

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

<b>BRIANNA BOE, et al.;</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>UNITED STATES OF</b>	)	<b>Civil Action No.</b>
<b>AMERICA,</b>	)	<b>2:22-cv-00184-LCB</b>
	)	
<b>Plaintiff-Intervenor,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>STEVE MARSHALL, in his</b>	)	
<b>official capacity as Attorney</b>	)	
<b>General of the State of Alabama;</b>	)	
<b>et al.;</b>	)	
	)	
<b>Defendants.</b>	)	

**EAGLE FORUM OF ALABAMA’S AND SOUTHEAST LAW INSTITUTE’S**  
**MOTION FOR SANCTIONS**  
**AGAINST THE UNITED STATES OF AMERICA**

Non-parties Eagle Forum of Alabama (“EFA”) and Southeast Law Institute (“SLI”) move the Court, pursuant to Fed. R. Civ. P. 45(d)(1), to impose an appropriate sanction on the United States of America, intervenor plaintiff, because of the non-party document subpoenas served on these organizations this past August by the U.S. Department of Justice (“DOJ” or “Government”) – in particular, the DOJ’s established breach of its duty under Rule 45(d)(1) to “take reasonable steps

to avoid imposing undue burden or expense” on non-parties through the subpoena process.

This Court has already established the impropriety of the subpoenas issued by the DOJ, both in the Court’s comments at the October 14, 2022, hearing on these non-parties’ Motions to Quash the subpoenas (Docs. 151 and 152), and in the Court’s October 24, 2022, Opinion and Order granting the motions to quash (Doc. 191). The Court specifically held in its Opinion and Order that the subpoenas “exceed the scope of discovery” under Rule 26; that the materials which the DOJ 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 the Vulnerable Child Compassion and Protection Act (“VCAP”) enacted into law by the Alabama Legislature 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.)<sup>1</sup>

Under the circumstances of this case, EFA and SLI submit that the DOJ’s breach of its duty under Rule 45(d)(1) and its abuse of the subpoena process was

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<sup>1</sup> Because the subpoenas fell outside the scope of discovery and thus were due to be quashed anyway, the Court declined to address EFA’s and SLI’s arguments that the subpoenas were also due to be quashed due to First Amendment privilege. (Doc. 192, p. 6, fn. 15.).

particularly egregious and deserving of compensatory as well as significant punitive sanctions.

**I. Pertinent Facts of the Government’s Misconduct and Its Evolving Position Regarding these Subpoenas**

This Court’s October 24, 2022, Opinion and Order outlined the breathtakingly broad scope of the document subpoenas which the Court went on to quash in their entirety. (Doc. 192, pp. 1-3). Those subpoenas demanded production from these non-parties of eleven (11) broad categories of documents going back to 2017 regarding EFA’s and SLI’s concerns about gender-altering medical treatment to minors and the VCAP legislation that was debated in and ultimately enacted by the Alabama Legislature, for which EFA and its membership had advocated. (Docs. 151-1 and 152-1). Notwithstanding these eleven (11) broad categories of documents which they were demanding over several years, however, Mr. Cheek’s cover letter with the subpoenas provided one (1) narrow, purported rationale – and a highly dubious one at that -- for why the DOJ was dragging these non-parties into the litigation:

During the preliminary injunction hearing the Court asked who drafted the bill that resulted in VCAP. Several public statements suggest that [EFA or SLI] staff may have had some involvement in drafting the legislation or its predecessor bills.<sup>2</sup>

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<sup>2</sup> Thus, the DOJ rested its entire justification for these non-party document subpoenas on an apparently off-handed question that the Court posed to the parties during Day 3 of the preliminary injunction proceedings back in May when the Court (after first saying that he wouldn’t be offended if no one wanted to address it), asked where the bill resulting in VCAP came from and who wrote

(Doc. 151-1, p. 1; Doc. 152-1, p. 1). Clearly, the broad range of documents which the DOJ demanded in these subpoenas was not relevant and not proportional to that narrow question, even if that question was itself relevant to the constitutionality issue before the Court (which, for the reasons discussed in EFA's and SLI's previous filings, as well as those of the State of Alabama defendants, it is not).

EFA and SLI objected and moved to quash the subpoenas in their entirety on September 7, 2022, on the basic grounds of: (1) the lack of relevance as well as proportionality of the documents sought, in violation of Fed. R. Civ. P. 26(b)(1); (2) First Amendment privilege, in violation of Fed. R. Civ. P. 45(d)(3)(A)(iii); and (3) undue burden on EFA, in violation of Fed. R. Civ. P. 45(d)(1) and 45(d)(3)(iv). (Docs. 151 and 152). The Declarations filed as exhibits to the Motions to Quash (among other things) confirmed what the DOJ already knew pertinent to the question it had asserted as a justification for the subpoenas – that, while of course the VCAP after thorough vetting and debate was ultimately the product of the Alabama Legislature, EFA (with some assistance from SLI) had provided some proposed legislation and amendments and that EFA and its membership had advocated to members of the Alabama Legislature over a several-year period for this kind of

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it. The Court's question was quickly and accurately answered at the hearing by Mr. LaCour on behalf of the State: "Your Honor, it was a bill introduced into the Legislature, considered by the Legislature, enacted, so this is the work product of the Legislature." Trans., p. 251.

legislation. (Docs. 151-3, 151-4, and 152-3). The Declarations further established – although the DOJ had to have already understood this also just by the sheer breadth of the subpoenas – what a massive burden would be imposed on EFA (including its volunteer general counsel, Margaret Clarke, as well as its executive director, Rebecca Gerritson) if it had to comply with the subpoenas. (Id.). Finally, the Declarations established the basis for the First Amendment privilege which EFA and SLI were asserting and the importance of that principle. (Id.).<sup>3</sup>

The next day, September 8, 2022, the undersigned on behalf of EFA and SLI had a “meet and confer” conference with two DOJ attorneys.<sup>4</sup> Despite having been provided in the Motions to Quash with the information pertinent to the purported (albeit itself irrelevant) question in Mr. Cheek’s original cover letter served with the subpoenas, the DOJ did not withdraw the subpoenas and made no offer at that time to even compromise or narrow the subpoenas. Further, in addition to the more mundane legal discussion between lawyers about issues of relevance, proportionality, undue burden, etc., during the “meet and confer” conference the undersigned discussed the First Amendment privilege issue and explained to the DOJ lawyers that one of the reasons why EFA, SLI, and the undersigned felt so

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<sup>3</sup> EFA also noted its special statutory protection as a 501(c)(4) social welfare organization.

<sup>4</sup> Asst. U.S. Attorney Jason Cheek, under whose signature the subpoenas were issued, and Kaitlin Toyama with the DOJ’s Civil Rights Division in Washington, D.C.

strongly about their position was that they viewed the subpoenas as a form of political harassment from the DOJ. Notably, the DOJ lawyers did not even attempt to deny this. (Doc. 176, pp. 3-6).

