IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Bruce A. Hake, et al. *Plaintiffs,* v. Carroll County, Maryland, by its Board of County Commissioners, et al. *Defendants*.	Case No. 1:13-cv-01312-WDQ

PLAINTIFFS' CERTIFICATE OF COMPLIANCE WITH LOCAL RULES 104.7 & 104.8 IN CONNECTION WITH PLAINTIFFS' MOTION TO COMPEL

1. On May 16, 2014, Plaintiffs served Defendants with a Request for the Production of Documents. This was Plaintiffs' first and only discovery request. Plaintiffs' Document Request consists of 25 specific requests, each of which is narrowly tailored to lead to discoverable information about Defendants' legislative prayers (including impeachment evidence).

2. On June 16, 2014, Defendants served their answers to Plaintiffs' Document Request by objecting in a wholly conclusory and boilerplate manner to each request. Defendants did not produce a single document in response.

3. On June 23, 2014, Plaintiffs served Defendants with Plaintiffs' Motion to Compel. Plaintiffs' counsel, Monica Miller, sent Defendants' counsel an email message along with the motion and memorandum in support, providing in part: "Defense Counsel, Please see the attached motion to compel and memorandum of law in support of the motion. As you know, the local rules require the motion and memorandum to be served on the parties without filing on ECF. If we are unable to resolve the matter, I will be filing the attached with the Court. If you would like to confer about this before serving your responsive papers, please let me know."

4. On June 25, 2014, Barbara Weller, counsel for Defendants, emailed Ms. Miller, as follows: "Do you have some time today to discuss discovery with Atty. Gibbs III? He has a pretty flexible day today, so just give me a time and a good telephone number, and we'll make it happen. Thanks." The same day, Ms. Miller replied: "Hi Barbara, Thanks for getting back to me. I'm leaving on a trip to California today and will be pretty busy packing and finishing up some work for my other cases. I might be free for a quick call around 3:00 pm (EST) but if he is looking to have a longer call to discuss every aspect of the motion, I will probably need to schedule the call for a different time. The local rules require us to meet and confer after all the briefs are filed (i.e. after you respond and we reply) so if today doesn't work out, we can plan to talk then, if not sooner. Also, I will be available via email while I am out in California so we can also try and resolve the disputes that way as well."

5. Pursuant to Local Rule 104.8.a, Defendants were required to respond to Plaintiffs' Motion within two weeks of service (by July 7, 2014). As of July 16, 2014, Plaintiffs have yet to receive a

response from Defendants. Because Defendants never filed an opposition memorandum, Plaintiffs could not file a reply.

6. On July 15, 2014, David Gibbs III (Defendants' counsel) and Ms. Miller agreed to have a phone conference in accordance with L.R. 104.7 to discuss Plaintiffs' Motion on July 16, 2014.

7. On July 16, 2014, at approximately 3:00 p.m. (EST), Ms. Miller contacted the office of Mr. Gibbs via telephone to hold the L.R. 104.7 conference. Ms. Miller left a voice message. At approximately 3:45 p.m. (EST) Ms. Miller contacted Mr. Gibbs a second time and the two discussed the motion and the pending discovery disputes. Ultimately, counsel could not reach an agreement regarding the discovery disputes.

8. The primary issues before the Court are: (1) Whether Defendants' boilerplate objections to each discovery request for documents constitutes a waiver of said objections; and (2) Whether Defendants' failure to oppose Plaintiffs' Motion to Compel constitutes an assent to the Motion and a waiver of any previous objections made. *See Anderson v. Obama*, 2010 WL 3000765, at *2 (D. Md. 2010) ("Defendants, having failed to oppose the Motion to Amend within 14 days, should be deemed to have waived any opposition to same.").

9. The specific issues before the Court are set forth in Plaintiffs' Memorandum of Law ("P.Br."). Because Defendants objected to every single request by citing a litany of boilerplate objections, Plaintiffs, in a desire to save judicial resources, incorporate said objections along with Plaintiffs' responses by reference as if fully stated herein. To briefly summarize, these more specific issues include: (1) Whether Defendants' failure to particularize any of their objections, including those related to privilege, undue burden and overbreadth, among others, constitutes a waiver of said objections (*See* P.Br. 2-6); (2) Whether Plaintiffs' requests are reasonably calculated to lead to the discovery of admissible evidence regarding Defendants' legislative prayers (P.Br. 6-14); (3) Whether legislative immunity shields the County from having to disclose relevant documents in discovery (P.Br.15-18); and (4) Whether Defendants' objections based on attorney-client privilege and work-product doctrine are

waived (P.Br. 18-21). However, should the Court find that Defendants' failure to oppose Plaintiffs' Motion constitutes an assent to the Motion, then these more specific issues need not be addressed.

Respectfully submitted,

July 16, 2014

/s/ Monica L. Miller
MONICA L. MILLER, Esq.
American Humanist Association
1777 T Street N.W., Washington, D.C, 20009
202-238-9088, mmiller@americanhumanist.org
facsimile (202) 238-9003
CA Bar: 288343 / DC Bar: 101625

DAVID A. NIOSE
Law Offices of David Niose
348 Lunenburg Street, Suite 202, Fitchburg, MA 01420
978-343-0800, dniose@nioselaw.com

STEPHEN R PICKARD
Stephen R Pickard PC
115 Oronoco St, Alexandria, VA 22314
703-836-3505, srpickard@aol.com

DANA DEMBROW
1226 Canterbury Dr., Sykesville, MD 21784
410-795-1502, DanaDembrow@aol.com

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Bruce A. Hake, et al. *Plaintiffs,* v. Carroll County, Maryland, by its Board of County Commissioners, et al. *Defendants*.	Case No. 1:13-cv-01312-WDQ

PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Plaintiffs hereby move the Court pursuant to Fed. R. Civ. P. 37 and L.R. 104.8 for an order compelling Defendants to produce all documents requested in Plaintiffs' First Request for Production of Documents ("Plaintiffs' Document Request"). Plaintiffs contend that the information objected to by Defendants is relevant or is reasonably calculated to lead to relevant evidence for Plaintiffs' claims and relief. Further support and grounds for this motion are set forth in the accompanying Memorandum in Support of Plaintiffs' Motion to Compel Production of Documents, which is incorporated herein by reference.

