

**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 MODIFIED 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 filed its response on 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 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, (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). On September 20, 2022, the Court denied Defendants' Motion for Judgment on the Pleadings with leave for Defendants to refile. (ECF No. 162). On September 23, 2022, Defendants re-filed their Motion for Judgment on the Pleadings of the United States. (ECF No. 171). 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 supporting the motions to quash, 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. The United States understands the response will now be due by October 14, 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 28, 2022.

Private Plaintiffs and Defendants do not oppose these requests.

Dated: September 26, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 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/ Margaret Lester Marshall  
Assistant U.S. Attorney  
U.S. Department of Justice