On September 14, 2022, Mr. Cheek on behalf of the Government again emailed the undersigned and said that after further review the DOJ was “willing” to narrow the categories of documents sought in both subpoenas to Request Nos. 1, 2, 4, 5, and 6. (Doc. 168-6). However, as the undersigned pointed out in his reply email, all of the numerous problems with the subpoenas that were outlined in the motions to quash – including but not limited to the First Amendment privilege issues – still applied even assuming the subpoenas were narrowed to the topics listed in Mr. Cheek’s email. (Doc. 168-6).

The DOJ filed its response in opposition to EFA’s and SLI’s motions to quash the subpoenas on September 21, 2022. (Doc. 168). The DOJ doubled down on its position at that time, even absurdly asserting to this Court that the document subpoenas as issued were “narrowly tailored.” (Doc. 168, p. 2). Tellingly, however, the DOJ did not even attempt to show in its opposition brief– because it could not show -- how most of the documents it demanded in its subpoenas could possibly be

relevant or proportional to the issues in this case.<sup>5</sup> Nor did the DOJ make a meaningful response to EFA's undue burden objection.

In fact, as EFA and SLI discussed in their reply brief filed September 28, 2022, none of the multiple categories of documents demanded by the DOJ could pass the relevance test much less the proportionality test under Rule 26(b)(1). EFA's and SLI's reply further demonstrated how all of the documents which the DOJ was demanding are protected by First Amendment privilege, and also discussed further the undue burden compliance with the subpoena would impose on EFA. (Doc. 176).

On October 7, 2022, the Friday night before the scheduled hearing on the Motions to Quash, the DOJ effectively conceded the impropriety of its subpoenas by filing a Notice informing the Court that it had "narrowed" the scope of the subpoenas at issue to only one (1) category of documents so as "to reduce the burden of production on EFA and SLI." (Doc. 184). The DOJ stated that it was now seeking from these private non-parties only "any medical studies or literature referenced in

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<sup>5</sup> For example, regarding document category no. 1 in the subpoenas, the DOJ made no attempt to explain how could just subpoena any draft legislation existing in the files of EFA or SLI that was not provided to the Alabama Legislature meet even the DOJ's (erroneous) theory of relevance. Similarly, on category no. 2, any materials considered by EFA and SLI in drafting proposed legislation could never have been relevant, much less proportional, even under the DOJ's theory. Similarly, on category no. 6, the DOJ made no attempt to defend its request for communications between EFA and other non-governmental entities. The DOJ did not address those questions, because the answer is obvious and illustrates the clear impropriety of the subpoenas. On other categories of documents in the original subpoenas (e.g., nos. 3, 7, 8, 9, 10, and 11), the lack of any relevant connection or proportionality between the documents which the DOJ demanded and any legitimate issue in this case is even more apparent.

Section 2 of VCAP” (*id.*), although in fact that category of documents was a new request and thus procedurally improper under Rule 45. EFA and SLI responded to the DOJ’s 11<sup>th</sup>-hour pivot from its original subpoenas by filing a Supplement to their Motions to Quash in which they addressed the problems with the DOJ’s latest request for documents. (Doc. 186).

At the October 14<sup>th</sup> hearing, the Court asked Mr. Cheek to explain what had changed between the original “absolutely asking for everything we can think of” subpoenas back in August and September, to “we just really actually need only one thing” (i.e., “1 percent” of the original subpoena) as evidenced by the October 7<sup>th</sup> Friday night filing. (Trans. pp. 6, 8). Mr. Cheek briefly tried to defend the DOJ’s “team subpoena[s],” asserting that they had sought relevant information (Trans. pp. 8-9, 14), when the Court asked him again: “*how in the world* could what the Department of Justice is asking for be relevant to this case and its outcome?” (Trans. p. 9). Mr. Cheek then asserted that the reason for the original subpoenas was that the DOJ was looking “first and foremost to pin down who wrote the statute” (again not attempting to address how the overwhelming majority of what the DOJ had demanded in the subpoenas could be relevant and proportional to even that question, which again itself is irrelevant) and that, while the DOJ had had some suspicions or information about who was involved in drafting the legislation, “we didn’t know that



for certain until we got the declarations that were attached to the motions to quash.” (Trans. pp. 9-10).<sup>6</sup>

While conceding that EFA and SLI were well within their rights to file motions to quash, Mr. Cheek further tried to justify the DOJ’s issuance of the original 11-category document subpoenas by saying that it expected more of a “dialogue” with these non-parties about the subpoenas before such a motion would be filed. (Trans., pp. 11, 30). However, Mr. Cheek did not try to explain why, if that was the DOJ’s thought process (inadequate a justification as it was for the reasons discussed infra), it had initially doubled down on its position after EFA and SLI had filed their motions to quash before finally effectively withdrawing the original subpoenas (while still asserting one new document request to EFA).

After a brief discussion of the DOJ’s (new) request for the medical studies or literature referenced by the Alabama Legislature in the VCAP statute, the Court then returned to the subject of the original subpoenas and asked Mr. Cheek: “I want to know how the Department of Justice thought that those were relevant and how were you going to use that information if you got it. ... So where were you really headed with this?” (Trans. pp. 16-17). Mr. Cheek’s response came no closer to justifying

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<sup>6</sup> While in fact the DOJ already knew this before it issued the subpoenas and shouldn’t have issued them to begin with, if all the DOJ was really looking for was to know who was involved in drafting the VCAP legislation why didn’t the DOJ withdraw the subpoenas immediately upon receiving the Declarations filed with EFA’s and SLI’s Motions to Quash?

the original 11-category, multi-year subpoenas than had his previous response: 1) “a big piece of it was to identify the origins of the statute;”<sup>7</sup> 2) “[i]t could provide circumstantial evidence of the Legislature’s intent;”<sup>8</sup> and 3) “it can lead to different areas for us to explore.”<sup>9</sup> (Trans. pp. 17-18).

The Court recognized the danger that the DOJ could in the future weaponize the subpoena process to go after other political advocacy groups, and articulated to Mr. Cheek the Court’s concern about the direction the Department was taking: “So, you know, is the new standard going to be that these kind of subpoenas ... go out in legislation to any advocacy organization, and they want e-mails to their members, they want social media posts, they want things that the group just considered in their advocacy. And that’s all the things you’re asking for.” (Trans. p. 18). The Court concluded the hearing by admonishing the DOJ, through Mr. Cheek, that “I hope we’re not going to go down this road with any organization in addition to Eagle

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<sup>7</sup> This explanation is hollow for the reasons discussed above.

<sup>8</sup> Mr. Cheek never attempted to explain how any of the 11 categories of these non-party document subpoenas were reasonably calculated to do that, because they were not. Further, this attempted justification for the subpoenas is contrary to the DOJ’s own position (as well as that of the private, original plaintiffs) that the VCAP statute is unconstitutional “on its face.” See further discussion in EFA’s and SLI’s reply brief on the motions to quash (Doc. 176), pp. 16-17.

