

can be no dispute that Defendants did not do so, and Defendants, in fact, admit to not inquiring of the officials, agents, and employees under their control to prepare their witness to give Defendants' collective knowledge. Defendants' failure ignores the mandates of Rule 30(b)(6), and they should be compelled to produce a properly prepared witness to answer all of Plaintiff's noticed questions. The Motion should be granted.

ARGUMENT

I. RULE 30(b)(6) DOES NOT COUNTENANCE DEFENDANTS' CONSTANT REFRAIN THAT PLAINTIFF'S QUESTIONS ARE "UNANSWERABLE."

Because Rule 30(b)(6) requires Defendants to produce a witness capable of providing binding answers based on **the collective knowledge** of the **entire Executive Branch** on all noticed topics for the deposition, there is no such thing as an "unanswerable" question. Despite this requirement of black letter law, Defendants failed to produce a witness that was capable of providing answers and did not provide answers based on such collective knowledge.

A. Because Rule 30(B)(6) Requires Defendants to Produce a Witness with Defendants' Collective Knowledge of All Noticed Topics, There Are No Such Things as "Unanswerable" Questions.

In the eight-page discussion of Defendants' purportedly "well-prepared" designee, Defendants explicitly state **nine times** that Plaintiff's questions concerning Defendants' understanding, interpretation, and application of SB 1028 are "unanswerable." (Resp. at 2–9.) In fact, when responding to Plaintiff's well-documented chorus of the designee's "I don't know" responses, Defendants state that such questions were "unanswerable by her" and are probably even **unanswerable "by anyone."** (*Id.* at 2 (emphasis added).) Such a contention flies in the face of well-established precedent concerning the requirements of a Rule 30(b)(6) designee, and represents a fundamentally flawed understanding of corporate designees.

As a matter of black letter law, a designee under Rule 30(b)(6) testifies concerning the **collective knowledge of the entire entity**, not the individual. Indeed, “testimony elicited at the Rule 30(b)(6) deposition represents the knowledge of the corporation, not of the individual deponent.” *First Mariner Bank v. Resolution Law Grp., P.C.*, No. MJG-12-1133, 2014 WL 1652550, *14 (D. Md. Apr. 22, 2014). “The designated witness is speaking for the corporation,” *Int’l Ass’n of Machinists & Aerospace Workers v. Werner-Masuda*, 390 F. Supp. 2d 479, 487 (D. Md. 2005), and “Rule 30(b)(6) explicitly requires the entity to have persons testify on its behalf as to all matters known or reasonably available to it in preparation for the Rule 30(b)(6) deposition.” *First Mariner*, 2014 WL 1652550, at *14. *See also Scott Hutchinson Enter., Inc. v. Cranberry Pipeline Corp.*, 318 F.R.D. 44, 55 (S.D.W.V. 2016) (corporation’s designee is “required to testify about facts within the **corporation’s collective knowledge**” (emphasis added)); *United States v. Taylor*, 166 F.R.D. 356, 362 (M.D.N.C. 1996) (defendant “does not fulfill its obligations under Rule 30(b)(6) by stating it has no knowledge or position with respect to a set of facts or area of inquiry within its knowledge or reasonably available”); *Sara Lee Corp. v. Kraft Foods Inc.*, 276 F.R.D. 500, 503 (N.D. Ill. 2011) (“Rule 30(b)(6) testimony [is] a matter of the corporation’s collective knowledge or subjective belief. Such topics include matters about which the corporation’s official position is relevant, such as corporate policies and procedures.”).

B. Defendants Failed to Produce a Witness That Could Answer the Questions Pertaining to Defendants’ Collective Knowledge.

This requirement of collective knowledge demands that Defendants’ designee obtain information that is possessed by the Executive Branch, including **all of its agents, employees, and persons in its control**. *See Taylor*, 166 F.R.D. at 362 (**defendants must present the position and knowledge of “its officers, employees, agents, or others” in their control as to all relevant set of alleged facts or areas of inquiry** (emphasis added)). Indeed, “the corporation is obligated to

prepare the designees so that they may give knowledgeable and binding answers for the corporation.” *Int’l Ass’n of Machinists*, 390 F. Supp. 2d at 487. Thus, Defendants were required to ensure that its designee inquired of the collective knowledge of the Executive Branch under Defendants’ control.

