

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

**BRIANNA BOE, et al.**

**Plaintiffs,**

**and**

**UNITED STATES OF AMERICA,**

**Plaintiff-Intervenor,**

**v.**

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

**Defendants.**

**CIVIL ACTION NO.  
2:22-CV-00184-LCB-SRW**

**NON-PARTY EAGLE FORUM OF ALABAMA’S OBJECTION TO AND  
MOTION TO QUASH LATEST DOCUMENT SUBPOENA FROM  
PLAINTIFFS, AND MOTION FOR SANCTIONS**

Eagle Forum of Alabama (“EFA”), which is not a party to this case, hereby objects to and moves to quash the latest subpoena served on it in this matter, i.e., a subpoena issued by and served upon EFA on February 6, 2024 (the “Subpoena”) by counsel for the individual plaintiffs. In addition, EFA moves the Court for an appropriate sanction on the individual Plaintiffs and/or their counsel, pursuant to Fed. R. Civ. P. 45(d)(1). A true and correct copy of the Subpoena is attached hereto as Exhibit A.

Plaintiffs seek through the present Subpoena to require EFA, a non-party to this suit, to search its files over a four-year time span and produce all written “[c]ommunications (including any attachments thereto) sent or received between Eagle Forum of Alabama and any of (i) a current or former member of the Alabama Legislature, (ii) his or her staff, or (iii) any other Alabama public official, regarding SB184, HB266, or any related or predecessor legislative bill in Alabama, sent or received between January 1, 2018 and April 7, 2022.” (Ex. A, p. 9.) As demonstrated below, the present subpoena to EFA – like the previous one served on it in 2022 by the United States – is due to be quashed for multiple reasons.

### **FACTUAL AND PROCEDURAL BACKGROUND**

1. As established in previous filings, EFA is a grassroots, non-profit Alabama corporation devoted to the cause of protecting Alabama’s families in public policy initiatives and reform efforts. It is a 501(c)(4) organization under the U.S. Internal Revenue Code. EFA has only one full-time paid employee, along with one part-time paid administrative assistant. Nearly all of the work done by EFA is done by volunteers. See the Declarations of Becky Gerritson and Margaret Clarke previously filed (Docs. 151-3 and 151-4).

2. As the Court will recall, this is not the first document subpoena which has been issued and served upon EFA in this case. Back in 2022, assistant U.S. attorney Jason Cheek, on behalf of the United States (intervening plaintiff), issued

and served on EFA a non-party document subpoena that demanded very similar documents to the present subpoena – including, among other categories of documents, “[a]ny documents provided to the Alabama State Legislature or any employee or member thereof in support of VCAP,<sup>1</sup> SB 184, HB 266, or any predecessor bills, including written testimony, letters, emails, draft legislation, model legislation, or proposed legislation, reports, summaries, analyses, fact sheets, and/or talking points[;]” and “[a]ny communications between [EFA] and any employee, agent, assign, or member of the Alabama State Legislature, Alabama Governor’s office, Alabama Lieutenant Governor’s office, Alabama Attorney General’s office, or any employee, agent, or assign of a District Attorney’s office within Alabama concerning VCAP, SB 184, HB 266, and/or any predecessor bills.” (Doc. 151-1, pp. 6-7 of 9, categories 4 and 5 of previous subpoena). EFA objected and moved to quash that subpoena on three basic grounds: (a) the documents sought were irrelevant to the issue in this case and outside the scope of permissible discovery under Fed. R. Civ. P. 26(b)(1); (b) compliance with the subpoena would impose an undue burden on EFA, in violation of Fed. R. Civ. P. 45(d)(1) and 45(d)(3)(A)(iv); and (c) compliance with the subpoena would require production of privileged documents in violation of Rule

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<sup>1</sup> The Alabama Vulnerable Child Compassion and Protection Act (“VCAP”), the constitutionality of which is the subject of the present case.

45(d)(3)(A)(iii), particularly EFA’s First Amendment privilege under the United States Constitution. (Doc. 151).

3. Shortly before a scheduled hearing on EFA’s motion to quash that subpoena, the U.S. filed a notice in which it withdrew all of the original categories of the document subpoena (including categories 4 and 5 quoted above), while purporting to add a new category of requested documents to the subpoena. (Docs. 184 and 186).