<sup>9</sup> That nebulous rationale also ignores not only the relevance and proportionality requirements of Rule 26(b)(1) but also the DOJ’s obligation under Rule 45(d)(1) to avoid imposing undue burdens on non-parties through a subpoena.

Forum in this case. Because that subpoena certainly was very overly broad. I understand why they're here today, and they should be here today.”

**II. Under Rule 45(d)(1), sanctions should be entered against the Government for its misconduct here.**

As noted above, at the October 14<sup>th</sup> hearing Mr. Cheek attempted to justify the DOJ's issuance of these improper and overly broad subpoenas by saying that the DOJ expected more of a “dialogue” with EFA and SLI before motions to quash were filed and that, had this “dialogue” occurred, perhaps motions to quash could have been avoided. (Trans., pp. 11, 30). In other words, according to Mr. Cheek's rationale, the DOJ with its vast resources and governmental power thought it was appropriate to use an incredibly broad subpoena to then, through subsequent “dialogue” (i.e., coercion), pressure a small, grassroots, volunteer-driven organization to compromise and produce what the Government was really after.

To the contrary, Rule 45 squarely prohibits such a use of the subpoena:

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.

Fed. R. Civ. P. 45(d)(1) (emphasis added). Thus, contrary to the DOJ's position, it had an affirmative duty *before issuing the subpoenas* to avoid an undue burden on

these non-parties. The DOJ utterly failed to comply with that duty. Sanctions are thus clearly called for by the text of the rule and the undisputed facts of this matter.

In Progressive Emu Inc. v. Nutrition & Fitness Inc., 785 F. App'x 622 (11th Cir. 2019), the Eleventh Circuit Court of Appeals upheld sanctions under Rule 45 against a law firm which (like the DOJ here) had issued an unreasonable document subpoena that would have imposed an undue burden on the responding party. One of the sanctioned law firm's arguments on appeal was essentially the same "we just wanted a dialogue" argument which the DOJ asserted at the October 14<sup>th</sup> hearing in this case. The Eleventh Circuit squarely rejected that argument:

Anderson Weidner maintains that Defendant's failure to move the court for a show cause order or consult with them to narrow Plaintiff's subpoena before filing its motion to quash 'alone precludes the district court's grant of attorneys' fees.' But Federal Rule of Civil Procedure 45 imposes no such obligation. Instead, it requires those serving a subpoena to take reasonable steps to avoid imposing undue burden and expense on the recipient of the subpoena and authorizes sanctions on a party or attorney who fails to comply. Fed. R. Civ. P. 45(d)(1). **Rule 45 leaves no room for a party or attorney to issue an untimely, facially overbroad and unduly burdensome subpoena and expect to work out the details later....**"

Id. at 629 n. 10 (emphasis added). For the same reason, even putting aside for the moment the political context of this case and the clear indications of government harassment and bad faith, sanctions would be due in this case due to the DOJ's unquestionable breach of its duty under Rule 45(d)(1).

Unlike the facts of Progressive Emu, however, this is not a case of a small law firm that, in the heat of trial preparation, was simply negligent in issuing an overly broad and unreasonable document subpoena to a non-party. Nor is this case about private commercial contract rights, as important as those are. Rather, this case is about the Government of the United States, through the DOJ (the largest law firm in the world), issuing ridiculously broad document subpoenas to volunteer-driven private organizations who were not parties to the case and had simply exercised their First Amendment rights – our most cherished and fundamental rights under the Constitution -- to petition their State Legislators and advocate for legislation that the current Administration in Washington, D.C. does not like. Thus, the branch of the federal government that should have been concerned with protecting the First Amendment rights of private organizations and citizens such as EFA and its membership instead has been dismissive of and punitive against those rights. At the very least, the DOJ's utter failure (already recognized by this Court) to comply with its Rule 45 duty to avoid imposing an undue burden on non-parties through subpoenas is much more egregious because of the politically-charged nature of this case and the fact that the documents demanded by the DOJ only existed in the first place because of these private entities' exercise of their First Amendment rights.

In fact, evidence of bad faith by the DOJ here is abundant, as demonstrated above. In particular, the rationale asserted by the DOJ for the subpoenas – to find

out who was involved in drafting the VCAP legislation – is itself irrelevant to the issues in this case. But beyond that, the glaring disconnect between even that slender purported rationale for the subpoenas, and the broad scope of what the subpoenas actually demanded, is strong evidence of bad faith by the DOJ.

Indeed, there is ample evidence just from the known facts of the Government’s conduct outlined above to infer that the issuance of these subpoenas was in fact political harassment and that the Government’s true intent in issuing these subpoenas was to try to intimidate EFA and other like-minded groups of citizens into silence and to stay out of the political process going forward.<sup>10</sup> The intimidation effort is well summarized by the amicus brief of 53 Organizations:

“[T]he United States served a subpoena on Eagle Forum of Alabama (“EFA”) with no legitimate purpose but instead to intimidate and chill the free speech, associational, and petitioning rights of an organization whose views are currently contrary to those of the United States Government. In so doing, the government seeks to force a small non-profit with only one full-time employee to pony up the resources to fight the Department of Justice, the world’s largest law firm. The government’s message is clear and unmistakable: exercise your rights and participate in the political process at your own peril.”

(Doc. 165-1, pg. 3.)

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<sup>10</sup> The Biden administration openly threatened Alabama legislators at a press conference back in April for enacting the VCAP. President Biden’s then-press secretary Jen Psaki warned, “...Alabama’s lawmakers and other legislators who are contemplating these [bills protecting children] have been put on notice by the *Department of Justice*...President Biden has committed in both words and actions to fight...” (Emphasis added.). The facts pertinent to this subpoena dispute outlined above show that the Biden Administration’s obsession to overturn the law of this State as expressed in the VCAP statute was not limited to only fighting against Alabama lawmakers, but also against private citizens and organizations who had advocated for that legislation.

### **III. Appropriate Sanctions**

The appropriate amount of the sanctions here is obviously within this Court's good discretion. However, EFA and SLI submit that the analysis should start with an amount that includes compensation for the significant time that their personnel incurred in fighting the DOJ's improper and illegitimate subpoena. For details, see the attached Third Declaration of Margaret Clarke (Exhibit A hereto); the Second Declaration of Rebecca Gerritson (Exhibit B), the Declaration of Eunie Smith (Exhibit C), and the Declaration of Eric Johnston (Exhibit D; the value of Mr. Johnston's professional time and expenses incurred in this subpoena dispute at his normal, reasonable rate is \$13,765.38). Rule 45(d)(1) also expressly contemplates sanctions to include a reasonable attorney's fee. In this case, as the Court is aware, the undersigned along with his law firm has provided legal services to EFA and SLI on a *pro bono* basis because of the important First Amendment principles at stake in this case which, as the Court recognized at the October 14<sup>th</sup> hearing, do not change depending on what political party currently occupies the White House. EFA and SLI submit that reasonable sanctions against the Government should include a reasonable attorney's fee. See the attached Declaration of John M. Graham (Exhibit E) for the amount of time and expenses incurred by him and other personnel with his law firm in this matter and the value of that time at a reasonable rate, the total of which is \$46,873.83.

