**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

Ohio House Republican Alliance, *et. al.*	
Plaintiffs,	Case No. 23CV007202
-vs-	Judge Mark Serrott
Jason Stephens, *et al.*,	
Defendants.	

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND EXPEDITED DISCOVERY

Now come Plaintiffs Ohio House Republican Alliance (OHRA), Phil Plummer, Derek Merrin, and Ronald Ferguson, pursuant to Rule 65 of the Ohio Rules of Civil Procedure and Ohio Revised Code §2727.02, respectfully moving this Court to issue a Temporary Restraining Order and Preliminary Injunction against Defendants Jason Stephens, J. Matthew Yuskewich, Treasurer, Winterset CPA Group, and Jeff LaRe, as follows:

1. That Defendants be enjoined from making expenditures, and/or transfers, to or from any bank account associated with the Ohio House Republican Alliance (OHRA) Legislative Campaign Fund ("LCF") during the pendency of this litigation.
2. That the Defendants be enjoined from operating the Ohio House Republican Alliance (OHRA) Legislative Campaign Fund in any manner, including, but not limited to, issuing statements that purport to be made by the LCF, during the pendency of this litigation.
3. That the Parties engage in expedited discovery.

The grounds for this Motion are more fully set forth in the accompanying Memorandum in Support. A proposed Temporary Restraining Order is attached as Exhibit 1.

Respectfully submitted,

/s/ Lisa Ferguson

Lisa Ferguson (0074777)
110 Main Street
Wintersville, Ohio 43953
Telephone: (740) 264-0661
Facsimile: (740) 264-6855
Email: lferguson@dlferguson.com

MEMORANDUM IN SUPPORT

Ohio Revised Code §3517.10(D)(3)(d) directs that the LCF for the Ohio House Republican Caucus shall be "administered" and "controlled" in a "manner directed by the caucus." On January 24, 2023, a majority of the Ohio House Republican Caucus met and voted to appoint Plaintiffs Phil Plummer and Derek Merrin to be in charge of the LCF. Verified Complaint, at ¶21-22. However, since that time, Defendants have usurped control of the LCF without any authorization of the Ohio House Republican Caucus at all, in plain violation of Ohio Revised Code §3517.10(D)(3)(d). *See* Verified Complaint, at ¶29-37.

Since the filing of this action, Defendants have poured gasoline on the fire by expanding their unauthorized activities with regard to the LCF in a manner which will have a direct effect on numerous elections around Ohio and cause a substantial detriment to the long-term finances of the LCF. Upon information and belief, Defendants are making expenditures, transfers, and payments to candidates and vendors that have never been authorized by the Ohio House Republican Caucus. Defendants are issuing statements in the LCF's name in an effort to influence elections, which have never been authorized by the LCF's actual elected leadership. Defendants are also soliciting funds, paying staff, and generally operating LCF in the absence of any legal authority to do so, in flagrant disregard for the claims pending in this case. And, perhaps most concerningly, Defendants are taking these actions even while a $1 million judgment creditor has filed a motion in the Franklin County Court of Common Pleas to confirm that the LCF's funds must be applied to his existing judgment.

This is precisely the type of situation which Ohio law is designed to remedy through the use of an injunction. Simply stated, when Plaintiffs prevail on their claims, it will be *Plaintiffs* – *not* Defendants – who are affirmed to be the sole lawful custodians of the LCF's funds and the sole arbiters of how those funds are (and are not) to be spent. Accordingly, allowing *Defendants* to instead raid the cupboard during the pendency of this lawsuit and leave Plaintiffs with nothing, would be exactly the kind of "violation of the plaintiff's rights" that would "tend to render the judgment ineffectual," for which an injunction is appropriate to prevent. Defendants' usurpation of the LCF will also have a direct impact on numerous elections for public office, as the LCF appears primed to spend nearly $1 million on various candidates without any authorization from the Ohio Republican Caucus to do so. And, if Defendants persist in this, in the face of a judgment creditor attempting to levy against the LCF's finances, Defendants would be creating liability for themselves, and Plaintiff OHRA, for violation of Ohio's fraudulent transfers statute. For the reasons which follow, Plaintiffs' Motion for a Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery ("Plaintiff's Motion") should be GRANTED.

