



statute.<sup>1</sup> These subjects were properly included in Plaintiff's Rule 30(b)(6) deposition notice, and Defendants purported to designate a witness as to each subject. Defendants have not sought any protective order from this Court, either before, during or after their deposition.

4. The subject matters on which Defendants refused or were unprepared and unable to give deposition testimony are critical to this Court's determination of the preliminary injunction motion. For example, a key issue in Plaintiff's facial and pre-enforcement **as applied** First Amendment challenge is whether the challenged statute prohibits sexual orientation or gender identity change counseling even when initiated, sought and requested by the minor client, or only when change is the pre-determined goal of the counselor. Defendants' deposition designee as to Defendants' interpretation, application and enforcement of the statute would not say.

5. Similarly, when deciding Plaintiff's claims of vagueness, overbreadth and overreach of the challenged statute, this Court must be aware of whether certain conversations or speech that Plaintiff wishes to say to minor clients who seek his counseling are banned by the statute. The statute does not define or specify any specific conversations or speech that would be banned as "conversion therapy," and thus there is no way to determine its reach without Defendants' testimony. Once again, Defendants' deposition designee as to interpretation, application and enforcement was unprepared and unable to answer a single question about how the statute is to be applied in numerous instances to speech in which Plaintiff Doyle wishes to engage.

---

<sup>1</sup> The deposition took place only two business days ago, and thus Plaintiff does not yet have the transcript. Plaintiff ordered the transcript on an expedited schedule, and expects to receive it by April 2 or 3, 2019. Because of the time exigencies involved, Plaintiff could not await the arrival of the transcript before filing this motion. Defendants' failure to provide deposition answers will be fully documented and explained in Plaintiff's forthcoming Motion to Compel.

6. Defendants cannot hide behind the fact that the challenged statute is to be applied or enforced by a regulatory board, who will supposedly deal with those questions as they are raised in the future on a “case-by-case” basis. This lawsuit brings not only a facial but also a pre-enforcement as applied challenge. As will be shown in the Motion to Compel, Defendants admitted that the regulatory board is part of the Executive Branch of the State of Maryland, which Plaintiff has sued and which Plaintiff properly sought to depose. As will be shown, Defendants had a duty to provide a properly prepared witness – from a regulatory board or otherwise – who could testify as to Defendants’ interpretation, application and enforcement of the challenged statute.

7. As indicated, Plaintiff intends to file, and is currently working expeditiously on, a Motion to Compel Defendants to provide deposition testimony on these subject matters. While Plaintiff will fully brief these issues in his forthcoming motion, to assure the Court that the issues he raises are substantial and meritorious – and not raised for the purpose of undue delay – Plaintiff refers the Court initially to the following authorities:

- a. First, on the issue of legislative privilege, in federal litigation, state legislative privilege is “a creature of federal common law” and is **qualified**, not absolute. *Benisek v. Lamone*, 263 F. Supp. 3d 551, 553 (D. Md. 2017) (granting plaintiffs’ motion to compel Maryland legislators to testify and produce documents in discovery), *aff’d*, 241 F. Supp. 3d 566 (D. Md. 2017). “Thus, unlike lawsuits seeking to hold individual legislators liable, ‘where [as here] the State faces liability, the legislative privilege becomes qualified when it stands as a barrier to the vindication of important federal interests and insulates against effective redress of public rights.’” *Id.*; *see also United States v. Craig*, 537 F.2d 957, 958 (7th Cir. 1976) (holding no federal legislative privilege available to state legislator who is

not targeted for individual civil liability). Where legislative intent is an element of a First Amendment claim against a state, “judicial inquiry . . . is specifically contemplated as part of the resolution of the core issue.” *Benisek*, 263 F. Supp. 3d at 553.