EFA and SLI also submit that punitive sanctions should be entered here, due to: a) the egregious nature of the Government's misconduct outlined above; b) the chilling effect the subpoenas if enforced would have had on constitutionally protected First Amendment activity; and c) the need for a deterrent against future Government overreach.

Respectfully submitted this 3rd day of November, 2022.

/s/ John M. Graham

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ASB-5616-G70J  
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and Southeast Law Institute

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**CERTIFICATE OF SERVICE**

I hereby certify that this 3rd day of November, 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 in this case.

/s/ John M. Graham

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OF COUNSEL



**IN THE UNITED STATES DISTRICT COURT  
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<b>BRIANNA BOE, et al.;</b>	)	
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<b>Plaintiffs,</b>	)	
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<b>UNITED STATES OF</b>	)	<b>Civil Action No.</b>
<b>AMERICA,</b>	)	<b>2:22-cv-00184-LCB</b>
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<b>Plaintiff-Intervenor,</b>	)	
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<b>vs.</b>	)	
	)	
<b>STEVE MARSHALL, in his</b>	)	
<b>official capacity as Attorney</b>	)	
<b>General of the State of Alabama;</b>	)	
<b>et al.;</b>	)	
	)	
<b>Defendants.</b>	)	

**THIRD DECLARATION OF MARGARET S. CLARKE**

I, Margaret S. Clarke, Esq., pursuant to 28 U.S.C.A. § 1746 (pertaining to declarations), declare under penalty of perjury that the following statements by me are true and correct to the best of my knowledge. I am over the age of nineteen (19) years and qualified to make this declaration, which is made from personal knowledge. This Declaration is given in support of Eagle Forum of Alabama’s

(EFA) Motion for Sanctions against the Intervenor plaintiff, United States of America, Department of Justice (DOJ or Government).

1. I have served voluntarily on the Board of Eagle Forum of Alabama from 2015 and as EFA General Counsel from 2018. I am a graduate of the University of Florida Levine College of Law and Reformed Theological Seminary. I have been licensed to practice law since 1985. I have held licenses in Florida, Mississippi and in Alabama. I served as General Counsel for the Florida Department of Health and Rehabilitative Services (HRS), Northwest District, and also for the Alabama Family Alliance (now known as the Alabama Policy Institute) where I worked for Gary Palmer (now U.S. Congressman Palmer). My legal focus has generally been in persuasive writing, and legislative and administrative public policy development.

2. As the General Counsel for HRS Northwest District, I helped develop comprehensive child welfare programs. One aspect was to draft regulations for the Florida Child Abuse Prevention Program, including definitions for “negligence” and “emotional,” “physical,” and “sexual abuse.” These definitions provided HRS case workers guidelines to assess child abuse and determine evidence for child abuse hearings prior to removing a child from a home.

3. As General Counsel for Alabama Family Alliance, I helped develop legislation proposals for education policy at both the state and national level and

write persuasive articles. I also organized the National School Choice Roundtable for the purpose of developing legislative models.

4. I am married to Chuck Clarke and am an engaged mother of three adult children. I am also an involved member at my Church. In the past, as a volunteer with EFA, my schedule was somewhat flexible. I am not a litigator and defense issues are outside my skillset as set forth herein. I frequently consult with A. Eric Johnston, Esq., President and General Counsel of the Southeast Law Institute, on litigation matters, who generously gives of his time. I could not have adequately defended EFA without the *pro bono* representation of John Mark Graham, Esq., a respected, ethical and skilled litigator with Phelps Dunbar, LLP. I am personally very grateful to both of these men, and to Phelps Dunbar LLP, for allowing Mr. Graham to give of his time and represent EFA *pro bono*.

5. Since August 4, 2022, when EFA received the first email from the DOJ, most of my available time has been consumed with defending EFA from the subpoena attack. It has been stressful balancing my prior responsibilities and commitments with the need to fight (not only for EFA, but for other similar private groups who the DOJ might otherwise go after in the future) against the DOJ subpoena that I strongly believe to be an abuse of power, intentional political harassment, and a disregard of our constitutionally protected First Amendment rights. I have never tracked my hours for EFA. Nevertheless, I believe I have

provided valuable professional legal services to EFA and easily spent a minimum of 40 hours per week for at least eight weeks in EFA's defense in this matter and efforts to quash the subpoena. The time required to assist with the defense of the subpoena would have otherwise been more appropriately spent on other legislative public policy development, which is in keeping with my legal skillset and the lawful purposes of EFA, a 501(c)(4) organization. This unnecessary loss is a direct result of the unconstitutional violations and burdens of the DOJ subpoena.

6. For all these reasons, I respectfully request the Court to issue an appropriate sanction against the intervenor plaintiff, the United States Department of Justice, to include reimbursement for my time and reasonable costs associated with defense from the subpoena.

Signed this 3 day of November, 2022.

By: Margaret S. Clarke  
Margaret S. Clarke

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

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<b>Plaintiffs,</b>	)	
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<b>UNITED STATES OF AMERICA,</b>	)	<b>Civil Action No.</b>
	)	<b>2:22-cv-00184-LCB</b>
<b>Plaintiff-Intervenor,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama;</b>	)	
<b>et al.;</b>	)	
	)	
<b>Defendants.</b>	)	

**SECOND DECLARATION OF REBECCA GERRITSON**

I, Rebecca (“Becky”) Gerritson, pursuant to 28 U.S.C.A. § 1746 (pertaining to declarations), declare under penalty of perjury that the following statements by me are true and correct to the best of my knowledge. I am over the age of nineteen (19) years and qualified to make this declaration, which is made from personal knowledge. This Declaration is given in support of Eagle Forum of Alabama’s (EFA) Motion for Sanctions against the Intervenor plaintiff, United States of America, Department of Justice (DOJ or Government).

1. I am the Executive Director of Eagle Forum of Alabama (EFA), and a lawfully registered legislative advocate. I have served EFA in that role since January 2019. As the only full-time salaried employee of EFA, I have spent at least 75% of my time, since the USDOJ subpoena was served, defending EFA against the DOJ's unwarranted subpoena demands which also carry the threat of civil penalty or perjury.

2. EFA is a lawfully operating Alabama grassroots lobbying organization serving thousands of Alabama citizens since the early 1970's. We are a 501(c)(4) social welfare organization permitted to petition the government. The Constitution protects EFA's rights to free speech, free association, freedom of the press, right to be free of unwarranted searches and to petition the government.

