

**APPENDIX TO  
PETITION FOR A WRIT OF CERTIORARI**

**TABLE OF CONTENTS**

	<b>Page</b>
Appendix A United States Court of Appeals for the Sixth Circuit opinion (September 16, 2025)	1a
Appendix B United States District Court for the Middle District of Tennessee opinion (November 20, 2024)	16a

**APPENDIX A**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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Dan McCaleb, Executive  
Editor of the Center  
Square,

Plaintiff-Appellant

v.

Michelle Long, in her of-  
ficial capacity as Direc-  
tor of the Tennessee Ad-  
ministrative Office of  
the Courts,

Defendant-Appellee

No. 24-6043

Appeal from the United States District Court for the  
Middle District of Tennessee at Nashville.

No. 3:22-cv-00439 Eli J. Richardson, District Judge.

Decided and Filed: September 16, 2025

Before: COLE, GIBBONS, and BUSH, Circuit  
Judges.

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**COUNSEL**

ON BRIEF: Jacob Huebert, Reilly Stephens, LIB-  
ERTY JUSTICE CENTER, Austin, Texas, for Appel-  
lant. Andrew C. Coulam, Robert W. Wilson, OFFICE  
OF THE TENNESSEE ATTORNEY GENERAL,  
Nashville, Tennessee, for Appellee. Jennifer Saf-  
strom, VANDERBILT UNIVERSITY, Nashville, Ten-  
nessee, for Amici Curiae.

BUSH, J., delivered the opinion of the court in  
which GIBBONS, J., concurred. COLE, J. (pp. 8 10),

delivered a separate opinion concurring in the judgment.

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OPINION

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JOHN K. BUSH, Circuit Judge. Justice Louis Brandeis once wrote that “sunlight is said to be the best of disinfectants.” *What Publicity Can Do*, Harper’s Wkly., Dec. 20, 1913, at 10. The Founders, though, recognized the benefits of sometimes keeping window curtains closed. Indeed, secrecy at the Constitutional Convention helped facilitate the forming of our nation. See generally John P. Kaminski, *Secrecy and the Constitutional Convention* (2005). And the Supreme Court of the United States has never recognized a hard-and-fast constitutional rule requiring public access to all governmental proceedings. *McBurney v. Young*, 569 U.S. 221, 232 (2013).

Here, the Tennessee Judicial Advisory Commission, with no objection from the Tennessee legislature, has kept its meetings closed to the public since 2018. Dan McCaleb, a journalist, claims that the Commission is violating the First Amendment, as applied to the State through the Fourteenth Amendment, by depriving him of access to the proceedings. He sued Michelle Long, the official purportedly responsible for maintaining the Commission’s closed meetings. McCaleb’s single basis for relief is that his request would satisfy the experience-and-logic test recognized in *Press-Enterprise Co. v. Superior Court of California for Riverside County*, 478 U.S. 1, 8–9 (1986), which we apply to requests for information tied to adjudicatory proceedings. As explained below, the Commission’s meetings are advisory, not adjudicatory, so the test does not govern here. We therefore

affirm the district court’s grant of summary judgment to Long.

I.

McCaleb is Executive Editor of The Center Square, an online news organization focused on local government news. His complaint about the Commission’s closed meetings calls upon us to consider Tennessee law, which recognizes that the Tennessee Supreme Court has the responsibility to promulgate rules on the practice and procedure of the state courts. Tenn. Code Ann. § 16-3-402. The Tennessee General Assembly created the Commission to “advise the supreme court from time to time respecting the rules of practice and procedure.” Tenn. Code Ann. § 16-3-601(a). The Tennessee Supreme Court appoints the members of the Commission. *Id.* The Commission can recommend changes to the state’s rules of practice and procedure, but its role is purely advisory—the statute gives only the Tennessee Supreme Court power to prescribe rules.

For some period, the public could access the Commission’s meetings. McCaleb has produced evidence that the meetings were open as of at least 2012. But in 2018, a member of the public disturbed one of the Commission’s meetings, and the Commission has closed them to the public ever since. Long, who is Director of the Tennessee Administrative Office of the Courts, claims that keeping the meetings closed makes sense because “discussions among Commission members can involve sensitive information, and confidential meetings allow members a certain level of candor that would be diminished if open to the public.” Appellee’s Br. at 6–7.

McCaleb sued Long in her official capacity. McCaleb asserted that his exclusion from the Commission's meetings violated the First Amendment, and he sought injunctive relief to allow for public access. The district court granted McCaleb a preliminary injunction, but after discovery the court granted summary judgment to the Commission and dissolved the injunction. This court reviews this decision *de novo*. *Hyman v. Lewis*, 27 F.4th 1233, 1237 (6th Cir. 2022).

## II.

McCaleb grounds his claim in the experience-and-logic test adopted in *Press-Enterprise*. The Supreme Court of the United States has applied that test only to requests for access to criminal proceedings. We have gone further, extending it to requests for information tied to other types of adjudicatory proceedings. But, absent direction from the Supreme Court to do so, we find it inappropriate to extend application of the *Press Enterprise* test beyond the adjudicatory context. Because McCaleb requests information unrelated to an adjudicatory proceeding, the experience-and-logic test, even as extended by our court, is inapplicable here. And because McCaleb proffers no other ground for relief, his First Amendment claim fails.

We start with a “well established” proposition: the First Amendment does not confer a general right to access information in the government's possession. *Zillow, Inc. v. Miller*, 126 F.4th 445, 457 (6th Cir. 2025). The Supreme Court has affirmed that principle on at least two occasions. *See Los Angeles Police Dep't v. United Reporting Pub. Corp.*, 528 U.S. 32, 40 (1999); *McBurney*, 569 U.S. at 232. And we have done so in at least six published opinions. *See Putnam Pit, Inc. v.*

*City of Cookeville*, 221 F.3d 834, 840 (6th Cir. 2000); *United States v. Miami Univ.*, 294 F.3d 797, 820–21 (6th Cir. 2002); *S.H.A.R.K. v. Metro Parks Serving Summit Cnty.*, 499 F.3d 553, 560 (6th Cir. 2007); *Phillips v. DeWine*, 841 F.3d 405, 418 (6th Cir. 2016); *Hils v. Davis*, 52 F.4th 997, 1002 (6th Cir. 2022); *Zillow*, 126 F.4th at 457. Consequently, when the government keeps information secret, the person seeking the information has the burden to show a violation of his or her constitutional rights. *Cf. Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022).