Respectfully submitted,

June 23, 2014

/s/ Monica L. Miller
MONICA L. MILLER, Esq.
American Humanist Association
1777 T Street N.W., Washington, D.C, 20009
202-238-9088, mmiller@americanhumanist.org
facsimile (202) 238-9003
CA Bar: 288343 / DC Bar: 101625

DAVID A. NIOSE

Law Offices of David Niose
348 Lunenburg Street, Suite 202, Fitchburg, MA 01420
978-343-0800, dniose@nioselaw.com

STEPHEN R PICKARD
Stephen R Pickard PC
115 Oronoco St, Alexandria, VA 22314
703-836-3505, srpickard@aol.com

DANA DEMBROW
1226 Canterbury Dr., Sykesville, MD 21784
410-795-1502, DanaDembrow@aol.com

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Bruce A. Hake, et al.	Case No. 1:13-cv-01312-WDQ
Plaintiffs,	
v.	
Carroll County, Maryland, by its Board of County Commissioners, et al.	
Defendants.	

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO COMPEL PRODUCTION OF DOCUMENTS

I. INTRODUCTION AND RELEVANT FACTS

On May 16, 2014, Plaintiffs served Defendants with a Request for the Production of Documents ("Plaintiffs' Document Request"). This was Plaintiffs' first and only discovery request thus far. Plaintiffs' Document Request consists of 25 specific requests, each of which is narrowly tailored to lead to discoverable information about Defendants' legislative prayers.

On May 20, 2014, Defendants filed their motion for summary judgment. (Dkt. 46). On May 23, 2014, Defendants re-filed their motion for summary judgment. (Dkt. 47). At no time did Defendants' counsel confer with Plaintiffs' counsel about the filing of their motion. The parties never discussed, let alone agreed upon, which party would file the initial summary judgment motion as required by Local Rule 105.2.c. The discovery deadline set forth in this Court's scheduling order is August 25, 2014. (Dkt. 38). Local Rule 105.2.c requires the party opposing the first motion for summary judgment to include its cross-motion for summary judgment and opposition in the same memorandum. Therefore, Plaintiffs filed their motion for summary judgment and their opposition to Defendants' motion in the same filing two weeks after Defendants filed their motion.

On June 16, 2014, Defendants served their answers to Plaintiffs' Document Request by objecting in a wholly conclusory and boilerplate manner to each request. Defendants did not produce a single document in response to the request.

II. GENERAL PRINCIPLES GOVERNING PLAINTIFFS' OBJECTIONS TO DEFENDANTS' RESPONSES

Federal Rule of Civil Procedure 37(a) provides that, where notice has been given, "a party may move for an order compelling disclosure or discovery." FED. R. CIV. P. 37(a)(1). Document production requests are properly the subject of a motion to compel discovery under Rule 37. *See* FED. R. CIV. P. 37(a)(3)(B). Under FED. R. CIV. P. 26(b)(1), "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* FED. R. CIV. P. 34 governs document production requests. Pursuant to Rule 34,

a party may request that the opposing party produce relevant documents, electronically stored information, and tangible things that are within the party's "possession, custody, or control." FED. R. CIV. P. 34(a)(1).

A. Defendants bear the burden of justifying each objection to Plaintiffs' requests.

The "burden of proof is with the party objecting to the discovery to establish that the challenged production should not be permitted." *Capital One Bank N.A. v. Hess Kennedy Chtd*., 2008 U.S. Dist. LEXIS 76385, at *4-5 (E.D. Va. Sept. 29, 2008). *See Finley v. Trent*, 955 F. Supp. 642, 648 (4th Cir. 1997); *Desrosiers v. MAG Indus. Automation Sys., LLC*, 675 F. Supp. 2d 598, 601 (D. Md. 2009) ("The burden is on the party resisting discovery to explain specifically why its objections, including those based on irrelevance, are proper given the broad and liberal construction of federal discovery rules."); *Tucker v. Ohtsu Tire & Rubber Co*., 191 F.R.D. 495, 498 (D. Md. 2000). As discussed in more detail below, Defendants failed to meet their burden in every objection they raised.

B. Defendants' boilerplate objections to each request constitute a waiver of said objections.

Defendants responded to every single request using non-specific boilerplate objections. "Under Rule 34, failure to make particularized objections to document requests constitutes a waiver of those objections." *Sabol v. Brooks*, 469 F. Supp. 2d 324, 328 (D. Md. 2006) (citations omitted). Both the Federal Rules and Local Rules mandate that "[a]ll objections to document production requests must be stated with particularity and specificity; objections may not be 'boilerplate.'" *D.J.'s Diamond Imps., LLC v. Brown*, 2013 U.S. Dist. LEXIS 46730, at *20 (D. Md. 2013). The failure to do so waives the objections. This rule is firmly established in this jurisdiction. *See id.*; *First Mariner Bank v. Resolution Law Group, P.C*., 2014 U.S. Dist. LEXIS 55379, at *47-48 (D. Md. 2014); *Sher v. Barclays Capital Inc*., 2013 U.S. Dist. LEXIS 122342, at *7-8 (D. Md. 2013); *Romanyk Consulting Corp. v. EBA Ernest Bland Assocs., P.C*., 2013 U.S. Dist. LEXIS 89485, at *14-15 (D. Md. 2013); *In re Trs. of the Heating*, 2013 U.S. Dist. LEXIS 34122, at *5-6 n.2 (D. Md. 2013); *Webb v. Green Tree Servicing LLC*, 2012 U.S. Dist. LEXIS 104953, at *5 (D. Md. July 27, 2012) ("objections to document production requests must be specific, non-boilerplate, and supported by particularized facts and that **failure to do so waives the**