1. Plaintiff’s Questions Do Not Exhibit Any Misunderstanding of Defendants’ Disciplinary Procedures, but Rather a Proper Understanding of Defendants’ Obligations Under Rule 30(b)(6).

In their Response, Defendants claim that many questions were “unanswerable” because Plaintiff’s questions “display a fundamental misunderstanding of the board disciplinary process.” (Resp. at 9.) In fact, Defendants astoundingly claim it was not possible for Defendants to obtain the collective knowledge of the Executive Branch by consulting the members of the disciplinary boards because “[a]ny member of such board’ could not answer” Plaintiff’s questions, as “only a quorum of a board” can answer such questions. (*Id.* at 9; *see also id.* at 5 (arguing answers to Plaintiff’s questions “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**” (emphasis added).) If there is any “fundamental misunderstanding” here, it is that of Defendants and their absurd contentions that they can simply ignore discoverable matters by failing to inquire of individuals in their control.

Indeed, as this Court has said,

A party cannot take a laissez faire approach to the inquiry. That is, producing a designee and seeing what he has to say or what he can cover. A party does not meet its obligations under Rule 26 or 30(b)(6) by figuratively “throwing up its hands in a gesture of helplessness” as . . . the corporate designee did in this case. **If the originally designated spokesman for the corporation lacks knowledge in the identified areas of inquiry, that does not become the inquiring party’s problem, but demonstrates the responding party’s failure of duty.**

Poole ex rel. Elliot v. Textron, Inc., 192 F.R.D. 494, 504-05 (D. Md. 2000) (emphasis added).

“The designee must be prepared to the extent matters are reasonably available, whether from documents, **present or past employees**, or **other sources**.” *Wilson v. Lakner*, 228 F.R.D. 524, 528 (D. Md. 2005) (emphasis added). Indeed, Rule 30(b)(6) “certainly requires a good faith effort on the party of the designate to find out the relevant facts—to collect information, review documents, and **interview employees with personal knowledge**.” *Id.* (emphasis added). *See also QBE Ins. Corp. v. Jorda Enter., Inc.*, 277 F.R.D. 676, 689 S.D. Fla. 2012) (“[T]he corporation has a duty to make a good faith, conscientious effort to designate appropriate persons and to prepare them to testify fully and non-evasively about the subjects.”); *Robinson v. Nexion Health At Terrell, Inc.*, 312 F.R.D. 438, 441 (N.D. Tex. 2014) (“[B]ecause under Rule 30(b)(6), the designated witness acts as the agent for the corporation, if a certain fact is within the collective knowledge or subjective belief of the organization, the designee should be prepared on the issue by the organization . . .”).

Defendants’ arguments here amount to” throwing up their hands” because the disciplinary process purportedly requires a quorum of board members to answer a specific complaint. But, Defendants fail to acknowledge that **all members of all disciplinary boards** are employees or agents of the Executive Branch. Thus, it was Defendants’ duty to prepare its Rule 30(b)(6) designee in a manner that would be able to provide binding answers on the noticed topics. If that required consulting a quorum of a disciplinary board, then it was incumbent on Defendants to do so. There can be no argument that such an inquiry was possible. Indeed, Defendants could have obtained the collective knowledge of every member of the disciplinary board, not merely a quorum of such a board. To be sure, Defendants had the option and duty under Rule 30(b)(6) to produce “one **or more** [designees] to testify on [their] behalf” to cover the subjects noticed by Plaintiff.

Thus, Defendants could have designated one or more members from each board if necessary to satisfy its Rule 30(b)(6) obligations.

