

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CAIR-FOUNDATION, INC. and
CAIR-FLORIDA, INC.,

Plaintiffs,

v.

Case No. 4:25-cv-00516-MW-MJF

RONALD DESANTIS, in his official
capacity as Governor, State of Florida,

Defendant.

PLAINTIFFS' MOTION TO COMPEL DEPOSITION TESTIMONY
WITHHELD UNDER THE DELIBERATIVE PROCESS PRIVILEGE &
SUPPORTING MEMORANDUM

MOTION TO COMPEL

Pursuant to Fed. R. Civ. P. 30(c)(2), 37(a)(3)(B)(i), and N.D. Loc. R. 26.1(D), Plaintiffs CAIR-Foundation, Inc. and CAIR-Florida, Inc. hereby file this Motion to Compel Deposition Testimony Withheld Under the Deliberative Process Privilege, requesting this Court to compel Defendant's Rule 30(b)(6) designee, Jay K. Arnold, Jr., to answer the deposition questions identified in this motion, from which his counsel instructed him not to answer on deliberative process privilege grounds. For the reasons stated in Plaintiffs' Supporting Memorandum, Plaintiffs respectfully request that this Court **GRANT** their motion, and order that Defendant pay Plaintiffs' reasonable expenses incurred in connection with making this motion and conducting a second deposition of Mr. Arnold.

CERTIFICATE OF CONFERRAL

Pursuant to Fed. R. Civ. P. 37(a)(1) and N.D. Loc. R. 7.1(B), the undersigned counsel state that Plaintiffs' counsel conferred in good faith with Defendant's counsel during the deposition, but Defendant's counsel still instructed the witness not to answer certain questions. Before filing this motion, the undersigned counsel again conferred via videoconference in an effort to resolve this dispute without court action, and the parties were unable to resolve all issues.

SUPPORTING MEMORANDUM

STATEMENT OF FACTS

On December 8, 2025, Defendant Florida Governor Ronald DeSantis signed Executive Order 25-244, titled “Protecting Floridians from Radical Islamic Terrorist Organizations” (“the EO”), designating the Council on American-Islamic Relations (“CAIR”) as a terrorist organization and preventing CAIR, or “any person known to have provided material support or resources” to CAIR, “from receiving any contract, employment, funds, or other benefit or privilege” from executive or cabinet agencies or from any county or municipality in Florida. *See* ECF No. 24-4. On December 15, Plaintiffs CAIR-Foundation, Inc. (“CAIR-Foundation”) and CAIR-Florida, Inc. (“CAIR-Florida”) filed a complaint for declaratory and injunctive relief against Defendant. *See* ECF No. 1.

On January 16, 2026, Plaintiffs filed their First Amended Complaint, asserting claims for violations of the First and Fourteenth Amendments. *See* ECF No. 21. On January 23, CAIR-Foundation filed a motion for a preliminary injunction to enjoin Defendant from enforcement of the EO. *See* ECF No. 24. On March 4, 2026, this Court granted CAIR-Foundation’s motion based on its First Amendment coercion claim. *CAIR-Found., Inc. v. Desantis*, 822 F. Supp. 3d 1263, 1282 (N.D. Fla. 2026). Defendant appealed, and the case has proceeded through discovery on the schedule this Court entered. *See* ECF Nos. 44, 50.

On June 23, 2026, Plaintiffs filed a motion to compel production of documents Defendant withheld on deliberative process privilege grounds. *See* ECF No. 64. Plaintiffs withdrew that motion after Defendant produced the documents at issue.

On August 26, 2026, Plaintiffs took the deposition of the Executive Office of the Governor under Federal Rule of Civil Procedure 30(b)(6). Jay K. Arnold, Jr., Deputy Chief of Staff to Governor DeSantis, testified as Defendant's Rule 30(b)(6) designee on eighteen topics related to the drafting, research, and promulgation of the Executive Order. *See* Ex. A (Rule 30(b)(6) Notice to the Executive Office of the Governor).