I. <u>STATEMENT OF FACTS</u>

The factual basis for Plaintiffs' claims is fully set forth in the Verified Complaint filed on October 7, 2023. This Complaint was verified by sworn statements from Plaintiffs State Representative Phil Plummer, State Representative Derek Merrin, and State Representative Ronald Ferguson. *See* V. Complaint. For the sake of brevity, Plaintiffs hereby incorporate the entirety of their Complaint herein, by reference. *Id.*

Briefly summarized, however, on November 16, 2022, the House Republican Caucus held a meeting to determine who would become the next Speaker. Verified Complaint, at ¶19. At that meeting, Derek Merrin won the majority of the caucus vote to become the next speaker. *Id.* While Derek Merrin was caring for his dying father (who passed on December 29, 2022) Defendant Stephens waged a war to overturn the November vote. *Id.* at ¶18.

On January 4, 2023, the Ohio Capital Journal reported the following:

> "I pledge to respect and to work with each and every one of you," Stephens said in his acceptance speech. But just a few weeks ago the GOP had another candidate in mind. "Our caucus actually met three weeks ago and unanimously selected him,'" Rep. James Hoops, R-Napoleon, said of state Rep. Derek Merrin. Back in December, the GOP caucus voted for Merrin to be speaker, a surprise to his two other challengers – one of whom was Stephens. Stephens decided to fight, and he fought in collaboration with the Democrats.'" See Trau, Morgan "'Moderate' Republican Jason Stephens snatches Ohio House Speaker Position in surprise upset."

See Affidavit of Plaintiff Ron Ferguson, Exhibit A, Ohio Capital Journal, 4 Jan. 2023. https://ohiocapitaljournal.com/2023/01/04/moderate-republican-jason-stephens-snatches-ohio-house-speaker-position-in-surprise-upset/

On the floor of the Ohio House of Representatives on January 3, 2023, Defendant Jason Stephens was elected Speaker of the Ohio House with the support of 22 Republicans and 32 Democrats, compared to 43 Republicans who voted for Derek Merrin. V. Complaint, at ¶18. Defendant Stephens' election as Speaker, however, has no bearing on his legal right to control the LCF of the Ohio House Republican Caucus which did *not* elect him as Speaker. Instead, Ohio Revised Code §3517.10(D)(3)(d), states that:

> (d) Each state political party shall have **only one** legislative campaign fund for each house of the general assembly. Each such fund shall be separate from any other funds or accounts of that state party. A legislative campaign fund is authorized to receive contributions and make expenditures for the primary purpose of furthering the election of candidates who are members of that political party to the house of the general assembly with which that legislative campaign fund is associated. **Each legislative campaign fund shall be administered and controlled in a manner designated by the caucus.** As used in this division, "caucus" has the same meaning as in section 3517.01 of the Revised Code and includes, as an ex officio member, the chairperson of the state political party with which the caucus is associated or that chairperson's designee.

The majority of the Ohio House Republican Caucus, through the calling of a meeting of the caucus on January 24, 2023, determined the leader of the House Republican Caucus and how the Legislative Campaign Fund would be administered and controlled by electing Phil Plummer as Chairman of OHRA and Derek Merrin as Vice Chairman of OHRA. Verified Complaint, at ¶21-22. Unfortunately, Defendants Stephens, LaRe, and Treasurer Yuskewich, refuse to accept the results of that election. V. Complaint, at ¶25, 28, 42. On January 26, 2023, the Associated Press reported the following:

> Stephen's supporters note a long-standing tradition that the speaker is the leader of their party caucus, though legal experts told The Associated Press that Ohio law does not expressly require the speaker and caucus leader to be the same individual. As evidence that Stephens is an official representative of the campaign arm, known as the Ohio House Republican Alliance, and has access to its funds, an unofficial political adviser to the speaker provided The Associated Press with an image of an OHRA credit card in Stephens' name. See Hendrickson, Samantha, and Julie C. Smyth. "Ohio House Speaker Asserts Leadership, Dismisses Rival Group."