4. EFA’s motion to quash the U.S.’s subpoena was heard on October 14, 2022. The Court granted EFA’s motion to quash in a written Opinion and Order dated October 24, 2022. The Court specifically held in its Opinion and Order that all of the categories of documents which the U.S. sought from EFA in the original subpoena were “unlikely to reveal or lead to any information that would help resolve the fundamental issue in this case” (i.e., the constitutionality of the VCAP statute), and, thus, had “little—if any—relevance for purposes of discovery.” (Doc. 192, p. 5). The Court further held that the burden on EFA as a non-party to produce the material sought by the U.S. “greatly outweigh[ed] any slight relevance it may have” (Doc. 192, p. 5).<sup>2</sup> Because the Court held that the documents sought

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<sup>2</sup> The Court noted that EFA is a nonprofit organization staffed almost entirely of volunteers and represented in this subpoena dispute by the undersigned on a *pro bono* basis. The Court further noted that to produce the requested material, the volunteer staff of non-party EFA and its *pro bono* counsel would first have to review thousands of documents, determine which, if any, of those documents are responsive to the subpoena, and then omit or redact any privileged information contained in those documents. (Doc. 192, pp. 5-6).

by the prior subpoena fell outside the scope of proper discovery, the Court did not address whether the documents sought by the U.S.'s subpoena were also privileged under the First Amendment to the U.S. Constitution. (Doc. 192, p. 6 n. 15). The Court went on to consider whether the U.S.'s misconduct in issuing such a subpoena to EFA merited sanctions, ultimately postponing ruling on that issue pending trial while continuing to monitor the behavior of the parties. (Doc. 264).

5. The current subpoena now at issue was issued by attorney Brent Ray on behalf of the individual plaintiffs on January 31, 2024. See Exhibit A hereto. The undersigned agreed to accept service of the subpoena on behalf of EFA on February 6, 2024, as reflected in email correspondence (Exhibit B hereto) between the undersigned and attorney Adam Reinke (another counsel for Plaintiffs). The undersigned and Mr. Reinke spoke on February 13, 2024, about EFA's objections to the current subpoena, which are in essence the same basic objections which it had to the U.S.'s previous subpoena that this Court quashed. In light of those objections and the Court's previous ruling, the undersigned asked Mr. Reinke to withdraw the current subpoena, but he declined to do so.

### **ARGUMENT**

The latest subpoena from Plaintiffs is objectionable for the same basic reasons as the previous subpoena issued by the U.S., which was quashed by this

Court as outlined above. Specifically, the grounds for EFA's objection and motion to quash the latest subpoena are as follows:

6. First, like the previous subpoena, the present Subpoena to EFA is objectionable under Fed. R. Civ. P. 26(b)(1) because it improperly seeks documents which are outside the scope of permissible discovery in that the documents sought are neither relevant to any issue in this lawsuit nor proportional to the needs of the case.<sup>3</sup> As the parties and the Court are well aware, the subject of this lawsuit is simply whether, and to what extent, the VCAP statute enacted by the Alabama Legislature and signed into law by Governor Ivey is constitutional. Plaintiffs appear to be on a desperate "fishing expedition" late in this lawsuit in an attempt to find some document which they can argue somehow constitutes evidence that the Alabama Legislature had a constitutionally impermissible motive in enacting VCAP. But legislative motive itself is not relevant to this case, much less documents that EFA as a non-party sent (in exercise of its membership's First

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<sup>3</sup> When a subpoena is directed to a non-party, the scope of discovery "must be limited even more. ... Bystanders should not be drawn into the parties' dispute without some good reason, even if they have information that falls within the scope of party discovery. ... A more demanding variant of the proportionality analysis therefore applies .... [C]ourts must give the recipient's nonparty status 'special weight, 'leading to an even more 'demanding and sensitive' inquiry than the one governing discovery generally." Va. Dep't of Corrs. v. Jordan, 921 F.3d 180, 189 (4th Cir. 2019) (quoting In re Pub. Offering PLE Antitrust Litig., 427 F.3d 49, 53 (1st Cir. 2005)). The Court must consider: (1) the requesting party's need for the information sought, "meaning that the information likely (not just theoretically) ...offer[s] some value over and above what the requesting party already has"; (2) whether the requesting party can obtain the same or comparable information that would satisfy its needs from other sources; and (3) whether the request will impose a cognizable burden on the nonparty. Id. at 189-90.

Amendment rights) to individual legislators over a four-year period. VCAP is a statute which should be interpreted according to its own plain language. As the U.S. Supreme Court has historically and again recently recognized:

This Court has long disfavored arguments based on alleged legislative motives .... the Court has recognized that inquiries into legislative motives are “a hazardous matter”. ... Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, we have been reluctant to attribute those motives to a legislative body as a whole. “What motivates one legislator to make a speech about his statute is not necessarily what motivates scores of others to enact it.”