The fact that the process of “preparing for a Rule 30(b)(6) deposition can be burdensome” is irrelevant, as that is simply what Rule 30(b)(6) requires of a corporate entity. *See Int’l Ass’n of Machinists*, 390 F. Supp. 2d at 487. Indeed, as the *Taylor* court noted, Defendants must present the position and knowledge of **all** of “its officers, employees, agents, or others” in their control as to **all relevant alleged facts or areas of inquiry**. *Taylor*, 166 F.R.D. at 362. Defendants’ “throw[ing] up their hands” in purported quorum-less helplessness was plainly improper under Rule 30(b)(6). This Court must compel Defendants to provide the answers representing the collective knowledge of all Executive Branch officers, employees, and agents, and cannot countenance Defendants’ arguments to the contrary.

2. Defendants’ Admit That Their Designee Did Not Even Attempt to Obtain Defendants’ Collective Knowledge Concerning the Noticed Topics.

While Defendants dispute Plaintiff’s characterization of their designee’s preparation efforts, in so doing, Defendants admit that their designee failed to prepare adequately for the noticed topics. Defendants claim that their designee spent “two hours over a two-day period – meeting and conferring with counsel” and approximately five hours “reviewing documents.” (Resp. at 4.) Notably absent from this recitation of preparation for the Rule 30(b)(6) deposition is any attempt to consult even one member of one disciplinary board, all of which are indisputably under the control of the Executive Branch and were accessible to Defendants’ designee. (Lang Dep. at 163:8–164:10.) More problematically, however, is Defendants’ contention that “a regulatory board interpreting its disciplinary statute . . . can only be done by a quorum of the board . . . and not by a Rule 30(b)(6) witness.” (*Id.* at 5.) Defendants’ argument admits that they did not even attempt to inquire of any disciplinary boards’ interpretation of SB 1028. Yet, Plaintiff’s

Notice of Deposition specifically stated that Plaintiff would inquire as to “[t]he interpretation, application, and enforcement of SB 1028 by **the Government of the State of Maryland.**” (Plaintiff’s Notice of Taking Deposition, Doc. 45-2, at 4, ¶ 10 (emphasis added).) This area of inquiry was clearly set forth for Defendants, but they utterly failed to inquire of the officials, employees, and agents under their control as to the answers to such questions. As this Court said in *Poole*, “**that does not become the inquiring party’s problem, but demonstrates the responding party’s failure of duty.**” *Poole*, 192 F.R.D. at 505 (emphasis added). Defendants must be compelled to provide a witness possessing Defendants’ collective knowledge on the noticed topics, and Defendants’ admitted failure to inquire of the appropriate individuals to produce a prepared witness was a dereliction of duty.

3. Defendants’ Excuse That Only a Quorum of a Disciplinary Board Can Answer Plaintiff’s Questions Is False According to SB 1028 Itself and Defendants’ Designee’s Testimony.

Defendants’ argument that “only a quorum of a board” can interpret what constitutes “conversion therapy” under SB 1028 (Resp. at 9) fails for another two reasons: First, the statute itself directs, “The Department [of Health] shall adopt regulations necessary to implement this section.” (SB 1028, Doc. 1-1, at 6.) Thus, department-level officials, not subsidiary regulatory board officials, are expressly contemplated to interpret SB 1028 in the first instance. Second, and more importantly, Defendants’ designee testified that the regulatory boards’ procedures for handling complaints involve interpretive and enforcement decisions made by personnel constituting less than “a quorum of a board.” (Lang Dep. at 160:15–164:10.)

In the context of the Board of Professional Counselors and Therapists, which is the health regulatory board with jurisdiction over Plaintiff, Defendants’ designee testified that every complaint of misconduct is received by the Disciplinary Review Committee of the board. (Lang

Dep. at 133:5–135:21.) That committee, according to Defendants’ designee, makes an initial decision whether to dismiss the complaint, take informal disciplinary action, or refer the complaint for investigation. (Lang Dep. at 134:15–135:21.) The committee would dismiss a complaint “If they found it had no merit.” (Lang Dep. at 136:1–3.) Despite this testimony showing interpretive and enforcement decisions being made by less than “a quorum of a board,” however, Defendants excuse their designee’s inability or unpreparedness to answer Plaintiff’s questions with the feint that “only a quorum of a board” could possibly say what combination of words or conversations constitutes “conversion therapy” under SB 1028. The Court should reject Defendants’ excuse.