See Ferguson Aff., Ex.A, The Associated Press, 26 Jan. 2023. https://apnews.com/article/us-republican-party-ohio.

Ignoring the will of the caucus he claims to lead, Defendant Stephens has purported to install his friend Defendant LaRe as sole chair of OHRA. V. Complaint, at ¶32-34. Defendants, acting together, have excluded Defendant Plummer from having any actual role in the administration of the LCF, and have moved forward with making a variety of hires and expenditures that they have no legal authority to make. V. Complaint, at ¶33. For example, upon information and belief, the LCF has purportedly hired Jared Borg as a full-time campaign staffer, entered into contracts with multiple fundraisers who are paid monthly, signed a lease for commercial office space, and made numerous expenditures from the LCF's funds despite the fact that no member of the Ohio House Republican Caucus as ever voted to put Jeff LaRe in charge of *anything*, let alone the LCF. Ferguson Aff., Ex. A, at ¶ 6.

Incredibly, Defendants have plowed ahead in thumbing their nose at Plaintiffs and these court proceedings by continuing to spend the LCFs funds even while this lawsuit is pending. On

November 27, 2023, an e-mail invitation on behalf of OHRA was sent to scores of recipients inviting them to an "OHRA Christmas Party" to be held on December 5, 2023 at North 4th Corridor: Post 4 at 580 North 4th Street, Columbus, Ohio 43215. *See* Affidavit of Ron Ferguson, attached hereto as Exhibit A(1). The invitation indicates that this event will be paid "Paid for By OHRA." *Id.* Plaintiffs have never approved the payment for this event, nor has the Ohio House Republican Caucus ever voted to sanction expenditures for this event either. Ferguson Aff., Ex.A at ¶ 8. Upon information and belief, the LCF is continuing to make numerous expenditures for staff, fundraisers, and rent, and continues to contract with third parties, despite Defendants having no authority to make any of these payments. *Id.* at ¶ 8. Defendants have sent fundraising appeals purportedly under the authority of the LCF. *See* Exhibits A(2).

Defendants have also begun to engage in campaign activity, purportedly in the name of the LCF, without any such authorization from the Ohio House Republican Caucus either. On January 19, 2024, Defendants authorized the issuance of a press release titled, "The Ohio House Republican Alliance Calls on Sally Culling to Denounce Ohio Conservatives PAC for Their Racist Post." Defendants have also continued to solicit contributions to the LCF, through various communications purportedly sent by the LCF. At no time has any one in the Ohio House Republican Caucus voted, or authorized, Defendants to take these actions. Defendants sent out an email on February 1, 2024 purportedly in the name of the LCF, without any authorization from the Ohio House Republican Caucus announcing they will be spending the cash on hand. *See* Affidavit of Ron Ferguson, attached hereto as Exhibit A(8).

Defendants filed a Campaign Finance Disclosure on January 31, 2024 which reported that the LCF had a "cash on hand" balance of $3,036,710.67. *See* Fundraising Report, attached hereto as Exhibit A(4). This Report is further evidence that the Plaintiffs continue to make expenditures during the course of this litigation. On December 22, 2023, Plaintiffs served written discovery requests to Defendants, seeking to gather the documentation that would show the LCF's spending activity. On January 5, 2024, Defendants' counsel and Plaintiffs' counsel had seemingly reached an agreement whereby Plaintiffs would agree to staying certain discovery, on the condition that certain basic financial documents for the LCF be produced immediately. *See* Ferguson Aff., Ex. A, at 12. Defendants themselves, however, apparently then overruled their counsel, and refused to provide any documentation that would confirm the extent of the LCF's spending since the filing of this action. *See* Ferguson Aff., at Ex.13. Since reneging, Plaintiffs have now sought to stay all discovery in this case, even while they routinely purport to operate the LCF simply by virtue of having seized the bank cards, rather than having ever been appointed to these positions.