Dobbs v. Jackson Women’s Health Organization, 142 S. Ct. 2228, 2255-56 (2022).

Accord CBS Inc. v. PrimeTime 24 Joint Venture, 245 F.3d 1217, 1222 (11th Cir. 2001) (“When the import of words Congress has used is clear . . . we need not resort to legislative history, and we certainly should not do so to undermine the plain meaning of the statutory language.”)

The question in this case is not whether the Alabama Legislature passed facially-neutral legislation with the secret intent and belief that it would have the effect of reducing or eliminating gender-altering medications or procedures on minors. To the contrary, the VCAP statute is clear on its face in prohibiting those medications and procedures. Indeed, the U.S. (intervening Plaintiff) recognized this in its assertion to the Eleventh Circuit in the appeal from the preliminary injunction order in this case that the VCAP statute “facially” discriminates on the basis of sex and transgender status. Brief for the United States as Intervenor-

Appellee to the Eleventh Circuit (filed 8/10/22), pp. 2, 28, 33 (n. 14). Similarly, the private plaintiffs who issued the latest subpoena to EFA previously acknowledged to the Eleventh Circuit that “[t]here is no need to do a pretext analysis; the [Legislature’s] intent is clear on the face of the Act.” Response Brief for Plaintiffs-Appellees to the Eleventh Circuit (also filed 8/10/22), p. 56. While EFA obviously disagrees (as did the Eleventh Circuit) with the plaintiffs’ position that the statute improperly discriminates on the basis of sex or any other protected characteristic, the point is that **plaintiffs have already agreed that the Legislature’s intent is clear from the face of the Act.** Thus, there is no reason for this Court to search for a hidden motivation by the Legislature in enacting the statute, much less any excuse for plaintiffs’ present non-party document subpoena to EFA.

The communications sought by the Subpoena are further outside the scope of discovery because the documents sought are protected from discovery by the legislative privilege. Similar to Pernell v. Fla. Bd. of Governors of State Univ., 84 F.4th 1339 (11th Cir. 2023), the improper purpose of the present Subpoena is “to support the lawsuit's inquiry into the motivation behind [a statute], an inquiry that strikes at the heart of the legislative privilege.” Id. at 1343 (quoting In re Hubbard, 803 F.3d 1298 (11th Cir. 2015), and remanding with instructions to

quash subpoenas of documents related to the drafting and adoption of a state statute).

Further, as the parties and the Court are also aware, EFA itself has no legislative capacity, as it is a completely private association. Thus, EFA's communications to any current or former individual legislator -- much less its communications to legislative staff members and other public officials, which are also sought by the present Subpoena -- regarding SB184, HB266, or any related or predecessor legislative bill in Alabama, have no bearing on VCAP's meaning or constitutionality (or lack thereof). See, e.g., Alliance of Auto. Mfr., Inc. v. Julie L. Jones, 2013 WL 4838764, \* 4 (N.D. Fla. Sept. 11, 2013) (“[q]uestions of constitutionality ... are not decided upon review of ... a citizen's view of the law or the like.”)

For these multiple reasons, the present Subpoena from Plaintiffs is objectionable because it improperly seeks documents which are not within the scope of proper discovery under Fed. R. Civ. P. 26(b)(1).

7. Second, compliance with the latest Subpoena (as would have been true of the previous subpoena from the U.S., had this Court not quashed it) would be unduly burdensome on EFA, in violation of Fed. R. Civ. P. 45(d)(1) and 45(d)(3)(iv). The current Subpoena requests a broad category of communications sent or received by EFA between January 1, 2018 and April 7, 2022 – a period of

more than four years. As previously established, EFA is a 501(c)(4) organization which has only one full-time paid employee, and one part-time paid administrative assistant. Nearly all of the work done by EFA is done by volunteers. Identification and production of the documents sought by the current subpoena would require extensive review of EFA's records (both electronic and hard copy), including document-by-document review of the personal computer and hard-copy files of its volunteer general counsel, Margaret Clarke. (Docs. 151-4 and 186-2).