In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), the Court recognized an exception to this general rule: when a court prohibits the public from accessing criminal trial proceedings. The Court recognized a right of access to criminal trials in large part because there was a history and tradition of keeping criminal trials open to the public. *Id.* at 565–69. Justice Brennan, writing for himself and Justice Marshall, penned a concurrence listing two factors he believed the Court should consider when someone asks for “access to a particular government process”: “historical and current practice” and “the importance of public access to the . . . process itself.” *Id.* at 589 (Brennan, J., concurring in the judgment). In *Press-Enterprise*, the Court adopted a version of these two factors to create the experience-and-logic test:

In cases dealing with the claim of a First Amendment right of access to criminal proceedings, our decisions have emphasized two complementary considerations. First . . . we have considered whether the place and process have historically been open to the press and general public . . . . Second, in this setting the Court has traditionally considered whether public access

plays a significant positive role of the functioning of the particular process in question. . . . If the particular proceeding in question passes these tests of experience and logic, a qualified First Amendment right of public access attaches.

*Press-Enterprise*, 478 U.S. at 8–9.

It bears emphasis that, unlike Justice Brennan’s *Richmond Newspapers* opinion, *Press-Enterprise* did not explicitly extend the experience-and-logic test to contexts beyond a request for access to criminal proceedings. Nine published opinions in this circuit refer to *Richmond Newspapers* or *Press-Enterprise* as creating a right of access to criminal proceedings.<sup>1</sup> And the first Sixth Circuit case to use the experience-and-logic test outside the context of criminal proceedings explicitly acknowledged that it was doing so, finding that the Court’s analysis in *Richmond Newspapers* applied equally to civil and criminal trials. *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1178–79 (6th Cir. 1983).

In *Detroit Free Press v. Ashcroft*, we extended the test’s application to adjudicatory proceedings conducted by executive agencies. 303 F.3d 681, 696 (6th

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<sup>1</sup> *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1178 (6th Cir. 1983); *Application of Nat’l Broad. Co., Inc.*, 828 F.2d 340, 343 (6th Cir. 1987); *Application of Storer Commc’ns, Inc.*, 828 F.2d 330, 336 (6th Cir. 1987); *Cincinnati Gas & Elec. Co. v. Gen. Elec. Co.*, 854 F.2d 900, 903 (6th Cir. 1988); *In re Memphis Pub. Co.*, 887 F.2d 646, 648 (6th Cir. 1989); *Miami Univ.*, 294 F.3d at 821; *In re Search of Fair Fin.*, 692 F.3d 424, 429 (6th Cir. 2012); *United States v. DeJournett*, 817 F.3d 479, 484 (6th Cir. 2016); *United States v. Kincaide*, 119 F.4th 1074, 1077 (6th Cir. 2024).

Cir. 2002) (“quasi-judicial government administrative proceedings”); accord Phillips, 841 F.3d at 418. But the holding in *Detroit Free Press* did not go any further than that. McCaleb incorrectly reads that case to require that we apply the experience-and-logic test to all requests for access to government proceedings. True, *Detroit Free Press* said the experience-and-logic test “provide[s] a test of general applicability” for deciding whether the First Amendment protects a right of access to a given piece of information. *Detroit Free Press*, 303 F.3d at 700. But, read in context, this snippet is not as ambitious as McCaleb wants us to believe.

The question presented in *Detroit Free Press* was whether to apply the experience-and-logic test to deportation proceedings. *See id.* at 699. The government had argued that the test only applied to “judicial” proceedings and that deportation proceedings did not count because they were “administrative” proceedings conducted by the executive branch. *See id.* at 694. The court “reject[ed] the Government’s assertion that a line has been drawn between judicial and administrative proceedings.” *Id.* at 695. Noting that “[d]rawing sharp lines between administrative and judicial proceedings would allow the legislature to artfully craft information out of the public eye,” *id.*, the court then embarked on a lengthy comparison between criminal judicial proceedings and deportation proceedings. It concluded that “there are many similarities between judicial proceedings and deportation proceedings,” emphasizing that deportation proceedings are “exceedingly formal and adversarial.” *Id.* at 699. The government’s citations to the contrary were inapplicable, according to the court, because they did not concern “access to information relating to a government adjudicative process.” *Id.* Only after this discussion did the

court say that the experience-and-logic test generally applies. *Id.* at 700.

So, in context, the court meant “general” in the sense of both judicial and administrative adjudicatory proceedings. It did not mean to suggest that the test applies to any request for government information. Indeed, if the court had intended “general” to extend that far, there would have been no need to spend nearly five pages describing the similarities between administrative deportation proceedings and judicial criminal proceedings—the court could have applied the experience-and-logic test straightaway.

This interpretation of *Detroit Free Press* is consistent with our case law. Both before and after *Detroit Free Press*, we have not applied the experience-and-logic test to situations that, in McCaleb’s view, would have required it.<sup>2</sup> In *S.H.A.R.K. v. Metro Parks Serving Summit County*, we noted that the “framework for analyzing access cases dealing with the special issue of access to judicial proceedings,” i.e., the experience-and-logic test, “is based on unique issues that arise in that context” and is therefore inapplicable “outside of the judicial-proceeding context.” 499 F.3d at 560 n.2. Likewise, in *Phillips v. DeWine*, we held that the experience-and-logic test did not apply to a request by death row inmates for “information related to Ohio executions” because that information

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<sup>2</sup> See *Putnam Pit*, 221 F.3d at 834 (electronic records of every parking ticket in a city); *S.H.A.R.K.*, 499 F.3d at 553 (press videotapes confiscated by park ranger); *Phillips*, 841 F.3d at 405 (information about state’s death penalty procedures); *Hils*, 52 F.4th at 997 (recordings of interviews conducted during police department internal investigation).

was “neither information of the type filed in a government proceeding nor its functional equivalent.” 841 F.3d at 419. *Phillips* also interpreted *Detroit Free Press* to extend the application of the experience-and-logic test only so far as adjudicative administrative proceedings. *Id.* at 418. It explicitly rejected the view that this Circuit has endorsed the views of other circuits who have applied the test generally. *Phillips* made clear that our circuit has applied the experience-and-logic test only in the context of adjudicatory proceedings.

