

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

BRIANNA BOE, individually and on
behalf of her minor son, MICHAEL BOE;
et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STEVE MARSHALL, in his official
capacity as Attorney General of the State
of Alabama; *et al.*,

Defendants.

Case No. 2:22-cv-184-LCB-CWB

Honorable Liles C. Burke

UNOPPOSED

**UNOPPOSED MOTION FOR LEAVE TO FILE RESPONSE TO
DEFENDANTS' BRIEF IN SUPPORT OF EAGLE FORUM OF ALABAMA
AND SOUTHEAST LAW INSTITUTE'S MOTIONS TO QUASH
DOCUMENT SUBPOENAS AND MOTION FOR EXTENSION OF TIME
TO RESPOND TO DEFENDANTS' MOTION FOR PARTIAL JUDGMENT
ON THE UNITED STATES' PLEADINGS**

The United States recently served document subpoenas on two third-party organizations, Eagle Forum of Alabama (“EFA”) and Southeast Law Institute (“SLI”), which were involved in the drafting and development of Alabama’s Vulnerable Child Compassion and Protection Act (“VCAP”). Prior to service, copies of the subpoenas were provided to Private Plaintiffs and Defendants on August 9, 2022. The United States subsequently served the subpoenas on EFA and SLI. On September 7, 2022, EFA and SLI filed motions to quash the subpoenas in their entirety, raising objections related to relevance, privilege, and rights under the First Amendment to the U.S. Constitution. The Court subsequently issued an order requiring any response to the motions to quash to be filed by September 21, 2022, and any replies to be filed by September 28, 2022. The United States is preparing its response to the motions to quash, which will be filed by September 21, 2022.

On September 19, 2022, Defendants requested consent from the United States to file a motion for leave to file a brief in support of the motions to quash. Despite having had notice of the subpoenas for over a month, prior to this outreach, Defendants had not raised any concerns with the United States’ subpoenas to EFA and SLI. Regardless, the United States informed Defendants that it would not oppose the filing of Defendants’ brief, if Defendants agreed not to oppose any request from the United States to file a brief that responds to Defendants’ substantive filing. Defendants agreed. Less than two hours after the

outreach, Defendants filed their motion for leave to file their proposed brief (ECF No. 158), which the Court granted today (ECF No. 160). Like the motions to quash, Defendants' brief raises relevance and First Amendment objections to the subpoenas. Unlike the motions to quash, the brief also contends that the subpoenas must be quashed due to legislative privilege.

Separately, and also on September 19, 2022, Defendants filed a motion for partial judgment on the United States' pleadings, (ECF No. 157). Defendants' brief in support of the motions to quash and the motion for partial judgment on the pleadings both argue that the United States is precluded from seeking discovery related to the motivations of Alabama legislators in enacting VCAP. The United States strongly disagrees with Defendants' views about the relevance of this evidence to its equal protection claim. The United States requires additional time to complete the ongoing meet and confer process on its pending discovery requests to Defendants and prepare a response brief that addresses the merits of Defendants' arguments, particularly given that this matter is in the middle of full discovery.

In order to adequately respond to Defendants' arguments in its brief in support of the motions to quash (ECF No. 158), the United States respectfully requests leave to file a brief in response by September 28, 2022. The United States is separately preparing a response to Defendants' motion for partial judgment on the pleadings, (ECF No. 157). The United States understands the response will be

due by October 11, 2022, per this Court's standard Initial Order. Based on that date, the United States requests two additional weeks to file its response, which would make the response due by October 25, 2022.

Private Plaintiffs and Defendants do not oppose these requests.

Dated: September 20, 2022

Respectfully submitted,

SANDRA J. STEWART
United States Attorney
Middle District of Alabama

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

PRIM F. ESCALONA
United States Attorney
Northern District of Alabama

JOHN POWERS (DC Bar No. 1024831)
Counsel to the Assistant Attorney General
Civil Rights Division

LANE H. WOODKE
Chief, Civil Division
Northern District of Alabama

CHRISTINE STONEMAN
Chief, Federal Coordination and Compliance
Section

/s/ Jason R. Cheek
JASON R. CHEEK
Deputy Chief, Civil Division
MARGARET L. MARSHALL
Assistant U.S. Attorney
U.S. Attorney's Office
Northern District of Alabama
1801 Fourth Avenue North
Birmingham, AL 35203
Tel.: (205) 244-2104
Jason.Cheek@usdoj.gov
Margaret.Marshall@usdoj.gov

COTY MONTAG (DC Bar No. 498357)
Deputy Chief, Federal Coordination and
Compliance Section

STEPHEN D. WADSWORTH
Assistant United States Attorney
U.S. Attorney's Office
Middle District of Alabama
Post Office Box 197

/s/ Kaitlin Toyama
ALYSSA C. LAREAU (DC Bar No. 494881)
RENEE WILLIAMS (CA Bar No. 284855)
KAITLIN TOYAMA (CA Bar No. 318993)
Trial Attorneys
United States Department of Justice
Civil Rights Division
Federal Coordination and Compliance
Section
950 Pennsylvania Avenue NW – 4CON
Washington, DC 20530
Tel.: (202) 305-2994
Alyssa.Lareau@usdoj.gov
Renee.Williams3@usdoj.gov

Montgomery, AL 36101-0197
Tel.: (334) 223-7280
Stephen.Wadsworth@usdoj.gov

Kaitlin.Toyama@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

Respectfully submitted,

s/ Jason Cheek

Assistant U.S. Attorney

U.S. Department of Justice