3. The DOJ's willful disregard of EFA's Constitutional rights and its intentional harassment and intimidation tactics through this subpoena process has been costly to our organization on many levels. There has been acute stress unnecessarily placed on EFA leadership, among the voluntary board members and thousands of members across the State, not to mention affiliates across the country offering similar legislation. There have been hundreds of man-hours expended that cannot be replaced or regained. We will never know how many potential members or donors have been turned away or discouraged in their political involvement because of the chilling effect of the DOJ's subpoena. The DOJ must be discouraged

from wasting our limited resources and chilling our Constitutional rights and placing an undue burden on us and other advocacy organizations and individuals in the future.

4. For all these reasons, I respectfully urge the Court to enter sanctions to include compensatory damages to EFA to make up for the loss to our organization.

Signed this 3rd day of November, 2022.

By: Rebecca Gerritson  
Rebecca Gerritson

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

<b>BRIANNA BOE, et al.;</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>Civil Action No.</b>
	)	<b>2:22-cv-00184-LCB</b>
	)	
<b>Plaintiff-Intervenor,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama;</b>	)	
<b>et al.;</b>	)	
	)	
<b>Defendants.</b>	)	

**DECLARATION OF EUNIE SMITH**

I, Eunice W. Smith (Eunie Smith), pursuant to 28 U.S.C.A. § 1746 (pertaining to declarations), declare under penalty of perjury that the following statements by me are true and correct to the best of my knowledge. I am over the age of nineteen (19) years and qualified to make this declaration, which is made from personal knowledge. This Declaration is given in support of Eagle Forum of Alabama’s (EFA) Motion for Sanctions against the Intervenor plaintiff, United States of America, Department of Justice (DOJ or Government).



1. I am currently the President of Eagle Forum of Alabama (EFA). I have been a full-time volunteer for over 45 years. EFA is an Alabama grassroots organization comprised of thousands of Alabama citizens. On behalf of EFA and all our national affiliates across the country, we greatly appreciate the Court's decision to quash the DOJ subpoena.

2. Since August 4, 2022 (when I first received an email about this matter), I have spent untold hours away from other obligations as a full-time EFA volunteer and as an engaged family member in order to consult with legal counsel, potential legal representation, EFA board members and field phone calls from leaders of other national and state organizations and elected officials with regard to the subpoena and Eagle Forum's responses to the continually changing position of the DOJ.

3. EFA, as a prominent reasoned voice in the public square on public policy, has a profound responsibility to defend not only the future effectiveness of our own organization, but the Constitutional rights of every other advocacy organization and individuals in Alabama and around the country, regardless of political persuasion, which might be subject to future political harassment and intimidation if they disagree with the current Administration. This is why we exist, and this is why we chose to fight the subpoena.

4. The value of our cost has been immeasurable. The volunteer hours expended by Counsel Margaret Clarke, Esq., and by me as President reflect some 75

years of experience in public policy lobbying and legislating and are difficult to monetize. Becky Gerritson is paid a salary as Executive Director of EFA (much lower than her actual worth to the organization), but has had to neglect her normal duties in order to assist with EFA's defense of the unjust DOJ subpoena.

5. For all these reasons, I respectfully urge the Court to enter sanctions that will include compensating EFA for its losses outlined above caused by the DOJ's improper subpoena.

Signed this 3rd day of November, 2022.

By: *Eunice W. Smith*  
Eunice W. Smith



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

<b>BRIANNA BOE, et al.;</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>UNITED STATES OF</b>	)	<b>Civil Action No.</b>
<b>AMERICA,</b>	)	<b>2:22-cv-00184-LCB</b>
	)	
<b>Plaintiff-Intervenor,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>STEVE MARSHALL, in his</b>	)	
<b>official capacity as Attorney</b>	)	
<b>General of the State of Alabama;</b>	)	
<b>et al.;</b>	)	
	)	
<b>Defendants.</b>	)	

**THIRD DECLARATION OF A. ERIC JOHNSTON**

I, A. Eric Johnston, pursuant to 28 U.S.C.A. § 1746 (pertaining to declarations), declare under penalty of perjury that the following statements by me are true and correct to the best of my knowledge:

1. I am A. Eric Johnston, and I am over the age of nineteen (19) years and in no way disqualified from making this declaration, which is made from personal knowledge. I am a licensed Alabama attorney in private practice.

2. As President of the Southeast Law Institute (“SLI”), I previously filed two Declarations in this case. This Declaration is in support of a motion for sanctions as a result of the court’s quashing unlawful subpoenas issued to SLI and to the Eagle Forum of Alabama (EFA) by the U.S. Department of Justice through an Assistant United States Attorney in the Northern District of Alabama.

3. Since 1973 I have been a licensed attorney in the State of Alabama. For forty (40) of those years I have practiced in the areas of constitutional law. A significant amount of my time has been committed to constitutional litigation and in the assistance of drafting of legislation for Alabama Legislators on issues which include health care and parental rights, issues that were important to the VCAP legislative process.

4. In response to the DOJ subpoenas, I assisted the attorney who has represented both SLI and EFA, John Mark Graham, in reviewing, researching and preparing written responses.

5. I also reviewed my files for potential response to the subpoena in the event there may have been an evidentiary hearing or an order to comply with the subpoena. I determined that the broad scope of the subpoena could have required production of most of my file.

6. I also attended and traveled to the hearing on October 14, 2022, on the motions to quash the subpoenas.

7. As a result of all of these activities, I was taken away from my law practice, committing the hours shown to this proceeding itemized as follows:

<u>August 9, 2022</u>	
Review subpoena; telephone conference	1.0
<u>August 18, 2022</u>	
Office Conference with Counsel	1.50
<u>August 19, 2022</u>	
Telephone conference with Counsel	1.00
<u>August 24, 2022</u>	
Review and edit Draft Motion; Declaration Brief	.60
<u>August 30, 2022</u>	
Review Second Revised Draft Motion	.40
<u>August 31, 2022</u>	
Review Final Declaration	.25
<u>September 2022</u>	
Review Revised Draft Pleadings; research	2.00
<u>September 6, 2022</u>	
Review Final Pleadings; telephone conference; email	.50
<u>September 20, 2022</u>	
Review Amicus Briefs; telephone conference	1.25
<u>September 21, 2022</u>	
Review DOJ Briefs; research	3.00
<u>September 23, 2022</u>	
Research; Preparation of Brief Memo	4.00
<u>September 26, 2022</u>	
Review Draft Brief; Research DOJ response; emails; telephone Conference	1.50
<u>September 28, 2022</u>	
Review additional Amicus Briefs; Telephone conference; Review 11 <sup>th</sup> Circuit Documents; Review final response documents	1.00
<u>October 9, 2022</u>	
Review Draft Brief; Telephone Conference	1.00
<u>October 10, 2022</u>	
Preparation, research and draft Declaration	1.25
<u>October 11, 2022</u>	
Completion of research and Declaration; review draft Supplement	.40
<u>October 12, 2022</u>	
Review Final Supplement and Declaration	.60

