

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

CAIR-FOUNDATION, INC., AND CAIR-
FLORIDA, INC.,

Plaintiffs,

v.

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

Defendant.

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

**MOTION FOR PROTECTIVE ORDER (ATTORNEYS KIMBALL
AND DUSHANE)**

Pursuant to Federal Rule of Civil Procedure 26(c), Defendant moves for a protective order regarding the potential depositions of two attorneys that helped prepare Executive Order 25-244. Defendant respectfully requests that this Court grant a protective order prohibiting or significantly limiting the depositions of government attorneys.

MEMORANDUM IN SUPPORT

I. Introduction

Attorneys Christopher Kimball and Hannah DuShane (collectively “Attorneys”) were both employed *as* attorneys within the Executive Office

of the Governor (EOG) when Plaintiffs initiated this lawsuit. Since, Mr. Kimball remains with EOG and Ms. DuShane amicably departed and currently works in Washington, D.C. These Attorneys helped draft and revise Executive Order 25-244. Their involvement produced and continues to reflect quintessential attorney-client-privilege and deliberative-process-privilege material. Both Attorneys executed declarations to this effect, which accompany this motion. Exhibits 1 & 2.

Defendant respectfully requests that this Court enter a protective order prohibiting or significantly limiting the depositions of these Attorneys.

II. Background

On December 8, 2025, Defendant took action to protect Floridians by designating the Muslim Brotherhood and the Council on American-Islamic Relations as terrorist organizations. DE21-1. Plaintiffs initially brought this suit on December 15, 2025, DE1, but then waited a month before amending their complaint, DE21, and serving Defendant, DE23.

Plaintiff CAIR filed for a preliminary injunction, DE24, which was granted by this Court as to that Plaintiff alone. DE43. Defendant appealed, DE 44, and that appeal is pending before the United States

Court of Appeals for the Eleventh Circuit. In the interim, discovery continued, and the parties exchanged discovery requests. Defendant produced responsive documents and a privilege log, which outlined that documents were protected by the deliberative process privilege. DE64-3. Eventually, Defendant produced those documents after Plaintiffs filed a motion to compel, DE64, which, as a result of the production, was withdrawn, DE71 (Order Denying Motion to Compel as Moot).

Plaintiffs refused to produce any documents and have consistently claimed that discovery does not extend to Defendant's defenses nor the case writ large. Instead, according to Plaintiffs, discovery in this case is related to their own allegations. *See, e.g.*, Pltfs' AMENDED Resp. to Def's RFP, Nos. 6, 7, & 8 (Exhibit 4). Similarly, to date, Plaintiffs have not produced a privilege log. *But see* Fed. R. Civ. P. 26(b)(5) (describing that when a party claims that material is privileged (as Plaintiffs do), it must list the allegedly privileged material in a privilege log). Plaintiffs, however, did turn over what they deemed non-confidential and non-privileged information on September 2, 2026—essentially, a document dump.

Depositions have been taken in this case, but only by Plaintiffs. Plaintiffs deposed Defendant's 30(b)(6) witness, Jay Arnold, and a fact witness, an employee from the Department of Management Services, Thomas Bower, on August 26, 2026, and August 27, 2026, respectively. At the deposition of Mr. Arnold, Defendant's counsel was forced to raise the deliberative process privilege and instruct Mr. Arnold not to answer on many occasions. The parties had met and conferred over Defendant's objections to certain 30(b)(6) topics on deliberative-process-privilege grounds, but counsel for Plaintiffs forged ahead with questions directly implicating internal deliberations, flouting previous discussions and exchanges. Defendant made Plaintiffs aware on multiple occasions that he would raise deliberative process privilege in response to questions that strike at predecisional and deliberative material. *E.g.*, Def's Ltr to Pltfs, re: Deliberative Process Privilege, 7.29.26 (Exhibit 3).

Now, Plaintiffs again seek to run headlong into the deliberative process privilege by deposing Attorneys directly involved in *predecisional deliberations*. The very label (Attorneys) given to Mr. Kimball and Ms. DuShane should raise concerns with the Court about *attorney-client* privilege. Moreover, their involvement in collaborative efforts, drafting

and reviewing the Executive Order, bears the hallmarks of the deliberative-process privilege: *predecisional* and *deliberative* involvement.

III. Legal Standard

In light of the discovery taken to date, Defendant anticipates that the proposed depositions of Attorneys Kimball and DuShane will be fraught with privilege and deliberative process protection issues. Protecting these issues in real time during their depositions creates undue burden on Defendant, particularly when other options (such as a deposition on written questions or interrogatories) exist. For this reason, a protective order is appropriate.