Here, McCaleb does not seek information tied to an adjudicatory proceeding. For many reasons, the Commission’s meetings are not adjudicatory in nature. To start, the Commission’s meetings are not “adversarial” like the deportation proceedings in *Detroit Free Press*. See 303 F.3d at 699. Nor do the decisions reached in them have “real operative effect” like the decisions in court hearings or administrative adjudicatory proceedings. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 160 & n.25 (1975). This is because the Tennessee Supreme Court retains plenary power to prescribe the state’s rules of practice and procedure. Tenn. Code Ann. § 16-3-402. The Commission only “advises” the Tennessee Supreme Court. Tenn. Code Ann. § 16-3-601(a). The advisory role of the Commission further supports that its meetings are not adjudicative proceedings because “advisory opinions, recommendations[,] and deliberations” are protected from disclosure under the common-law deliberative process privilege embedded in the Freedom of Information Act. *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 267 (2021) (internal citation omitted).

### III.

The Constitution does not require government to open every door closed to the public. In First Amendment right-of-access cases, we apply the experience-and-logic test to requests for information tied to adjudicatory proceedings and we do not apply it to requests for other types of information. Because the Commission's meetings are not adjudicatory proceedings, we do not apply the experience-and-logic test to McCaleb's request for access. McCaleb raises no alternative theory entitling him to access the Commission's meetings.

So the judgment of the district court is affirmed.

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**CONCURRENCE**

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COLE, Circuit Judge, concurring in judgment. The Supreme Court recognizes no general right of access to governmental proceedings. *Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1, 8 (1986) (“*Press-Enterprise II*”). An exception “exists when the government excludes the people from a space historically open to them, and that space has played a particularly significant role in the functioning of the judicial process and the government as a whole.” *Hils v. Davis*, 52 F.4th 997, 1002 (6th Cir. 2022) (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 605–06 (1982) (citation modified)). We apply this analytical framework—the “experience-and-logic” test—to requests for access to judicial and quasi-judicial proceedings. See *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 695–96 (6th Cir. 2002). Since meetings of the Tennessee Judicial Advisory Commission are advisory and not adjudicatory, I agree with the majority that the experience-and-logic test is inapplicable, and that McCaleb’s First Amendment claim fails. I accordingly concur in the judgment. I write separately to clarify my view of the experience-and-logic test’s application outside the criminal context.

The experience-and-logic test is derived from *Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555 (1980), where the Supreme Court recognized a constitutional right of access to criminal trials because of the long tradition of open trials and the value of openness to the proceedings themselves, including their “significant community therapeutic value,” the appearance of fairness, and the “educative effect of public attendance.” *Id.* at 570–73 (citation modified). The

Court reasoned that, “to work effectively, it is important that society’s criminal process satisfy the appearance of justice, and the appearance of justice can best be provided by allowing people to observe it.” *Id.* at 571–72 (citation modified). Moreover, as the Court recognized in a later case, “public access to criminal trials permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government.” *Globe Newspaper*, 457 U.S. at 606.

Applying this logic, the Supreme Court recognized a right of access to other criminal proceedings, including jury selection, *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 508–09 (1984) (“*Press-Enterprise I*”), and preliminary hearings, *Press-Enterprise II*, 478 U.S. at 10. To do so outside the context of the trial itself, the Court emphasized the importance of both proceedings to the wider criminal process. See *Press-Enterprise I*, 464 U.S. at 507; *Press-Enterprise II*, 478 U.S. at 12. In *Press-Enterprise II*, for example, the Court recognized that a preliminary hearing is “often the final and most important step in the criminal proceeding” because its outcome often impacts a defendant’s plea. 478 U.S. at 12. Therefore, even if a preliminary hearing cannot result in a conviction and is adjudicated without a jury, “these features . . . do not make public access any less essential to the proper functioning of the proceedings in the overall criminal justice process.” *Id.*

A tradition of public participation and the value of public access, not the criminal nature of the proceedings, were the Court’s key considerations. *Id.* at 9 (“If the particular proceeding in question passes [the] tests of experience and logic, a qualified First Amend-

ment right of public access attaches.”). While Supreme Court has not explicitly extended the experience-and-logic test beyond a request for access to criminal proceedings, it has also not cabined the test to criminal proceedings. Nor has the Court taken issue with the application of the test to various proceedings outside of the criminal context in our circuit and others. Any language describing the experience-and-logic test as applicable to criminal proceedings is, in my view, not a limiting principle, but a function of discussing the specific legal issues presented by the case under review. *See, e.g., Richmond Newspapers*, 448 U.S. at 580 n.17 (plurality op.) (“Whether the public has a right to attend trials of civil cases is a question not raised by this case, but we note that historically both civil and criminal trials have been presumptively open.”).

Consistent with this understanding, we have joined other circuits in applying the experience-and-logic test to adjudicative proceedings beyond the criminal context, “[n]otwithstanding its origin in criminal proceedings[.]” *In re Fair Fin.*, 692 F.3d 424, 429 (6th Cir. 2012) (collecting cases); see also *Detroit Free Press*, 303 F.3d at 695 (collecting cases). True, we have described the test as applicable to criminal proceedings. But simply describing the test’s application to criminal proceedings does not imply that it is less relevant to other adjudicatory proceedings. *See, e.g., Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1178 (6th Cir. 1983) (describing the test’s past application to criminal proceedings but applying the test to assess access to civil trials); *United States v. Miami Univ.*, 294 F.3d 797, 820–21 (6th Cir. 2002) (describing the test’s past application to criminal proceedings

but applying the test to assess access to student disciplinary records). Rather, in accordance with Supreme Court precedent, we have discussed the relevant proceeding's tradition of public participation and the value of public access, often analogizing to criminal proceedings to do so. *See, e.g., Brown*, 710 F.2d at 1178–79; *Miami Univ.*, 294 F.3d at 821–22; *Detroit Free Press*, 303 F.3d at 698, 701.