To be sure, the Maryland General Assembly did not, by enacting SB 1028, merely delegate authority to health regulatory boards to discipline professionals for “unprofessional conduct;” it had already done that. *See, e.g.*, Md. Code Ann., Health Occ. § 17-509(16) (authorizing Board of Professional Counselors and Therapists to discipline for, *inter alia*, “unprofessional conduct”). Rather, by enacting SB 1028, the General assembly codified Maryland’s new position that “conversion therapy” is unprofessional conduct. Maryland’s Governor and Attorney General—*i.e.*, the Executive Branch—should be able to designate a witness to say what speech by licensed counselors is outlawed.

II. DEFENDANTS’ IRRELEVANT ARGUMENTS CONCERNING THE MERITS OF PLAINTIFF’S CLAIMS DO NOT RELIEVE THEM OF THEIR OBLIGATION TO PRODUCE A PROPERLY PREPARED WITNESS TO ANSWER PLAINTIFF’S QUESTIONS.

Defendants devote much discussion to the notion that their inability to answer certain questions on interpretation and their admitted failure even to try to answer such questions does not show that SB 1028 suffers from unconstitutional vagueness. (Resp. at 6–9 (arguing failure to answer hypothetical questions concerning proper interpretation of a challenged law is not evidence of unconstitutional vagueness).) Despite being incorrect as a matter of law, *see infra* pt. III,

Defendants' contentions on this issue are utterly irrelevant to Plaintiff's Motion. Indeed, whether SB 1028 is unconstitutionally vague is a merits determination, and arguments concerning the ultimate merits of a particular claim are irrelevant to discovery disputes. *See, e.g., EEOC v. Freeman*, No. RWT-09-2573, 2012 WL 3536752, *2 (D. Md. Aug. 14, 2012) ("Arguments regarding the merits of claims or defenses asserted in pleadings are not the kinds of arguments that the Court can adequately entertain in a discovery dispute."); *Triangle Residential Designs, Inc. v. Ashley Turner Enter., Inc.*, No. 5:05-CV-412-F(3), 2011 WL 7293428, *2 (E.D.N.C. Feb. 24, 2011) (same); *Drexel Heritage Furnishings, Inc. v. Furniture USA, Inc.*, 200 F.R.D. 255, 257 (M.D.N.C. 2001) (same). Indeed, for purposes of Plaintiff's Motion, "the Court must determine whether the deposition seeks information relevant to that defense or reasonably calculated to the discovery of admissible evidence," not whether the claims upon which such discoverable information might shed light are merited. *EEOC v. Freeman*, 2012 WL 3536752, at *2; *Drexel*, 200 F.R.D. at 257 (granting motion to compel discovery because "plaintiffs are seeking information relevant to a claim or defense"). Defendants must be compelled to provide the answers to Plaintiff's discoverable inquiries that the ultimate merits of Plaintiff's claims may be determined on an appropriate record.

III. DEFENDANTS' FAILURE TO ANSWER QUESTIONS CONCERNING THE LINE BETWEEN PERMISSIBLE AND IMPERMISSIBLE SPEECH UNDER SB 1028 DEMONSTRATES THAT IT IS UNCONSTITUTIONALLY VAGUE.

Defendants' contentions concerning the merits of Plaintiff's vagueness challenge to SB 1028, aside from being irrelevant on a motion to compel, are also incorrect. The First Amendment compels the government to adequately explain where the line is between permissible and impermissible, lest the First Amendment be reduced to a semantic exercise. As was evidenced by Defendants' Rule 30(b)(6) designee, even Defendants are left to guess at the meaning of certain

provisions of SB 1028 and will unquestionably differ as to its application. The is the textbook definition of unconstitutional vagueness.

A. The First Amendment Compels Defendants to Adequately Explain Where the Line Is Between the Permissible and Impermissible Under SB 1028.

