics as requested would be unduly burdensome.

Eleventh Amendment Immunity

Finally, UK claims that the motion to quash should be granted on the independent ground that the subpoena is also barred by the Eleventh Amendment to the United States Constitution. [R. 105-1 at n. 2]. The Eleventh Amendment holds that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or in equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. AMEND. XI. As the Sixth Circuit has explained, "'a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief.'" *EMW Women's Surgical Ctr., P.S.C. v. Beshear*, 920 F.3d 421, 444–45 (6th Cir. 2019) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984)). Further, "UK has been long recognized as an arm of the state for Eleventh Amendment immunity purposes." [*Id*. (citing *Hutsell v. Sayre*, 5 F.3d 996, 999 (6th Cir. 1993))].

However, 42 U.S.C. § 2000d-7(a)(1) provides that a State "shall not be immune" under the Eleventh Amendment from claims and disputes arising under enumerated civil-rights statutes, expressly including Title VI. Judge Boom explained in a recent hearing that she could not order discovery from the parties in this case on the non-Title VI claims because there is a potential immunity argument. [R. 102 at pg. 16]. However, Judge Boom further explained that as to the Title VI claims, immunity does not apply, and instead, "we are then under the standard of Rule 26(c), which is good cause." [*Id*.]. Thus, Judge Boom determined that because discovery likely overlaps between the two types of claims, limited discovery could continue in this case. [*Id*.].

Accordingly, the immunity argument brought by UK—who is arguing that it is an arm of Defendant the Commonwealth of Kentucky for immunity purposes—has already been decided by Judge Boom. [*See id*.]. Therefore, the Plaintiffs may seek discovery from UK in compliance with

Judge Boom's directives regarding immunity, and in compliance with the directives the undersigned outlined above.

2. *LRC Discovery Dispute*

Next, the parties have notified the undersigned of an ongoing discovery dispute between the Plaintiffs and non-party, the LRC. Plaintiffs have requested what the LRC describes as the production of "extensive" discovery materials and the taking of depositions. [LRC's Position Statement at pg. 1]. Further, the LRC claims it is entitled to legislative immunity which includes a testimonial privilege that bars the discovery Plaintiffs seek. [*Id*. at pg. 3]. In response, Plaintiffs argue they have requested "a focused institutional search, production of discoverable records, and adjudication of supported privilege claims—not an unrestricted examination of legislators' thoughts." [R. 144 at pg. 1].

David W. Osborne, Speaker of the Kentucky House of Representatives (Speaker Osborne), also moved for leave to file a position statement as *amicus curiae* in the discovery dispute between Plaintiffs and the LRC, [R. 136], which the undersigned granted. [R. 137]. Speaker Osborne argued that while he agrees with the LRC's argument, *if* the Court treats this dispute as it did in *Glowgower v. Bybee-Fields*, No. 3:21-CV-00012-EBA, 2022 WL 4042412, at *8—9 (E.D. Ky. Sept. 2, 2022), as one of legislative privilege, the Plaintiffs are still not entitled to the discovery they seek. [R. 144 at pg. 1].

Legislative Immunity

First, the undersigned will consider the LRC's argument that it is entitled to legislative immunity which bars the discovery sought by the Plaintiffs. At the onset, the Court will note that it has not been provided with the discovery requests Plaintiff has sent to the LRC. Nor is the Court certain that all requests or subpoenas have been sent. Moreover, there is no motion before the Court for the undersigned to rule on. Thus, after outlining the parties' positions and discussing the

relevant law, the undersigned will direct the parties to file any motion within 7 days of entry of the Order.

Legislative immunity acts as an absolute bar to certain claims where legislators act within "the sphere of legitimate legislative activity." *See Arabbo v. City of Burton*, 689 Fed. App'x 418, 420 (6th Cir. 2017) (citing *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998) (discussing legislative immunity in 42 U.S.C. § 1983 claims)). But the LRC is not a party to this action, and thus it does not seek immunity from the Plaintiffs' claims. Instead, it seeks protection from engaging in discovery in this action. The proper assertion by a party seeking not to produce certain documents or sit for depositions would be to invoke legislative *privilege*, not legislative *immunity*. *See Glowgower*, 2022 WL 4042412, at *9.

The LRC, however, seeks this Court to extend legislative immunity to include a testimonial privilege. [LRC's Position Statement at pg. 4]. The LRC does not provide the Court with any binding Sixth Circuit authority to support its argument [*See id*.]. Instead, the LRC relies on persuasive authority which—if followed by this Court—would extend legislative immunity to include a "testimonial privilege," that would bar the discovery sought by the Plaintiffs. [*Id*. (first citing *Brown & Williamson Tobacco Corp. v. Williams*, 67 F.3d 408 (D.C. Cir. 1995) ("A litigant does not have to name members or their staff as parties to a suit in order to distract them from their legislative work. Discovery procedures can prove just as intrusive.") (internal quotations omitted) and then citing *Pernell v. Andrade*, 84 F.4th 1339, 1344 (11th Cir. 2023) (holding that the privilege applies as an absolute bar of discovery from legislative non-parties))]. For the reasons discussed in detail below, legislative privilege governs the discovery dispute in this case. Therefore, the Court need not address the issue of whether legislative immunity extends to also bar the discovery sought.