As relevant to this case, the meetings of the Tennessee Judicial Advisory Commission are only advisory. Tenn. Code Ann. § 16-3-601(a). The Tennessee Supreme Court ultimately prescribes the state's rules of practice and procedure. *Id.* § 16-3-402. The judicial subject of the Commission's meetings does not make the meetings judicial in nature. And since the meetings are not judicial or quasi-judicial proceedings, they do not implicate the “unique issues that arise in that context.” *S.H.A.R.K. v. Metro Parks Serving Summit Cnty.*, 499 F.3d 553, 560 n.2 (6th Cir. 2007). Of course, the Commission's meetings may, as McCaleb asserts, benefit from public access and foster public education. After all, “many governmental processes operate best under public scrutiny[.]” *Press-Enterprise II*, 478 U.S. at 8. But those interests alone do not create a constitutional right of access. *See, e.g., Houchins v. KQED, Inc.*, 438 U.S. 1, 15 (1978). Instead, the Tennessee legislature may choose to open the meetings to the public, as the federal government and other states have done. *See* 28 U.S.C. § 2073(c)(1); Zachary D. Clopton, *Making State Civil Procedure*, 104 Cornell L. Rev. 1, 35 (2018).

Secrecy is, sometimes, required for government to function properly. But it is not an overriding virtue. Indeed, as the experience-and-logic test recognizes,

openness plays “a significant positive role” in governmental proceedings, *Press-Enterprise II*, 478 U.S. at 8, because “the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known[,]” *Press-Enterprise I*, 464 U.S. at 508. “People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Richmond Newspapers*, 448 U.S. at 572.

**APPENDIX B**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

DAN MCCALED, Execu-  
tive Editor of THE CEN-  
TER SQUARE,

Plaintiff,

v.

MICHELLE LONG in  
her official capacity as  
DIRECTOR of the TEN-  
NESSEE ADMINIS-  
TRATIVE OFFICE OF  
THE COURTS,

Defendant.

No. 3:22-cv-00439

JUDGE RICHARDSON

MEMORANDUM OPINION

Pending before the Court are Defendant’s Motion for Summary Judgment (Doc. No. 71, “Defendant’s Motion”) and Plaintiff’s Motion for Summary Judgment (Doc. No. 74, “Plaintiff’s Motion”). Defendant filed a memorandum in support of her Motion (Doc. No. 72, “Defendant’s Memorandum”), and Plaintiff has done likewise (Doc. No. 76, “Plaintiff’s Memorandum”). Plaintiff has filed a response in opposition to Defendant’s Motion (Doc. No. 83, “Plaintiff’s Opposition”), to which Defendant has filed a reply (Doc. No. 86, “Defendant’s Reply”). Conversely, Defendant has filed a response in opposition to Plaintiff’s Motion (Doc. No. 80, “Defendant’s Opposition”), to which Plaintiff has filed a reply (Doc. No. 85, “Plaintiff’s Reply”).

For the reasons discussed herein, the Court will deny Plaintiff's Motion and grant Defendant's Motion.

### BACKGROUND<sup>1</sup>

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<sup>1</sup> The facts that are stated herein without qualification are undisputed—a term the Court will use to describe both facts that are not in dispute at all and facts that are not in *genuine* dispute—and are treated as such. Alleged facts that are qualified here in some way (as for example by being prefaced with “Plaintiff contends that”) are in dispute and are treated as such.

Some of the facts herein come from Defendant's Responses to Plaintiff's Statement of Undisputed Material Facts (Doc. No. 81, “Defendant's Responses”), wherein they are largely undisputed, except for Plaintiff's characterization of past Advisory Commission meetings and related notices as being public. (See generally *id.*). With respect to Defendant's Responses, the Court will overrule Defendant's sole objection, which describes Plaintiff's statement as impermissibly compound in violation of Local Rule 56.01(b), because Defendant's response remedies the compound nature of said statement. (See *id.* at 2).

Other facts herein come from Plaintiff's Responses to Defendant's Statement of Undisputed Material Facts (Doc. 84, “Plaintiff's Responses”). In his Responses, Plaintiff objects to the testimony of Lang Wiseman on the basis that he was not designated as a fact witness. (*Id.* at 2–4). The Court will overrule the objection because the testimony at issue appears to be within the scope of Mr. Wiseman's expert opinions. (See Doc. No. 83-3 at 4–8). Plaintiff also objects to the testimony of Chairman Bulso on the basis that “his counsel clarified on the record in his deposition that Bulso was testifying only in his individual capacity and not for the Advisory Commission.” (Doc. No. 84 at 3). The Court will overrule this objection because the testimony at issue (in addition to being relevant) falls squarely within Chairman's Bulso's personal knowledge and thus is generally relevant even if Chairman Bulso is deemed to have testified “only in his individual capacity and not for the Advisory Commission.”

Other facts contained herein come from record evidence (such as depositions) and are cited (as being accurate) by the opposing

Plaintiff Dan McCaleb is the executive editor of the online news organization, “The Center Square.” (Doc. No. 76 at 2). Defendant Michelle Long is the Director of the Tennessee Administrative Office of the Courts (“AOC”). (*Id.* at 3; Doc. 81 at 1). As part of her duties, Defendant oversees the AOC.<sup>2</sup> (Doc. No. 76 at 2; Doc. 81 at 2). In relevant part, the AOC provides administrative support to the Advisory Commission on the Rules of Practice & Procedure (“Advisory Commission”). (Doc. No. 72 at 2; Doc. No. 76 at 2; Doc. 81 at 2). The Advisory Commission was established to “advise the [Tennessee] supreme court from time to time respecting the rules of practice and procedure.” Tenn. Code Ann. § 16-3-601(a). In practical terms, the Advisory Commission proposes changes to those rules. (Doc. 84 at 1–2). After considering a proposal by the AOC, the Advisory Commission takes a vote. If the Advisory Commission approves the proposal, the AOC sends the proposal to the Tennessee Supreme Court.

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party in his or her briefing. Other facts (background, uncontroversial ones) are mutually stated in the parties’ opposing briefing on their respective Motions (Doc. Nos. 71, 76, 80, 83, 85, 86). Finally, some of the facts contained herein come from uncontroverted portions of Plaintiff’s Amended Complaint (Doc. No. 19), as well as this Court’s Order and Preliminary Injunction (Doc. No. 40).

There are other purported facts that are disputed but are evidentially supported and are asserted by Plaintiff or Defendant, as the case may be with respect to a particular fact, to support the asserting party’s view as to whether there is or is not a genuine issue of material fact as to a particular claim. The Court treats these purported facts as potentially but necessarily true and refers to them, and the evidence supporting them, in appropriate places in its analysis below.