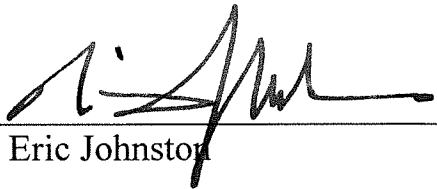
<u>October 13, 2022</u>	
Review Amicus Briefs	.65
<u>October 14, 2022</u>	
Attend Court Hearing (including travel)	4.75
<u>October 17, 2022</u>	
Review Hearing Transcript;	.75
<u>October 24, 2022</u>	
Review Opinion and order; preparation of memo; emails	.75
<u>October 27, 2022</u>	
Review Motions for Sanctions; emails; telephone conference	2.00
<u>October 28, 2022</u>	
Research sanctions; preparation Declaration and portion of Motion	3.00
<u>November 2022</u>	
Review Final Pleadings; Emails; telephones conference	1.00
<b>TOTAL HOURS 34.15 @ \$400.00 PER HOUR</b>	<b>\$13,660.00</b>

7. My usual billing rate is \$400.00 per hour. Additionally, I had mileage to and from my office to the Federal Court in Montgomery of 168.6 miles at the approved IRS rate of \$105.38.

8. Not included are countless hours of telephone conferences and discussions with other persons who were concerned with negative implications of the work of SLI due to the attack by the DOJ. Also, the mere time spent does not represent the public perception and damage that it may have caused SLI, particularly professionally since it is a law organization. A subpoena by the DOJ raises questions in the mind of many, including other lawyers. These questions would hopefully be answered by the Court entering sanctions against the DOJ of sufficient size to vindicate SLI as well as EFA and also to act as a deterrent to future DOJ excesses and unprofessionalism.

9. This declaration is to be used in support of the motion for sanctions with which it is filed on behalf of EFA and SLI.

Signed this 3<sup>rd</sup> day of November, 2022.

By:   
A. Eric Johnston



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

<b>BRIANNA BOE, et al.;</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>Civil Action No.</b>
	)	<b>2:22-cv-00184-LCB</b>
	)	
<b>Plaintiff-Intervenor,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama; et al.;</b>	)	
	)	
<b>Defendants.</b>	)	

**DECLARATION OF JOHN M. GRAHAM**

I, John M. Graham, pursuant to 28 U.S.C.A. § 1746 (pertaining to declarations), declare under penalty of perjury that the following statements by me are true and correct to the best of my knowledge:

1. I am John M. Graham, and I am over the age of nineteen (19) years and in no way disqualified from making this declaration, which is made from personal knowledge. I am a licensed Alabama attorney in private practice with the law firm of Phelps Dunbar LLP, and have represented non-parties Eagle Forum of Alabama

(“EFA”) and Southeast Law Institute (“SLI”) in this matter with regard to the document subpoenas served on them by the United States Department of Justice (“DOJ”).

2. I have been in the private practice of law since 1992, practicing particularly in the area of civil litigation.

3. With my law firm’s consent and assistance, I have represented EFA and SLI in this matter on a *pro bono* basis because of the important First Amendment principles at stake in this case which, as the Court recognized at the October 14<sup>th</sup> hearing, do not change depending on what political party currently occupies the White House.

4. While my representation of EFA and SLI in this matter has been and will remain *pro bono*, in light of the Motion for Sanctions we are filing due to the DOJ’s misconduct in this case, it is appropriate that the Court be made aware of the amount and value of the legal services I and my firm have provided in this case if we were charging our clients for those services. The following list itemizes the professional time incurred in representing EFA and SLI in this matter by me and the other lawyers and paralegals at our firm who have assisted me, along with the expenses incurred by our firm, up through October 24, 2022 (the date of the Court’s written Opinion and Order granting our Motions to Quash the subpoenas). The total is \$46,873.83. This does not include the significant secretarial/clerical time that my

legal assistant has worked on this matter. Again, the amounts shown and rates on which those are based will not be charged to EFA and SLI, but based on my experience those amounts and rates are entirely reasonable if we were charging such a fee.

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
08/16/22	M. Hurst	Review USAO-NDAL subpoena to Eagle Forum	0.50	200.00
08/16/22	J. Graham	Emails with Ali Kilmartin (APF), et al. re DOJ subpoena to Eagle Forum; telephone conferences with Mike Hurst; telephone conference with Margaret Clarke (Eagle Forum); review email from Margaret and subpoena	1.25	500.00
08/17/22	M. Hurst	Communications with John Graham and Ali Kilmartin re: case	0.25	100.00
08/17/22	J. Graham	Review various documents sent by Margaret Clarke; multiple emails with Ali Kilmartin (ADF); email and telephone conference with Margaret Clarke; conference with Mike Hurst; begin work on objection; emails to Katherine Robertson (AL AG's office); review John McGivaren's research; telephone conference with Eric Johnston re similar subpoena served on him	3.50	1,400.00
08/17/22	J. McGivaren	Research on potential objections to DOJ's discovery requests	2.25	562.50
08/18/22	M. Hurst	Communications with John Graham re: legal strategy	0.25	100.00
08/18/22	J. Graham	Work on objection and motion to quash DOJ subpoena; review case authority from Eric Johnston; research for objection/ motion; work on declaration of Margaret Clarke; telephone conference with Margaret; telephone conference with Becky Gerritson; emails with Margaret Clarke and Becky Gerritson; emails with Eric Johnston; email to ADF lawyers	8.00	3,200.00

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
08/18/22	S. Slanovits	Online legal research for J. Graham pertaining to legislative intent; additional legal research as to Alabama's new VCAP law; general research pertaining to client's Secretary of State listings	0.75	123.75
08/19/22	M. Hurst	Review emails from Alliance Defending Freedom regarding subpoena received by eagle form from DOJ; phone conference with John Graham regarding Case; review subpoena; exchange emails with Graham and ADF legal team; phone conference with Graham regarding legal strategy; Research regarding AUSA; phone call to AUSA Jason Cheek regarding subpoena; email summary to Graham; phone call with Cheek and requesting an extension for response to subpoena	1.50	600.00
08/19/22	J. Graham	Emails with Mike Hurst; emails with Margaret Clarke; work on objection/motion to quash subpoena and supporting declarations; telephone conference with Margaret Clarke and B. Gerritson; review Margaret's suggestions for her declaration; review D. Carroll's research; telephone conferences with Eric Johnston re SLI objection; review draft objection and declaration for SLI from Eric Johnston; emails with Eunice Smith; work on SLI documents; telephone conference with Barrett Bowdre; telephone conference with Mike Hurst; emails with Jason Cheek	4.25	1,700.00
08/19/22	D. Carroll	Analyze federal case law/authority in support of motion to quash non-party document subpoena; Conference with J. Graham re findings	1.25	312.50
08/20/22	J. Graham	Text messages with Becky Gerritson	0.25	100.00
08/21/22	J. Graham	Text messages with Margaret Clarke	0.25	100.00