objections."); *Fisher v. Fisher*, 2012 U.S. Dist. LEXIS 78445, at *15-16 (D. Md. 2012); *Lynn v. Monarch Recovery Mgmt*., 285 F.R.D. 350, 360 (D. Md. 2012); *Allstate Ins. Co. v. Warns*, 2012 U.S. Dist. LEXIS 163860, at *4 (D. Md. 2012); *Adams v. Sharfstein, Civil Case*, 2012 U.S. Dist. LEXIS 100366, at *4 (D. Md. July 19, 2012); *Anderson v. Reliance Std. Life Ins. Co*., 2011 U.S. Dist. LEXIS 117058, at *6-8 (D. Md. 2011); *Mezu v. Morgan St. Univ.*, 269 F.R.D. 565, 573-74 (D. Md. 2010); *Desrosiers v. MAG Indus. Automation Sys., LLC*, 675 F. Supp. 2d 598, 601 (D. Md. 2009); *Mancia v. Mayflower Textile Servs. Co*., 253 F.R.D. 354, 359 (D. Md. 2008); *Hall v. Sullivan*, 231 F.R.D. 468, 470 (D. Md. 2005) (holding that "objections to document production requests must be stated with particularity in a timely answer, and that a failure to do so may constitute a waiver of grounds not properly raised, **including privilege or work product immunity**"); *Thompson v. U.S. Dep't of Hous. & Urban Dev.*, 199 F.R.D. 168, 173 (D. Md. 2001); *Marens v. Carrabba's Italian Grill, Inc*., 196 F.R.D. 35, 38-39 (D. Md. 2000). *Cf. Cook v. Nationwide Ins. Co*., 2013 U.S. Dist. LEXIS 143237, *42-43 (D. Md. 2013) ("Any objections to the interrogatories will be stated with particularity. Boilerplate objections (e.g., objections without a particularized basis, such as 'overbroad, irrelevant, burdensome, not reasonably calculated to identify admissible evidence'), as well as incomplete or evasive answers, will be treated as a failure to answer").

Indeed, the "very act of making such boilerplate objections is prima facie evidence of a Rule 26(g) violation, because if the lawyer had paused, made a reasonable inquiry, and discovered facts that demonstrated the burdensomeness or excessive cost of the discovery request, he or she should have disclosed them in the objection, as both Rule 33 and 34 responses must state objections with particularity, on pain of waiver." *Mancia*, 253 F.R.D. at 359 (citations omitted).

In *Anderson*, this Court emphasized that "[b]oilerplate objections are expressly prohibited" and that case law in this jurisdiction "states that objections to discovery, including Rule 33 interrogatories and Rule 34 document production requests, must be specific, non-boilerplate, and supported by particularized facts where necessary to demonstrate the basis for the objection." 2011 U.S. Dist. LEXIS 117058, at *6-8 (citing cases). And in *Allstate*, this Court again made clear: "The Federal Rules of Civil

Procedure, see Fed. R. Civ. P. 34(b)(2)(B), this Court's Local Rules, see Loc. R. 104(6), and governing case law prohibit non-specific and boilerplate objections to discovery requests." 2012 U.S. Dist. LEXIS 163860, at *4 (citation omitted).

Put "simply, objections that recite 'the familiar litany that . . . a document production request is 'overly broad, burdensome, [vague, ambiguous, and/or] irrelevant'—like those made by Defendant[s] in this case—are plainly deficient." *Webb*, 2012 U.S. Dist. LEXIS 104953, at *6-7 (citation omitted). Insofar as every objection Defendants asserted was boilerplate and not stated with particularity and specificity, **all of Defendants' objections are waived**. Such "objections clearly disregard the requirement, stated in the Federal Rules of Civil Procedure, this Court's Local Rules, and ample case law, that objections to document production requests must be specific, non-boilerplate, and supported by particularized facts and that **failure to do so waives the objections**." *Id.* at *5.

This Court has frequently held that a litigant's boilerplate objection constitutes a waiver, and has thus required such litigants to produce documents that may actually be privileged or unduly burdensome to produce. *See Adams*, 2012 U.S. Dist. LEXIS 100366, at *4 (granting defendants' motion to compel for certain document requests because plaintiff's boilerplate objections asserting vagueness, burdensomeness, and privilege were not particularized); *Webb*, 2012 U.S. Dist. LEXIS 104953, at *5-7; *Mezu*, 269 F.R.D. at 573-74 (holding that defendant waived objections to discovery requests because defendant failed to provide specific objections supported by particularized facts); *Sabol*, 469 F. Supp. 2d at 328-29 ("Synergy did not particularize its objections to these [document] requests, and instead used the boilerplate objections that this Court repeatedly has warned against, thereby waiving its objections."); *Mancia*, 253 F.R.D. at 364 ("the boilerplate objection to Plaintiffs' interrogatory waived any legitimate objection Defendant Argo may have had . . . The same is true for the boilerplate objections to Plaintiffs' document production requests.") (citations omitted).

For example, in *D.J.'s Diamond*, the plaintiff's document request sought "[a]ll Silverman Consultants, LLC's federal [and state] tax returns, including all schedules, attachments and worksheets, for the years 2008 through 2011." 2013 U.S. Dist. LEXIS 46730, at *21. The defendant responded:

"Objection. This request is overly broad and irrelevant for purposes of the remaining limited claim in this litigation." *Id.* at *21-22. This Court ruled that the defendant's "**boilerplate objection amounts to a waiver of any legitimate objection it may have had to these requests**." *Id.* at *22. The Court then granted the plaintiff's motion to compel the production of all the documents. *Id.* at *22-23. The plaintiff sought another request for "[a]ll Sale Account records for the Sale Event pursuant to the April [and July] Agreement[s,]" and the defendant objected, stating: "This request is irrelevant for purposes of the remaining limited claim." *Id.* at *27. For the same reasons as the Court stated above, it found that this "**boilerplate objection waives any legitimate objection [the defendant] may have had**," and ordered the defendant to produce said documents. *Id.*

Likewise, in *Allstate*, the plaintiff Allstate "essentially [sought] all documents and communications that [the defendant] retained from her time of employment at Allstate, or has in her possession from her work at Bennett & Albright, relating to Allstate or its insureds." 2012 U.S. Dist. LEXIS 163860, at *4. The Court observed that many of the defendant's responses "to the document requests constitute boilerplate objections," and were waived. *Id.* For instance, the defendant there stated, as the Defendants have done here, that she "objects to this request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence." *Id.* at *5. She also objected "on the basis that [the requests] seek[] information that is confidential and/or privileged." *Id.* The Court noted that "[the defendant] never explains how the document requests are overly broad, unduly burdensome, vague, ambiguous, or not calculated to lead to discovery of admissible evidence." *Id.* Thus, the Court concluded that "[the defendant's] objections are insufficient, and Allstate's Motion to Compel responses to Document Requests . . . is GRANTED." *Id.*

In *Anderson*, this Court again held that an objection stating that a request "is overly broad in time and scope and not reasonably calculated to lead to the discovery of admissible evidence" is a boilerplate objection, and thus, waived by the party asserting it. 2011 U.S. Dist. LEXIS 117058, at *6-8.

