

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CHRISTOPHER DOYLE, LPC, LCPC,

Plaintiff,

v.

LAWRENCE J. HOGAN, JR, *et al.* ,

Defendants.

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Civil Action No. 1:19-CV-00190-DKC

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**DEFENDANTS’ MEMORANDUM IN OPPOSITION TO PLAINTIFF’S MOTION TO
COMPEL**

The defendants, Lawrence J. Hogan, Jr., Governor, and Brian E. Frosh, Attorney General, pursuant to Local Rule 104.8(a), oppose the Motion to Compel filed by the plaintiff, Christopher Doyle, LPC, LCPC. The Governor and Attorney General complied with their discovery obligations and produced a well-prepared witness to answer Mr. Doyle’s reasonable questions related to the State’s interpretation, enforcement, and application of section 1-212.1 of the Health Occupations Article. Further, the Governor and Attorney General have no authority to require the General Assembly to produce a witness to answer questions regarding the legislative process, and any such witness would be protected by legislative privilege from providing any information beyond the publicly-available legislative record.

I. INTRODUCTION

On February 16, 2019, the Governor and the Attorney General received Mr. Doyle’s Notice of Taking Deposition of State of Maryland pursuant to Rule 30(b)(6), which sought a designee on behalf of the State of Maryland to answer questions regarding thirteen matters related to the passage of section 1-212.1 of the Health Occupations Article. The Rule 30(b)(6)

deposition was subsequently set for, and held on, Thursday, March 28, 2019, at 10 a.m. The Rule 30(b)(6) designee fully answered Mr. Doyle's relevant, non-privileged questions. Mr. Doyle, however, asked a number of questions that either sought material covered by the legislative privilege, or were unanswerable and displayed a clear lack of understanding of the disciplinary processes of regulatory boards. Mr. Doyle now seeks an order compelling the Governor and Attorney General to produce a new designee, although the witness he seeks cannot possibly be produced.¹

II. ARGUMENT

A. The Governor and Attorney General Produced a Well-Prepared Rule 30(b)(6) Designee Who Answered Mr. Doyle's Reasonable Questions

Mr. Doyle's Motion to Compel misrepresents the Rule 30(b)(6) deposition and the designee's performance at the deposition. The Rule 30(b)(6) designee carefully considered every question presented to her, took pains to amend or clarify her answers whenever she thought it was necessary, gave substantive replies to the questions asked of her, and only refrained from answering questions – particularly on topics subject to the legislative privilege – when specifically instructed to do so by counsel. Mr. Doyle goes to great lengths in his Motion to Compel to characterize the deposition as a “constant chorus of ‘I don't know’” despite only citing 4 small sections of a 261-page deposition transcript, and fails to recognize that even when the designee did answer “I don't know,” she qualified the answer or attempted to explain why the question was unanswerable by her (or, in many cases, by anyone).

¹ Mr. Doyle was on notice that the defendants would assert the legislative privilege in response to many of the topics in the notice of deposition. Counsel for both parties discussed the defendants' view that the many of the topics were covered by the legislative privilege and that a protective order might be appropriate. Defendants' counsel ultimately decided to adopt the view of plaintiff's counsel that question by question objections were more appropriate.

Mr. Doyle alleges that the Governor and Attorney General's designee was "woefully unprepared to answer basic questions concerning Defendants' understanding, interpretation, application, and enforcement" of section 1-212.1. Mr. Doyle takes the greatest issue with the designee's answers to a number of questions he posed regarding the various health occupations boards' hypothetical interpretations of section 1-212.1.² Mr. Doyle points to the following exchange:

Q: . . . [I]f the minor requests it, requests help to change sexual orientation or gender identity and the practitioner responds by doing what the client asks, is that conversion therapy under SB 1028?

MS. ELLIS: Objection.

A: I believe that would be a matter for the board to consider if that's unprofessional conduct.

Q: So you're not able to tell me?

A: I'm not.

. . . .

Q: And I'm asking you based on what you see on the page, is that a correct interpretation of what's here, that when the minor requests assistance to change or reduce or eliminate same-sex attractions and a practitioner responds by doing what the client asks, is that conversion therapy?

MS. ELLIS: Objection.

A: And my answer is going to continue to be the same, that is legislative intent, that is judicial review, I cannot render an opinion on that.