The Federal Rule of Civil Procedure 26(c)(1) authorizes the Court, for good cause, to protect a party or person from annoyance, oppression, or undue burden or expense. The Court may forbid the proposed discovery, prescribe an alternative discovery method, or prohibit inquiry into specified matters. *Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334, 355 (11th Cir. 2012). District courts possess broad discretion to fashion appropriate discovery protections such as a protective orders. *FTC v. Abbvie Prods. LLC*, 713 F.3d 54, 61 (11th Cir. 2013). This

discretion extends to entering orders prohibiting or narrowing the scope of depositions of attorneys. *See W. Peninsular Title Co. v. Palm Beach County*, 132 F.R.D. 301, 302 (S.D. Fla. 1990). The party seeking protection bears the burden of establishing good cause through a particular and specific factual showing. *See, e.g. Carrizosa v. Chiquita Brands Int'l, Inc. (In re Chiquita Brands Int'l, Inc. Alien Tort Statute & S'holder Derivative Litig.)*, 965 F.3d 1238, 1251 (11th Cir. 2020). Relevant considerations include the severity and likelihood of the anticipated harm, the precision of the requested order, the availability of a less onerous alternative, and the order's duration. *Id.*

IV. The Court Should Prohibit the Depositions of Attorneys Kimball and DuShane Because of the Myriad of Privilege Issues Presented.

a. Eleventh Circuit Precedent Supports a Protective Order Prohibiting or Limiting the Deposition of Attorneys.

Depositions of attorneys present an exception to the general rule that protective orders prohibiting a deposition should be rarely granted. *See W. Peninsular Title*, 132 F.R.D. at 302. The depositions of Attorneys Kimball and DuShane fall within this exception and present good cause for a protective order. In determining whether good cause exists, the

Court balances the requesting party's need for the discovery against the burden and harm the proposed discovery would impose. *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1546 (11th Cir. 1985). Given the complexity and burden imposed on the parties and the Court when attorneys are deposed, not to mention the potential impact on the attorney-client relationship, courts have entered protective orders prohibiting or limiting attorney depositions in circumstances such as those presented here. *See W. Peninsular Title*, 132 F.R.D. at 302–03. Indeed, the Eleventh Circuit has affirmed an order limiting depositions of opposing counsel to written questions where oral examinations threatened repeated disputes over attorney-client privilege and would likely require close judicial supervision. *Cox v. Adm'r U.S. Steel & Carnegie*, 17 F.3d 1386, 1423 (11th Cir. 1994). Accordingly, the Court should assess whether the proposed attorney deposition seeks relevant, nonprivileged, and proportional discovery; whether the information can be obtained through less intrusive sources or methods; and whether narrowing the topics or requiring written questions would adequately protect counsel's privileged and work-product material. *Akridge v. Alfa Mut. Ins. Co.*, 1 F.4th 1271, 1275 (11th Cir. 2021), *Cox*, 17 F.3d at 1423.

Here, those safeguards cannot prevent undue burden and repeated incursions into protected matters and good cause exists to prohibit the noticed depositions.

b. The Issues Plaintiffs Will Likely Raise Through Depositions of Attorneys Kimball and DuShane Implicate Privileged Information.

Upon reasonable belief, any potential deposition of Attorneys includes attorney-client privilege and deliberative-process privilege.

Counsel for Plaintiffs will likely ask about advice given to Defendant from Attorneys regarding the Executive Order. Counsel will likely ask about deliberations and conversations that occurred between draft versions of the Executive Order. Counsel will likely ask why certain language was included in the executive order, e.g., why some clauses were included or whether any alternatives were considered.

Questions could cover conversations or deliberations about research done to support the order (while the existence of those research facts is not privileged, the analysis of them certainly is). Potential enforcement mechanisms for the order may be raised. Contemplated action based on the order might be raised. Questions might implicate Defendant's or his team's legal analysis. It is foreseeable that questions might implicate the

nature of contributions to the order from deliberative parties (like Attorneys). Counsel for Plaintiffs may try to peak behind the curtain to question how the Governor's office generally operates.

All of these potential questions would raise objections for the attorney-client privilege and the deliberative-process privilege. They strike at counseling, advice, or legal assistance made in a confidential manner for the purpose of obtaining an attorney's take on a matter. Moreover, the potential questions strike at predecisional and deliberative material.