<sup>2</sup> <https://www.tncourts.gov/administration>

(*Id.* at 2–3). The Tennessee Supreme Court then decides whether to move forward with the proposal. (*Id.* at 3). The Tennessee Supreme Court can also revise the proposal without consulting the Advisory Commission. (*Id.*). If it decides to move forward with a proposal, the Tennessee Supreme Court publishes the proposed rule for public comment for 60 days, takes received comments into consideration, and proposes the rule to the General Assembly. (*Id.*). According to Defendant, the proposed rule does not go into effect unless approved by the General Assembly. (*Id.* at 4).

Meetings of the federal counterpart to the Advisory Commission are open to the public. (Doc. No. 81 at 4). According to Plaintiff, meetings of the Advisory Commission used to be likewise open to the public. (Doc. No. 76 at 4–5; Doc. No. 83 at 4). Plaintiff also contends that, as part of its administrative support to the Advisory Commission, the AOC back then would post a notice on its website in advance of the meetings, inviting the public to attend. (Doc. No. 76 at 4–5; Doc. No. 81 at 2; Doc. No. 83 at 1, 4). Defendant, however, contends that members of the Advisory Commission understand meetings to be closed to the public. (Doc. No. 72 at 3; Doc. No. 84 at 4–5). Defendant further contends that the notices on AOC’s website were merely indicative of the dates of Advisory Commission meetings, and not an invitation to the public to attend the meetings. (Doc. No. 81 at 3).

In 2018, a member of the public verbally disrupted a meeting. (*Id.* at 1, 4; Doc. No. 83 at 4). Since this incident, Plaintiff claims, the meetings have become closed to the public, and the AOC has stopped providing notice of the meetings on its website. (Doc. No. 76 at 2, 4–5, 8–9; Doc. No. 83 at 1, 5, 8). According to Defendant, Advisory Commission meetings are closed to

the public to encourage honest and frank discussions at the meetings. (Doc. No. 72 at 3; Doc. No. 84 at 5).

Plaintiff filed a claim under 42 U.S.C. § 1983, alleging that Defendant deprived him of his purported First Amendment right to access the Advisory Commission meetings by closing them to the public. (Doc. No. 19 ¶¶ 72–74). Plaintiff also filed a motion (Doc. No. 20) requesting a preliminary injunction that would prohibit Defendant from closing future Advisory Commission meetings and would require her to grant him virtual and in-person access to the meetings. (See Doc. No. 40 at 2). The Court granted in part and denied in part Plaintiff’s request, issuing a preliminary injunction that—while carving out certain exceptions not relevant here—ordered the AOC (under Defendant’s direction) to open the meetings either by livestreaming or by allowing in-person attendance.<sup>3</sup> (*Id.*). Pursuant to the Court’s preliminary injunction, meetings were livestreamed to the public on June 9, 2023, and December 8, 2023. (Doc. No. 81 at 5). Thereafter, the parties’ cross-motions for summary judgment were filed.

#### LEGAL STANDARD

Summary judgment is appropriate where there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). “By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment;

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<sup>3</sup> The Court contemporaneously denied Defendant’s motion to dismiss (Doc. No. 24) based on this Court’s alleged lack of subject-matter jurisdiction. (Doc. No. 25).

the requirement is that there be no *genuine* issue of *material fact*.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). In other words, even if genuine, a factual dispute that is irrelevant under applicable law is of no value in defeating a motion for summary judgment. *See id.* at 248. On the other hand, “summary judgment will not lie if the dispute about a material fact is ‘genuine[.]’” *Id.*

A fact is “material” within the meaning of Rule 56(c) “if its proof or disproof might affect the outcome of the suit under the governing substantive law.” *Reeves v. Swift Transp. Co.*, 446 F.3d 637, 640 (6th Cir. 2006) (citing *Anderson*, 477 U.S. at 248), abrogated on other grounds by *Young v. Utd. Parcel Serv.*, 575 U.S. 206 (2015). A genuine dispute of material fact exists if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Harris v. Klare*, 902 F.3d 630, 634–35 (6th Cir. 2018). The party bringing the summary judgment motion has the initial burden of identifying portions of the record that demonstrate the absence of a genuine dispute over material facts. *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 627–28 (6th Cir. 2018) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Alternatively, the moving party may meet its initial burden by otherwise “show[ing]”—even without citing materials of record—that the nonmovant “cannot produce admissible evidence to support a material fact (for example, the existence of an element of a nonmovant plaintiff’s claim).” Fed. R. Civ. P. 56(c)(1)(B). If the summary judgment movant meets its initial burden, then in response the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. *Pittman*, 901 F.3d at 628. Importantly, “[s]ummary

judgment for a defendant [that has met its initial burden as the movant] is appropriate when the plaintiff ‘fails to make a showing sufficient to establish the existence of an element essential to [her] case, and on which [she] will bear the burden of proof at trial.’” *Cleveland v. Pol’y Mgmt. Sys. Corp.*, 526 U.S. 795, 805–06 (1999) (quoting *Celotex*, 477 U.S. at 322).

Any party asserting that a fact cannot be or genuinely is disputed (i.e., any party seeking summary judgment and any party opposing summary judgment, respectively) can support the assertion either by: (a) citing to materials in the record, including, but not limited to, depositions, documents, affidavits, or declarations, Fed. R. Civ. P. 56(c)(1)(A), or (b) “showing” (i) that the adverse party cannot produce admissible evidence to raise a genuine dispute as to that fact or (ii) that contrary to the claim of the adverse party, the materials cited by the adverse party do not actually establish the absence or presence (as the case may be) of a genuine dispute as to that fact.

In reviewing a motion for summary judgment, this Court must view the evidence in the light most favorable to the non-moving party. *Tlapanco v. Elges*, 969 F.3d 638, 647 (6th Cir. 2020) (quoting *Anderson*, 477 U.S. at 248). Likewise, the Court should view the facts and draw all reasonable inferences in favor of the non-moving party. *Pittman*, 901 F.3d at 628. Credibility judgments and weighing of evidence are improper. *Hostettler v. College of Wooster*, 895 F.3d 844, 852 (6th Cir. 2018). As noted above, where there is a genuine dispute as to any material fact, summary judgment is not appropriate. *Id.* The Court determines whether sufficient evidence has been presented to make the issue of fact a proper jury question. *Id.* The mere existence of a scintilla of evidence in support of the non-

moving party's position will be insufficient to survive summary judgment; rather, there must be evidence upon which the jury could reasonably find for the non-moving party. *Rodgers v. Banks*, 344 F.3d 587, 595 (6th Cir. 2003).