Similarly, in *Adams*, the Court held that the following objections to a party's requests were "boilerplate" and thus inadequate: "overbroad, vague, [and] overly burdensome," and "irrelevant,

immaterial[,] or inadmissible information or information protected by privilege[.]" 2012 U.S. Dist. LEXIS 100366, at *9-10. The Court stressed that these objections are "non-specific, boilerplate, and unsupported by particularized facts." *Id.* at *14. As in *Adams*, "None of [Defendants'] confidentiality, privilege, relevance, overbreadth, vagueness, and burdensomeness objections are particularized." *Id.* at *15. Thus, Defendants' "objections are insufficient" and waived. *Id.* at *16 (granting motion to compel the documents on the ground the objections were boilerplate).

Against "this wealth of authority, Defendant[s'] patently deficient responses are particularly disturbing, and call into question whether Defendant[s] violated Fed. R. Civ. P. 26(g)(1)(B)(i)-(iii)." *Webb*, 2012 U.S. Dist. LEXIS 104953, at *7. Defendants' "failure to particularize these objections as required leads to one of two conclusions: either the Defendants lacked a factual basis to make the objections that they did, which would violate Rule 26(g), or they complied with Rule 26(g), made a reasonable inquiry before answering and discovered facts that would support a legitimate objection, but they were waived for failure to specify them as required." *Mancia*, 253 F.R.D. at 363-64. Neither "alternative helps the Defendants' position, and **either would justify a ruling requiring that the Defendants provide the requested discovery regardless of cost or burden, because proper grounds for objecting have not been established**." *Id.* Accordingly, Defendants must now produce all documents in Plaintiffs' Document Request.

Although all of Defendants' objections are waived for the foregoing reasons, Plaintiffs provide the analysis below, articulating additional reasons why each objection is unjustifiable.

C. Defendants cannot object to discovery simply because Plaintiffs asserted that they have *sufficient* evidence to prove the legislative prayer practice is unconstitutional, as each discovery request is relevant to Plaintiffs' claims and is likely to lead to admissible evidence.

Defendants objected to every request stating: "Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses." Even if this were true, this is not a valid objection to discovery.[1] To accept this argument would turn the broad and liberal standard of

[1] Defendants filed for summary judgment months before the discovery deadline and immediately after Plaintiffs' propounded their first and only discovery request, and they did so without conferring with Plaintiffs' counsel as

discovery on its head. It would mean that litigants would have to prove that discovery is *necessary* in order to obtain it. Because Defendants unexpectedly and prematurely filed their motion for summary judgment when they did, Plaintiffs were forced to file any cross motion as part of their timely response, and did so. Plaintiffs correctly contended in their motion that the undisputed facts entitle them to summary judgment, but this assertion does not bar them from discovery. Indeed, if it did, parties to civil litigation could routinely use the premature summary judgment procedure utilized by Defendants here as a device to preclude discovery. This, of course, is not the standard.

To the contrary, "[a]ll non-privileged information that is either admissible at trial or that 'appears reasonably calculated to lead to the discovery of admissible evidence' should be discoverable." *Watson v. Lowcountry Red Cross*, 974 F.2d 482, 485 (4th Cir. 1992) (citing FED. R. CIV. P. 26(b)(1)). The Federal Rules "extend the scope of discovery . . . to information 'reasonably calculated to lead to the discovery of admissible evidence[.]'" *King v. McCown*, 1987 U.S. App. LEXIS 18799, at *3-4 (4th Cir. 1987) (citations omitted). The Fourth Circuit has "interpreted the quoted language liberally as a requirement merely that information sought be **germane to the subject matter of the action**." *Id.* (citing *Ralston Purina Co. v. McFarland*, 550 F.2d 967, 973 (4th Cir. 1977); 8 Wright & Miller, § 2008, p.48 (1970)). The underlying philosophy of the discovery rules was stated by the Supreme Court in the landmark case of *Hickman v. Taylor*, 329 U.S. 495, 507 (1947):

---

required by Local Rule 105.2.c. In so doing, Defendants effectively forced Plaintiffs to file their cross-motion for summary judgment immediately instead of waiting until the discovery deadline. Local Rule 105.2.c *requires* that as soon as the first motion for summary judgment is filed, "the other party shall file a cross-motion accompanied by a single memorandum (both opposing the first party's motion and in support of its own cross-motion)." *See Gross v. SES Americom, Inc*., 225 F.R.D. 169, 170 (D. Md. 2004) (105.2.c requires "filing a single memorandum in support of their cross-motion . . . and in opposition"). Plaintiffs maintain that the evidence on the record is *sufficient* for the Court to rule in their favor, but maintain that further discovery is relevant to their claims and to rebut Defendants' defenses. Thus, Plaintiffs wrote "Although discovery is not *necessary* for Plaintiffs to prove their case for the reasons set forth below, at a minimum, the Court should postpone ruling on Defendants' motion until after discovery has been completed so that Plaintiffs are given with the opportunity to supplement their motion with any newly-discovered evidence." Ms. Miller set forth in her affidavit that this statement does not mean that further evidence will not be relevant to Plaintiffs' claims. Rather, in this unique Establishment Clause context, all facts regarding Defendants' prayer practice are relevant, especially to the scope of relief. (ECF Dkt. 52 Miller Decl. ¶4).

> [D]iscovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of "fishing expedition" serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. (Footnote omitted.)

The standard for discovery under Rule 26 is "broad." *Innes v. Bd. of Regents of the Univ. Sys. of Md*., 2014 U.S. Dist. LEXIS 73425, at *4 (D. Md. 2014). Under Rule 26(b)(1), "[p]arties may obtain discovery regarding any nonprivileged matter that is **relevant** to any party's claim or defense." *See also* FED. R. CIV. P. 34(a). While the Federal Rules of Civil Procedure do not define relevance, the Federal Rules of Evidence do, as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." FED. R. EVID. 401.