- b. Second, Defendants’ refusal or lack of preparation and inability to testify as to their interpretation, application or enforcement of the challenged statute will also be shown to be improper. *See e.g., Paul Rivere Life Ins. Co. v. Jafari*, 206 F.R.D. 126, 127 (D. Md. 2002) (explaining Rule 30(b)(6) witness “must not only testify about facts within the corporation’s knowledge, but also **its subjective beliefs and opinions** [and] **must provide its interpretation of documents and events**” (emphasis added)); *Burnett v. Ford Motor Co.*, No. 3:13-cv-14207, 2015 WL 4137847, \*10 (S.D.W.V. July 8, 2015) (“[T]he testimony of a corporate designee is useful to explain and clarify the policy and procedures, **to provide the corporation’s interpretation** of the document, and to **confirm how the policy was applied . . .**” (emphasis added)); *Hoye v. City of Oakland*, 653 F.3d 835, 850, n.12 (9th Cir. 2011) (noting propriety of deposition of government 30(b)(6) witness concerning government’s “policies, procedure, **and interpretations relating to enforcement**’ of the Ordinance” allegedly restricting a plaintiff’s free speech rights (emphasis added)); *id.* at 850 n.12 (holding proper to ask government 30(b)(6) deponent questions “in an attempt to ascertain the [government’s] enforcement policy”); *Keepers, Inc. v. City of Milford*, 807 F.3d 24, 32 (2d Cir. 2015) (describing deposition of government 30(b)(6) witness regarding “**drafting, passage, and enforcement**” of challenged law, “the potential **application and interpretation**”

of challenged law, and “the **legal interpretations** offered by its designated witness” (emphasis added)); *Greater Birmingham Ministries v. Merrill*, 321 F.R.D. 406, 411 (N.D. Ala. 2017) (denying motion for protective order and requiring government official to submit to 30(b)(6) deposition “regarding proper **interpretation**” of challenged law (emphasis added)); *Billups v. City of Charleston*, 2017 WL 4238233, \*4 (D.S.C. Sept. 25, 2017) (noting questioning of government 30(b)(6) deponents concerning government’s understanding of certain terms in statute and how certain provisions apply in certain contexts).

8. Plaintiff has not delayed but has moved very expeditiously to file this motion. The deposition where these issues came up took place only two business days ago, on Thursday, March 28, 2019. Plaintiff’s counsel did not arrive back at their residences and offices in Florida until the early morning hours of Friday, March 29, 2019.

9. Under the current schedule, with the April 11, 2019 Preliminary Injunction Hearing only ten days away, there is not sufficient time for Plaintiff to brief the Motion to Compel, for Defendants to respond, for the Court to provide guidance, and, if ordered or allowed by the Court, for a follow-up, half-day deposition to take place, and for the transcript thereof to be reproduced in time for the hearing. Thus, although he regrets this delay that was beyond his control, and although he would have preferred the Preliminary Injunction Hearing to proceed as scheduled and without delay, Plaintiff must now ask the Court for a brief continuance of the Preliminary Injunction Hearing, because Plaintiff’s counsel believe, in their reasoned judgment, that these critical issues must be resolved first.

10. Also, because Plaintiff’s counsel have had to divert their attention to the instant motion and to the Motion to Compel, Plaintiff also respectfully requests a brief additional

extension of time for his consolidated motion to dismiss opposition and preliminary injunction reply, currently due on April 5, 2019. Plaintiff's counsel are unable to complete that substantial filing by April 5, because they must focus on this motion and the Motion to Compel, and because they also have: (a) three depositions this week (April 2, 3 and 4), for which they must travel to San Francisco and Los Angeles, California; (b) a major appellate brief due at the Eleventh Circuit on April 9, 2019; and (c) two separate briefs due in two Indiana federal court matters on April 4 and 5, 2019. Therefore, Plaintiff respectfully requests an extension until April 22, 2019 to file this brief.<sup>2</sup> Under the amended schedule proposed below, this would still be **two to three weeks** prior to the rescheduled Preliminary Injunction Hearing, which is **double or triple** the one-week advance filing period on the current schedule.

11. Therefore, Plaintiff respectfully requests that the Court amend the existing Preliminary Injunction Hearing, briefing and discovery schedule as follows:

April 8, 2019	Plaintiff's Motion to Compel
April 15, 2019	Defendants' Opposition to Plaintiff's Motion to Compel
April 16 – 26, 2019	The Court should schedule at its convenience a telephonic hearing, or a telephonic status conference, to provide the parties with guidance on the issues briefed in Plaintiff's Motion to Compel.
April 22, 2019	Plaintiff's Consolidated Opposition to Defendants' Motion to Dismiss and Reply in Support of Preliminary Injunction
April 22 – May 3, 2019	Follow-up Rule 30(b)(6) Deposition of Defendants, if the Court grants Plaintiff's Motion to Compel. The actual date of the deposition will be determined by the timing of the Court's ruling and the availability of the parties and witness.