Legislative Privilege

Next, the Court will address Speaker Osbourne's argument that legislative privilege bars the discovery sought in this matter. [R. 138]. Speaker Osborne and the Plaintiffs do not appear to dispute whether legislative privilege applies. Nor do they appear to dispute that said privilege is a qualified one. Instead, the parties dispute whether the Plaintiffs have established compelling circumstances to overcome the LRC's legislative privilege. Additionally, the parties disagree as to which test the Court should use when determining whether the privilege applies.

Plaintiffs argue that the undersigned should analyze the privilege determination using the five-factor test outlined in *Rodriguez v. Pataki*, 280 F.Supp.2d 89, 100-01 (S.D. N.Y. 2003). [R. 133]. Speaker Osborne, in contrast, argues that *Rodriguez* has been rejected by several Circuits, and that while the legislative privilege may yield "where important federal interests are at stake, as in the enforcement of federal criminal statutes," *United States v. Gillock*, 445 U.S. 360, 373 (1980), the Supreme Court has never extended the exception beyond criminal statutes. [R. 138 at pg. 2].

Rodriguez laid out a five-part balancing test for assessing whether the qualified legislative privilege applies: "(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 the government in the litigation; and (v) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable." *Rodriguez*, 280 F.Supp.2d at 100-01. While the parties do not provide any caselaw indicating how the Sixth Circuit has treated *Rodriguez*, the decision has not been treated favorably among the other circuits. The Eleventh Circuit explained, "[n]one of our sister circuits have subjected the privilege to such a test, and at least four of them have rejected this approach." *Pernell v. Fla. Bd. Of Governors of State Univ., 8*4 F.4th 1339, 1344—45 (11th Cir. 2023)*; see also Lee v. City of Los Angeles*, 908 F.3d 1175, 1187 (9th Cir. 2018) (holding that unsubstantiated "claims of racial gerrymandering," though

"serious," "fall[ ] short of justifying the 'substantial intrusion' into the legislative process" of a discovery request (citation omitted)); *Am. Trucking Ass'ns, Inc. v. Alviti*, 14 F.4th 76, 88 (1st Cir. 2021) ("[This] argument suggests a broad exception overriding the important comity considerations that undergird the assertion of a legislative privilege by state lawmakers."); *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 239–40 (5th Cir. 2023) ("[A] state legislator's common-law absolute immunity from civil actions precludes the compelled discovery of documents pertaining to the state legislative process that Plaintiffs seek here."); *In re N.D. Legis. Assembly*, 70 F.4th 460, 465 (8th Cir. 2023) ("Dicta from *Village of Arlington Heights* does not support the use of a five-factor balancing test in lieu of the ordinary rule that inquiry into legislative conduct is strictly barred by the privilege.").

Instead, other circuits have followed the approach that "for purposes of the legislative privilege, there is a fundamental difference between civil actions by private plaintiffs and criminal prosecutions by the federal government." *In re Hubbard*, 803 F.3d 1298, 1 3 11—12 (11th Cir. 2015). Courts have held that the privilege does not even yield to the United States enforcing the Voting Rights Act, because such a suit is "fundamentally disanalogous to a sovereign enforcing its criminal laws." *League of United Latin Am. Citizens v. Abbott*, 708 F. Supp. 3d 870, 884 (W.D. Tex. 2023). Because the parties have not provided clear direction from the Sixth Circuit, and because of the well sounded reasoning of the other circuit courts, the undersigned finds the caselaw provided by Speaker Osborne persuasive. Thus, under this standard, Plaintiffs' suit is not an extraordinary case—it is a private suit to enforce individual rights, not one resembling criminal prosecution. Therefore, the LRC's legislative privilege bars the discovery Plaintiff seeks.

The Plaintiffs maintain their position that this discovery is necessary to prove their claims brought under *Arlington* and *Fordice*. Further, to support their argument, Plaintiffs point to the undersigned's decision in *Glowgower*, arguing that this case is synonymous. [R. 133 at pg. 4].

Specifically, Plaintiffs argue that the undersigned should consider the *Rodriguez* factors here as it did in *Glowgower*. [*Id.*].