**c. A Protective Order of Live Questioning Is
Necessary to Prevent Disclosure of Privileged
Information and Undue Burden.**

Moreover, requiring Defendant to raise these privilege objections at the deposition would unnecessarily risk inadvertent disclosure and impose undue burdens on both Defendant and the Court. The Attorneys' relevant knowledge stems primarily, if not exclusively, from their involvement in the deliberative process leading up to the issuance of the Executive Order. Thus, virtually every relevant question that Plaintiffs could ask of these Attorneys would implicate privileged information.

While “counsel can interpose objections and instruct the witness not to answer when appropriate,” “[t]his approach risks the disclosure of privileged information” and is unduly burdensome. *U.S. ex rel. Baklid-Kunz v. Halifax Hosp. Med. Ctr.*, No. 6:09-cv-1002, 2012 WL 3537070, at *5 (M.D. Fla. Aug. 14, 2012) (relying on real-time objections during attorney deposition “would increase the burden on this Court which would likely have to make many otherwise unnecessary decisions about issues of work product privilege”); *JPMorgan Chase Bank v. Winget*, No. 08-13845, 2016 WL 7242136, at *4 (E.D. Mich. Dec. 15, 2016) (holding deposition seeking information “uniquely within the knowledge of [a] party’s lawyers” would be “unduly burdensome”); *Hannah v. Armor Corr. Health Servs., Inc.*, No. 8:19-cv-596, 2020 WL 3414999, at *4 (M.D. Fla. June 22, 2020) (“Because the Sheriffs’ opinion testimony as to statutory and constitutional duties would constitute inadmissible legal conclusions, the Court finds it unduly burdensome . . .”).¹

¹ Plaintiffs’ counsel makes this very point in her own motion to compel testimony. See DE101 at 15. Though the pejorative descriptions of Defendant’s counsel’s objections require no direct response, the point remains that requiring “real time, question-by-question” objections, *id.*, risks inadvertent disclosure and potentially inconsistent privilege applications. This is particularly so when attorneys attempt to confuse deposition witness and conjure implications otherwise unfounded.

There is no reason to subject Defendant and the Court to the burden of confronting the “inevitable array of issues” that would be raised by these attorney depositions. *E.E.O.C. v. McCormick & Schmick’s Seafood Rests., Inc.*, No. CIV.A. 08-cv-984, 2010 WL 2572809, at *6 (D. Md. June 22, 2010). That burden is especially unwarranted here, where Plaintiffs “ha[ve] other means of discovery available to procure much of the information [they] seek.” *Id.* Therefore, the Court should grant this motion and enter a protective order.

d. The Deliberative Process Privilege at Issue Further Complicates the Depositions of Attorneys Kimball and DuShane.

Beyond the obvious privilege issues presented by the proposed depositions, the information possessed by Attorneys Kimball and DuShane are protected by the deliberative-process privilege. The deliberative-process privilege is “a form of executive privilege” that “protect[s] agencies from being ‘forced to operate in a fishbowl.’” *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 267 (2021) (quoting *EPA v. Mink*, 410 U.S. 73, 87 (1973)). “The privilege is rooted in ‘the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and

front page news.” *Id.* (quoting *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8–9 (2001)). “To encourage candor, which improves agency decisionmaking, the privilege blunts the chilling effect that accompanies the prospect of disclosure.” *Id.*

The deliberative-process privilege protects from disclosure documents and communications “reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *Id.* (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975)). Documents and communications “fall within the deliberative process privilege” when they are both “predecisional” and “deliberative.” *Moye, O’Brien, O’Rourke, Hogan, & Pickert v. Nat’l R.R. Passenger Corp.*, 376 F.3d 1270, 1277 (11th Cir. 2004) (quoting *Klamath Water Users*, 532 U.S. at 8). “Documents are ‘predecisional’ if they were generated before the agency’s final decision on the matter, and they are ‘deliberative’ if they were prepared to help the agency formulate its position.” *Sierra Club*, 592 U.S. at 268. Documents and conversations that “make[] recommendations or express[] opinions on legal or policy matters” qualify for the deliberative process privilege—and that is true even if they are

“inter-agency” deliberations. *Fla. House of Reps. v. U.S. Dep’t of Com.*, 961 F.2d 941, 945 (11th Cir. 1992) (quotation omitted).²

Here, any relevant testimony that Plaintiffs might seek from Attorneys Kimball and DuShane falls squarely within the scope of the privilege. As discussed above, Attorneys Kimball and DuShane are connected to this lawsuit solely by virtue of their roles in creating and revising drafts of the Executive Order. Any relevant communications they possess are additionally privileged because they “reflect[] advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *Sierra Club*, 592 U.S. at 267.

