

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

RICHARD ROE, ET AL.,

Plaintiffs,

v.

PATRICK M. SHANAHAN, ET AL.,

Defendants.

NO. 1:18-CV-01565-LMB-IDD

**PLAINTIFFS' MOTION TO COMPEL DOCUMENTS AND INFORMATION
WITHHELD ON THE BASIS OF DELIBERATIVE PROCESS PRIVILEGE**

Pursuant to Fed. R. Civ. P. 37 and the Local Rules of the U.S. District Court for the Eastern District of Virginia, Plaintiffs Richard Roe, Victor Voe, and OutServe-SLDN, Inc. (collectively, "Plaintiffs") hereby move to compel the production of documents and information withheld on the basis of the deliberative process privilege.

Defendants are currently withholding 161 documents on the sole basis of deliberative process privilege. As detailed in the accompanying Memorandum in Support of Plaintiffs' Motion, the deliberative process privilege is inapplicable in this case because the government's intent is at issue in this case and government misconduct is alleged. Alternatively, the balancing test laid out in *Cipollone v. Liggett Grp. Inc.*, 812 F.2d 1400, 1987 WL 36515 (4th Cir. 1987) (unpublished table decision), still compels production of these documents given the information requested is highly relevant, Defendants are the only source of information, the government is integral to the case, and disclosure of this information would not hinder frank and independent discussion regarding the discriminatory policies disputed in this case. Accordingly, Defendants

should be required to produce all documents and information that have been withheld on the bases of deliberative process privilege.

Pursuant to Local Rule 37(E), Plaintiffs hereby certify they have made a good faith effort to resolve this dispute with counsel for Defendants.

Dated: March 22, 2019

Respectfully submitted,

/s/ Scott Schoettes

Scott Schoettes*
SSchoettes@lambdalegal.org
Kara Ingelhart*
KIngelhart@lambdalegal.org
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
105 W. Adams St., Suite 2600
Chicago, IL 60603
T: (312) 663-4413

Peter E. Perkowski*
PeterP@outserve.org
OUTSERVE-SLDN, INC.
P.O. Box 65301
Washington, DC 20035-5301
T: (800) 538-7418

Attorneys for Plaintiffs
**pro hac vice*

/s/ Andrew R. Sommer

Andrew R. Sommer
Virginia State Bar No. 70304
ASommer@winston.com
John W. H. Harding
Virginia State Bar No. 87602
JWHarding@winston.com
Lauren Gailey*
LGailey@winston.com
Laura Cooley
Virginia State Bar No. 93446
LCooley@winston.com
WINSTON & STRAWN LLP
1700 K St., NW
Washington, DC 20006
T: (202) 282-5000

Julie A. Bauer*
JBauer@winston.com
WINSTON & STRAWN LLP
35 W. Wacker Dr.
Chicago, IL 60601
T: (312) 558-5600

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of March 2019, I caused the foregoing to be filed electronically using the Court's CM/ECF system, which automatically sent a notice of electronic filing to all counsel of record.

Dated: March 22, 2019

Respectfully submitted,

/s/ Andrew R. Sommer
Andrew R. Sommer