

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

TREVA THOMPSON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:16-cv-783-ECM-SMD
)	
JOHN H. MERRILL, <i>et al.</i> ,)	
)	
Defendants)	

ORDER

Before the Court is the third discovery dispute in as many weeks. *See* (Docs. 230, 234). The subject matter of this dispute – legislative privilege – was also thoroughly addressed by both the undersigned and the District Judge on this case in an earlier discovery dispute. *See* (Docs. 199, 212). Nonparty Jeff Woodard (“Woodard”), Clerk of the Alabama House of Representatives, has filed a Motion to Quash Subpoena. (Doc. 232). Plaintiffs have responded in opposition (Doc. 238) and the State Defendants and Woodard have replied (Docs. 239, 241, respectively). For the reasons that follow, the Motion is due to be **GRANTED**.

I. BACKGROUND

Plaintiffs have subpoenaed Woodard to produce documents that are virtually identical to those sought in the subpoena that this Court quashed when issued against state legislators earlier this year. (Doc. 232) at 5. The documents relate to the design, passage, and implementation of House Bill 282 and Section 177(b) of the Alabama Constitution. *Id.* Woodard argues that the legislative privilege this Court extended to the legislators in the

earlier discovery dispute should be extended to him because his work is an integral part of the legislative process. *Id.* at 6-11. Alternatively, Woodard argues that Plaintiffs have access to public sources of non-privileged information. *Id.* at 11-13.

Plaintiffs argue that Woodard's claim of privilege sweeps far too broadly, that he has not yet shown that all subpoenaed documents would invade upon legislative privilege, and that Woodard should be required to turn over non-privileged documents and produce a privilege log detailing withheld documents. (Doc. 238) at 2-5. Plaintiffs also argue that they have exhausted non-privilege avenues for discovery. *Id.* at 4-6.

II. LEGAL STANDARD

"On timely motion, the court for the district where compliance is required must quash or modify a subpoena that: (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies." Fed. R. Civ. P. 45(d)(3)(A).

In its previous ruling on legislative privilege, this Court explained:

The legislative privilege is important because it protects the legislative process itself. *In re Hubbard*, 803 F.3d 1298, 1307-08 (11th Cir. 2015) (applying the legislative privilege in a case challenging Alabama state legislation). The legislative privilege covers actions in the "proposal, formulation, and passage" of legislation. *Id.* at 1308. The privilege "applies whether or not the legislators themselves have been sued." *Id.* (quotation and citation omitted). The legislative privilege "protects against inquiry into acts that occur in the regular course of the legislative process and *into the motivation for those acts.*" *Id.* at 1310 (emphasis in original, quotation and

citation omitted). “That is why the privilege extends to discovery requests, even when the lawmaker is not a named party in the suit: complying with such requests detracts from the performance of official duties” *Id.* (citation omitted)

(Doc. 212) at 3.

III. DISCUSSION

For substantively the same reasons as this Court has provided – at length – in its earlier orders, (Docs. 199, 212), this Motion is due to be granted. The Court declines to revisit its earlier findings and instead begins this inquiry by addressing whether Plaintiffs have offered any arguments that would provide grounds for not providing Woodard the same legislative privilege that it has previously extended to the legislators. Plaintiffs have not done so.

First, Plaintiffs argue that Defendants identified Woodard in their initial disclosures as a relevant witness having information about “the House legislative process and generally.” (Doc. 238) at 4. However, Plaintiffs cite no authority for the proposition that his inclusion in the initial disclosures operates to waive legislative privilege.

Next, Plaintiffs argue that Woodard must follow the normal rules for utilizing a privilege, which entails turning over nonprivileged material and documenting withheld materials in a privilege log for Plaintiffs’ review. The undersigned previously declined to do so because the parties fulfilled the Rule 45 requirement of demonstrating that they had enough information to assess the privilege claim. (Doc. 199) at 7-8. Affirming, the District Judge also noted: “The subpoenas themselves and the briefing on these issues go into great

detail in the nature of the information at issue. Therefore, the lack of a privilege log does not preclude the application of the legislative privilege in this case.” (Doc. 212) at 11. (internal citations omitted). So too here.

Finally, *In re Hubbard* makes clear that legislative privilege is as much about protecting the legislative process as it is the individual legislators, hence the ability for third parties to invoke it. In applying *Hubbard*, this Court also previously noted that vigorous application of legislative privilege serves long-term purposes extending beyond the instant dispute. These principles include “the burden that being compelled to testify would impose on state legislators, the chilling effect the prospect of having to testify might impose on legislators when considering proposed legislation and discussing it with staff members, and perhaps most importantly, the respect due a coordinate branch of government.” (Doc. 212) at 8. (internal citations omitted). These considerations, especially the final one, apply with equal force to Woodard.

In addition, Plaintiffs’ discovery is primarily aimed at the underlying motivation for the legislators’ actions. As has been thoroughly explained, this is not a proper area of inquiry. Consequently, this Court joins other courts in recognizing that legislative privilege is sometimes appropriately extended beyond legislators to legislative officials, (Doc. 232) at 7-8, and finds that Woodard’s Motion is due to be granted.

IV. CONCLUSION

ACCORDINGLY, Woodard’s Motion to Quash (Doc. 232) is hereby **GRANTED**.

DONE this 20th day of July, 2020.

/s/ Stephen M. Doyle
STEPHEN M. DOYLE
UNITED STATES MAGISTRATE JUDGE