

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

CHRISTOPHER DOYLE, LPC, LCPC, etc.,)
)
Plaintiff,)
) Civil Action No. 1:19-cv-00190-DKC
v.)
) **INJUNCTIVE RELIEF SOUGHT**
LAWRENCE J. HOGAN, JR., etc., et al.,)
)
Defendants.)
)

**PLAINTIFF'S NOTICE OF FILING
DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISISONS
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff gives notice of filing a copy of Defendants' Response to Plaintiff's Request for Admissions, attached hereto, in support of Plaintiffs' Motion for Preliminary Injunction (Doc. 2).

Respectfully submitted,

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(signed by Roger K. Gannam
with permission of John R. Garza)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been filed this August 5, 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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**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

CHRISTOPHER DOYLE, LPC, LCPC,)
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 Plaintiff,)
) Civil Action No. 1:19-cv-00190-DKC
 v.)
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 LAWRENCE J. HOGAN, JR., *et al.*,)
)
 Defendants.)

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
REQUEST FOR ADMISSIONS**

Pursuant to the Federal Rules of Civil Procedure and this Court's Local Rules and Discovery Guidelines, the defendants, the Governor of Maryland and the Attorney General of Maryland, respond to the plaintiff's requests for admission. The defendants' responses are subject to the following general objections, incorporated as indicated in each response.

Objections to Definitions and Instructions

1. The defendants, the Governor of Maryland and the Attorney General of Maryland in their official capacities, object to Definition No. 7 as overly broad. The Governor and Attorney General will respond to these requests for admission based on information within their control to obtain. Neither has the authority to compel the legislative or judicial branch of the State of Maryland's government to provide information for these discovery responses. *See* Md. Declaration of Rights, Article 8.

2. The defendants, the Governor of Maryland and the Attorney General of Maryland in their official capacities, object to Definition No. 11 as overly broad. The Governor and the Attorney General construe the term "Legislative Record" to include only materials that are

publicly available, all of which are listed below, and they will respond to these requests for admission based on these materials:

- a. MD0001 – MD0096 – HB 902 Bill File
- b. MD0097 – MD0164 – SB 1028 Bill File
- c. MD0165 – HB 902 Summary
- d. MD0166 – HB 902 Documents
- e. MD0167 – MD0170 – HB 902 Fiscal and Policy Note
- f. MD0171 – MD0176 – HB 902 First Reader
- g. MD0177 – HB 902 Voting Record
- h. MD0178 – HB 902 History
- i. MD0179 – SB 1028 Summary
- j. MD0180 – SB 1028 Documents
- k. MD0181 – MD0184 – Proposed Amendments to SB 1028 First Reader
- l. MD0185 – MD0187 – Proposed Amendments to SB 1028 Third Reader
- m. MD0188 – MD0191 – SB 1028 Fiscal and Policy Note
- n. MD0192 – MD0197 – SB 1028 First Reader
- o. MD0198 – MD0203 – SB 1028 Third Reader
- p. MD0204 – MD0209 – Ch. 685, 2018 Laws of Maryland
- q. MD0210 – MD0220 – SB 1028 Voting Record
- r. Recording of Health and Government Operations Committee Hearing on HB 902
- s. Recording of Education, Health and Environmental Affairs Committee Hearing on SB 1028
- t. Recordings of floor proceedings in House of Delegates and Senate

3. The defendants, the Governor of Maryland and the Attorney General of Maryland in their official capacities, object to Instruction No. 2 because it purports to obligate the defendants to obtain and disclose information protected by the legislative privilege, the attorney client privilege, and the attorney work product doctrine. The term “SB 1028 Proponents” is defined to mean those individuals involved in legislative activities related to SB 1028 (2018), HB 902 (2018), and Ch. 685, 2018 Laws of Maryland, all of whom are protected by a legislative privilege from having to provide information in discovery. *See, e.g., 2BD Associates Ltd. Partnership v. County Commissioners for Queen Anne’s County*, 896 F. Supp. 528, 533 (D. Md. 1995). To the extent that either or both of the defendants were involved in the activities listed in the definition of “SB Proponents,” they were engaged in legislative activities and are thus,

protected by the legislative privilege. *See Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998) (determine scope of legislative privilege by the nature of the act); *Baraka v. McGreevey*, 481 F.3d 187, 196 (3d Cir. 2007) (Governor's advocacy for a bill in the legislature and Governor's signing of bill "squarely within the sphere of legitimate, legislative activity"); *Mandel v. O'Hara*, 322 Md. 103, 122-34 (1990) (Governor's deciding whether to veto or sign a bill is legislative act). Furthermore, the Governor and the Attorney General have no authority to require members of the General Assembly or their staffs to provide information or documents for discovery in this matter. *See Md. Declaration of Rights, Article 8.*