² Mr. Doyle also objects, less strenuously, to the designee's answers to his irrelevant questions regarding the Governor's and Attorney General's opinions about the 2009 APA report *since the enactment of section 1-212.1* and three questions regarding the State's ability to conclude "how likely it is that harm will occur" from conversion therapy. The Rule 30(b)(6) designee spent considerable time in her deposition discussing portions of the record that spoke to the General Assembly's consideration of harm, *see* Lang Dep. at 76:4-99:20, 205:4-208:1, and the Governor and Attorney General's interrogatory answers also identified portions of the legislative record that related to the question of harm.

(Lang Dep. at 181:14-183:10.) Mr. Doyle may not like the designee's answers, but the answers are correct – as discussed more fully below, whether a certain fact pattern is conversion therapy in violation of Section 1-212.1 would be “a matter for the Board to consider if that's unprofessional conduct”, and any dispute after a board's decision would be a matter for judicial review.

Mr. Doyle also takes issue with the Rule 30(b)(6) designee's preparedness, calling the designee's preparation “slapdash” and a “slap in the face to this Court[.]” Of course, in arguing as much, Mr. Doyle blatantly misrepresents the amount of time the designee testified to spending preparing for the deposition. Mr. Doyle alleges that the designee spent a grand total of two hours, over a two-day period, preparing for the Rule 30(b)(6) deposition. The designee did spend two hours, over a two-day period – meeting and conferring with counsel. But the designee's testimony clearly included significant additional time preparing for the deposition:

Q: About how long would you say you spent reviewing documents to prepare for your testimony today?

A: Several hours over the last two weeks.

Q: And by several hours you mean three or four or more or less than that?

A: Sir, I would approximate **five**.

(Lang Dep. at 22:19-23:4 (emphasis added)).

Even based on an estimate, the Rule 30(b)(6) designee spent at least **three times** as much time preparing for the deposition as Mr. Doyle claims. Moreover, in spending that time preparing for the deposition, the designee became fully capable of answering the questions asked by Mr. Doyle at the deposition, and did so – except to the extent that they were either unanswerable or sought privileged information.

Mr. Doyle argues that Rule 30(b)(6) designees “are required to provide the government’s answers on its interpretation, enforcement, or application of a challenged law.” None of the cases cited by Mr. Doyle, however, stand for that legal proposition, and they can all be easily distinguished from this case. As a preliminary matter, none of the cases cited by Mr. Doyle involve a regulatory board interpreting its disciplinary statute, which, as set out more fully below, can only be done by a quorum of the board in response to a specific complaint, and not by a Rule 30(b)(6) witness in a deposition. Mr. Doyle cites *Hoye v. City of Oakland*, 653 F.3d 835, 850 (9th Cir. 2011) merely because it “not[es] government’s designation of official ‘most knowledgeable of [government’s] ‘policies, procedure, and interpretations relating to enforcement’” of challenged law,” which, regardless of Mr. Doyle’s disagreement, is exactly what the Governor and Attorney General did in this case;³ similarly, Mr. Doyle cites *Billups v. City of Charleston*, 2017 WL 4238233, at *4 (D.S.C. Sept. 25, 2017), simply because it “not[es] government 30(b)(6) deponents were questioned concerning government’s understanding of meaning of certain terms in challenged law,” which inarguably happened at the Rule 30(b)(6) deposition in this case. Mr. Doyle claims that the court in *Greater Birmingham Ministries v. Merrill*, 321 F.R.D. 406, 411 (N.D. Ala. 2017), “den[ied] government official’s motion for protective order requiring him to submit to Rule 30(b)(6) deposition ‘regarding proper interpretation’ of challenged law,” but the opinion had nothing to do with a Rule 30(b)(6) deposition – rather, the defendant, the Alabama Secretary of State, was seeking a protective order preventing him from sitting for a deposition based on his immunity as a “high government

³ Mr. Doyle also cites a footnote from *Hoye* in which the court refused to disregard a Rule 30(b)(6) designee’s statements admitting that the city did not apply the challenged statute neutrally, finding that it would be “setting an impossibly high bar for plaintiffs if we were to require them to establish a municipality’s policy and then to exclude as inadmissible a responsible police official’s testimony as to what the municipality’s policy is.” 653 F.3d at 850 n. 12. The Governor and the Attorney General are not seeking to exclude any of the Rule 30(b)(6) designee’s testimony regarding the interpretation of section 1-212.1; they are merely noting that no individual can do so in a hypothetical vacuum.

official,” *id.* at 407-08, and part of his argument was that the plaintiffs had “already deposed his Rule 30(b)(6) designee . . . for over thirteen hours” *Id.* at 410.