During the deposition, Defendant's counsel instructed Mr. Arnold not to answer approximately 35 questions on deliberative process privilege grounds—including questions going directly to Defendant's intent and motive in issuing the Order, which is squarely at issue in this litigation. Although Defendant's counsel eventually agreed to allow the witness to answer some of these questions, Defendant's counsel refused to allow the witness to answer many others. As a result, Plaintiffs were prevented from obtaining discovery on eight topics that are relevant to the claims and defenses in this case.

1. Whether other organizations were considered for designation, and the criteria used. Mr. Arnold was instructed not to answer questions concerning how the Governor's office decided which organizations to research for the Order, *see* Ex.

B, J. Arnold Dep. Tr. (“Arnold Tr.”) 185:21–186:4; which organizations, other than those named in the EO, were considered for inclusion, *id.* 186:6–11; whether the Governor’s office considered designating any other organization, including the other unindicted co-conspirators identified in the Holy Land Foundation (“HLF”) prosecution, *id.* at 186:13–24; and whether the Governor had decided not to designate those co-conspirators, *id.* 187:1–5. On this last question, Defendant’s counsel additionally invoked, for the first time, an undisclosed “executive privilege” that appears nowhere in Defendant’s privilege log, prior discovery responses, or any filing in this case. *Id.* 188:21–189:4.

2. Why draft “whereas” clauses were removed before the Order issued.

An early draft of the EO included a whereas clause stating that “CAIR and its leadership have repeatedly and publicly claimed that Israel should be attacked and offered praise for the violent and inhumane actions of Hamas on October 7th.” *Id.* 136:17–137:9; *see also* Ex. C (Bates 166–68). That clause does not appear in the EO ultimately signed by the Governor. Arnold Tr. 137:18–20. Mr. Arnold was instructed not to answer why it was removed, *id.* 137:21–24, or whether there were any conversations among staff about removing it, *id.* 146:6–10. And he was instructed not to answer why another whereas clause was removed after Ms. DuShane suggested there was no evidentiary support for it. *Id.* 151:5–155:18 (discussing documents showing Ms. DuShane’s concern about the draft clause, which speculated

that CAIR “provided support for individuals convicted of aiding terrorist organizations and funding terrorist organizations”).

3. Who added the “material support” provision in Section 2 of the EO, and why. Between two drafts created hours apart on December 4, 2025, Section 2 of the EO—which directs state agencies to withhold contracts, employment, funds, and benefits from CAIR and those who support it—was added. *Id.* 157:25–159:3. Mr. Arnold was instructed not to answer why that provision was added, *id.* 159:4–7; why it was insufficient simply to direct existing state law enforcement to prevent unlawful activity, as the prior draft had done, *id.* 159:9–14; whose idea it was to add the provision, beyond a bare yes-or-no that someone in the Governor’s office had the idea, *id.* 159:16–161:19; and who was present for the conversation that occurred between the drafting of the two documents, *id.* 161:21–164:3.

4. Whether anyone in the Governor’s office reviewed a source cited in Mr. Arnold’s declaration. The declaration that Mr. Arnold submitted in opposition to Plaintiffs’ Motion for Preliminary Injunction in this case cites a report titled “Patient Extremism: The Many Faces of the Muslim Brotherhood” as a source the governor’s office consulted in reaching its factual findings. *Id.* 195:3–195:24; *see also* ECF 37-1 (J. Arnold Decl.) ¶ 7. Mr. Arnold was instructed not to answer whether anyone in the Governor’s office consulted that source during the drafting of the Order. Arnold Tr. 195:25–196:3.

5. Whether anyone in the Governor’s office considered the EO’s First Amendment implications before it issued. Mr. Arnold was instructed not to answer whether, at any point prior to issuance, anyone in the Governor’s office discussed or considered whether the Order might implicate CAIR’s or CAIR-Florida’s First Amendment rights. *Id.* 118:19–119:12.