In particular, as established by the Second Declaration of Ms. Clarke previously filed, on her personal computer (which she uses for her volunteer work with EFA) are nearly 500 Word/PDF documents and over 2,000 email messages potentially related to the VCAP campaign. This does not include countless hard copies of documents saved in boxes and binders. These documents are not organized in any way that would allow her to easily and quickly identify the content of those documents and which of those may have been provided at some point to a legislator – i.e., whether the document is responsive to the current subpoena. Any attempt to comply with the plaintiffs' latest subpoena would require Ms. Clarke to open and read through each of the thousands of the documents in her personal files referenced above. This task would easily take a number of days of her time, as well as causing her to incur personal expense. (Doc. 186-2). Such review would be an undue and entirely unjustified burden on

Ms. Clarke and EFA, particularly when the documents sought have, as this Court has already ruled, “little – if any – relevance for purposes of discovery.” (Doc. 192, p. 5). Plaintiffs’ latest subpoena should therefore be quashed or modified on this basis as well.

8. Third, the present Subpoena, as was true of the last subpoena from the U.S., is also objectionable because it seeks materials which are privileged under the First Amendment to the U.S. Constitution. In the context of discovery, the First Amendment creates a qualified privilege from disclosure of certain associational information. See Perry v. Schwarzenegger, 591 F.3d 1147, 1159-61 (9th Cir. 2010). The burden to make a prima facie showing of First Amendment privilege is “light,” given “the crucial place speech and associational rights occupy under our constitution.” Christ Covenant Church v. Town of Sw. Ranches, 2008 WL 2686860, at \* 6 (S.D. Fla. June 29, 2008) (quoting Schiller v. City of New York, 2006 WL 3592547 (S.D.N.Y. Dec. 7, 2006)). Here, the communications sought by the Subpoena are privileged under the First Amendment, because production of these documents would have a chilling effect on the exercise of the constitutional rights of EFA’s membership to free speech, assembly, and to petition the government. See, e.g., the Declarations of Becky Gerritson and Margaret Clarke previously filed (Docs. 151-3 and 151-4).

9. Finally, particularly given the history and circumstances of this case, EFA moves that this Court impose an appropriate sanction on Plaintiffs and/or their counsel. Plaintiffs were fully aware that this Court had already quashed similar subpoenas issued by the U.S. (intervening plaintiff) on EFA and another non-party. (Doc. 192). The Court specifically held in its October 24, 2022, Opinion and Order that such subpoenas “exceed the scope of discovery” under Rule 26; that the materials which the U.S. had sought by the subpoenas were “unlikely to reveal or lead to any information” that would help resolve the fundamental issue in this case (i.e., whether VCAP is constitutional), and, thus, that “the requested material has little – if any – relevance for purposes of discovery;” and, further, that “the burden of the requested material greatly outweighs any slight relevance it may have.” (Doc. 192, pp. 1, 5-6.) Before filing this present Motion, EFA’s counsel conferred with counsel for Plaintiffs and requested that they withdraw the Subpoena, but Plaintiffs declined.

Rule 45(d)(1) prohibits Plaintiffs’ abuse of the subpoena process and requires sanctions under these circumstances. The text of the rule provides as follows:

A party or attorney responsible for issuing and serving a subpoena **must** take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction – which may include lost earnings and

reasonable attorney's fees – on a party or attorney who fails to comply.

See also Progressive Emu Inc. v. Nutrition & Fitness Inc., 785 F. App'x 622 (11th Cir. 2019) (affirming district court's imposition of sanctions under Rule 45 against a law firm which had issued an unreasonable document subpoena that would have imposed an undue burden on the responding party). Particularly in light of what they already knew about the previous subpoena from the U.S. to EFA, the private plaintiffs' blatant disregard of their duty under Rule 45(d)(1) deserves significant sanctions including (but not limited to) attorneys' fees. EFA and its counsel stand ready to provide whatever further information the Court requests in this regard.

### **CONCLUSION**

WHEREFORE, for good cause shown, non-party EFA respectfully requests that this Honorable Court:

1. Enter an order quashing the Subpoena;
2. Impose an appropriate sanction on plaintiffs, including reasonable attorneys' fees related to this Motion; and
3. Grant any further relief the Court deems just and necessary.

Respectfully submitted this the 19th day of February, 2024.

*s/ John M. Graham*

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John M. Graham  
ASB-5616-G70J

Attorney for Eagle Forum of Alabama

OF COUNSEL:

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**CERTIFICATE OF SERVICE**

I hereby certify that this 19th day of February, 2024, 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 in this case.

*s/ John M. Graham*

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OF COUNSEL

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Alabama

Rev. Paul A. Eknes-Tucker, et al.