Finally, Mr. Doyle cites to *Keepers, Inc. v. City of Milford*, 807 F.3d 24, 32 (2d Cir. 2015), merely because it “not[es] government’s production of designee on ‘matters related to the drafting, passage, and enforcement’ of challenged law.” Again, the Governor and Attorney General also produced a designee on the topics identified by Mr. Doyle, and the decision in *Keepers* had nothing to do with a regulatory board interpreting its disciplinary statute. Further, *Keepers* actually supports the Governor and Attorney General’s argument that the fact that no individual has the authority to answer Mr. Doyle’s hypothetical questions about section 1-212.1 does not mean the law itself is vague. In *Keepers*, the plaintiffs objected to the municipal defendant attempting to supplement the Rule 30(b)(6) deposition of its former municipal attorney (who was unable to answer a number of hypothetical questions about the challenged ordinance) with an affidavit from its chief of police (who would be primarily responsible for enforcing the ordinance.) 807 F.3d at 32-33. Ultimately, the Second Circuit affirmed the District Court’s decision to consider the affidavit and found that even if the court erred in considering the affidavit, such error was harmless because it did not affect the outcome of the case. Specifically, the Circuit Court determined that even if the District Court had “relied solely on the [Rule 30(b)(6)] Deposition in deciding whether the ordinance gave sufficient guidance to law enforcement, the most the Court could have concluded was that Milford lacked an ‘official position’ on how to apply several provisions of [the ordinance] to various hypothetical situations. But that conclusion alone *would not have supported a finding of vagueness*. When the text of an ordinance is sufficiently clear to satisfy the Due Process Clause, *a municipal official’s inability to*

supply precise answers regarding its hypothetical application is insufficient to render that ordinance unconstitutionally vague.” Id. at 37-38 (emphasis added).

B. Mr. Doyle’s Deposition Questions, and His Motion to Compel, Display a Fundamental Misunderstanding of the Disciplinary Process of the Health Occupations Boards.

Mr. Doyle clearly does not understand the latitude that regulatory boards have to interpret their disciplinary statutes on a case-by-case basis or the process by which they do so. Section 1-212.1 states that engaging in conversion therapy with a minor is considered unprofessional conduct that subjects a mental health practitioner to “discipline by the mental health or child care practitioner’s licensing or certifying board.” Md. Code Ann., Health Occ. § 1-212.1. Mr. Doyle’s licensing board, the Board of Professional Counselors and Therapists (the “Board”), has the authority to deny a license, place a license on probation, reprimand any licensee, or suspend or revoke a license for unprofessional conduct “on the affirmative vote of a majority of its members then serving” pursuant to Md. Code Ann., Health Occ. § 17-509(16).⁴ The Board cannot take any such action without providing the licensee the opportunity for an evidentiary hearing before a quorum of the Board, Md. Code Ann., Health Occ. § 17-511(a), and a licensee aggrieved by a Board decision in a contested case may petition for judicial review pursuant to Md. Code Ann., Health Occ. § 17-512.

The term “unprofessional conduct,” as used by the Board, is not defined further by law or regulation – but it does not have to be. “Terms such as ‘unprofessional conduct’ generally are sufficiently definite to withstand constitutional scrutiny if they are ‘susceptible to common understanding by members of the [regulated] profession,’” and the meaning of such terms is “determined by the ‘common judgment’ of the profession as found by the professional licensing

⁴ The Board’s sanctioning guidelines provide that “[c]ommit[ting] an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy” subjects a licensee to a sanction that ranges from a reprimand to revocation, and a fine that ranges from \$100 to \$5000. COMAR 10.58.09.06B(16).

board.” *Finucan v. Maryland Bd. of Physician Quality Assur.*, 846 A.2d 377, 386 (Md. 2004) (citing *Chastek v. Anderson*, 416 N.E.2d 247, 251 (Ill. 1981); *Kansas State Bd. of Healing Arts v. Acker*, 612 P.2d 610, 615 (Kan. 1980)). Therefore, a statute like the Board’s prohibiting “unprofessional conduct” broadly “is not per se unconstitutionally vague; the term refers to ‘conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession.’” *Id.* at 386-87 (citing *Shea v. Bd. of Medical Exam'rs*, 146 Cal. Rptr. 653, 660 (Cal. App. 1978)). In the *Finucan* case, a physician disciplined by the Maryland Board of Physician Quality Assurance argued that because the Board’s laws and regulations did not specifically prohibit a physician from engaging in consensual sex with a current patient, he was not on notice that the Board considered such conduct unprofessional conduct, and the Board’s prohibition on unprofessional conduct was void for vagueness. The court, after finding that it was “commonly understood” in the medical profession that engaging in sex with a current patient was prohibited (based, in large part, on the testimony of the Board’s expert at the administrative hearing), concluded that “[t]he statutory prohibition against ‘immoral or unprofessional conduct’ was sufficient to warn Finucan and other physicians licensed to practice in Maryland that having sex with patients is prohibited.” *Id.* at 388.