6. Whether the Governor’s office considered alternative measures before designating CAIR, and why they were rejected. Mr. Arnold was instructed not to answer whether the Governor’s office considered any alternative measures to address its concerns about CAIR and CAIR-Florida before issuing the Order, *id.* 231:13–18; what those alternative measures, if any, were, *id.* 231:20–25; and why any such alternative measures were rejected, *id.* 232:2–5.

7. Whether the Governor’s office assessed the sufficiency of existing Florida law before issuing the Order. Mr. Arnold was instructed not to answer whether the Governor’s office assessed whether Florida’s existing civil and criminal laws were sufficient to prevent the solicitation of funds in a deceptive manner before the Order issued. *Id.* 222:21–223:1.

8. Whether the Champions for Justice Fund was discussed before the EO issued. Mr. Arnold was instructed not to answer a yes-or-no question regarding whether there were conversations about the “Champions for Justice Fund”—a fund established by CAIR for students facing penalties stemming from pro-Palestinian

advocacy, and which was referenced in a post-issuance internal document—before the EO was issued. *Id.* 181:20–182:8.¹

ARGUMENT

I. The Testimony Defendant Instructed Mr. Arnold Not to Provide Is Not Protected by the Deliberative Process Privilege and Should Be Compelled.

A deponent may be instructed not to answer a question “only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).” Fed. R. Civ. P. 30(c)(2). Where, as here, a deponent is instructed not to answer on privilege grounds that do not apply, the Court should compel the answer under Rule 37(a)(3)(B)(i).

Two requirements must be met for the deliberative process privilege to apply. First, the material must be pre-decisional, i.e., “prepared in order to assist an agency decisionmaker in arriving at his decision.” *Renegotiation Bd. v. Grumman Aircraft Eng’g Corp.*, 421 U.S. 168, 184 (1975). Second, it must be deliberative, “a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters.” *Nadler v. U.S. Dep’t of Just.*, 955 F.2d 1479, 1490–91 (11th Cir. 1992) (quoting *Vaughn v. Rosen*, 523 F.2d 1136, 1144 (D.C. Cir. 1975)), *abrogated on unrelated grounds by U.S. Dep’t of Just. v. Landano*, 508 U.S.

¹ Although Defendant’s staff referred to it as the “Champions for Justice Fund,” CAIR refers to it as the “Champions of Justice Fund.”

165, 170 (1993). Even where both requirements are met, “[t]he deliberative process privilege is a qualified privilege and may be overcome where there is a sufficient showing of a strong need that outweighs the reasons for non-disclosure.” *Kearney Partners Fund, LLC ex rel. Lincoln Partners Fund, LLC v. United States*, No. 10-cv-153, 2013 WL 1966967, at *5 (M.D. Fla. May 13, 2013) (citing *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997)).

A. The Deliberative Process Privilege Does Not Apply Because Defendant’s Misconduct and Intent Is Directly at Issue.

The deliberative process privilege yields “when government misconduct is the focus of the lawsuit.” *Jones v. City of Coll. Park*, 237 F.R.D. 517, 520–21 (N.D. Ga. 2006) (quoting *Tri-State Hosp. Supply Corp. v. United States*, 226 F.R.D. 118, 134–35 (D.D.C. 2005)); *see also FSI Green Park S. Prop., LLC v. City of Pelham*, No. 18-cv-1211, 2021 WL 12319530, at *3 (N.D. Ala. Oct. 1, 2021). “The prevailing view appears to be that the government misconduct exception is simply a restatement of the principle that the deliberative process privilege does not apply when the government’s intent is at issue.” *Jones*, 237 F.R.D. at 520–21 (collecting cases); *see also Ala. Educ. Ass’n v. Bentley*, No. CV-11-S-761, 2013 WL 124306, at *15–16 (N.D. Ala. Jan. 3, 2013), *rev’d and remanded on other grounds sub nom., In re Hubbard*, 803 F.3d 1298 (11th Cir. 2015). In other words, “[i]f the plaintiff’s cause of action is directed at the government’s intent . . . it makes no sense to permit the government to use the privilege as a shield.” *In re Subpoena Duces Tecum Served*

on the Off. of the Comptroller of the Currency, 145 F.3d 1422, 1424 (D.C. Cir. 1998) (further noting “it seems rather obvious” that “the privilege has no place in” various actions, including a “constitutional claim for discrimination”), *on reh’g in part*, 156 F.3d 1279 (D.C. Cir. 1998).²