On a motion for summary judgment, a party may object that the supporting materials specified by its opponent "cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). Upon such an objection, the proponent of the supporting material must show that the material is admissible as presented or explain how it could be presented in a form that would be admissible. *Thomas v. Haslam*, 303 F. Supp. 3d 585, 624 (M.D. Tenn. 2018); *Mangum v. Repp*, 674 F. App'x 531, 537 (6th Cir. 2017) (citing Fed. R. Civ. P. 56(c) advisory comm. note to 2010 amend.).

"The standard of review for cross-motions for summary judgment does not differ from the standard applied when a motion is filed by only one party to the litigation." *New Century Found. v. Robertson*, 400 F. Supp. 3d 684, 689 (M.D. Tenn. 2019) (citing *Ferro Corp. v. Cookson Grp., PLC*, 585 F.3d 946, 949 (6th Cir. 2009)). "[S]ummary judgment in favor of either party is not proper if disputes remain as to material facts. Rather, the court must evaluate each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration." *Id.* (quoting *Taft Broad. Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991)). In addition, "if the moving party will bear the burden of persuasion at trial, then that party must support its motion with credible evidence that would entitle it to a directed verdict if not controverted at trial." *Timmer v. Mich. Dep't of Com.*, 104

F.3d 833, 843 (6th Cir. 1997) (citing *Celotex*, 477 U.S. at 322–23); see also *Ely v. Dearborn Heights Sch. Dist. No. 7*, 150 F. Supp. 3d 842, 849–50 (E.D. Mich. 2015) (explaining that, if the moving party bears the burden of proof at trial, that party “must satisfy both the initial burden of production on the summary judgment motion—by showing that no genuine dispute exists as to any material fact—and the ultimate burden of persuasion on the claim—by showing that it would be entitled to a directed verdict at trial.” (citing William W. Schwarzer, et al., *The Analysis and Decision of Summary Judgment Motions*, 139 F.R.D. 441, 477–78 (1992))).

Below, the Court will address the legal framework applicable to Plaintiff’s First Amendment right-of-access claim under Sixth Circuit law. Then, the Court will address the parties’ respective motions, which are a mirror image of one another. Because the motions are based on the same arguments, and these arguments are repeated in the parties’ respective responses, the Court will address the motions together. (See *PNC Bank, Nat’l Ass’n v. Legal Advoc.*, 2019 WL 4746810 at \*2 (E.D. Mich. Sept. 30, 2019) (addressing cross-motions based on the same arguments together); *Lusane v. Conn-Selmer, Inc.*, 2014 WL 12768814 at \*4 (N.D. Ohio Aug. 12, 2014) (same); see also *Mitchell v. Mod. Woodmen of Am.*, 2014 WL 6983293 at \*9 (N.D. Ala. Dec. 10, 2014) (same); *Gutierrez v. Metro. Life Ins. Co.*, 2007 WL 9814730 at \*8 n.7 (N.D. Ill. Sept. 28, 2007) (same); *Banks v. Wells Fargo Bank, N.A.*, 2011 WL 5555728 at \*3 (E.D. Pa. Aug. 17, 2011), *report and recommendation adopted*, 2011 WL 5555835 (E.D. Pa. Oct. 27, 2011) (addressing “intricately interrelated” cross-motions together).

## DISCUSSION

For the reasons stated below, the Court concludes that as a matter of law, Plaintiff does not have a First Amendment right to access Advisory Commission meetings. Therefore, Plaintiff's Motion will be denied. Conversely, Defendant's Motion—a mirror image of Plaintiff's—will be granted.

A. The Supreme Court's Decision in *Houchins* Governs

The crux of Defendant's argument is that the Supreme Court's decision in *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978), governs this case. (See Doc. No. 72 at 6–10; Doc. No. 80 3–6; Doc. No. 86 at 1–2).<sup>4</sup> The Plaintiff counters that Defendant's reliance on *Houchins* is inapposite and that *Richmond Newspapers* provides the applicable rule. (See Doc. No. 83 at 19–20; Doc. No. 85 at 3–5). After a careful review of relevant Sixth Circuit precedent, the Court agrees with Defendant.

Cases about access to information are “rooted in First Amendment principles.” *S.H.A.R.K. v. Metro Parks Serving Summit Cnty.*, 499 F.3d 553, 559 (6th Cir. 2007). But that is not to say that these cases blend in with other kinds of cases that likewise are

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<sup>4</sup> In her filings relating to injunctive relief, Defendant did not argue that *Houchins* provided the applicable rule. Rather, Defendant embraced the applicability of *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), and asked the Court to find in her favor based thereon. (See generally Doc. Nos. 10, 23). Therefore, the applicability of *Houchins* in this case is a new issue for the Court. Had Defendant asserted the applicability of *Houchins* in response to Plaintiff's motion for a preliminary injunction, it is easy to imagine that the Court would have denied that motion on the grounds that Plaintiff had not shown (and in light of *Houchins* likely could not have shown) a likelihood of success on the merits.

“rooted in First Amendment principles”; in fact, these represent a distinct area of First Amendment law. *See id.* (noting that “access cases . . . have developed along distinctly different lines than have freedom of expression cases”).

There is a circuit split on the issue of whether *Houchins* or *Richmond Newspapers* provides the generally applicable rule in cases about access to information.<sup>5</sup> *See* Matthew L. Schafer, *Does Houchins v. KQED, Inc. Matter?*, 70 BUFF. L. REV. 1331, 1420–33 (2022). On one hand, the Third, Ninth, and Eleventh Circuits have held that *Richmond Newspapers* provides the general rule.<sup>6</sup> *See, e.g., N. Jersey Media Grp., Inc. v. Ashcroft*, 308 F.3d 198, 201 (3d Cir. 2002) (“While we believe that the notion that *Richmond Newspapers* applies is open to debate as a theoretical matter, we must yield to the prior precedent of this Court, and hence will apply it to the facts.”); *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 830 n.8 (9th Cir. 2020) (while discussing the progeny of *Richmond Newspapers*, stating “by its terms the test is not limited to any particular type of

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<sup>5</sup> The test articulated in *Richmond Newspapers* and its progeny is commonly referred to as the “experience and logic test.” *See, e.g., Phillips v. DeWine*, 841 F.3d 405, 418 (6th Cir. 2016). For the sake of simplicity and ease of reference, herein the Court will refer to this test as the “*Richmond Newspapers*” test.