	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No. 2:22-cv-00184-LCB-SRW
Steve Marshall, et al.	)	
	)	
<i>Defendant</i>	)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Eagle Forum of Alabama  
c/o John Mark Graham, Phelps Dunbar LLP, 2001 Park Place North, Suite 700, Birmingham, AL 25203

*(Name of person to whom this subpoena is directed)*

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Exhibit A

Place: Lightfoot, Franklin & White LLC, The Clark Building, 400 20th Street North Birmingham, AL 35203	Date and Time:  02/23/2024 5:00 pm
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**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/31/2024

CLERK OF COURT

OR

_____ <i>Signature of Clerk or Deputy Clerk</i>	OR	_____ /s/ Brent P. Ray <i>Attorney's signature</i>
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The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Rev. Paul Ecknes-Tucker, et al., who issues or requests this subpoena, are:

Brent Ray, 110 N Upper Wacker Dr Suite 3800, Chicago, IL 60606, bray@kslaw.com, (312) 995-6333

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:22-cv-00184-LCB-SRW

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**EXHIBIT A TO SUBPOENA TO PRODUCE DOCUMENTS & THINGS**

Plaintiffs requests that You produce or make available for inspection the documents and things requested below at the time and place specified in this subpoena.

**I. DEFINITIONS**

1. The terms “You” and “Your” refer to Eagle Forum of Alabama.

2. “Eagle Forum of Alabama” means the business or organization affiliated with 4200 Stone River Circle Birmingham, AL 35203, and includes any and all past or present officers, directors, partners, employees, agents, representatives, attorneys, accountants, advisors, consultants, divisions, subsidiaries, parents, affiliates, successors-in- interest, predecessors, or other persons or entities acting or purporting to act for, on behalf of, or with Eagle Forum of Alabama as defined herein.

3. “SB184” means Alabama Senate Bill 184, titled “Public health, minors, biological male or female, sexual state, practices to alter or affirm minor’s sexual identity or perception such as prescribing puberty blocking medication or surgeries, prohibited, exceptions, nurses and school personnel not to withhold information from parents, violations a Class C felony,” passed April 7, 2022.

4. “HB266” means Alabama House of Representatives Bill 266, titled “Public health, minors, biological male or female, sexual state, practices to alter or affirm minor's sexual identity or perception such as prescribing puberty blocking medication or surgeries, prohibited, exceptions, nurses and school personnel not to withhold information from parents, violations a Class C felony,” introduced February 3, 2022.

5. “Predecessor legislative bill” refers to any legislation, draft legislation, proposed legislation, or model legislation predating SB184 relating to the provision of

gender affirming care to minors in Alabama, including Senate Bill 5 (2022), House of Representatives Bill 150 (2022), Senate Bill 10 (2021), House of Representatives Bill 1 (2021), Senate Bill 219 (2020), and House of Representatives Bill 303 (2020).

6. “Document” or “Documents” shall have the broadest meaning ascribed to it by Fed. R. Civ. P. 34(a)(1)(A) and Fed. R. Evid. 1001, including, without limitation, electronic or computerized data compilations. A draft or non-identical copy of a document is a separate document within the meaning of this term.

7. The terms “Communication” and “Communications” shall mean, without limitation, any transmission, conveyance, or exchange of a word, statement, fact, thing, idea, document, instruction, information, demand, or question by any medium, whether by written, oral or other means, including but not limited to electronic communications and electronic mail (“e-mail”).

8. The terms “Person” and “Persons” shall refer to any individual, corporation, proprietorship, association, joint venture, company, partnership or other business or legal entity, including governmental bodies and agencies.

9. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each request all responses that might otherwise be construed outside the scope.

10. “Any” shall include “all” and “all” shall include “any.”

11. “Including” shall mean including without limitation.

12. “Referring to,” “relating to,” “related to,” “regarding,” or any variation thereof, means concerning, containing, describing, discussing, embodying, commenting upon, identifying, incorporating, summarizing, constituting, comprising,

or otherwise pertinent to the matter or any aspect thereof.

13. The use of the singular form of any word includes the plural and vice versa.

## **II. INSTRUCTIONS**

The following instructions supplement those contained in the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Middle District of Alabama, both of which are incorporated herein by reference:

1. In responding to this document request, please furnish all information that is available to You or subject to Your control, including information in the possession, custody, or control of Your officers, directors, employees, representatives, consultants, agents, servants, attorneys, accountants, or any person who has served in any such role at any time, as well as corporate parents, subsidiaries, affiliates, divisions, predecessor companies or proprietorships, any joint venture to which You are a party, and other persons acting on Your behalf.

