IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

PAMELA MOSES,	)	
	)	
Plaintiff,	)	**Case No. CT-1579-19**
	)	**Division I**
v.	)	
	)	**Judge Felicia Corbin-Johnson**
MARK GOINS, TRE HARGETT, and JONATHAN SKRMETTI, in their official capacities,	)	**Judge Suzanne Cooke**
	)	**Judge Barry Tidwell**
	)	
	)	
Defendants.	)	

RESPONSE IN OPPOSITION TO NON-PARTY OFFICE OF LEGAL SERVICES' MOTION TO QUASH AND FOR A PROTECTIVE ORDER

The Office of Legal Services ("OLS") has petitioned the Panel to quash Plaintiff's non-party subpoena in its entirety with a broad-brush assertion of legislative immunity, which OLS fails to support with *any* description of the responsive documents that are purportedly protected from disclosure and *any* case binding on the Panel that suggests the Speech or Debate Clause of the Tennessee Constitution grants a party a non-disclosure privilege as applied to documentary evidence. OLS falls woefully short of its burden as the movant seeking to quash the non-party subpoena *duces tecum* on the basis of a purported evidentiary privilege.[1]

[1] Though OLS frames its arguments against disclosure in terms of "legislative immunity," Plaintiff addresses its arguments in terms of "legislative privilege" insofar as legislative immunity and legislative privilege are distinct concepts: the former deals with immunity from civil liability, while the latter deals with the obligations to produce otherwise discoverable information. *See Favors v. Cuomo*, 285 F.R.D.187, 209 (E.D.N.Y. 2012) ("Legislative privilege is related to, but distinct from, the concept of legislative immunity"); *see also Hobart v. City of Stafford*, 784 F. Supp. 2d 732, 763-64 (S.D. Tex. 2011) (explaining that under federal common law legislative immunity and legislative privilege are not treated the same).

The Panel should deny OLS's motion because legislative privilege, which is derived from Tenn. Const. art. II, § 13 (the "Speech or Debate Clause"), does not provide grounds to withhold documentary evidence. Tennessee courts have *exclusively* recognized this privilege as a form of *immunity from liability* premised on legislative acts, and OLS cannot withhold responsive documents on the basis of a non-existent evidentiary privilege. Despite this, to the extent the Panel is prepared to recognize legislative privilege as an *evidentiary* privilege, the Panel should nevertheless hold legislative privilege does not provide a basis to withhold documents here because any such privilege—if the Panel finds it to exist—should only be one of non-disclosure.

Finally, if the Panel holds that legislative privilege *does* exist, *does* apply to documents, and *does* provide some degree of protection from producing documentary evidence, the Panel should nevertheless deny OLS's motion for three reasons. *First*, OLS's motion is unripe because OLS failed to produce a privilege log, leaving Plaintiff and the Panel with no viable way to meaningfully assess the propriety of OLS's assertion of privilege. *Second*, to the extent the Panel holds that the legislative privilege operates as a privilege of non-disclosure, the Panel should find that the privilege is a qualified privilege that is overcome in this case by the critical constitutional interests at stake. *Third,* Plaintiff requested many documents that are not protected by even the broadest plausible interpretation of legislative privilege, which is not boundless.

BACKGROUND

Plaintiff is challenging Tennessee's permanent disenfranchisement laws, which impose a complete bar on certain Tennesseans restoring their right to vote after completing the terms of their criminal sentences. As particularly relevant here, Plaintiff asserts that the Tennessee Legislature weaponized felony disenfranchisement as a means to suppress the political power of Black Tennesseans. *See* Second Am. Compl. ¶¶ 92, 102, 141.

OLS does not dispute in its motion that the information Plaintiff seeks is highly relevant to her claims in this case. To resolve some of Plaintiff's claims, the Panel will need to determine whether race was a motivating factor behind the passage of the permanent disenfranchisement statutes at issue. Indeed, the Panel has noted the high importance and particular relevance of evidence of contemporaneous discriminatory intent. (Order on Motion to Dismiss at 23-24).

On December 8, 2023, Plaintiff served a subpoena *duces tecum* on OLS requesting the production of legislative history concerning a series of felony disenfranchisement statutes. *See* OLS Subpoena (attached as **Exhibit A**). All the information requested could reasonably support one or more of Plaintiff's surviving claims and/or lead to the discovery of further relevant information. On January 2, 2024, OLS filed its motion seeking to quash the non-party subpoena and requesting a protective order.