Discovery "is broad in scope and freely permitted." *Carefirst of Md., Inc. v. Carefirst Pregnancy Centers, Inc*., 334 F.3d 390, 402 (4th Cir. 2003). As this Court has repeatedly stated, "[t]he scope of relevancy under the discovery rules is broad, such that relevancy **encompasses any matter that bears or may bear on any issue that is or may be in the case**." *Romanyk*, 2013 U.S. Dist. LEXIS 89485, at *9-10 (citing *E.E.O.C. v. Freeman*, 288 F.R.D. 92, 100 (D. Md. 2012); *Carr v. Double T Diner*, 272 F.R.D 431, 433 (D. Md. 2010)). Consequently, "a request for discovery should be allowed 'unless it is clear that the information sought **can have no possible bearing'** on the claim or defense of a party." *Cardenas v. Dorel Juv. Group, Inc*., 232 F.R.D. 377, 382 (D. Kan. 2005) (citations omitted).

Each of Plaintiffs' requests seeks information "**germane to the subject matter of the action**." *King*, 1987 U.S. App. LEXIS 18799, at *3-4. All of the requests are "relevant" to the Plaintiffs' claims and Defendants' defenses, as each pertains to the legislative prayer practice. That is all that FED. R. CIV. P. 26(b) requires; thus, the information is discoverable.

Moreover, the Supreme Court has stated: "Consistent with the notice-pleading system established by the Rules, discovery is not limited to issues raised by the pleadings, for discovery itself is designed to help define and clarify the issues." *Oppenheimer Fund, Inc. v. Sander*s, 437 U.S. 340, 351 (1978). Indeed, courts in the Fourth Circuit have held that "evidence obtained solely for the purpose of

impeachment is discoverable within the federal discovery rules." *Capital One*, 2008 U.S. Dist. LEXIS 76385, at *5-8. *See, e.g.*, *Becker v. Bayer Cropscience, L.P.*, 2006 US Dist. LEXIS 44197, at *11 (S.D.W. Va. 2006); *Newsome v. Penske Truck Leasing Corp.*, 437 F. Supp. 2d 431, 436-37 (D. Md. 2006); *Behler v. Hanlon*, 199 F.R.D. 553, 561 (D. Md. 2001); *Ward v. CSX Transp.*, 161 F.R.D. 38, 39 (E.D.N.C. 1995).

For instance, in *Capital One*, the plaintiff Capital One sought "any and all documents which in any way relate to any lawsuit, regulatory action, administrative action, bar investigation, or bar complaint filed which involves any defendant or a list of specified individuals." 2008 U.S. Dist. LEXIS 76385, at *7-8. The defendant objected, "arguing that any other action is unrelated to the pending action, and that the information is deemed confidential by statute," and that therefore, "the request is overbroad and not reasonably calculated to lead to the discovery of admissible evidence." *Id.* The court disagreed, observing, "[i]n fact, such information is relevant to the lawsuit in that it may provide the basis for impeachment of a trial witness." *Id.* Thus, the court ordered the defendants to produce documents in response to the request. *Id.*

In addition to Defendants' baseless justification that Plaintiffs have sufficient evidence to establish a violation of the Establishment Clause, Defendants objected to Plaintiffs' Requests #6-18, #20, and #23-25, asserting in each that "this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*." Similarly, in #21, Defendants answered: "This request therefore cannot be relevant to establishing any material fact, and is therefore beyond the proper scope of discovery." Defendants claimed in response to #19: "Insofar as any such documents would pertain to prayers other than legislative prayers, they are not relevant to establishing any material fact in this lawsuit."

However, the party asserting that the information requested is not relevant and therefore not discoverable "bears the burden of establishing that the information is not relevant." *Kidwiler v. Progressive Paloverde Ins. Co.*, 192 F.R.D. 193, 199 (N.D.W. Va. 2000). Defendants failed to meet this burden, using conclusory and boilerplate language to claim irrelevancy. It "is never enough for a party

resisting discovery to simply proclaim irrelevance, but must 'explain precisely why its objections are proper.'" *First Mariner Bank v. Resolution Law Group, P.C.*, 2014 U.S. Dist. LEXIS 55379, at *47-48 (D. Md. 2014) (quoting *United Oil Co., Inc. v. Parts Assocs., Inc.*, 227 F.R.D. 404, 409 (D. Md. 2005)).

Additionally, the information sought need not ultimately establish a "material fact," for, as noted above, it need only "appear[] [to be] reasonably calculated to lead to the discovery of admissible evidence," *supra.* Even if the "material fact" standard were the discovery test (rather than the summary judgment test), which it is not, Plaintiffs' requests would still be relevant. A fact is material if it "'**might** affect the outcome of the suit under the governing law.'" *Henry v. Purnell*, 652 F.3d 524, 548 (4th Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). It "is one where its existence or non-existence **could** result in a different jury verdict." *JKC Holding Co. LLC v. Wash. Sports Ventures, Inc.*, 264 F.3d 459, 465 (4th Cir. 2001). Information obtained pursuant to Request #19, for instance, which seeks documents relating to the "delivery of prayers in Carroll County government buildings," could persuade a jury to rule in Plaintiffs' favor if the evidence shows that Defendants are using their position as Commissioners to exalt their personal religious views even beyond delivering legislative prayers. Certainly, such evidence would be relevant to Plaintiffs' claims. And at a minimum, it would serve as valuable impeachment evidence, which is discoverable even if not related to a "material fact," *supra.*

Again, there is no requirement that the information sought "directly relate to the claims and defenses;" it simply must be calculated to "to lead to the discovery of admissible evidence." *See Romanyk*, 2013 U.S. Dist. LEXIS 89485, at *10, *12 ("even if it does not directly relate to the claims and defenses, this information is still discoverable because it is reasonably calculated to lead to the discovery of admissible evidence."). "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Clean Earth of Md., Inc. v. Total Safety, Inc.*, 2011 U.S. Dist. LEXIS 118146, at *14-15 (N.D. W. Va. Oct. 12, 2011). *See also Capital One*, 2008 U.S. Dist. LEXIS 76385 ("relevance does not mean that the information has

to be admissible at trial, but merely that the requested information is reasonably likely to lead to the discovery of admissible evidence.").

In view of the above, Defendants' objections based on relevancy and related grounds are insufficient objections. And because Defendants failed to justify any of such objections with particularized facts and merely used boilerplate language, said objections are waived, requiring Defendants to produce said documents *even if irrelevant*, *supra*.