First, in *Glowgower*, the undersigned outlined the *Rodriguez* factors and discussed that they had been considered by district courts in this Circuit. *See Glowgower*, 2022 WL 4042412, at *9 (first citing *Mich. State A. Philip Randolph Inst. v. Johnson*, No. 16-cv-11844, 2018 U.S. Dist. LEXIS 87623, at *11 (E.D. Mich. Jan. 4, 2018) and then citing *League of Women v. Johnson*, 2018 U.S. LEXIS 86398, at *6 (E.D. Mich. May 23, 2018)). However, the undersigned did *not* weigh the factors. *See id*. Instead, the undersigned determined, as it has in this case, that legislative privilege—not immunity—applies and that the Defendant was required to supply a privilege log to explain any discovery she withheld on a claim of privilege. *Id*.

Moreover, even *if* the Court were to apply the *Rodriguez* factors, the LRC's legislative privilege would still bar discovery in this case. In *Johnson*, the Court analyzed the *Rodriguez* factors. *Johnson*, 2018 U.S. Dist. LEXIS 87623, at *11. In analyzing the first factor, relevance, the Court discussed the *Arlington Heights* case that is relied upon by the Plaintiffs in the underlying dispute. In *Johnson,* the Court stated that "in violation of the Equal Protection Clause, the legislative history of the official action 'may be highly relevant' in determining whether 'invidious discriminatory purpose was a motivating factor' in the action, 'especially where there are contemporary statements by members of the decision-making body, minutes of its meetings, or reports.'" *Id*. (internal citations omitted). However, the Court went on to explain:

> But while testimony and other communications reflecting a legislator's stated motivation might be the most direct form of evidence of discriminatory intent, it is not necessary to sustain a claim under the Equal Protection Clause or Voting Rights Act. *Comm. for a Fair & Balanced Map v. Illinois State Bd. of Elections*, No. 11 C 5065, 2011 U.S. Dist. LEXIS 117656, 2011 WL 4837508, at *2-3 (N.D. Ill. Oct. 12, 2011). In *Arlington Heights*, the Supreme Court identified three categories of direct and circumstantial evidence that may be considered in determining whether racially discriminatory intent existed: the impact of the official action; the historical background or specific sequence of events leading up to the challenged action; and

> the legislative history of the action. *Arlington Heights*, 429 U.S. at 264-68. Under this precedent, communications reflecting a legislator's stated motivation are just one of the various types of evidence that Plaintiffs may use to prove their claims, and they are therefore not central to the outcome of this case. *See Comm. for a Fair & Balanced Map*, 2011 U.S. Dist. LEXIS 117656, 2011 WL 4837508, at *4, 8.

Id. at *15-16. The Court further warned of the danger of inquiring into the legislative motive or intent, as Plaintiffs have stated they seek to do in this case. "Inquiries into congressional motives or purposes are a hazardous matter." *Id*. (quoting *Hunter v. Underwood*, 471 U.S. 222, 228 (1985)).

After balancing the remaining factors, the Court went on to hold that the need for the discovery in the case was insufficient to overcome the legislative privilege. *Id*. at *19-20. In doing so, the Court found that the second factor, availability of other evidence, weighed in favor of quashing the subpoenas because "considerable amount of direct and circumstantial evidence" was available to the Plaintiffs to support their claims, "including historical information related to previous appeals of straight ticket voting, publicly available studies and reports; statements made by legislators during debate, speeches, or on social media; press releases; newspaper articles; committee meeting minutes; and the Senate Journal." *Johnson*, 2018 U.S. Dist. LEXIS 87623, at *18. Further, the Court found that "the fifth factor—the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable—favors the state legislators." *Id*. The Court reasoned that "[o]pen dialogue between lawmakers and their staff would be chilled if their subjective, preliminary opinions and considerations are potentially subject to public disclosure and critique." *Id*. (quoting *Citizens Union of New York v. AG of New York*, 269 F. Supp. 3d 124, 2017 WL 3836057, at *29 (S.D.N.Y. 2017)).

Similarly, here, Plaintiffs argument that the requested discovery is required to establish their claims is unpersuasive. Communications from the LRC, members of the House, Senate, and staff are just *one* of the various types of evidence that Plaintiffs may use to prove their claims. *Id*. at *15-16. The Plaintiffs have not established sufficient circumstances to overcome the legislative

privilege and therefore must use other evidence to establish their claims. Therefore, under either test, the Plaintiffs have not established facts to overcome the LRC's legislative privilege in this case.

CONCLUSION

Accordingly, having considered the matter and being otherwise succinctly advised,

IT IS ORDERED that the University of Kentucky's Motin to Quash, [R. 105], is **GRANTED**.

IT IS FURTHER ORDERED that any motion regarding the ongoing discovery dispute with Plaintiffs and the Legislative Research Committee **SHALL** be filed within **7 days of entry of this Order.**

Signed November 20, 2026.

Signed By:
Edward B. Atkins EBA
United States Magistrate Judge