Here, Plaintiffs allege precisely that: that Defendant acted with the impermissible subjective motivation to suppress free expression and to retaliate against Plaintiffs for exercising their First Amendment rights. *See* ECF No. 21 ¶¶ 86, 88, 96, 99, 115. “The core of a First Amendment retaliation claim, its factual heart, is the subjective motivation to retaliate.” *In re Hubbard*, 803 F.3d at 1310; *see also Andrews v. Miner*, 301 F. Supp. 3d 1128, 1135 (N.D. Ala. 2017) (“[A] plaintiff must present evidence of a retaliatory animus on the part of the defendant, i.e., ‘the defendant was subjectively motivated to [take action] against the plaintiff for exercising his First Amendment rights.’” (quoting *O’Bryant v. Finch*, 637 F.3d 1207, 1219 (11th Cir. 2011))). Additionally, for content- or viewpoint-based

² *See also Doe 2 v. Esper*, No. CV 17-1597, 2019 WL 4394842, at *7 (D.D.C. Sept. 13, 2019) (“[T]he deliberative process privilege should not be used to shield discovery into Defendants’ decision-making process and intent when the extent and scope of that decision-making process is a central issue in this lawsuit.”); *Velazquez v. City of Chicopee*, 226 F.R.D. 31, 34 (D. Mass. 2004) (finding the “over breadth” of the government’s assertion of the deliberative process privilege to be “particularly stark in light of the fact that this is a civil rights case where the process of decision-making itself is at the center of the dispute,” and granting motion to compel documents that revealed the government actor’s “state of mind or strategy,” which were “at the heart of the litigation itself”).

discrimination claims, courts “may also consider whether [government action] was enacted due to an impermissible motive, i.e., the suppression of free expression.” *Harbourside Place, LLC v. Town of Jupiter*, 958 F.3d 1308, 1317 (11th Cir. 2020) (citing *Reed v. Town of Gilbert*, 576 U.S. 155, 165–66 (2015); *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

Every category of testimony at issue here goes directly to that intent: whether other, similarly-situated organizations were considered and rejected for designation (*see supra* at 4–5, describing Category 1); why factual assertions were drafted into, and then quietly dropped from, the EO (*see supra* at 5–6, Category 2); the bases (if any) for the EO’s factual assertions (*see supra* at 6–8, Categories 4, 8); whether the Governor’s office considered—and rejected—less restrictive alternatives (*see supra* at 6–7, Categories 3, 6, 7); and whether anyone stopped to consider the EO’s effect on Plaintiffs’ First Amendment rights before it issued (*see supra* at 7, Category 5). All of these questions go to the “essence of the claims raised in this case, namely, the decision making process involved in the determination” to designate Plaintiffs. *Anilao v. Spota*, No. CV 10-32, 2015 WL 5793667, at *20–21 (E.D.N.Y. Sept. 30, 2015) (granting motion to compel deposition testimony where plaintiff’s First Amendment claim “place in issue the deliberative process” of the government

defendants).³ Because Defendant’s misconduct and intent are squarely at issue, deliberative process privilege does not apply to any of this testimony. *See Jones*, 237 F.R.D. at 520–21; *Bentley*, 2013 WL 124306, at *15–16.

