

IN THE COMMON PLEAS COURT OF LORAIN COUNTY, OHIO

GIBSON BROS., INC., et al.

CASE NO.: 17 CV 193761

Plaintiffs,

JUDGE JOHN R. MIRALDI

-vs-

OBERLIN COLLEGE aka OBERLIN
COLLEGE AND CONSERVATORY, et al.

Defendant.

REPLY BRIEF IN SUPPORT OF MOTION TO
QUASH SUBPOENA AND/OR
FOR PROTECTIVE ORDER OF JASON
HAWK AND OBERLIN NEWS TRIBUNE
AND IN OPPOSITION TO DEFENDANTS'
MOTION TO COMPEL DEPOSITION
TESTIMONY OF JASON HAWK

Now comes Jason Hawk and Oberlin News Tribune, a non-party witness, by and through the undersigned counsel, and pursuant to Civ.R. 26(C) and 45(C)(3)(b) renew their motion for this Honorable Court to quash the subpoena issued to Jason Hawk and/or for a protective order limiting the scope of any further examination of Jason Hawk by the parties, and to deny Defendants' Motion to Compel Deposition Testimony of Jason Hawk.

Defendants admit that the same information which they seek from Mr. Hawk can be obtained by other means—through Dr. Meredith Raimondo, who is a party to this case. For that reason alone, Defendants' fail to overcome the qualified privilege of the First Amendment as recognized in *Fawley v. Quirk*, 9th Dist. Summit No. 11822, 1985 WL 110006 (July 17, 1985).

Defendants rely heavily upon their argument that the undersigned counsel somehow waived Mr. Hawk's First Amendment privilege. However, Ohio courts have recognized regarding matters of privilege that the privilege belongs to the client. *See, e.g., Mansour v. State Med. Bd. Of Ohio*, 32

Cory, Meredith, Witter & Smith

N.E.3d 508, 2015-Ohio-1716 at ¶29 (“the persons who possess the confidentiality privilege must waive the privilege. . . . the holder of the privilege is the only one who has the power to relinquish it”); *Neftzer v. Neftzer*, 140 Ohio App.3d 618, 748 N.E.2d 608 (“[o]nly the holder of the privilege may assert the privilege in order to suppress relevant evidence”); *Air-Ride, Inc. v. DHL Express (USA), Inc.*, 12th Dist. Clinton No. CA2008-01-001, 2008-Ohio-5669, ¶8, cause dismissed, 121 Ohio St.3d 1483, 2009-Ohio-2274, 906 N.E.2d 440, ¶8 (2009) (“[t]here are two ways, pursuant to the statute, to waive the attorney-client privilege: ‘(1) the client expressly consents, or (2) the client voluntarily testifies on the same subject’”). The undersigned counsel had no intent to waive Mr. Hawk’s privilege; indeed, the entire purpose of the conversation was to *protect* Mr. Hawk’s privilege. This Court should not find that the undersigned counsel’s attempt to engage in frank and open discussion with opposing counsel formed an enforceable contract to waive Mr. Hawk’s First Amendment privilege.

Based upon all the reasons set forth in the Motion to Quash Subpoena and/or for Protective Order, and based upon Defendants’ admission that the same information sought from Mr. Hawk can be obtained through Dr. Meredith Raimondo, Jason Hawk and the Oberlin News Tribune respectfully request this Court to grant their Motion to Quash and/or for a Protective Order and to deny Defendants’ Motion to Compel Deposition Testimony of Jason Hawk.

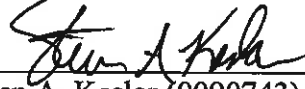
An oral hearing on this motion is respectfully requested.

WHEREFORE, Movants, Jason Hawk and Oberlin News Tribune, request that the Court:

- a) quash the subpoena, or in the alternative;
- b) enter a protective order limiting Defendants’ examination of Hawk to verifying the attribution of information described in the ONT’s news reports to the sources disclosed to the ONT’s readers; and
- c) deny Defendants’ Motion to Compel Deposition Testimony of Jason Hawk.

Cory, Meredith, Witter & Smith

Respectfully submitted,



Steven A. Keslar (0090743)

CORY, MEREDITH, WITTER & SMITH

A Legal Professional Association

101 N. Elizabeth, 6th Floor

Lima, OH 45801

419-228-6365 Fax: 419-228-5319

E-mail: skeslar@corylpa.com

Attorney for Jason Hawk and Oberlin News Tribune

Of Counsel:

John Bussian

The Bussian Law Firm

150 Fayetteville Street, 17th Fl.

Raleigh, North Carolina 27601

Tel: (919) 306-3319

jbussian@aol.com

Co-Counsel for Jason Hawk and Oberlin News Tribune

CERTIFICATE OF SERVICE:

This is to certify that service of the above pleading has been made this 17th day of August, 2018, by Ordinary U.S. Mail to the following:

- Lee E. Plakas, Counsel for Plaintiffs, Tzangas, Plakas, Mannos, & Raies, 220 Market Avenue South, 8th Floor, Canton, Ohio 44702;
- Terry A. Moore, Owen J. Rarric, and Matthew W. Onest, Counsel for Plaintiffs, Krugliak, Wilkins, Griffiths, & Dougherty Co, LPA, 4475 Munson Street, N.W., P.O. Box 369, Canton, Ohio 44735;
- Ronald D. Holman, II, Julie A. Crocker, and Cary M. Snyder, Counsel for Defendants, Taft Stettinius & Hollister, LLP, 200 Public Sq. Ste 3500, Cleveland, Ohio 44114;
- Matthew W. Nakon and Malorie A. Alverson, Counsel for Defendants, Wickens, Herzer, Panza, Cook & Batista, 35765 Chester Road, Avon, Ohio 44011;



Steven A. Keslar

Cory, Meredith, Witter & Smith