4. The defendants, the Governor of Maryland and the Attorney General of Maryland in their official capacities, object to Instruction No. 8 regarding the provision of a Privilege Log. With respect to the legislative privilege, no privilege log is necessary. *See North Carolina State Conference v. McCrory*, 2015 WL 12683665, at *7 (M.D.N.C. Feb. 4, 2015). Furthermore, the defendants object to Instruction No. 8 to the extent that it purports to require a privilege log of communications and documents created after the filing of the complaint. *See Interstate Indemnity Co. v. Black*, 2003 WL 23269342, at *1 (M.D.N.C. Oct. 24, 2003).

5. The defendants, the Governor of Maryland and the Attorney General of Maryland in their official capacities, object to Instruction No. 12 regarding the date range applicable to these discovery requests. There is no basis for requiring the production of information or documents for any time before the start of the legislative session in 2018 – January 10, 2018 – or for any time after the lawsuit was filed on January 22, 2019.

Responses to Requests for Admission

REQUEST FOR ADMISSION 1:

Admit that the Legislative Record of SB 1028 does not include any Complaint that any Minor was harmed by any SOCE counseling provided within the State of Maryland.

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 1 as irrelevant and not likely to lead to the discovery of admissible evidence. There is no requirement that a legislature wait until it has evidence of actual harm before taking action to protect minors. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009); *King v. Governor of State of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014); *Otto v. City of Boca Raton, Florida*, 2019 WL 588645, *20 (S.D. Fla. Feb. 14, 2019). Without waiving any of these objections, Request for Admission No. 1 is denied.

REQUEST FOR ADMISSION 2:

Admit that the Legislative Record of SB 1028 does not include any Complaint that any Minor was harmed by any SOCE counseling provided within the State of Maryland against that Minor's wishes or without that Minor's consent.

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 2 as irrelevant and not likely to lead to the discovery of admissible evidence. There is no requirement that a legislature wait until it has evidence of actual harm before taking action to protect minors. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009); *King v. Governor of State of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014); *Otto v. City of Boca Raton, Florida*, 2019 WL 588645, *20 (S.D. Fla. Feb. 14, 2019). Furthermore, under Maryland law, a minor under 16 years of age does not have the capacity to consent to medical treatment, including mental health treatment, and a minor 16 or 17

years of age does not have the ability to refuse treatment to which his or her parent or guardian has consented. *See* Md. Code Ann., Health-Gen'l § 20-104. Without waiving any of these objections, Request for Admission No. 2 is denied.

REQUEST FOR ADMISSION 3:

Admit that, prior to enacting SB 1028, the State did not conduct or commission any empirical study, research, or investigation of its own to determine whether any Minor within the State of Maryland had been harmed by any SOCE counseling or had been subjected to any SOCE counseling against the Minor's wishes or without the Minor's consent.

[For the sake of clarity, this RFA is limited to empirical studies, research, or investigations that the State itself conducted or commissioned, as opposed to studies, research, or investigations conducted by third parties which the State may have reviewed, considered, discussed, or debated.]

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 3 as irrelevant and not likely to lead to the discovery of admissible evidence. There is no requirement that a legislature conduct or commission empirical studies, research, or investigation before taking action to protect minors. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009); *King v. Governor of State of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014); *Otto v. City of Boca Raton, Florida*, 2019 WL 588645, *20 (S.D. Fla. Feb. 14, 2019). Furthermore, under Maryland law, a minor under 16 years of age does not have the capacity to consent to medical treatment, including mental health treatment, and a minor 16 or 17 years of age does not have the ability to refuse treatment to which his or her parent or guardian has consented. *See* Md. Code Ann., Health-Gen'l § 20-104. Without waiving these objections, Request for Admission No. 3 is admitted.