ARGUMENT

I. Legislative Privilege Does Not Provide Grounds to Withhold Documentary Evidence

The Panel should deny OLS's motion because legislative privilege does not provide a basis to withhold documentary evidence in the State of Tennessee.

A. Legislative Privilege Exclusively Provides Tennessee Legislative Actors Immunity from Liability

In Tennessee, "[l]egislative privilege refers to the protection afforded to members of legislative bodies for allegedly defamatory statements made in the course of their legislative functions." *Issa v. Benson*, 420 S.W.3d 23, 26 (Tenn. Ct. App. 2013).[2] "Because a reason supporting the legislative privilege is 'to insure an uninhibited debate concerning matters before a

[2] In addition, Tenn. Code Ann. § 20-7-106 requires courts to grant continuances when a legal proceeding would require a member of the General Assembly to be absent during the legislative session, and one court has referred to this protection as "legislative privilege." *See Ecoff v. Murphy*, 652 S.W.2d 901, 902 (Tenn. Ct. App. 1982). This provision is not relevant to OLS' motion.

legislative body, it follows that such a privilege is applicable only if the defamatory remarks are made relating to matters within the scope of that body's authority.'" *Miller v. Wyatt*, 457 S.W.3d 405, 410 (Tenn. Ct. App. 2014) (quoting *Issa*, 420 S.W.3d at 27). To that end, Tennessee courts have *exclusively* applied legislative privilege as a form of *immunity from liability* for defamation premised on statements made by legislative actors in the course of their legislative functions. *See, e.g.*, *Moses v. Roland*, No. W201900902COAR3CV, 2021 WL 1140273, at *10 (Tenn. Ct. App. Mar. 25, 2021) (Shelby County Commissioner could not be sued for defamation based on comments made during county commission meeting); *Miller*, 457 S.W.3d at 412 (city council member's statements arising from the conduct of the affairs of the council were "cloaked with immunity"); *Issa*, 420 S.W.3d at 28 (city council member's statements to fellow councilmembers were protected by legislative privilege and could not support liability for defamation).

As far as Plaintiff is aware, no Tennessee court has found legislative privilege to be a basis for withholding documents created during the legislative process. This is because legislative privilege in Tennessee is a limited immunity from liability, not an evidentiary privilege. None of the cases cited by OLS related to the nondisclosure of documents (Defs. Motion to Quash ("Mot.") at 7-8) involve the interpretation of the Speech or Debate Clause of the Tennessee Constitution. The Panel should afford the cases cited by OLS no weight, considering Tennessee courts have exclusively interpreted legislative privilege to provide Tennessee legislative actors immunity from liability, not from discovery. In sum, OLS has no basis to withhold documents based on an evidentiary privilege that does not exist in the State of Tennessee.

B. At Most, a Newly Created Legislative Privilege Could Only Protect Against Documents Being Used Against Tennessee Legislative Actors in Court

Even if the Panel were to hold that the Speech or Debate Clause of the Tennessee Constitution affords legislative actors protection beyond immunity from liability (and it should

not), the Panel should find that OLS cannot withhold responsive documents from Plaintiff on the basis of legislative privilege. This would be in accordance with the various federal court decisions holding that the Speech or Debate Clause of the United States Constitution, as applied to records, "secures a privilege of non-use, rather than of non-disclosure." *In re Search of Elec. Commc'ns*, 802 F.3d 516, 522 (3d Cir. 2015) (emphasis added).[3]

"Unlike privileges such as attorney-client, physician-patient, or priest-penitent, the purpose of which is to prevent disclosures which would tend to inhibit the development of socially desirable confidential relationships, the Speech or Debate privilege is at its core a use privilege." *In re Grand Jury Investigation*, 587 F.2d 589, 596 (3d Cir. 1978) (internal citation omitted) (emphasis added); *see also* Legislative Privilege, 26A Fed. Prac. & Proc. Evid. § 5675 (1st ed.) ("It is clear that the Speech or Debate Clause does not provide a witness privilege that would allow the legislator or his aides to refuse to testify or to produce evidence in response to a subpoena duces tecum, even though the hindrance rational might justify such a privilege."). "This means that documents created by legislative activity can, if not protected by any other privilege, be disclosed and used in a legal dispute that does not directly involve those who wrote the document, i.e., the legislator or his aides." *Corporacion Insular de Seguros v. Garcia*, 709 F. Supp. 288, 297 (D.P.R. 1989). While certain federal courts have held legislative privilege entails a testimonial element that shields legislative actors from being compelled testify, there is no testimonial element of the privilege as applied to documentary evidence. *See In re Grand Jury Investigation*, 587 F.2d. at 597 ("[T]o the extent that the Speech or Debate Clause creates a Testimonial privilege as well as a Use immunity, it does so only for the purpose of protecting the legislator and those intimately associated with him