D. Defendants' "overbroad" and "unduly burdensome" objections are waived and unfounded.

Defendants objected to every single document request as "overbroad" and "unduly burdensome" without supplying a single justification or explanation for said objections. The "party claiming that a discovery request is unduly burdensome must allege specific facts that indicate the nature and extent of the burden, usually by affidavits or other reliable evidence." *Tucker v. Ohtsu Tire & Rubber Co*., 191 F.R.D. 495, 498 (D. Md. 2000) (citations omitted). A "**conclusory assertion of burden and expense is not enough**." *Id.* (citation omitted). *See id.* ("defendant's assertions of harassment, burden, prejudice, and expense are generalized, non-specific objections, which are insufficient to prevent the requested discovery."); *Marens*, 196 F.R.D. at 39 (the party objecting to a production request based on overbreadth must suggest an appropriate limitation to the scope of the discovery request); *Thompson*, 219 F.R.D. at 99 ("A properly particularized showing of burden . . . identifies evidentiary facts to support the claims of unfair burden or expense.") (citation and internal quotation marks omitted)). *See also Hopson v. Mayor & City Council of Baltimore*, 232 F.R.D. 228, 231 (D. Md. 2005); *Clean Earth*, 2011 U.S. Dist. LEXIS 118146, at *15-17 ("When a claim that responding to a request would be overly burdensome is raised, the burden is on the party who has raised such an objection to prove that it is overly burdensome.") (citation omitted). As with Defendants other objections, their failure to particularize these objections constitutes a waiver, thus requiring them to produce all documents, regardless of the burden.

Indeed, "Federal Rule 26(b) and Discovery Guideline 10(e) of the Local Rules Appendix A (D. Md.) impose 'an **affirmative duty** on the objecting party to particularize facts, not conclusory statements' as the basis for raising an undue burden objection." *Romanyk*, 2013 U.S. Dist. LEXIS 89485,

at *14 (citations omitted). In "other words, the party claiming that a discovery request is unduly burdensome must allege **specific facts** that indicate the nature and extent of the burden, **usually by affidavits or other reliable evidence; conclusory assertions of burden and expense are not enough."** *Id.* at *14-15. *See also U.S. E.E.O.C. v. McCormick & Schmick's Seafood Rests*., 2012 U.S. Dist. LEXIS 92157, at *2-3 (D. Md. July 2, 2012).

As previously noted, Defendants failed to allege specific facts that indicate the nature and extent of the claimed burden, let alone demonstrate this burden through affidavits or other reliable evidence. Consequently, Defendants' cursory and boilerplate objections constitute a waiver of said objections.

In *Romanyk*, the plaintiff claimed that a request was "unduly burdensome" and provided an explanation as to why that was so. 2013 U.S. Dist. LEXIS 89485, at *15. Even then, the Court ruled that the plaintiff's objection was "without merit." *Id.* The Court reasoned, "Plaintiff does not explain how the cost and burden outweigh the importance of the requested relevant information. Plaintiff merely states that one of Plaintiff's employees involved with the project is no longer with the company and thus makes it unduly burdensome to reconstruct the time records." *Id.* The court concluded, "Plaintiff neither explains **nor provides concrete evidence** showing why information is unduly burdensome to produce. Therefore, Plaintiff fails to meet the standards for an undue burden objection." *Id.* In this case, Defendants did not even attempt to explain why Plaintiffs' request would be unduly burdensome. *A fortiori*, their objections are inadequate and therefore waived.

Furthermore, even if Defendants' objections were not waived by their boilerplate, non-specific assertions, none of Plaintiffs' requests are overbroad or unduly burdensome. They all seek relevant evidence related to Defendants' legislative prayer practice. The information sought is also relevant to the scope of injunctive relief and to Defendants' defenses regarding *Monell* liability and immunity. The requests are narrowed by identifying specific individuals, providing short timeframes, and/or providing specific search terms to limit the scope of the requests.

Similar requests – and indeed, far more onerous and costly ones – have been held not unduly burdensome or overbroad. *See, e.g.*, *Lillibridge v. Nautilus Ins. Co*., 2013 WL 1896825, at *14 (U.S.D.

May 3, 2013) (granting a motion to compel production of "any and all documents relating to regulatory actions, including but not limited to suspension or revocation proceedings, Market Conduct Examinations, Cease and Desist Orders, Consent Orders, Reports of Examinations, Corrective Orders or Corrective Action Plans relating to Defendant's property claims from January 1, 2001, to present"); *Chevron Corp. v. Stratus Consulting, Inc.*, 2010 WL 3923092, at *4, *12 (D. Colo. Oct. 1, 2010) (granting a motion to compel production of, *inter alia*, "all documents relating to any communication between [Stratus] and any person or entity that relates, refers, or pertains to the Cabrera Reports" and "all documents that were reviewed, considered, or relied upon by [Stratus] in performing any work relating to the Cabrera Reports"); *Beyer v. Medico Ins. Grp.*, 266 F.R.D. 333, 336-37 (D.S.D. 2009) (finding that discovery request for "any and all documents" relating to similar denied claims was not unduly burdensome, even though insurer would have to scan images to make them text-searchable or search manually for 5,040 documents); *Moss v. Blue Cross and Blue Shield of Kansas, Inc.*, 241 F.R.D. 683 (D. Kan. 2007) (review of 1,800 personnel files was not in and of itself overly broad and unduly burdensome, for purposes of discovery rule); *Harner v. Greyhound Lines, Inc.*, 2003 WL 147774, at *2 (E.D. Pa. Jan. 10, 2003) (finding that a discovery request for "[a]ll documents relating to communications, meetings and or conversations between Greyhound and persons with disabilities, government entities, organizations representing persons with disabilities or any other entity or person concerning the person concerning the transportation of person with disabilities" was valid so long as request was limited to the preceding five years); *Payless Shoesource Worldwide, Inc. v. Target Corp.*, 2007 WL 1959194, at *11 (D. Kan. June 29, 2007) (finding that discovery requests for "all documents relating to Target's market share in shoe sales [and] financial data or other financial information for Target's footwear products and accessories" were not unduly burdensome); *United States v. Pel-Star Energy, Inc.,* 670 F.2d 1032, 1033-34 (Temp. Emer. Ct. App. 1982) (holding that subpoena for "all documents or records . . . relating to Pel-Star Energy, Inc.'s purchases, sales, exchanges, and acquisitions and dispositions of crude oil during the period from June 1, 1979 through January 27, 1981" was not unduly burdensome); *Beach v. City of Olathe, Kansas*, 203 F.R.D. 489, 499 (D. Kan. 2001)

(finding that a discovery request for "all documents relied upon to answer Plaintiff's First Interrogatories No. 1 through 13" was not unduly burdensome, even though it would have required the city to produce "every personnel file and every file relating to complaints handled by the Internal Affairs Unit of the Olathe Police Department").