REQUEST FOR ADMISSION 4:

Admit that, prior to enacting SB 1028, the State did not conduct or commission any empirical study, research, or investigation of its own to determine whether voluntary SOCE

counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor.

[For the sake of clarity, this RFA is limited to empirical studies, research, or investigations that the State itself conducted or commissioned, as opposed to studies, research, or investigations conducted by third parties which the State may have reviewed, considered, discussed, or debated.]

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 4 as irrelevant and not likely to lead to the discovery of admissible evidence. There is no requirement that a legislature conduct or commission empirical studies, research, or investigation before taking action to protect minors. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009); *King v. Governor of State of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014); *Otto v. City of Boca Raton, Florida*, 2019 WL 588645, *20 (S.D. Fla. Feb. 14, 2019). Furthermore, under Maryland law, a minor under 16 years of age does not have the capacity to consent to medical treatment, including mental health treatment, and a minor 16 or 17 years of age does not have the ability to refuse treatment to which his or her parent or guardian has consented. *See Md. Code Ann., Health-Gen'l § 20-104.* Without waiving these objections, Request for Admission No. 4 is admitted.

REQUEST FOR ADMISSION 5:

Admit that no third-party empirical study, research, investigation, resolution, or position paper in the Legislative Record of SB 1028 identified or provided causal evidence of harm from, or a causal attribution of harm to, voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive.

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 5 as irrelevant and not likely to lead to the discovery of admissible evidence. There is no requirement that a legislature wait until it

has evidence of actual harm before taking action to protect minors. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009); *King v. Governor of State of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014); *Otto v. City of Boca Raton, Florida*, 2019 WL 588645, *20 (S.D. Fla. Feb. 14, 2019). Furthermore, under Maryland law, a minor under 16 years of age does not have the capacity to consent to medical treatment, including mental health treatment, and a minor 16 or 17 years of age does not have the ability to refuse treatment to which his or her parent or guardian has consented. *See Md. Code Ann., Health-Gen'l § 20-104*. Without waiving these objections, Request for Admission No. 5 is denied.

REQUEST FOR ADMISSION 6:

Admit that no third-party empirical study, research, investigation, resolution, or position paper in the Legislative Record of SB 1028 identified or provided causal evidence of family rejection from, or a causal attribution of family rejection to, voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive.

RESPONSE:

The defendants incorporate by reference their objection to Definition No. 11. The defendants further object to Request for Admission No. 6 as irrelevant and not likely to lead to the discovery of admissible evidence. Under Maryland law, a minor under 16 years of age lacks capacity to consent to mental health treatment, and minors 16 or 17 years of age lack the ability to refuse to participate in mental health treatment to which their parent or guardian consents. *See Md. Code Ann., Health-Gen'l § 20-104(b)*. Without waiving these objections, Request for Admission No. 6 is admitted.

REQUEST FOR ADMISSION 7:

Admit that there is no empirical study, research, investigation, resolution, or position paper in the Legislative Record of SB 1028 analyzing the ability or inability of Minors to consent to SOCE counseling.

RESPONSE:

The defendants incorporate by reference their objection to Definition No. 11. The defendants further object to Request for Admission No. 7 as irrelevant and not likely to lead to the discovery of admissible evidence. Under Maryland law, a minor under 16 years of age lacks capacity to consent to mental health treatment, and minors 16 or 17 years of age lack the ability to refuse to participate in mental health treatment to which their parent or guardian consents. *See* Md. Code Ann., Health-Gen'l § 20-104(b). Without waiving these objections, Request for Admission No. 7 is denied.

REQUEST FOR ADMISSION 8:

Admit that the Legislative Record of SB 1028 does not reflect any review, consideration, discussion, or debate of any alternative means of serving the State's interests recited in SB 1028 which would have been less restrictive on speech than SB 1028 as enacted.

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 8 because it assumes that SB 1028 restricts speech, when it actually only prohibits a specific type of treatment and only for minors. Without waiving these objections, Request for Admission No. 8 is denied.

Respectfully Submitted:
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March 21, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2019, I caused a true and correct copy of the foregoing to be served by e-mail on the following:

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Kathleen A. Ellis