A law is unconstitutionally vague and overbroad if it “either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application.” *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926). Government policies “must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to take.” *Id.* at 393. “Precision of regulation” is the touchstone of the First Amendment. *NAACP v. Button*, 371 U.S. 415, 435 (1963). “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). While all regulations must be reasonably clear, “laws which threaten to inhibit the exercise of constitutionally protected” expression must satisfy “a more stringent vagueness test.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982). Thus, a law must give “adequate warning of what activities it proscribes” and must “set out explicit standards for those who apply it.” *See Broadrick v. Oklahoma*, 413 U.S. 601, 607 (1973) (citing *Grayned*, 408 U.S. at 108).

Defendants contend that SB 1028 is not unconstitutionally vague simply because their Rule 30(b)(6) designee was unable to provide answers on questions concerning its proper application, and that SB 1028 is not unconstitutionally vague simply because it provides for discipline on a case-by-case basis. (Resp. at 7–9.) This simply is not the law. The Supreme Court’s discussion in *Dombrowski v. Pfister*, 380 U.S. 479 (1965) is particularly instructive on this point. There, the High Court noted that even “**the threat of sanctions may deter almost as potently as the actual application of sanctions.**” 380 U.S. at 486 (emphasis added). Because of that, the Supreme

Court—in rejecting the precise contention Defendants’ proffer here—held that the First Amendment requires more than case-by-case adjudication of the proper contours of a speech-restrictive law. *Id.* at 487. “We believe that those affected by a statute are entitled to be free of the burdens of defending prosecutions, however expeditious, aimed at hammering out the structure of the statute piecemeal with no likelihood of obviating similar uncertainty for others.” *Id.* at 491. Indeed, the First Amendment demands more than “hammer[ing] out [the statute] case by case” because “[t]he chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure.” *Id.*

B. Even Defendants’ Rule 30(B)(6) Designee Was Left to Guess at SB 1028’s Meaning and Undoubtedly Demonstrated That Officials Will Differ as to Its Application.

The answers of Defendants’ Rule 30(b)(6) designee regarding the proper understanding and application of SB 1028 demonstrate that even she was left to guess at its meaning, and leave it to others to determine its application.

Plaintiff repeatedly inquired as to whether certain practices would constitute a violation of SB 1028, and Defendants’ designee admitted that she could not answer whether certain practices constitute a violation of the statute that Maryland passed.

Q: So before we move on, just so the record is clear, I’ve asked the same hypothetical a number of times about the 10-year-old. Do you recall that I’ve asked that?

A. I do.

Q. **And you have been unable to answer specifically whether that hypothetical would implicate a violation of SB 1028.** Would it be fair to conclude that you would provide a similar answer to other hypotheticals asking whether particular conduct would be deemed a violation of SB 1028?

A: **That’s accurate.**

(Deposition of Kimberly Christine Lang, Ph.D., Doc. 44-1 (“Lang Dep.”), at 173:13–174:3 (emphasis added).)

Plaintiff inquired of the Rule 30(b)(6) designee whether certain practices would constitute a violation of SB 1028. **Defendants’ designee could not provide any answer.**

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.

Q: And so again just for the sake of completeness, is your answer the same if I asked about a minor who presented to a practitioner requesting help to change gender expressions and that practitioner responds by doing what the client asks, would that be conversion therapy under SB 1028?

Ms. Ellis: Objection

A: And my response would be the same.

Q: **That you are unable to tell me?**

A: **Correct.**

(Lang Dep. at 181:13–183:20 (emphasis added).)

The litany of “I don’t know,” “I cannot tell you,” or “that is a matter for someone else” demonstrates that Defendants’ own officials are unable to answer basic questions concerning the line between permissible and impermissible. Such a failure is textbook vagueness and leaves even Defendants’ guessing and differing about the contours of SB 1028.

IV. DEFENDANTS’ EFFORTS TO HIDE BEHIND LEGISLATIVE PRIVILEGE CANNOT BE COUNTENANCED.

A. There Is No Question That the Government’s Intent Is a Seminal Question in First Amendment Matters.

The government’s purpose and intent in enacting a law are a “principal inquiry” in First Amendment challenges. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994). In fact, regardless of the level of scrutiny applicable in any given First Amendment challenge, the government’s intent is critical. *See, e.g., Ysursa v. Pocatello Educ. Ass’n*, 555 U.S. 353, 359 (2009) (government purpose and intent are relevant inquiries in rational basis review); *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2228 (2015) (illicit intent, although not the *sine qua non* of a violation of the First Amendment, is sufficient to warrant strict scrutiny); *Giovani Carandola Ltd. v. Bason*, 303 F.3d 507, 515 (4th Cir. 2002) (government intent is relevant to analysis of both strict scrutiny and intermediate scrutiny); *Steiner v. Cnty. Comm’rs of Caroline Cnty.*, 490 F. Supp. 2d 617, 624 (D. Md. 2007) (same).