[3] Because of the similarities between the Speech or Debate clauses of the United States Constitution and the Tennessee Constitution, Tennessee courts find cases interpreting the Speech or Debate Clause of the United States Constitution "particularly helpful." *Mayhew v. Wilder*, 46 S.W.3d 760, 774 (Tenn. Ct. App. 2001).

in the legislative process from the harassment of hostile questioning."). This is because the Speech and Debate clause "is not designed to encourage confidences by maintaining secrecy, for the legislative process in a democracy has only a limited toleration for secrecy." *Id.* (citing U.S. Const. art. 1, § 5, cl. 3).[4]

Numerous federal courts across multiple circuits have endorsed the notion that, with respect to documentary evidence, legislative privilege—**at most**—operates as a privilege of non-use, rather than of non-disclosure. *See, e.g.*, *United States v. Renzi*, 651 F.3d 1012, 1038-39 (9th Cir. 2011) (rejecting the notion that legislative immunity operates as a non-disclosure privilege); *Page v. Virginia State Bd. of Elections*, 15 F. Supp. 3d 657, 665 (E.D. Va. 2014) (holding legislative privilege is "of non-evidentiary use" and deeming untenable "the argument that legislative privilege is an impenetrable shield that completely insulates any disclosure of documents") (internal citation omitted); *Mayor & City Council of Baltimore v. Priceline.com, Inc.*, No. CV MJG-08-3319, 2010 WL 11552861, at *2 (D. Md. Feb. 5, 2010) ("[L]egislative privilege . . . only immunizes *use* of legislative acts and bars testimony by legislators about those acts; it does not operate as a privilege of confidentiality and nondisclosure."); *United States v. Helstoski*, 576 F.2d 511, 523 (3d Cir. 1978) (Speech or Debate privilege "is not a privilege against non-disclosure"). To be fair, not all courts agree. *See* Mot. at 8 (citing *Brown & Williamson Tobacco Corp.*). But the numerous courts that have limited the construction of legislative privilege to a non-use privilege have adopted the interpretation that is most consistent with the primary purpose of the Speech or Debate Clause, which is "to prohibit evidence of a congressman's acts to be used in

[4] The United States Supreme Court has *never* held that the protections of the Speech or Debate Clause are grounded in the legislature's need for confidentiality. In fact, the very opposite is implied from the nature of the protections bestowed by the Clause, protections designed to encourage candor and openness in speech or debate in either House. *See* U.S. Const. Art. I, § 6, cl. 1.

a proceeding against him (based on a historical fear that legislators could be subject to 'prosecution by an unfriendly executive and conviction by a hostile judiciary') and not to protect the confidentiality of legislative communications." *Corporacion Insular de Seguros*, 709 F. Supp. at 297 (citing *United States v. Johnson*, 383 U.S. 169, 179 (1966)).

The proper time for a holder of legislative privilege to assert it in relation to legislative act documents is at trial. Here, if the case proceeds to trial, OLS will not have an opportunity to assert the non-use privilege because OLS is not a defendant, meaning *OLS is not susceptible to documents being used in a proceeding against it*. This underscores why the Panel should deny OLS's motion and reject the premise that OLS may resort to this privilege to justify the nondisclosure of responsive documents.

Ultimately, even if the Panel recognizes legislative privilege as an evidentiary privilege, it should deny OLS's motion because the privilege secures a protection of non-use, not one of non-disclosure.

II. Even if the Panel Finds that Legislative Privilege Provides Some Degree of Relief from the Obligation to Produce Documentary Evidence, the Panel Should Still Deny OLS's Motion

Even if the Panel recognizes legislative privilege as a non-disclosure privilege (and it should not), the Panel should nonetheless deny OLS's motion for three reasons.

A. The Motion Is Unripe Because OLS Has Not Produced a Privilege Log

First, OLS's motion is unripe for disposition because OLS seeks to withhold all documents responsive to the non-party subpoena without producing a privilege log, leaving Plaintiff and the Panel unable to assess the documents that were withheld and the basis for the privilege assertion. That is not permitted.