<sup>6</sup> The forementioned law review article also places the Sixth and Eighth Circuits in this category. *See* Schafer, 70 BUFF. L. REV. at 1423. The Court, however, was unable to find an Eighth Circuit case that would sufficiently support this proposition. As for the Sixth Circuit, the Court disagrees as detailed below.

plaintiff or any particular type of forum”)<sup>7</sup>; *Wellons v. Comm’r, Ga. Dep’t of Corr.*, 754 F.3d 1260, 1266 (11th Cir. 2014) (implying that the experience and logic test derived from the *Richmond Newspapers* line of cases is generally applicable).<sup>8</sup> On the other hand, the First, Fourth, Fifth, Seventh, Tenth, and D.C. Circuits have held that *Houchins* is the general rule. *See, e.g., Flynt v. Rumsfeld*, 355 F.3d 697, 704 (D.C. Cir. 2004) (stating that *Houchins* is the general rule and *Richmond Newspapers* the exception); *Ctr. for Nat. Sec. Stud. v. U.S. Dep’t of Just.*, 331 F.3d 918, 935 (D.C. Cir. 2003) (same); *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488, 495 (1st Cir. 1992) (“we seriously question whether *Richmond Newspapers* and its progeny carry positive implications favoring rights of access outside the criminal justice system”); *Fusaro v. Cogan*, 930 F.3d 241, 250 (4th Cir. 2019) (applying *Houchins* and stating that *Richmond Newspapers* is a “narrow exception”); *Am. C.L. Union of Mississippi, Inc. v. State of Miss.*, 911 F.2d 1066, 1071 (5th Cir. 1990) (stating that *Richmond Newspapers* is the exception); *Calder v. I.R.S.*, 890 F.2d 781, 783 (5th Cir. 1989) (“the cases in the *Richmond* line establish and define the scope of

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<sup>7</sup> *But see Boardman v. Inslee*, 978 F.3d 1092, 1104 (9th Cir. 2020) (in a civil lawsuit, applying *Houchins* to government-controlled information without mentioning *Richmond Newspapers*).

<sup>8</sup> The Court notes that district courts within those Circuits have occasionally taken a different approach. *See, e.g., Adkins v. Rumsfeld*, 450 F. Supp. 2d 440, 448–49 (D. Del. 2006) (opining that the *Richmond Newspapers* line of cases merely applies to criminal and trial-like administrative proceedings); *Parmelee v. McKenna*, No. C08-5633RBL, 2009 WL 1756812 at \*2 (W.D. Wash. June 19, 2009) (finding *Houchins* applicable because “[w]hen dealing with a non-criminal proceeding it is more appropriate for Courts to use the general rule prescribed by *Houchins*”).

the first amendment [sic] right of access [only] to criminal trials and certain criminal proceedings”); *Travis v. Reno*, 163 F.3d 1000, 1007 (7th Cir. 1998) (describing *Houchins* as the rule and *Richmond Newspapers* as the exception); *Lanphere & Urbaniak v. State of Colo.*, 21 F.3d 1508, 1511 (10th Cir. 1994) (noting that *Houchins* is the general rule and mentioning *Richmond Newspapers* as part of a line of cases in which the “[Supreme] Court has held that in certain circumstances the First Amendment is implicated in relation to the Sixth Amendment right to a fair and public trial”).

As for the Sixth Circuit, it has held that *Richmond Newspapers*, rather than *Houchins*, applies to deportation hearings because the latter are “exceedingly formal and adversarial,” “adjudicative,” and “a demonstrably quasi-judicial government administrative proceeding normally open to the public.” *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 696–99 (6th Cir. 2002). In the same opinion, the Sixth Circuit also stated that *Richmond Newspapers* is a test of general applicability. See *id.* at 694–96; see also *In re Search of Fair Fin.*, 692 F.3d 424, 429–30 (6th Cir. 2012) (highlighting the “breadth of the application of” the *Richmond Newspapers* test). In *Phillips*, 841 F.3d 405, however, the Sixth Circuit, sitting en banc, explained that the portion of *Detroit Free Press* stating that *Richmond Newspapers* is generally applicable was merely dictum. *Id.* at 418–20. The Court further explained that *Houchins* is the general rule and that *Richmond Newspapers* is the exception, applicable only in specific circumstances and/or to specific information, such as “certain criminal proceedings and the documents filed in those proceedings,” “civil trials,”

“plea agreements,” “university disciplinary proceedings,” “documents related to the issuance and execution of a search warrant,” and “deportation proceedings.”<sup>9</sup> *Id.* (collecting cases); *accord S.H.A.R.K.*, 499 F.3d at 560 n.2 (distinguishing *Houchins* from “access cases dealing with the special issue of access to judicial proceedings”). Thus, as a district court within the Sixth Circuit, this Court must apply *Houchins* unless an exception applies.

Defendant argues that *Houchins* rather than *Richmond Newspapers* is applicable because Advisory Commission meetings “are not adjudicatory or quasi-adjudicatory.” (Doc. No. 72 at 8–9; Doc. No. 80 at 4–6; Doc. No. 86 at 2). Relying on *Detroit Free Press*, Plaintiff counters that *Houchins* is inapposite because he is not claiming access “over and above that of other persons.” (Doc. No. 83 at 19–20 (internal quotation marks removed); Doc. No. 85 at 3–5).

Plaintiff’s argument fails for two reasons. First, Plaintiff’s argument mimics Judge Stranch’s dissent in *Phillips*. See *Phillips*, 841 F.3d at 426–27 (Stranch,

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<sup>9</sup> Judge Stranch authored a sharp dissent, opining that *the Richmond Newspapers* test was applicable because (i) in her view, the *Houchins* test applies only to cases in which the press claims access “over and above that of other persons” (*see id.* at 427 (Stranch, J., dissenting)); (ii) *Houchins* was a case about the Press Clause, not the Free Speech Clause (*id.*); (iii) *Houchins* was a plurality decision, the Supreme Court subsequently moved away from its position in *Houchins*, and the *Richmond Newspapers* test “sufficiently addresses all of the *Houchins* Courts’ concerns” (*id.* (internal quotations omitted)); and (iv) the regulation at issue in *Houchins* did not have the effect of completely restricting access to the information sought, insofar as other avenues to access that information remained available (*see id.* at 427–28).