The situation here goes even further than the *Finucan* case, because the Maryland legislature has now, through section 1-212.1, specifically defined the practice of conversion therapy, as defined in section 1-212.1, as “unprofessional conduct.”⁵ Mental health practitioners are on notice that practicing conversion therapy, as defined in section 1-212.1, subjects them to

⁵ Mr. Doyle does not like or agree with the definition of “conversion therapy” in section 1-212.1, but the term is defined sufficiently to provide notice of what does, and does not, fall under it. *See Pickup v. Brown*, 740 F.3d 1208, 1234 (9th Cir. 2014) (rejecting claim that term “sexual orientation change efforts therapy” is vague); *Otto v. City of Boca Raton*, 353 F. Supp. 3d 1237, 1271-72 (S.D. Fla. 2019) (rejecting claim that terms “sexual orientation” and “gender identity” are vague).

discipline by their licensing board. The relevant boards could decide to further define unprofessional conduct in these matters by regulation, but “[c]ourts have generally held that administrative agencies ‘[are] not precluded from announcing new principles in . . . adjudicative proceeding[s] and that the choice between rulemaking and adjudication lies in the first instance within the [agency’s] discretion.’” *Consumer Protection Div. v. Consumer Publishing Co.*, 501 A.2d 48, 60 (Md. 1985) (citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974)). In fact, “[t]he agency must retain power to deal with the problems on a case-by-case basis if the administrative process is to be effective.” *Id.* (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947)).

Mr. Doyle suggests that, because the health occupations boards are part of the executive branch, “there was no barrier to the witness’s consulting any member of such board to prepare for her testimony.” Again, this argument displays a fundamental misunderstanding of the board disciplinary process. “Any member of such board” could not answer Mr. Doyle’s hypothetical questions regarding potential discipline for mental health practitioners performing conversion therapy; as set forth above, only a quorum of a board, based on the specific facts in a particular, real case, could determine whether those particular facts establish the practice of conversion therapy as set forth in section 1-212.1.

Furthermore, the Governor and the Attorney General produced documents that set forth the complaint investigation and disciplinary process for the occupational boards that license the various mental health professionals recognized under Maryland law,⁶ and the Rule 30(b)(6) designee explained the Board’s disciplinary process, the method by which section 1-212.1 will

⁶ Materials for the State Board for Certification of Residential Child Care Program Professionals were not produced, even though section 1-212.1 of the Health Occupations Article mentions that board, because residential child and youth care practitioners do not provide therapy. *See* Md., Code Ann., Health Occ. § 20-101(k) (defining residential child and youth care practitioner).

be interpreted and enforced, during the deposition. *See* Lang Dep. at 133:5-151:16. Thus, Mr. Doyle has no basis for any claim that he does not understand the process that would occur if a complaint were filed against him.

C. Mr. Doyle’s Questions Relating to the Legislative Intent Behind Section 1-212.1 are Beyond the Governor’s and Attorney General’s Capacity to Answer and Are Protected by the Legislative Privilege.

1. The Rule 30(b)(6) Designee Spent a Considerable Amount of Time Answering Questions Related to the Public Legislative Record.

As a preliminary matter, the Governor and Attorney General note that the majority of Mr. Doyle’s deposition of the Rule 30(b)(6) designee was spent on questions and answers related to the public record of the legislative process that resulted in the adoption of section 1-212.1. The designee was very forthcoming and answered numerous questions from Mr. Doyle on allegations of harm related to conversion therapy, possible amendments to the bill that were considered and adopted by the legislature, testimony presented at the committee hearings on the bill, and the public conclusions made by the legislature. Additionally, the Governor and Attorney General responded fully to Mr. Doyle’s written discovery and included in those responses citations to the portions of the public legislative record that addressed all those matters. The public legislative record is extensive and was fully provided to Mr. Doyle. Mr. Doyle cannot claim that the Governor, the Attorney General, or the Rule 30(b)(6) designee have attempted to keep any part of the public legislative record from him.