"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." Tenn. R. Civ. P. 45.08(2)(A). Despite this, OLS has not produced a privilege log, or even a general description of the documents being withheld.

By failing to produce a privilege log, OLS suggests that the Panel should take its word that *every* responsive document falls within the contours of legislative privilege. Even more troubling, there is no indication that OLS has even conducted a search to identify the documents responsive to Plaintiff's requests. It appears OLS is blindly asserting legislative privilege over every document in its possession without assessing whether each responsive document fits the ambit of the privilege. As described below, even the courts that recognize legislative privilege as a basis for the nondisclosure of documents do not support OLS's position that the privilege is boundless and that a blanket assertion of the privilege is sufficient. *See infra* Section II.C.

OLS defends its failure to produce a privilege log on the ground that the instructions in Plaintiff's non-party subpoena requested a privilege log pursuant to Tenn. R. Civ. P. 26, which only applies to a party in the litigation. *See* Mot. at 3 n.2. But this scrivener's error in the instructions did not relieve OLS of its obligation under Tenn. R. Civ. 45.08 to produce a privilege log explaining the basis of its assertion of privilege in response to a non-party subpoena.[5]

[5] Rule 45.08(2)(A) is clear that a privilege log is required: "*When* information subject to a subpoena is withheld on a claim that it is privileged … the claim … *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." (emphasis added). OLS's suggestion that the Panel should read-in to Rule 45.08(2)(A) a requirement that the subpoena itself demand compliance with Rule 45.08(2)(A) and that the demand for compliance cite Rule 45.08(2)(A), or else the rule may be ignored, is contrary to the plain meaning of the rule, has no support in the caselaw, would essentially rewrite the rule, and would call into question the need to comply with any other number of rules.

Rule 45.08 broadly requires a privilege log regardless of what privilege is being asserted. Various courts have required a privilege log to support claims of legislative privilege:

- *Favors v. Cuomo*, 285 F.R.D. 187, 223-24 (E.D.N.Y. 2012) (ordering defendants to supplement descriptions in privilege log to support claim of legislative privilege);
- *Doe v. Nebraska*, 788 F. Supp. 2d 975, 986-87 (D. Neb. 2011) (ordering production of privilege log for documents withheld on privilege grounds, including legislative privilege, if parties could not reach agreement on discovery);
- *Young v. City and County of Honolulu*, No. 07-cv-00068, 2008 WL 2676365, at *2 (D. Haw. July 8, 2008) (noting that the court ordered production of privilege log for any documents withheld on privilege grounds, including legislative immunity).

As these cases have recognized, requiring the production of a privilege log makes good sense because privilege logs are the *rule*, not the exception, even when those materials are requested by subpoena. *See* Tenn. R. Civ. P. 45.08 (requiring description of documents so that the opposing party can assess the non-party's claim of privilege).

Importantly, a privilege log is the only way for Plaintiff to assess what information has been withheld and whether OLS has fairly asserted a privilege. Given the expansive view that OLS has taken with respect to legislative privilege, requiring production of a privilege log is a modest requirement compared to what OLS is seeking here: to deny Plaintiff an untold number of documents that, in all likelihood, bear directly on whether Tennessee's permanent disenfranchisement statutes were passed, in whole or in part, to target Black Tennesseans. OLS should be required to produce a privilege log for any materials it seeks to withhold on grounds of legislative privilege or legislative immunity.

B. Any Claim of Privilege Would be Overcome by Compelling Interests

Second, even if the Panel holds that the legislative privilege operates as a non-disclosure privilege (and it should not), the Panel should find that legislative privilege in Tennessee is a qualified privilege overcome in this case by compelling interests.

"In cases involving constitutional challenges related to voting rights, the vast majority of federal courts have found that the federal common law also affords state legislators only a qualified (*i.e.*, not absolute) legislative privilege against having to provide records or testimony concerning their legislative activity." *Nashville Student Org. Comm. v. Hargett*, 123 F. Supp. 3d 967, 969 (M.D. Tenn. 2015).[6] While this body of law does not derive from the Speech or Debate Clause of the United States Constitution, but rather is a creature of federal common law, the calculated rationale for treating the privilege as a *qualified* privilege of non-disclosure (to the extent it is recognized at all) is equally applicable to the construction of the Speech or Debate Clause of the Tennessee Constitution. Specifically, the privilege should be "strictly construed and accepted only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth." *Hargett*, 123 F. Supp. 3d at 969 (internal citations omitted). Tennessee would not be the first state to interpret legislative immunity, as derived from the state constitution, to be a *qualified* privilege. *See League of Women Voters of Fla. v. Fla. House of Representatives*, 132