J., dissenting) (arguing that *Houchins* was inapplicable because the plaintiffs did not claim a privilege of access above that of the public). And the majority in *Phillips* clearly rejected this argument. See *id.* at 417–20. Second, *Detroit Free Press* distinguished cases in which *Houchins* was found applicable on the basis that they did not pertain to adversarial, quasi-judicial, or otherwise adjudicative proceedings. *Detroit Free Press v. Ashcroft*, 303 F.3d at 696–700. Here, it is undisputed that the meetings at issue are part of a rulemaking process (or, at least, a preliminary step thereof), as opposed to an adjudicative process. (See Doc. No. 84 at 1–4 (describing the role of the Advisory Commission as proponent of rules for the Tennessee Supreme Court)); see also *State v. Best*, 614 S.W.2d 791, 793 (Tenn. 1981) (“The statutory scheme of *rule making* contemplates that the Supreme Court will make appropriate use of the advisory commissions authorized by [Tenn. Code Ann. §] 16-3-601.”) (emphasis added). Indeed, regardless of what branch of government undertakes it, rulemaking is generally not adversarial, quasi-judicial, or adjudicative. See *VanWulfen v. Montmorency Cnty.*, 345 F. Supp. 2d 730, 739 (E.D. Mich. 2004) (“A matter is ‘adjudicatory’ when it serves to resolve an existing dispute between identifiable parties or allocates responsibility for past acts. Actions or decrees that establish standards for future conduct, prescribe rules, or fix guidelines or limits are not adjudicatory; rather they are legislative in nature.”); *Morrison v. Lipscomb*, 877 F.2d 463, 466 (6th Cir. 1989) (“[S]imply because rule making and administrative authority has been delegated to the judiciary does not mean that acts pursuant to that authority are judicial. This proposition is equally true if the authority has been traditionally given to the

courts.”). Therefore, the instant case is distinguishable from *Detroit Free Press* and falls outside the purview of *Richmond Newspapers* and its progeny.<sup>10</sup>

Plaintiff’s Motion is entirely premised upon *Detroit Free Press* and does not make an argument (as to why Plaintiff is entitled to judgment as a matter of law) under *Houchins*. (See generally Doc. No. 76). Therefore, it must be denied for failure to explain why, under applicable law, Plaintiff is entitled to judgment as a matter of law. Alternatively, Plaintiff’s Motion must be denied because as explained below, actually *Defendant* is entitled to summary judgment —i.e., entitled to judgment as a matter of law under applicable law (i.e., *Houchins* and cases interpreting it) as applied to undisputed facts.

B. Plaintiff Has No First Amendment Right to Access the Meetings

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<sup>10</sup> The parties’ briefing does not mention a case entirely analogous to the instant case, and the Court was unable to find one on its own. Nonetheless, *Manogg v. Stickle*, No. 98-3394, 1999 WL 266348 (6th Cir. 1999), an unpublished Sixth Circuit opinion, provides some guidance. There, the plaintiffs brought First Amendment claims against, *inter alia*, trustees and officials of a township, alleging that the trustee and officials “in effect ‘closed’ the board meetings by speaking in whispers and passing notes among themselves in order to deprive those members of the public in attendance of the opportunity to observe the business being conducted.” *Id.* at \*1. The Sixth Circuit applied *Houchins* and found that the plaintiffs did not have a First Amendment right to access the meetings in the first place. *Id.* On that basis, the Sixth Circuit affirmed summary judgment for the defendants. *Id.* at \*2. The Advisory Commission meetings here are somewhat analogous to the township board meetings in *Manogg*. Therefore, the Court finds in *Manogg* some (nonbinding) support for its finding that *Houchins* applies to the present case.

In *Houchins*, the Supreme Court noted that “[t]here is no constitutional right to have access to particular government information, or to require openness from the bureaucracy. The public’s interest in knowing about its government is protected by the guarantee [sic] of a Free Press, but the protection is indirect. The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act.” *Houchins*, 438 U.S. at 14 (internal citations and quotations omitted). The High Court further concluded that “neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government’s control.” *Id.* at 15. Similarly, in *Hils v. Davis*, 52 F.4th 997 (6th Cir. 2022), the Sixth Circuit found that “the First Amendment right to gather information from the government usually extends as far as the government has opened its doors to the public and press. It thus includes a right to collect information within government control that is *currently* public or, perhaps in discrete settings not shown here, that the government has made public historically.” *Id.* at 1003 (emphasis added). Stated simply, “[t]he question is whether the plaintiffs had a lawful right of access to the information. If the plaintiffs did have a lawful right of access, then the government violates the First Amendment when it blockades access.” *S.H.A.R.K.*, 499 F.3d at 560. In sum, there is generally no First Amendment right to access information that the government has decided not to make public.

Here, the parties agree that the Advisory Commission meetings were closed to the public— at least after 2018—until livestreamed pursuant to the Court’s injunction. (See Doc. No 81 at 2– 3). Therefore, it is undisputed that the information Plaintiff seeks access to

is not currently public. As discussed above, the meetings are also not an adjudicatory or quasi-adjudicatory proceeding. Therefore, the Court finds that Plaintiff has failed to establish a First Amendment right to access the meetings. *See Manogg*, 1999 WL 266348 at \*1–2 (affirming summary judgment because, under *Houchins*, the plaintiffs never had a First Amendment right to access the meetings at issue); *Phillips*, 841 F.3d at 419 (plaintiffs had no First Amendment right to access Ohio’s execution-related information because such information was “neither information of the type filed in a government proceeding [as recognized by *Richmond Newspapers* and its progeny] nor its functional equivalent.”) In short, there are facts that are not in genuine dispute that enable the Court to decide whether, as Defendant claims, Plaintiff’s First Amendment claim fails as a matter of law. And the Court answers that question in the affirmative. Accordingly, Defendant’s Motion will be granted.<sup>11</sup>

#### CONCLUSION

For the reasons discussed herein, Defendant’s Motion (Doc. No. 71) will be granted. Conversely, Plaintiff’s Motion (Doc. No. 74) will be denied. The Order and Preliminary Injunction (Doc. No. 40) will be vacated.

An appropriate accompanying order will be entered.

ELI RICHARDSON

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<sup>11</sup> Because it finds under *Houchins* and its progeny that Plaintiff has no First Amendment right to access the meetings, the Court need not analyze the parties’ remaining arguments, which are all based upon *Richmond Newspapers*. (See generally Doc. Nos. 72, 76, 80, 83, 85, 86).

34a

UNITED STATES DISTRICT JUDGE