Also, since the filing of this action, a creditor of the Ohio House Republican Campaign Committee (HRCC), LCL Columbus Property Owner, LLC, has filed a motion in Franklin County Common Pleas Court Case No. 21CV-04-2157 asking for Judge O'Donnell to clarify a prior judgment against HRCC and its "successors" as being equally enforceable against OHRA. *See* Creditor Motion, at Exhibit A(5). The creditor's argument, essentially, is that since Ohio law only establishes a single legislative campaign fund for each caucus, a judgment against HRCC (the *former* name of the Ohio House Republican Campaign Committee) is enforceable against OHRA (the *current* name of the Ohio House Republican Campaign Committee). A Memorandum of Amicus Ohio House Republican Alliance Regarding Plaintiff's Motion to Clarify May 26, 2022 Decision was filed on November 29th, 2024. See Exhibit A(6). Upon information and belief, this Memorandum was filed by the Defendant's. Defendants have not informed the general membership of the Ohio House Republican Caucus about this filing at all and have not provided the caucus with any indication as to what Defendants are doing, or not doing, to satisfy (or attempt to avoid), this creditor. Ferguson Aff., A, at 15. Plaintiff LCP Columbus Property Owner, LLC's Reply in Support of its Motion to Clarify May 26,2022 Decision, at Exhibit A(7).

Defendants' activities with regard to this judgment, since they presently have seized the campaign account, will have an enormous, long-lasting effect on the finances of the LCF.

II. <u>LAW AND ARGUMENT</u>

a. <u>Standard of Review</u>

Ohio Civil Rule 65(A) provides, in part, that:

> A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.

Ohio Revised Code §2727.02 further provides that:

> A temporary order may be granted restraining an act when it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part of it, consists in restraining the commission or continuance of such act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, threatens or is about to do, or is procuring or permitting to be done, such act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

Taken together, Ohio courts have held that in order to issue a preliminary injunction, four elements must be demonstrated by Plaintiffs:

1. A strong or substantial likelihood of success on the merits;
2. That irreparable injury to the Plaintiffs would result if an injunction is not granted;
3. That the injunction will not cause substantial harm to others; and

4. That the public interest will be served by issuing the injunction being sought.

City of Cleveland v. Cleveland Elec. Illumination Co. (1996), 115 Ohio App.3d 1, 12, (8th Dist.).

Issuance of an injunction, though otherwise justified, lies within the trial court's discretion, and depends on the facts and circumstances surrounding the particular case. *Lemley v. Stephenson* (1996), 104 Ohio App.3d 126 (6th Dist.). In determining whether to grant injunctive relief, courts have recognized that no one factor is dispositive. *Cleveland,* 115 Ohio App.3d at 14 (citing *Royal Appliance Mfg. Co. v. Hoover Co., Inc.* (1994), 845 F. Supp. 469 (N.D. Ohio). Rather, the four factors must be balanced with the "flexibility which traditionally has characterized the law of equity." *Id.* (citing *Friendship Materials, Inc. v. Michigan Brink, Inc.* (1982), 679 F.2d 100, 105 (6th Cir.)).

b. Plaintiffs Have a Strong Likelihood of Success On the Merits.