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[6] *See, e.g.*, *Am. Trucking Ass'ns, Inc. v. Alviti*, 14 F.4th 76, 88 (1st Cir. 2021) (recognizing that a state official's legislative privilege is qualified and subject to a balancing test in civil cases); *Lee v. City of Los Angeles*, 908 F.3d 1175, 1187 (9th Cir. 2018) (acknowledging that there may be some circumstances where "the privilege must yield to the need for a decision maker's testimony"); *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov't*, 849 F.3d 615, 624 (5th Cir. 2017) (noting that "the legislative privilege for state lawmakers is, at best, one which is qualified" and "must be strictly construed"); *In re Hubbard*, 803 F.3d 1298, 1311–12 (11th Cir. 2015) ("[A] state lawmaker's legislative privilege must yield in some circumstances where necessary to vindicate important federal interests . . . .").

So. 3d 135, 138 (Fla. 2013) (legislative privilege derived from the Florida Constitution "is not absolute where . . . the purposes underlying the privilege are outweighed by [a] compelling, competing interest"). This approach makes sense here, and—to the extent that it finds that a documentary legislative privilege exists at all—the Panel should adopt the view shared by "[m]ost decisions in [voting rights] cases involving claims of legislative privilege . . . [which] have recognized a qualified legislative privilege[] and have balanced the parties' competing interests when determining if and to what extent the privilege applies and protects against compelled disclosure." *Favors*, 285 F.R.D. at 213.

This is precisely the type of case where, even if legislative privilege exists and applies, the privilege should yield to the need for discovery. The importance of the information that Plaintiff seeks cannot be overstated. Understanding how and why the challenged permanent disenfranchisement statutes were proposed and enacted is critical to Plaintiff's claim that these statutes were designed to target voters for permanent disenfranchisement based on their race. To put in plainly, Defendants should not be permitted to argue that Plaintiff's allegations regarding discriminatory intent are "conclusory" and "inadequate to support even a colorable claim"[7] **and** for any and all evidence of intent to be shielded. This is a sort of the "sword and shield" argument that is routinely dismissed by Tennessee courts (and others) in privilege and work product disputes. *See, e.g.*, *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 787 (Tenn. Ct. App. 1999) ("Courts have universally held that a party is prevented from invoking the work product doctrine immunity as both 'sword and shield'."); *Singleton v. Merrill*, 576 F. Supp. 3d 931, 940-42 (N.D. Ala. 2021) (denying motion for protective order and stating legislators sought to "use their unique position as

[7] *See* Mem. in Supp. of Mot. to Dismiss, Dec. 7, 2022, at 9.

[redistricting plan's] principal drafters as a sword to defend the law on its merits, [while] intermittently seek[ing] to retreat behind the shield of legislative privilege when it suits them").[8]

On the other hand, quashing Plaintiff's subpoena would undermine the State of Tennessee's compelling interest in vindicating the explicit constitutional prohibitions against discrimination and unequal elections. At bottom, the Panel should at most recognize a qualified legislative privilege and hold that the qualified privilege is overcome in this case by the compelling interests at issue.

C. Even the Broadest Plausible Interpretation of Legislative Privilege Would Not Apply to Every Document Plaintiff Requested

Finally, Plaintiff requested documents that are outside the scope of even the broadest plausible interpretation of legislative privilege, and, at the very least, OLS's motion should be denied at least with respect to those documents.

In the motion, OLS broadly asserts that legislative privilege bars *all* of Plaintiff's document requests in their entirety. *See* Mot. at 5-11.[9] But this is simply not true. Even under an expansive reading of legislative privilege, it cannot be said that legislative privilege applies to *every*

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[8] *See also, e.g., S.C. State Conf. of NAACP v. McMaster*, 2022 WL 425011, at *8 (D.S.C. Feb. 10, 2022) (rejecting "Defendants' broad conception of the legislative privilege, and order[ing] Defendants to produce requested documents, communications, and information … relevant to the broad issue of legislative motivation in the enactment of [legislative redistricting plan]"); *Benisek v. Lamone*, 263 F. Supp. 3d 551, 552-55 (D. Md. 2017) (finding non-party legislators and mapmakers were not entitled to qualified state legislative privilege to avoid testifying at deposition and production of documents in lawsuit alleging Maryland's congressional redistricting plan was unconstitutional); *Napper v. United States*, No. 116CV01023JDBJAY, 2021 WL 2555131, at *5 (W.D. Tenn. June 22, 2021) ("In addition, a court should not allow a party to use the privilege as both 'a shield and a sword.' The shield/sword "image is meant to convey that 'the privilege may implicitly be waived when [the privilege holder] asserts a claim that in fairness requires examination of protected communications.'"") (citations omitted).