2. The Governor and Attorney General Have No Authority to Require the General Assembly to Produce a Witness Pursuant to the Separation of Powers Doctrine.

Article 8 of the Maryland Declaration of Rights provides that “the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the

duties of any other.” The Governor and the Attorney General, the defendants named in this case, are the Chief Executive and an independent constitutional officer. Mr. Doyle’s deposition questions relating to legislative intent sought information on the legislative process the General Assembly undertook in passing section 1-212.1. Neither the Executive Branch nor an independent constitutional officer have the authority to compel the Legislative Branch to produce a witness to answer questions regarding the legislative process. Mr. Doyle has not sought to depose any members of the General Assembly or any legislative staff, who would be immune as set forth below; rather, he has attempted to make the Governor and the Attorney General produce a witness to answer the same questions on legislative matters. The Governor and the Attorney General cannot do so.

3. Mr. Doyle’s Deposition Questions Sought Information Protected by the Legislative Privilege.

The legislative privilege, which stems from the Speech and Debate Clauses contained in Article I, Section 6 of the United States Constitution and Article 10 of the Maryland Declaration of Rights, provides absolute immunity from civil suit to Maryland legislators “acting within ‘the sphere of legitimate legislative activity.’” *2BD Associates Ltd. Partnership v. County Commissioners for Queen Anne’s County*, 896 F. Supp. 528, 531 (D. Md. 1995) (quoting *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951)). Legislative immunity “also functions as an evidentiary and testimonial privilege” which “is also applicable to legislative staff members, officers, or other employees of a legislative body.” *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 297-98 (D. Md. 1992). The “testimonial privilege” aspect of legislative immunity protects legislators from both compelled testimony and compelled production of documents, and applies whether or not the legislators themselves are parties to the proceeding. *See Equal Emp’t Opportunity Comm’n v. Washington Suburban Sanitary Comm’n*, 631 F.3d

174, 181 (4th Cir. 2011) (“Because litigation’s costs do not fall on named parties alone, this privilege applies whether or not the legislators themselves have been sued.”) (citing *MINPECO, S.A. v. Conticommodity Servs., Inc.*, 844 F.2d 856, 859 (D.C. Cir. 1988)); *Brown & Williamson Tobacco Co. v. Williams*, 62 F.3d 408, 421 (D.C. Cir. 1995) (“A party is no more entitled to compel congressional testimony—or production of documents—than it is to sue congressmen.”).

“Whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it.” *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998). Legislative activities include drafting, introducing, and enacting legislation, as well as meeting privately with interested individuals about proposed legislation. *2BD Associates*, 896 F. Supp. at 534 (citing *Bruce v. Riddle*, 631 F.2d 272, 279 (4th Cir. 1980)). Although the legislative privilege can be waived, such waiver “can be found only after explicit and unequivocal renunciations of the protection.” *Id.* at 535 (quoting *United States v. Helstoski*, 442 U.S. 477, 490-91 (1979)).

To the extent that Mr. Doyle’s deposition questions inquired into legislative intent above and beyond that indicated in the public legislative record, such questions were covered by the legislative privilege. Mr. Doyle argues that the legislative privilege is a qualified privilege in this case; however, “[t]he universe of cases is very small in which a sufficiently ‘important federal interest’ has resulted in a court finding that legislative privilege must yield.” *Church v. Montgomery Cty.*, 335 F. Supp. 3d 758, 767 (D. Md. 2018). Specifically, “[r]edistricting, voting rights and criminal cases are considered ‘important federal interest’ cases which do not allow for absolute immunity.” *Id.* at 766. This Court in *Church* recognized that legislative immunity had been found to be qualified in a number of redistricting cases (including *Bethune-Hill v. Virginia State Bd. of Elections*, 114 F. Supp. 3d 323 (E.D. Va. 2015), *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292 (D. Md. 1992), and the case cited by Mr. Doyle,

Benisek v. Lamone, 263 F. Supp. 3d 551 (D. Md. 2017)),⁷ a case in which a legislator was being prosecuted (*United States v. Gillock*, 445 U.S. 360, 373 (1980)), and a case involving a grand jury investigation (*Gravel v. United States*, 408 U.S. 606 (1972)). *Church*, 335 F. Supp. 3d at 767. This Court, however, like other courts, has not found the legislative privilege to be qualified outside of these contexts.