At a minimum, the information sought is relevant for impeachment and therefore discoverable. *See Capital One*, 2008 U.S. Dist. LEXIS 76385, at *5-8.

Even assuming, *arguendo*, that some of Plaintiffs' requests could be characterized as unduly broad or burdensome (which they are not), Defendants bear the burden of "providing suggested alternatives" to lessen "the burden of responding to allegedly burdensome electronic records[.]" *Hopson v. Mayor & City Council of Baltimore*, 232 F.R.D. 228, 245 (D. Md. 2005). Additionally, they cannot simply refuse to turn over *all* records on such grounds. *See Moss v. Blue Cross & Blue Shield of Kansas, Inc*., 241 F.R.D. 683, 690 (D. Kan. 2007).

For instance in *In re Coventry Healthcare, Inc. v. This Document Relates*, 290 F.R.D. 471, 475 (D. Md. 2013), the defendants claimed "that they applied Plaintiffs' proposed search terms to the ESI . . . and 'hit' approximately 200,000 documents." They argued "that it will cost approximately $388,000 to process, host, and review the data for responsiveness and privilege." *Id.* The defendants, however, had "not suggested any alternative measures that could reasonably accommodate Plaintiffs' discovery needs other than negotiating more refined search terms." *Id.* Because the Court found that there were alternative measures such as a clawback provision, the Court ruled that "[d]efendants have not shown that producing the requested ESI will be unduly burdensome." *Id.* at 476.

It would be troubling to say the least if there were over 200,000 emails between the five Commissioners in a mere five year time-span mentioning Plaintiffs' proposed search terms (*viz.* prayer "Jesus Christ" or "Savior"). Plaintiffs would like to assume that is not the case here. It would be highly inappropriate and potentially unconstitutional unto itself for County Commissioners to be using their ostensibly valuable time (which Defendants' claim underlies the importance of legislative immunity, a defense they tirelessly invoke in this case) emailing one another about Jesus Christ and prayer rather

than legislating on secular County matters, which they were elected to do. Nevertheless, Defendants have not produced a scintilla of evidence regarding the burden they claim Plaintiffs' requests will impose on them. As such, their defenses are grossly deficient and waived.

E. None of Plaintiffs' requests are barred by legislative immunity

In all but four requests, Defendants objected to producing documents on legislative immunity grounds. This objection is untenable. As Plaintiffs pointed out in many of their briefs, including their most recent memorandum, Defendants are not entitled to legislative immunity. Each Commissioner is sued only in his or her official capacity. Prayers are not deemed legislative acts. Not a single court has accepted Defendants' argument that legislative immunity applies in legislative prayer cases, and in fact, many courts have flatly and explicitly rejected the defense. For that reason alone, all of Defendants' responses based on this objection are unjustified and even rise to the level of sanctions.

Moreover, *even* if the official-capacity Commissioners were entitled to legislative immunity, which they very clearly are not, that would not shield the County from having to disclose relevant documents in discovery - particularly documents that relate to wholly non-legislative actions such as emailing about prayer. As an initial matter, Defendants seem to be confusing legislative *immunity* with qualified legislative ***privilege***. However, neither would supply Defendants with a valid objection to Plaintiffs' requests because each request pertains to non-legislative information and activity. *See EEOC v. Wash. Suburban Sanitary Comm'n*, 666 F. Supp. 2d 526, 531 (D. Md. 2009) ("[T]he [testimonial legislative] privilege is only permitted to protect actions that are considered legislative."), *aff'd*, 631 F.3d 174 (4th Cir. 2011); *Doe v. Pittsylvania County*, 842 F. Supp. 2d 906, 920 (W.D. Va. 2012) ("There are several reasons why legislative testimonial privilege has no application to this case. First, as the Board's opening prayers do not fall within the sphere of legitimate legislative activities, it cannot be credibly argued that any common law evidentiary privilege applies to this case."); *Page v. Virginia State Bd. of Elections*, 2014 WL 1873267, at *6-7 (E.D. Va. May 8, 2014) ("[T]he argument that legislative privilege is an impenetrable shield that completely insulates any disclosure of documents is not tenable.") (citation omitted); *Hopson v. Mayor & City Council of Baltimore*, 232 F.R.D. 228, 233 (D.

Md. 2005) (allowing discovery of documents from city council); *Brown & Williamson Tobacco Corp., v. Williams*, 62 F.3d 408, 420, 421 (D.C. Cir. 1995) ("Documents or other material that comes into the hands of congressmen may be reached either in a direct suit or a subpoena only if the circumstances by which they come can be thought to fall outside 'legislative acts' or the legitimate legislative sphere."); *Jewish War Veterans of the U.S. of America, Inc. v. Gates*, 506 F. Supp. 2d 30, 62 (D.D.C. 2007); *Corporacion Insular de Seguros v. Garcia*, 709 F. Supp. 288, 297 (D.P.R. 1989) (holding that certain legislative documents were discoverable because "the legislative privilege is one of non-evidentiary use against a legislator not one of non-disclosure"); *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 302 n.20 (D. Md. 1992) ("Legislative immunity . . . does not, however, extend to certain types of documentation. The defendants will be required to produce any documents prepared by the Committee during the course of its deliberations which are requested by the plaintiffs, subject, of course, to the assertion of any other privilege on behalf of particular documents.") (citations omitted).