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
08/22/22	M. Hurst	Receive and review emails from AUSA Jason Cheek and John Graham re: subpoena	0.50	200.00
08/22/22	J. Graham	Emails with Barrett Bowdre; briefly review Becky Gerritson's further edits to her draft declaration received 8/19; emails with Jason Cheek re extension on deadline to file objection/motion; emails with Ali Kilmartin (ADF)	0.50	200.00
08/23/22	J. Graham	Briefly review Margaret Clarke's revised version of her declaration; text messages with Margaret	0.25	100.00
08/24/22	J. Graham	Email to Margaret Clarke; review latest draft declaration; work on objection/motion to quash subpoena and supporting declarations; emails with Eric Johnston; lengthy telephone conference with Margaret Clarke; email to clients	4.75	1,900.00
08/25/22	J. Graham	Multiple emails with EFA leadership; work on objection and motion to quash subpoena and supporting declaration; review Margaret Clarke's and Becky Gerritson's suggested changes; telephone conference with Becky Gerritson; emails with Heritage Counsel attorney	1.50	600.00
08/26/22	J. Graham	Email and telephone conference with Margaret Clarke; emails with Eric Johnston; telephone conference with Dan Mauler (Heritage Foundation)	1.00	400.00
08/29/22	J. Graham	Telephone conference with Margaret Clarke re possible press release; review email from Eric Johnston and possible additional language for his declaration; email to Eric; emails with Kris Ullman; emails with Dan Mauler (Heritage Foundation)	0.50	200.00
08/30/22	J. Graham	Lengthy telephone conference with Kris Ullman (Eagle Forum National), et al. re subpoena, strategy, and publicity; work on objection/motion to quash and supporting declaration for EFA and	2.00	800.00

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		SLI; emails to EFA personnel and Eric Johnston re current drafts		
08/31/22	J. Graham	Review revised SLI objection/motion to quash and declaration from Eric Johnston; work on same; emails with Eric Johnston; briefly review Eagle Forum's draft public statement revised from Margaret Clarke	0.75	300.00
09/01/22	J. Graham	Work on suggested revisions to Margaret Clarke's draft public statement; email to Margaret; review email from Eric Johnston and signed declaration; review Margaret's revised draft public statement; multiple emails with Margaret Clarke, et al.; telephone conference with Barrett Bowdre	1.25	500.00
09/02/22	J. Graham	Review Margaret Clarke's further revised draft public statement; multiple emails with Margaret, Becky G., Eunie S., and Eric J.; telephone conference with Barrett Bowdre; telephone conference with Margaret Clarke; work on Margaret's declaration; work on motion to quash	1.25	500.00
09/05/22	J. Graham	Review draft press release; multiple emails with Kris Ullman, et al. re same	0.25	100.00
09/06/22	J. Graham	Review Margaret Clarke's signed declaration; multiple emails with Kris Ullman, et al. re filing tomorrow, press release; telephone conferences with Becky Gerritson; email to Barrett Bowdre; emails and telephone conference with M. Clarke re her declaration; review documents to be filed tomorrow	1.25	500.00
09/07/22	J. Graham	Supervise filing of motion to quash and exhibits; multiple text messages and emails with Dan Mauler (Heritage Foundation); email to Eric Johnston; emails with Jason Cheek (DOJ); emails with ADF	1.00	400.00
09/08/22	J. Graham	Multiple emails and text messages with Margaret Clarke, Becky Gerritson, et al.; emails with EFA and Eric Johnston; emails x2 with	1.00	400.00

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		Dan Mauler (Heritage Foundation) re amicus brief efforts; email with Ali Kilmartin (ADF)		
09/09/22	J. Graham	Text messages and emails with EFA personnel; emails with Dan Mauler (Heritage Foundation)	0.25	100.00
09/10/22	J. Graham	Multiple emails and text messages with Margaret Clarke	0.25	100.00
09/12/22	J. Graham	Email with Margaret Clarke, et al.	0.25	100.00
09/13/22	J. Graham	Telephone conferences with Margaret Clarke and Eunie Smith re possible FOIA request to DOJ; telephone conference with Marc Wheat (Advocacy American Freedom); review plaintiff's current motion for leave to file second amended complaint; text messages with Margaret; emails with Eunie; telephone conference with Bill Olson (Free Speech Coalition); telephone conference with Barrett Bowdre (Alabama AG's office)	1.75	700.00
09/14/22	J. Graham	Review email from Jason Cheek (DOJ) re government's willingness to compromise to some extent; multiple emails with clients; telephone conferences with John Ramer (state attorney); telephone conferences with Eric Johnston; telephone conference with Margaret Clarke and Eunie Smith; telephone conference with Becky G.	1.75	700.00
09/15/22	J. Graham	Email to AUSA J. Cheek re narrowed subpoena; telephone conference with Margaret Clarke; email to Margaret re USDOJ attorneys of record	0.50	200.00
09/16/22	J. Graham	Review order and briefing schedule; emails with Margaret Clarke, et al.; emails with Dan Mauler (Heritage Foundation) re amicus brief	0.25	100.00
09/17/22	J. Graham	Review draft amicus brief from Trent McCotter; telephone conferences with Margaret Clarke; emails with Trent McCotter, et al.	1.25	500.00
09/19/22	J. Graham	Text messages with Margaret Clarke; review Whole Woman's	0.75	300.00

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		Health case from 5th Circuit; review today's pertinent filings; emails to clients; email to amicus group		
09/19/22	S. Slanovits	Online legal research for J. Graham	0.50	82.50
09/20/22	J. Graham	Review filings today; review order setting hearing on motions to quash; multiple emails and texts with clients; email Barrett Bowdre; emails with Trent McCotter	1.00	400.00
09/21/22	J. Graham	Review as-filed amicus brief by Free Speech Coalition, et al.; review separate amicus brief by Trent McCotter's clients; emails with clients; multiple emails with amici counsel; telephone conference with Bill Olson; review DOJ's opposition to our motion filed today; begin work on reply; begin work on reply; telephone conference with Margaret Clarke	4.25	1,700.00
09/21/22	J. McGivaren	Review DOJ's response to Eagle Forum's motion to quash; review amici briefs	2.25	562.50
09/21/22	S. Slanovits	Online research for J. Graham pertaining to registered lobbyists in the state of Alabama; further online legal research to pull and shepardize cases cited by opposing party	0.50	82.50
09/22/22	J. Graham	Work on reply brief; multiple text messages and telephone conference with Margaret Clarke; emails with Barrett Bowdre; review pertinent excerpt of transcript from preliminary injunction hearing	2.75	1,100.00
09/22/22	J. McGivaren	Review amicus briefs; review case law cited by DOJ	1.00	250.00
09/22/22	S. Slanovits	Pull and shepardize cases for J. Graham	0.75	123.75
09/23/22	J. Graham	Telephone conference with Margaret Clarke; multiple emails and text messages	0.50	200.00
09/23/22	J. McGivaren	Review case law cited by DOJ	4.00	1,000.00
09/23/22	S. Slanovits	Review audio visual media cited by opposing party to verify accuracy of citations	2.50	412.50