The Plaintiffs, in the underlying Complaint, are seeking a declaratory judgment affirming that Phil Plummer and Derek Merrin are the only persons authorized to control and direct the LCF, by construing Ohio Revised Code §3517.10(D)(3)(d), which states:

> (d) Each state political party shall have **only one** legislative campaign fund for each house of the general assembly. Each such fund shall be separate from any other funds or accounts of that state party. A legislative campaign fund is authorized to receive contributions and make expenditures for the primary purpose of furthering the election of candidates who are members of that political party to the house of the general assembly with which that legislative campaign fund is associated. **Each legislative campaign fund shall be administered and controlled in a manner designated by the caucus.** As used in this division, "caucus" has the same meaning as in section 3517.01 of the Revised Code and includes, as an ex officio member, the chairperson of the state political party with which the caucus is associated or that chairperson's designee.

Plaintiffs have shown, with evidence, that Derek Merrin and Phil Plummer have been "designated by the caucus" to lead the LCF. Defendants – by contrast – have not. Defendants base their entire claim to leadership of the LCF on amorphous claims of "tradition," while Plaintiffs base theirs on 1) a directly applicable statute, and 2) an actual vote, memorialized in writing and signed to by the voting members, affirming the election of Merrin and Plummer. The only reason Defendants find themselves presently controlling LCF is that they seized it without authorization. No one in the Ohio House Republican Caucus voted to "designate" Defendant LaRe to do anything, let alone control all their money and campaign activities. Defendant Stephens was elected Speaker of the Ohio House of Representatives by *Democrats* – not the Republican caucus. As a consequence, with regard to the LCF, Defendants are squatters in a house they do not own.

The plain text of the statute requires that the Ohio House Republican Caucus "designate the manner" in which its LCF will be administered. The caucus did so in selecting Plaintiffs Plummer and Merrin. Defendants have no such authority under the law and can point to no authority having been granted by the Republican caucus either. Accordingly, Plaintiffs have a strong likelihood of success on the merits.

c. <u>Plaintiffs Will Suffer Irreparable Injury If a Restraining Order Is Not Granted.</u>

For purposes of a restraining order, an injury is irreparable when there could be no plain, adequate, and complete remedy at law for its occurrence and when any attempt at monetary restitution would be "impossible, difficult or incomplete." *Sequoia Voting Sys., Inc. v. Ohio Secy. of State* (Ohio Ct. Cl., 2003), 125 Ohio Misc.2d 7, 10, 796 N.E.2d 598 (*citing*, *Cleveland v. Cleveland Elec. Illum. Co.* (1996), 115 Ohio App.3d 1, 12, 684 N.E.2d 343). Here, Plaintiffs will suffer significant irreparable harm if the temporary restraining order is not granted.

First, Plaintiff OHRA is the legislative campaign fund for the Ohio House Republican Caucus. It is, by law, the only entity authorized to raise money and spend money at levels which exceed those for other political action committees, and even candidates themselves. The purpose of this legislative campaign fund is defined by statute, "A legislative campaign fund is authorized to receive contributions and make expenditures for the primary purpose of furthering the election of candidates who are members of that political party to the house of the general assembly with which that legislative campaign fund is associated." Ohio Revised Code §3517.10(D)(3)(d). Accordingly, what OHRA chooses to spend its money on, and not spend its money on, has a great impact on the outcome of various campaigns across the state of Ohio. For example, if Defendants are allowed to continue their seizure of the LCF's funds, and spend them on Candidate X, as opposed to Candidate Y, which impacts the results of an election. And in the context of the LCF, that scenario is multiplied across potentially dozens of races.

Second, if Defendants spend money from the LCF today, and those expenditures are later deemed to be fraudulent transfers to avoid the creditor in Case No. 21CV-04-2157, then Plaintiff OHRA, and its current and subsequent leadership, could be subject to liability for fraudulent transfers. Simply awarding monetary restitution against Defendants would be incomplete. This Court cannot "un-ring the bell" of an election that has already been influenced by Defendants' unauthorized seizure of the LCF and its monies, nor can this Court retroactively protect the LCF from liability for fraudulent transfers to evade a creditor if Defendants undertake those actions during this case.