Mr. Doyle, in fact, has not cited any cases, other than redistricting or criminal cases, concluding that the legislative privilege is qualified. Courts in this Circuit have rejected such findings across the board. *See, e.g., Church*, 335 F. Supp. at 767 (“there is no apparent case law supporting Plaintiffs’ position [that legislative immunity is qualified] in the context of a [Religious Land Use and Institutionalized Persons Act] case”); *Lee v. Virginia State Bd. of Elections*, 2015 WL 9461505, at *5 (E.D. Va. Dec. 23, 2015) (citing *Schlitz v. Virginia*, 854 F.2d 43, 45 (4th Cir. 1998)) (“Moreover, in rejecting an argument that legislative immunity for state legislators is not absolute, the Fourth Circuit has held that ‘where ... the suit would require legislators to testify regarding conduct in their legislative capacity, the doctrine of legislative immunity has full force.’ In reaching that holding, the Fourth Circuit specifically stated that—in the course of ADEA litigation—an inquiry into ‘whether [the Virginia General] Assembly’s purported motives for declining to reelect [a state judge] are a pretext for age discrimination’ was an inquiry that ran ‘squarely afoul of the doctrine of legislative immunity.’”); *Pulte Home Corp. v. Montgomery Cty.*, 2017 WL 2361167, at *8 (D. Md. May 31, 2017) (“I find that under the

⁷ Mr. Doyle cites *Benisek* for the proposition that judicial inquiry “is specifically contemplated as part of the resolution of the core issue” when legislative intent is an element of a First Amendment claim against the state. 263 F. Supp. 3d at 553. The full quote, however, makes it clear that the court was discussing judicial inquiry being specifically contemplated in *redistricting* cases: “A redistricting case such as that now before the Court is a ‘particularly appropriate circumstance’ for qualifying the privilege claimed by state legislators since ‘judicial inquiry into legislative intent is specifically contemplated as part of the resolution of the core issue’ in the case.” *Id.* (citing *Bethune-Hill*, 114 F. Supp. 3d at 337 (“Redistricting litigation presents a particularly appropriate circumstance for qualifying the state legislative privilege because judicial inquiry into legislative intent is specifically contemplated as part of the resolution of the core issue that such cases present.”)).

circumstances of this case, the legislative privilege is not qualified as it is in redistricting litigation and that the custodians have not waived the legislative privilege.”).

4. The Governor and Attorney General Have Not Indicated Any Intention of Using the Legislative Privilege as a Sword and a Shield

Mr. Doyle expresses his concern that the Governor and Attorney General intend to “hid[e] behind the shield of privilege during discovery and then ambush[] the plaintiff with the sword of the undisclosed information at trial.” The Governor and Attorney General have done nothing to indicate that they intend to do so, as their discovery responses demonstrate. The Governor and Attorney General have been clear from the beginning of this case that they interpret the “legislative record” to be the publicly-available documents regarding the legislative process that led to the adoption of section 1-212.1, all of which have been provided to Mr. Doyle in discovery. The legislative record is self-explanatory, and the designee provided by the Governor and Attorney General was prepared to answer deposition questions related to the legislative record and fully did so.

The Governor and the Attorney General also fully responded to Mr. Doyle’s written discovery – requests for admission, document requests, and interrogatories. Their response to the document requests included copies of the complete bill files for both the House of Delegates and the Senate versions of the bills that became section 1-212.1 of the Health Occupation Article, copies of the documents available on the General Assembly’s website about both bills, and copies of the audio and video recordings of the proceedings in the House and Senate concerning the two bills. Their answers to Mr. Doyle’s interrogatories identified the parts of the legislative record that supported the constitutionality of section 1-212.1. Neither these discovery responses nor the deposition testimony suggest that the defendants would try to ambush the plaintiff at the trial of this case.

III. Conclusion

For all the foregoing reasons, this Court should deny the Motion to Compel filed by Mr. Doyle. The designee already deposed was well prepared to answer questions regarding the matters for examination in Mr. Doyle's Notice of Taking Deposition of State of Maryland; that designee answered Mr. Doyle's questions fully and appropriately; and the Governor and the Attorney General cannot produce a witness to testify how a given health occupations board will respond in a hypothetical case or to testify regarding the legislative process beyond the publicly-available legislative record.

Respectfully Submitted:

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