B. Because the Government’s Intent Is Critical Under Any Level of First Amendment Scrutiny, Plaintiff’s Questions Concerning Such Intent Are Properly Discoverable, and Defendant Must Answer Such Questions.

As Rule 26 makes abundantly clear, “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1); *see*

also *Thompson v. U.S. Dep't of Housing and Urban Dev.*, 219 F.R.D. 93, 95 (D. Md. 2003) (noting that Plaintiff need only satisfy “minimal threshold requirements” to obtain discoverable information, namely all non-privileged information relevant to the claims and defenses raised in the pleadings). As is plainly clear from the above authorities, *supra* Section IV.A, the government’s intent here is a principal inquiry and thus highly relevant to Plaintiff’s claims in this matter. Moreover, Defendants have unquestionably made their intent relevant to the proceedings by arguing that they did not have discriminatory intent for enacting SB 1028. (*See* Doc. 25, Defendants’ Response in Opposition to Plaintiff’s Motion for Preliminary Injunction, at 14-21 (arguing that Defendants’ intent was to protect minors, not silence the viewpoint or content of speech they do not like). Given Defendants’ lengthy response concerning their intent in enacting SB 1028, they can hardly be permitted to hide behind barriers to discovery that would permit Plaintiff to probe the legitimacy of such asserted intent.

C. Regardless of Defendants’ Stated or Implied Intention, This Court Must Mandate That Defendants Produce Answers on Questions of Government Intent or Bar Them from Subsequently Introducing Any Evidence to Dispute Plaintiff’s Allegations of Discriminatory Intent.

Defendants assert that they “have not indicated any intention of using the legislative privilege as a sword and shield.” (Resp. at 14.) Regardless of their currently stated intent, Plaintiff’s Motion seeks an order that either (1) requires Defendants to answer the properly discoverable inquiries concerning Defendants’ intent and understanding of SB 1028, or (2) that Defendants be prohibited from introducing subsequent evidence to support any claim of permissible intent. Defendant cannot be permitted to hide behind a privilege assertion during discovery and then introduce evidence contrary to the allegations of Plaintiff’s Complaint at a later date. As a matter of law, *see supra* Section IV.A-B, Defendants should be required to produce evidence and answer Plaintiff’s reasonable questions concerning the government’s intent in

enacting SB 1028. But, should this Court not compel such discovery responses, it must as a matter of settled law prohibit Defendants from subsequently ambushing Plaintiff with evidence at any hearing or trial. *See, e.g., United Bank v. Buckingham*, 301 F. Supp. 3d 547, 558 (D. Md. 2018) (party cannot “use the privilege as a sword and shield”); *Rihardson v. Sexual Assault/Spouse Abuse Res. Ctr., Inc.*, 764 F. Supp. 2d 736, 739 (D. Md. 2011) (same); *Burlington Indus. v. Exxon Corp.*, 65 F.R.D. 26, 46 (D. Md. 1974) (“the court is not unmindful of the fact that privileges cannot be used as both a sword and a shield. A party cannot choose to disclose only so much of allegedly privileged matter as is helpful to his case.”).

CONCLUSION

For the foregoing reasons, and for all those articulated in Plaintiff’s Motion, this Court should (1) compel Defendants to produce one or more prepared Rule 30(b)(6) designees on all noticed topics, and pay the expenses of the re-convened deposition, and (2) require Defendants’ Rule 30(b)(6) designee(s) to answer Plaintiff’s questions concerning Defendants’ constitutional burden or, alternatively, preclude Defendants from introducing any evidence concerning matters upon which they asserted legislative privilege.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been filed this May 9, 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:

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