[9] As noted above, Plaintiff finds it perplexing how OLS can assert that the legislative privilege applies to each and every document responsive to Plaintiff's requests, when it appears that OLS has not conducted a search to identify the responsive documents in the first place.

document Plaintiff requested, many of which include communications with third parties. *See* OLS Subpoena, **Ex. A**, at 8-9. Taking OLS's position to its logical end would mean that legislative documents or communications with *any* third party, no matter the party's relationship to the functions of the General Assembly, are privileged because they involved a legislator or a legislator's support staff.

This position is untenable and unsupported by the law. Legislative privilege does not apply to any and all documents involving a legislator or their staff. OLS concedes as much. *See, e.g.*, Mot. at 9 (the privilege only encompasses activities within the sphere of legitimate legislative activities). At best, the privilege "only applies to activities *integral* to the legislative process." *Doe v. Pittsylvania Cnty.*, 842 F. Supp. 2d 906, 916 (W.D. Va. 2012) (emphasis added); *see also EEOC v. Washington Suburban Sanitary Comm'n*, 631 F.3d 174, 184 (4th Cir. 2011) (ordering compliance with modified subpoena because it did not involve "integral steps" of the legislative process) (internal quotations omitted). Indeed, in *Gravel v. United States*—a case on which OLS relies—the Supreme Court made clear that "[l]egislative acts are not all-encompassing," explaining that:

> That Senators generally perform certain acts in their official capacity as Senators does not necessarily make all such acts legislative in nature. Members of Congress are constantly in touch with the Executive Branch of the Government and with administrative agencies—they may cajole, and exhort with respect to the administration of a federal statute—but such conduct, though generally done, is not protected legislative activity.

408 U.S. 606, 625 (1972).

The Court's explanation in *Gravel* succinctly describes the problem here. OLS claims, in essence, that any activity is protected legislative activity by virtue of involving a legislator or their staff, but that goes far beyond the purpose and breadth of the privilege. It is axiomatic that "the clause does not protect 'all conduct *relating* to the legislative process.'" *United States v. Biaggi*,

853 F.2d 89, 102 (2d Cir. 1988) (quoting *United States v. Brewster*, 408 U.S. 501, 515 (1972) (emphasis in original)). Documents reflecting communications with constituents, state agencies, interest groups, third parties or other kinds of public documents, for example, are not protected. On this basis alone, OLS should be ordered to respond to many, if not all, of Plaintiff's document requests. For instance, Plaintiff's Request for Production No. 14 specifically requests communications with third parties "discussing people's (or any individual person's) ineligibility to register and/or vote by virtue of a conviction of a felony." **Ex. A** at 6. Moreover, Plaintiff's Requests for Production Nos. 1 through 13 would encompass communications about felon disenfranchisement bills with third-parties such as interest groups and the executive branch. *See id.* at 5-6. These types of documents squarely fall outside of the scope of the most plausible expansive interpretation of legislative privilege.

Insofar as Plaintiff's requests for production encompass documents created by parties outside of the legislative branch that were shared with OLS (such as the "research, studies and analysis . . . *considered* by the Tennessee General Assembly" requested in Request for Production No. 15), the Panel should deny OLS's motion with respect to those documents. OLS offers no authority for the proposition that a document created by a non-legislative actor can become imbued with the protection of legislative immunity simply because it was received by a legislative actor. Such a broad interpretation of legislative immunity would be inconsistent with the purpose behind the Speech or Debate Clause, which is to prohibit a *legislator's acts* from being used against him or her.

As such, the Panel should, at a bare minimum, deny OLS's motion as applied to the various categories of documents to which even the broadest plausible interpretation of legislative privilege does not apply.

CONCLUSION

For the foregoing reasons, the Panel should deny Non-Party Office of Legal Services' Motion to Quash and For a Protective Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served via email and the Panel's electronic filing system on February 21, 2024, as follows:

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