It should be noted that, even without spending money, the LCF has the ability to influence elections which Defendants should be prevented from exercising. As described above, Defendants have used the LCF and sent numerous communications purporting to speak for the LCF, and by extension, the members of the Ohio House Republican Caucus. Allowing Defendants to utilize LCF to transmit electioneering messages that Defendants were never authorized to do, is contrary to law, and contrary to the expressed vote of the caucus, and should likewise be enjoined.

Defendants unauthorized seizure of the LCF will influence the outcome of elections all across Ohio unless Defendants are enjoined from spending the LCF's funds during this litigation. Accordingly, Plaintiffs, including Plaintiff OHRA, will suffer irreparable injury unless injunctive relief is granted.

d. <u>The Benefits of Injunctive Relief Outweigh Any Detriment to Defendant and Will Not Cause Any Harm to Others.</u>

The benefits of granting relief to Plaintiffs far outweigh the nonexistent detriment to Defendants. Restraining the Defendants from spending the LCF's money until the Court determines the outcome of this case costs the Defendants nothing monetarily. Also, to be clear, despite having been elected by the Republican caucus to lead the LCF, Plaintiffs' Motion does not seek any authority for them to immediately begin spending the LCF's funds either. While that is the ultimate relief sought in the underlying action, Plaintiffs, in this short term, believe that neither side should be empowered to spend LCF's funds or operate the entity while this case is pending. Accordingly, since under Plaintiffs' proposed injunction neither side would be permitted to utilize the LCF, there would not be any damages caused to Defendants nor anyone else.

e. <u>The Public Interest Weighs in Favor of Granting a Preliminary Injunction.</u>

Granting Plaintiff's requested injunction is in the public interest. First, it would be in furtherance of correctly applying existing law, specifically, Ohio Revised Code §3517.10(D)(3)(d), which provides the manner in which a caucus designates how its LCF is to be administered. Second, it would prevent the improper influencing of the outcome of elections by preventing Defendants – who have no legal right to operate the LCF or spend its funds – from spending funds in legislative races statewide. Third, it would prevent Defendants from further harming the LCF – and its potential creditor in Case No. 21CV-04-2157 – making transfers that could be fraudulent conveyances to avoid a judgment. Given all these realities, it is in the public interest to simply halt all spending and activities of the LCF until the outcome of this case is determined.

III. CONCLUSION

Defendants have seized control of the LCF absent any authority from the Ohio House Republican Caucus to do so. There has never been any vote to appoint Defendant Stephens or Defendant LaRe to do *anything* with regard to the LCF, and certainly not to spend its money and issue statements which attempt to influence the outcome of elections. By contrast, Plaintiffs Phil Plummer and Derek Merrin were *elected* by a majority of the actual House Republican Caucus, all of whom signed their name to memorialize their vote in writing. Ohio law is clear – the LCF is to be administered "in a manner designated by the caucus." Defendants are akin to squatters living in a house with no lease or employees making expenditures from a company they do not run. Defendants have no legal right to do anything with regard to the LCF and given the fact that their misuse of the LCF will directly impact elections for public office statewide, they must be enjoined from doing any further damage while this case remains pending.

Respectfully submitted,

/s/ Lisa Ferguson

Lisa Ferguson (0074777)
110 Main Street
Wintersville, Ohio 43953
Telephone: (740) 264-0661
Facsimile: (740) 264-6855
Email: lferguson@dlferguson.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery was served by e-mail in accordance with Ohio Civil Rule 5(b)(2)(f) upon the following; Robert J. Tucker at rtucker@bakerlaw.com this 1st day of February 2024, and with this Court's electronic filing system, which will send notice to all counsel of record.

Respectfully submitted,

/s/ Lisa Ferguson
Lisa Ferguson (0074777)