B. The Qualified Privilege Is Outweighed by Plaintiffs’ Strong Need for This Testimony.

Defendant’s deliberative process assertion also fails because that privilege is a *qualified* one. *See Kearney Partners*, 2013 WL 1966967, at *5. Courts apply a balancing test to determine whether a party has a compelling need for the information, considering “the relevance of the evidence,” “the availability of other evidence,” “the seriousness of the litigation,” “the role of the government,” and “the possibility of future timidity by government employees.” *Id.* (quotation marks omitted). All factors weigh in favor of disclosure here.

³ *See also Am. Ass’n of Univ. Professors v. Rubio*, 816 F. Supp. 3d 216, 219–20 (D. Mass. 2026) (granting motion to compel where information sought dealt with targeting pro-Palestinians for deportation based on First Amendment protected speech); *E.K. by and through Keeley v. Dep’t of Def. Educ. Activity*, 793 F. Supp. 3d 744, 752–53 (E.D. Va. 2025) (even if privilege applied, not appropriate in First Amendment case challenging removal of books at DoDEA schools); *Children First Found., Inc. v. Martinez*, No. 04-CV-0927, 2007 WL 4344915, at *7 (N.D.N.Y. Dec. 10, 2007) (allegations of “content-based and viewpoint-based discrimination . . . identified the deliberative process as the fulcrum of this litigation,” meaning the deliberative process privilege “must now disappear”); *Grossman v. Schwarz*, 125 F.R.D. 376, 381 (S.D.N.Y. 1989) (“In a civil rights action where the deliberative process of State or local officials is itself genuinely in dispute, privileges designed to shield that process from public scrutiny must yield to the overriding public policies expressed in the civil rights laws.”).

First, on relevance, this testimony goes to a central factual dispute in this case—whether Defendant enacted the EO to suppress CAIR’s speech. Second, there is no other source for this information: Mr. Arnold was the Rule 30(b)(6) designee on precisely these topics, and Defendant’s drafting and research process is, by definition, in Defendant’s sole possession. Third, the seriousness of the litigation weighs strongly in Plaintiffs’ favor, given that this Court has already enjoined enforcement of the Order as fundamentally at odds with the First Amendment. *See CAIR-Found., Inc.*, 822 F. Supp. 3d at 1279.⁴ Fourth, the role of the government is central, not collateral, here. *See, e.g., Karnoski v. Trump*, 926 F.3d 1180, 1206 (9th Cir. 2019) (finding this factor weighed in favor of disclosure where the government “is a party to and the focus of the litigation”).⁵ Fifth, no reason exists to think that

⁴ *See also Montrevil v. Decker*, No. 20-CV-264, 2021 WL 11690690, at *5 (E.D.N.Y. July 19, 2021) (“Petitioner’s claim that respondents retaliated against him because of his protected First Amendment activity is sufficiently compelling to justify respondents’ disclosure of the unredacted documents.”); *Griffin-El v. Beard*, No. 06-2719, 2009 WL 1606891, at *9 (E.D. Pa. June 8, 2009) (seriousness of litigation weighs in favor of party seeking disclosure in civil rights case); *Kay v. City of Rancho Palos Verdes*, No. CV 02-03922, 2003 WL 25294710, at *19 (C.D. Cal. Oct. 10, 2003) (noting that this factor “weighs more heavily in favor of disclosure” in “an action asserting that a local government’s actions denied constitutional free-speech rights”); *Hinsdale v. City of Liberal*, No. 96-1249, 1997 WL 557314, at *1 (D. Kan. Aug. 27, 1997) (“Courts have consistently found that the [deliberative process] privilege is outweighed by the interest in disclosure where a case is based on alleged violations of federally-protected civil rights.”).

⁵ *See also Am. Trucking Ass’n, Inc. v. Alviti*, 496 F. Supp. 3d 699, 714, 716 (D.R.I. 2020) (noting that “[w]hen the role of the [government] in the unlawful conduct is ‘direct,’ the fourth factor weighs in favor of disclosure,” and concluding the deliberative process privilege did not apply (quoting *Citizens Union of City of N.Y.*

disclosure would chill government employees from doing their jobs. For all of these reasons, the Court should compel this testimony.