<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
09/24/22	J. Graham	Review State's re-filed motion for judgment on the pleadings as to legislative intent issue; work on reply brief re motions to quash; review Eric Johnston's notes on DOJ brief; emails with Bill Olson	8.00	3,200.00
09/25/22	J. Graham	Emails with Margaret Clarke	0.25	100.00
09/26/22	J. Graham	Work on reply brief; multiple emails with Ali Kilmartin; emails and telephone conferences with Bill Olson; emails with Margaret Clarke and William Woodruff; review suggested excerpts from Bill Olson; review briefing from Woodruff's case in Michigan; multiple emails with clients	7.25	2,900.00
09/26/22	S. Slanovits	Online legal research for J. Graham to pull and shepardize cases	1.00	165.00
09/27/22	J. Graham	Multiple emails with Margaret Clarke, Becky Gerritson, and Eric Johnston, et al.; work on reply brief; emails with Kris Ullman; telephone conference with Eric Johnston; telephone conference with Margaret Clarke; review plaintiffs' 11th Circuit brief forwarded from Eric Johnston	5.50	2,200.00
09/27/22	S. Slanovits	Online legal research for J. Graham to pull and shepardize cases	1.25	206.25
09/28/22	J. Graham	Work on and file reply brief; emails with Eric Johnston, Margaret Clarke, et al.; telephone conference with Eric Johnston; email to Ali Kilmartin; review amicus brief filed by National Republican Redistricting Trust; review draft press release and emails with Kris Ullman	3.00	1,200.00
09/29/22	J. Graham	Review DOJ's brief in response to State's brief in support of our motion to quash; multiple emails with M. Clarke and E. Johnston	0.25	100.00
09/30/22	J. Graham	Email with Kris Ullman, et al.	0.25	100.00
10/01/22	J. Graham	Review email from Kris Ullman and press release	0.25	100.00
10/06/22	M. Hurst	Phone conference with Prim Escalona, US Attorney, NDAL, re: DOJ subpoena and settlement offer;	0.50	200.00

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		Phone conference with and email to and from John Graham re: same		
10/06/22	J. Graham	Telephone conferences with Mike Hurst re U.S. Attorney's proposed compromise of subpoena dispute; multiple emails with clients; telephone conferences with Eric Johnston; telephone conference with Barrett Bowdre	0.75	300.00
10/07/22	M. Hurst	Receive and review emails from John Graham, Ali Kilmartin and Prim Escalona (USAO-NDAL) re: settlement offer from DOJ relating to subpoena; Phone conference with Graham and Escalona re: same	0.50	200.00
10/07/22	J. Graham	Multiple emails with clients; telephone conference with Margaret Clarke re US's proposed compromise; telephone conference with Mike Hurst; email from Assistant U.S. Attorney Jason Cheek withdrawing subpoenas, voice mail and email from U.S. Attorney renegeing to some extent; emails with amici counsel	1.00	400.00
10/10/22	M. Hurst	Emails with John Graham re: case and legal strategy	0.25	100.00
10/10/22	J. Graham	Consider strategy in light of 10/7 developments; telephone conference with Eric Johnston; telephone conference with Barrett Bowdre; work on supplement to motions to quash; telephone conference with Margaret Clarke; multiple emails with clients; review Margaret Clark's draft second declaration; work on supplement to motions to quash; work on second declaration of Margaret Clarke	5.50	2,200.00
10/10/22	S. Slanovits	Online legal research for J. Graham	0.50	82.50
10/11/22	J. Graham	Work on supplement to motion to quash; review Eric Johnston's draft second declaration; multiple emails with clients; review Margaret Clarke's reworded version of her second declaration; work on Margaret's declaration; telephone conferences with Margaret Clarke; multiple emails with clients	2.00	800.00

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
10/12/22	J. Graham	Work on supplement to motions to quash and exhibit to be filed; emails, telephone conferences, and text messages with Margaret Clarke; multiple emails with clients; text with Becky Gerritson; initial work to prepare for Friday's hearing	0.75	300.00
10/12/22	K. Fields	Create case binder in advance of hearing	2.50	412.50
10/12/22	S. Slanovits	Online general and legal research for J. Graham	0.25	41.25
10/13/22	J. Graham	Prepare for hearing tomorrow; text messages with Margaret Clarke; review new brief filed today by Tea Party Patriots, Inc.; email to clients	3.00	1,200.00
10/14/22	J. Graham	Prepare for and attend hearing in Montgomery, Alabama on our motions to quash subpoenas; conference with client representatives; emails with amici counsel	7.75	3,100.00
10/15/22	J. Graham	Review media reports re yesterday's hearing; text messages with Beck Gerritson, et al.	0.25	100.00
10/17/22	J. Graham	Multiple emails with amici counsel; work on securing transcript of Friday's hearing; multiple emails with Margaret Clarke; telephone conference with Margaret; multiple text messages with Becky Gerritson; emails and telephone conference with Eric Johnson; review transcript of hearing; consider possible motion for sanctions	1.50	600.00
10/18/22	J. Graham	Consider motion for sanctions and initial work for same	0.50	200.00
10/19/22	J. Graham	Conference with J. McGivaren re his research for motion for sanctions; text messages with Becky Gerritson	0.25	100.00
10/20/22	J. Graham	Emails and lengthy telephone conference with Margaret Clarke re medical articles, how to proceed and get information to State, possible motion for sanctions	0.75	300.00

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
TOTAL FEES				\$ 45,720.00

## Summary By Timekeeper

<u>Timekeeper</u>	<u>Hours</u>	<u>Billed Per Hour</u>	<u>Billed Amount</u>
J. Graham	99.00	400.00	39,600.00
M. Hurst	4.25	400.00	1,700.00
J. McGivaren	9.50	250.00	2,375.00
D. Carroll	1.25	250.00	312.50
K. Fields	2.50	165.00	412.50
S. Slanovits	8.00	165.00	1,320.00
Totals	124.50		\$ 45,720.00

## Disbursements Through October 24, 2022

10/14/22	Mileage John Graham, 10/14/22, Attend hearing on motions to quash third party subpoenas to Eagle Forum of Alabama and Southeast Law Institute, 173.00	108.13
10/17/22	Trial Transcripts - - Christina K. Decker Transcript 10/14/22 hearing	45.15
	Lexis Research Database Charge	144.87
	Online Research Database Charges	32.30
	Photocopies Internal	77.25
	Postage	0.57
	Telephone Long Distance	12.14
	Westlaw Research Database Charge	733.42
TOTAL DISBURSEMENTS		\$ 1,153.83
TOTAL VALUE OF FEES AND DISBURSEMENTS		\$ 46,873.83

Signed this 3<sup>rd</sup> day of November, 2022.

By:   
 John M. Graham