---

<sup>2</sup> Plaintiff's counsel also have depositions in California on April 8, 9, 10, 15, 16 and 17, and an evidentiary hearing on April 22, and thus their time will be extremely limited even under the amended schedule. Plaintiff is not seeking this extension for the sake of undue delay.

May 13–14 (preferred), or May 7–8, 8–9, or 9–10	Preliminary Injunction Hearing (Plaintiff’s counsel are unavailable on May 6 because of an unmovable previous commitment, or on May 15–31 because of a previously scheduled, non-refundable international trip).
---	--

12. Pursuant to Local Rule 105.9, the undersigned counsel conferred with counsel for Defendants, and was ultimately advised that Defendants oppose the relief requested herein. Defendants’ counsel initially indicated that Defendants would **not** oppose the re-scheduling of the Preliminary Injunction Hearing to May for the purpose of briefing the Motion to Compel, but also insisted that Plaintiff file his Consolidated Preliminary Injunction Reply and Motion to Dismiss Opposition **first**, on the existing April 5, 2019 deadline. Plaintiff explained that this was not possible, because Plaintiff’s counsel must divert their attention to this motion and the Motion to Compel (in addition to the other commitments discussed above), and also that this made no sense, because the Motion to Compel issues necessarily must be decided first (and thus the Motion to Compel should be filed first, to allow time for briefing, decision and follow-up deposition, if permitted). Plaintiff also explained that, under the amended schedule proposed by Plaintiff, with the April 22 filing date for Plaintiff’s consolidated Preliminary Injunction/Motion to Dismiss brief, Defendants and the Court would receive it two to three weeks in advance of the rescheduled Preliminary Injunction Hearing, as opposed to only one week before the hearing under the existing schedule. Plaintiff’s counsel asked Defendants’ counsel whether they had any specific scheduling conflicts that would preclude them from adequately reviewing Plaintiff’s consolidated Preliminary Injunction/Motion to Dismiss brief in the two or three weeks available after its filing on April 22, and Defendants’ counsel could not identify any such specific conflicts, other than the general press of business. Defendants also could not explain how the doubling or tripling of their review period (from one week to two or three weeks prior to the hearing) could possibly prejudice them. When

the parties could not reach agreement on the timing of Plaintiff's Preliminary Injunction/Motion to Dismiss brief, Defendants retaliated by indicating that they would oppose this entire motion.

13. Because Plaintiff's existing Preliminary Injunction/Motion to Dismiss briefing deadline is only **four days** away, and the Preliminary Injunction Hearing is only **ten days** away, Plaintiff respectfully requests the Court's expedited consideration of this motion. Plaintiff also respectfully requests a telephonic hearing or status conference as early this week as possible, so that the parties know how to proceed. Plaintiff regrets having to trouble the Court with this time-sensitive issue, and appreciates the Court's soonest guidance.

WHEREFORE, for good cause shown, Plaintiff respectfully requests that this motion be granted, and that the Court amend the Preliminary Injunction Hearing, briefing and discovery schedule as proposed above.

/s/ John R. Garza  
(signed by Roger K. Gannam  
with permission of John R. Garza)  
John R. Garza (D. Md. 01921)  
GARZA LAW FIRM, P.A.  
Garza Building  
17 W. Jefferson Street, Suite 100  
Rockville, Maryland 20850  
301-340-8200 ext. 100  
301-761-4309 FAX  
jgarza@garzanet.com

/s/ Roger K. Gannam  
Mathew D. Staver (Fla. 701092)<sup>†</sup>  
Horatio G. Mihet (Fla. 26581)<sup>†</sup>  
Roger K. Gannam (Fla. 240450)<sup>†</sup>  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 32854-0774  
407-875-1776  
407-875-0770 FAX  
court@LC.org  
hmihet@LC.org  
rgannam@LC.org

*Attorneys for Plaintiff*

<sup>†</sup> Admitted to appear *pro hac vice*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been filed this April 1, 2019, through the Court's ECF system, which will send a notice of electronic filing to all parties and counsel of record, including the following:

Kathleen A. Ellis  
Assistant Attorney General  
Maryland Department of Health  
Suite 302, 300 West Preston Street  
Baltimore, Maryland 21201  
kathleen.ellis@maryland.gov  
*Attorney for Defendants*

/s/ Roger K. Gannam  
*Attorney for Plaintiff*