2. Electronic records and computerized information must be produced in an intelligible format.

3. Each request seeks production of each document in its entirety, including all attachments or other matters affixed thereto. To the extent these documents are maintained in both hard copy and electronic form, provide both forms.

4. Documents are to be produced in their full and unredacted form; redacted documents shall not constitute compliance with this request, unless such documents are redacted pursuant to a claim of privilege, as set forth below.

5. If You withhold any document responsive to this request based on a claim of privilege or immunity from production, please submit a schedule at the time

of the production setting forth and identifying the following information for each document so withheld:

- a) The type of document (e.g., letter, memorandum, account statements, etc.);
- b) The date the document was prepared, and the date of any meeting or conversation reflected or referred to in the document;
- c) The name of each author, co-author, or preparer of the document and the name of each recipient or addressee, including each recipient of a copy of the document;
- d) If the document reflects or refers to a meeting or conversation, the name of each Person who was present at or was a party to the meeting or conversation;
- e) The subject matter of the information contained in the document;
- f) The nature of the privilege or immunity asserted; and
- g) A brief explanation of why the document is believed to be privileged or immune from production.

6. Please produce the originals of any document requested and all copies thereof if any copy is other than identical with the original.

7. If You object to any portion of any request herein, produce the document(s) and thing(s) relating to any portion of that request to which You have no objection and identify which document(s) and thing(s) are being withheld and the reason for such refusal to produce.

8. If no documents are responsive to any request herein, state in Your response that no responsive documents exist.

9. If for any reason, any of the documents or tangible things to be produced pursuant to any request have been destroyed, lost, or otherwise disposed of, please state and identify for each category the following information:

- a) The date the document or tangible thing was lost, destroyed, or disposed of;
- b) All individuals who have knowledge of the loss, destruction, or disposal;
- c) All documents which refer or relate to the loss, destruction, or disposal of the object or tangible thing; and
- d) All circumstances concerning the loss of such documents.

10. Each document produced by You in response to these requests should include a unique production number.

### **III. DOCUMENTS TO BE PRODUCED**

1. Communications (including any attachments thereto) sent or received between Eagle Forum of Alabama and any of (i) a current or former member of the Alabama Legislature, (ii) his or her staff, or (iii) any other Alabama public official, regarding SB184, HB266, or any related or predecessor legislative bill in Alabama, sent or received between January 1, 2018 and April 7, 2022.

**John Graham (7235)**

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**From:** John Graham (7235)  
**Sent:** Tuesday, February 6, 2024 10:22 AM  
**To:** Adam Reinke  
**Subject:** RE: Boe, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Adam, I have been authorized to accept service of the subpoena on Eagle Forum of Alabama. Go ahead and email it to me, and my receipt of same will constitute service. I understand that we will have 14 days from date of service to object to the subpoena.

Thanks,  
John

**From:** Adam Reinke <AReinke@KSLAW.com>  
**Sent:** Thursday, February 1, 2024 7:35 PM  
**To:** John Graham (7235) <John.Graham@phelps.com>  
**Subject:** RE: Boe, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Thank you, John. Please let us know by the end of the day Tuesday if you can; otherwise, we will engage a process server.

Best,  
Adam

**From:** John Graham (7235) <John.Graham@phelps.com>  
**Sent:** Thursday, February 1, 2024 8:17 PM  
**To:** Adam Reinke <AReinke@KSLAW.com>  
**Subject:** Re: Boe, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

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**CAUTION: MAIL FROM OUTSIDE THE FIRM**

Adam, my apologies, I have been out of town. My clients are considering your request, and I will plan to get back with you by early next week.

John

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**From:** Adam Reinke <AReinke@KSLAW.com>  
**Sent:** Wednesday, January 31, 2024 1:23:05 PM  
**To:** John Graham (7235) <John.Graham@phelps.com>  
**Subject:** Boe, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Hi John:

I am one of the attorneys representing the Private Plaintiffs in the above-referenced matter. We plan to serve the subpoena I have attached here on Eagle Forum of Alabama. Since you have previously appeared in this case on behalf of Eagle Forum of Alabama, I am reaching out to see if you would be willing to accept service. Can you please let me know when you have a chance?

Thanks,  
Adam

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**Adam Reinke**  
*Partner*

T: +1 404 572 2774 | E: [areinke@kslaw.com](mailto:areinke@kslaw.com) | [Bio](#) | [vCard](#)

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