C. Defendant Has Not Met the Procedural Requirements to Invoke Deliberative Process Privilege.

Additionally, certain procedural requirements must be satisfied to properly assert deliberative process privilege. *See Kearney Partners*, 2013 WL 1966967, at *4). First, “the head of the agency that has control over the requested [information] must assert the privilege after personal consideration,” though the agency head may properly delegate that authority. *Id.* However, “the claim of privilege cannot be invoked merely by attorneys acting on behalf of the governmental official.” *Bentley*, 2013 WL 124306, at *18. Second, the party asserting the privilege “must state with particularity what information is subject to the privilege.” *Kearney Partners*, 2013 WL 1966967, at *4 (quoting *Walsky Constr. Co. v. United States*, 20 Cl. Ct. 317, 320 (1990)). Third, “the agency must supply the court with precise and certain reasons for maintaining the confidentiality of the requested [information].” *Id.* (quotation marks omitted). Finally, “the agency must establish that certain

v. Att’y Gen. of N.Y., 269 F. Supp. 3d 124, 169 (S.D.N.Y. 2017)); *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, No. 11 C 5065, 2011 WL 4837508, at *8 (N.D. Ill. Oct. 12, 2011) (finding, under the legislative privilege’s similar factors, that this factor weighed in favor of disclosure where the government’s “decisionmaking process . . . [itself] is the case, at least to the extent” the allegations bear on the government’s “*intentional[]* discriminat[ion]” (cleaned up and second emphasis added)).

information is privileged at the time the privilege is asserted.” *Id.* (citing *Pac. Gas & Elec. Co. v. United States*, 70 Fed. Cl. 128, 135 (2006)). “Usually such claims must be raised by affidavit.” *Bentley*, 2013 WL 124306, at *18 (quoting *United States v. O’Neill*, 619 F.2d 222, 226 (3d Cir. 1980)); *see also Connelly v. Cook Cnty. Assessor’s Off.*, No. 19 CV 7894, 2022 WL 17718411, at *7 (N.D. Ill. Dec. 15, 2022) (denying motion to quash deposition testimony where procedural requirements not satisfied).

None of that occurred here, even though Defendant was on notice of the topics that would be addressed in the deposition. *See* Ex. A (Rule 30(b)(6) Notice to the Executive Office of the Governor). Instead, Defendant’s counsel repeatedly and haphazardly invoked the deliberative process privilege in real time, question-by-question, during the deposition itself. There is no affidavit from the Governor, or from anyone with delegated authority, attesting to personal consideration of these specific topics, and Defendant’s own counsel could not consistently identify a stable legal basis for the objection. At various points, counsel inconsistently applied the deliberative process privilege to similar lines of questions. *See, e.g., Arnold Tr.* 163:2–164:5 (instructing witness not to answer “Who was in the conversation?”); *Arnold Tr.* 63:1–23 (permitting witness to answer “Who was in the meeting?”). This ad hoc, shifting invocation of privilege is precisely what the procedural requirements exist to prevent.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court **GRANT** Plaintiffs' motion and compel Defendant's Rule 30(b)(6) designee to answer the questions identified above and any related follow-up questions through an additional session of deposition testimony, and order Defendant to pay Plaintiffs' reasonable expenses incurred in connection with making this motion and conducting an additional deposition of Mr. Arnold.

Dated: September 24, 2026.

Respectfully submitted,

/s/ Elizabeth C. Lockwood

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CERTIFICATE OF WORD COUNT

Pursuant to N.D. Fla. Loc. R. 7.1(F), the undersigned hereby certifies that this memorandum contains approximately 3,393 words, inclusive of headings, footnotes, and quotations, according to the word-processing system used to prepare the memorandum.

DATE: September 24, 2026

/s/ Elizabeth C. Lockwood