The production of certain pre-decisional documents related to the Executive Order did not waive this protection. Although those

² It’s disingenuous, at best, to suggest that Defendant’s counsel has not identified “a stable legal basis for the [deliberative process] objection.” DE101 at 15. Defendant’s counsel has been clear. See Exhibit 3. For good measure, the basis for a deliberative process privilege assertion or objection is that the material implicated be predecisional and deliberative. *Moye*, 376 F.3d at 1279. Plaintiffs’ counsel knows this and has been aware of Defendant’s position on—and basis for—this privilege since Defendant shared his initial privilege log. It’s a shame that an attempt to score a rhetorical point led to such a willfully misleading assertion.

documents are not protected by the privilege, testimony about the deliberative process used to prepare those documents is protected by the privilege. Any testimony about the deliberative process relating to the preparation or use of those documents is unquestionably privileged. *See Fla. House of Reps.*, 961 F.2d at 947 (holding that the deliberative process privilege is not waived “based on the release of related documents” because that “would be contrary both to the case law on waiver and to the policies underlying FOIA and its exemptions”) (quotation omitted); *see also Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Com.*, No. 1:18-cv-03022, 2020 WL 4732095, at *2 (D.D.C. Aug. 14, 2020) (explaining that the deliberative process privilege is only waived as to “the document or information specifically released”) (quotation omitted).

Finally, Plaintiffs cannot evade the deliberative process privilege by asserting that their claim involves government misconduct. That’s because “the government-misconduct exception to the deliberative-process privilege is a narrow one—otherwise, if every hint of marginal misconduct sufficed to erase the privilege, the exception would swallow the rule.” *Agility Pub. Warehous. Co. K.S.C. v. Dep’t of Def.*, 110 F. Supp. 3d 215, 222–23 (D.D.C. 2015) (quotation omitted). “Thus, to preclude

application of the . . . privilege . . . , the claimed governmental misconduct must be severe enough to qualify as nefarious or extreme government wrongdoing.” *Id.* at 223 (quotation omitted). Here, Plaintiffs “ha[ve] failed to point to any behavior that warrants the ‘nefarious’ or ‘extreme’ moniker.” *Id.* “In the rare cases that have actually applied the exception, the ‘policy discussions’ sought to be protected with the deliberative process privilege were so out of bounds that merely discussing them was evidence of a serious breach of the responsibilities of representative government. The very discussion, in other words, was an act of government misconduct, and the deliberative process privilege disappeared.” *ICM Registry, LLC v. U.S. Dep’t of Com.*, 538 F. Supp. 2d 130, 133 (D.D.C. 2008).

Plaintiffs do not—and cannot—make any such showing here. Plaintiffs’ “[g]eneral criticisms of the merits of policy decisions do not amount to evidence of misconduct.” *Hall & Assocs. v. U.S. Env’t Prot. Agency*, 14 F. Supp. 3d 1, 9–10 (D.D.C. 2014). Governor DeSantis has the prerogative to divert state resources from *any* organization, let alone terrorist organizations. The Executive Order does no more than direct

state agencies to ensure that state funds do not directly or indirectly benefit terrorist organizations—that is nowhere near misconduct.

* * *

This Court should issue a protective order which either prohibits or significantly limits the depositions of two Attorneys that were involved in internal deliberations about Executive Order 25-244. Plaintiffs have other avenues of recourse for the information that they seek—namely, interrogatories or written deposition questions. It is an undue burden on Defendant and will result in additional motions practice should he be required to subject his Attorneys to a deposition at which virtually every question asked will be met with an objection on privilege grounds. To protect long-standing privileges and ensure judicial economy, Defendant respectfully requests that this Court issue a protective order.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to N.D. Fla. Loc. R. 7.1(F), the undersigned hereby certifies that this motion contains 2,845 words, inclusive of headings, footnotes, and quotations, according to the word-processing system used to prepare the motion.

DATE: October 14, 2026

/s/ Tyler E. Gustafson

CERTIFICATE OF CONFERRAL

Pursuant to Fed. R. Civ. P. 37(a)(1) and N.D. Loc. R. 7.1(B), the undersigned counsel states that on October 1, 2026, and October 9, 2026, Defendant's counsel met and conferred via teleconference and email, respectively, in good faith with Plaintiffs' counsel. At that conference, and via subsequent emails, counsel for the parties discussed the issues raised in this Motion but were unable to reach agreement on those issues.

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record was delivered a true and correct of this motion via CMECF on October 14, 2026.

/s/ Tyler E. Gustafson