"[C]onfidentiality does not lie at the root of the concerns motivating a privilege for all legislative speech or debate. The speech or debate privilege is at its core a 'use privilege' not a privilege of nondisclosure." *In re Grand Jury*, 821 F.2d 946, 958 (3d Cir. 1987). *See also id.* ("we do not believe that the needs of state legislators for confidentiality justify the creation of a qualified privilege for the full range of legislative activities normally protected by the Speech or Debate Clause."); *State Emps. Bargaining Agent Coal. v. Rowland*, 494 F.3d 71, 76 (2d Cir. 2007) ("We agree with the District Court's holding that discovery is necessary to assess whether legislative immunity may bar any of plaintiffs' claims for reinstatement to their previous positions."); *Powell v. Ridge*, 247 F.3d 520, 524 (3rd Cir. 2001) (noting that legislative immunity is not "bottomed on confidentiality"); *United States EEOC*, 666 F. Supp. 2d at 532 (recognizing "The Distinction Between Legislative Immunity and Legislative Privilege."); *Pittsylvania*, 842 F. Supp. 2d at 920 ("In contrast to the privilege enjoyed by members of Congress under the Speech or Debate Clause, there is no absolute 'evidentiary privilege for state legislators for their legislative acts.'"); *Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 95-96 (S.D.N.Y. 2003) ("notwithstanding their immunity from suit, legislators may, at times, be called upon to produce

documents or testify at depositions."); *Hobart v. City of Stafford*, CIV.A 09-3332, 2010 WL 3419660 (S.D. Tex. 2010) ("the testimony of Council members is reasonably calculated to lead to the discovery of admissible evidence. It is relevant, at the very least, to whether there existed a custom or usage having the force of state law that established Chief Krahn as the final policymaking authority for the City of Stafford with regard to police practices and procedures."); *Stone's Auto Mart, Inc. v. City of St. Paul, Minn*., 721 F. Supp. 206, 211 (D. Minn. 1989) ("The motivation of the council members is precisely what is at issue and, therefore, is discoverable.").[2] Because the courts have been *unanimous* in concluding that legislative prayers are not legislative acts, the County cannot rely on this objection to prevent the disclosure of evidence in this case.

Finally, Defendants' legislative immunity objections lack the specificity required by the Federal Rules, *supra*, and are therefore waived. The burden of proving that legislative immunity is applicable and that the activity in question is legislative lies with the government actor asserting the defense. (See Plaintiffs' Memorandum in Support of Summary Judgment). Defendants' responses merely declare, in a wholly conclusory manner, that the documents requested are barred by legislative immunity. No explanation or justification is provided. Thus, as with the other objections, these objections are waived.[3] *Supra. See also Elat v. Ngoubene*, 2013 U.S. Dist. LEXIS 116275, at *10 (D. Md. 2013) ("A party asserting privilege during written discovery should provide a privilege log that identifies each document withheld, information regarding the nature of the privilege/protection claimed, the name of the person

[2] Moreover, the Supreme Court has stated that evidentiary privileges must be "strictly construed" and accepted "only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth." *Trammel v. United States*, 445 U.S. 40, 50 (1980) (citation omitted). Legislative privilege, unlike legislative immunity from suit, "is qualified, not absolute, and may be overcome by a showing of need." *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 2011 U.S. Dist. LEXIS 117656, at *25 (N.D. Ill. Oct. 12, 2011).

[3] *Cf. Kingman Park Civic Ass'n v. Williams*, 358 U.S. App. D.C. 295, 348 F.3d 1033, 1039 (D.C. Cir. 2003) (mayor waived legislative immunity); *Powell v. Ridge*, 247 F.3d 520, 531 (3d Cir. 2001) (Roth, J., concurring) ("legislative immunity may be waived"); *Fraternal Order of Police v. City of Hobart*, 864 F.2d 551, 554 (7th Cir. 1988) (by failing to invoke legislative immunity in the district court, members of city counsel waived that defense); *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1278 (S.D. Fla. 2002). *See also Perez v. Perry*, 2014 U.S. Dist. LEXIS 1838, at *16 (W.D. Tex. Jan. 8, 2014) ("The legislative privilege is a personal one and may be waived or asserted by each individual legislator.").

making/receiving the communication, the date and place of the communication, and the document's general subject matter.").

Defendants' immunity-from-disclosure objections are further undermined by the fact that Defendants already provided Plaintiffs with public records pursuant to Plaintiffs' pre-litigation public records request, which included the type of documents sought in discovery that Defendants now claim immunity from. Specifically, Plaintiffs sought and obtained emails between the Commissioners discussing their legislative prayer practice. (See Exhibits attached to Plaintiffs' Motion for Summary Judgment). Plaintiffs, through the proper channels of discovery, now seek to obtain additional and more recent emails of an identical nature. Insofar as Defendants *already produced* emails of the exact same nature, their immunity arguments are further waived. *Cf. Victor Stanley, Inc. v. Creative Pipe, Inc*., 250 F.R.D. 251, 267-268 (D. Md. 2008) ("the court finds that the Defendants waived any privilege or work-product protection for the 165 documents at issue by disclosing them to the Plaintiff.").

It would be an odd position to say that Plaintiffs cannot obtain documents through discovery because of immunity but can obtain them pursuant to an ordinary public records request. Under the Maryland Public Information Act, all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. 2014 Md. Laws, Ch. 94, § 2(4–103)(a). The act covers "any original or any copy of any documentary material . . . made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business." *Id*. at § 2(4–101)(h). Defendants properly interpreted the act to cover the types of documents Plaintiffs seek here, such as the emails between the Commissioners regarding their legislative prayers.

F. Defendants' attorney-client privilege and work-product objections are waived.

As with Defendants' other objections, Defendants' objections based on attorney-client privilege and work-product doctrine (which is not a privilege) are asserted in a conclusory, boilerplate manner and lack the specificity required by the applicable rules. Defendants raised such objections in requests #13-15, #18-20, and #22-23. At no point did they provide any explanation as to why such privilege is

applicable or produce any relevant, non-privileged material. Consequently, as with their other objections, these objections are waived.

Objections "based on attorney-client privilege or the work product doctrine must be particularized, Fed. R. Civ. P. 26(b)(5) . . . The Court may deem the failure to do so to be a waiver of the privilege or work product protection." *Anderson*, 2011 U.S. Dist. LEXIS 117058, at *6-8. *See D.J.'s Diamond*, 2013 U.S. Dist. LEXIS 46730, at *7 n.3 (same); *Fisher v. Fisher*, 2012 U.S. Dist. LEXIS 78445, at *16-17 n.6 (D. Md. 2012) ("If a party objects on attorney-client privilege or work product grounds, the objection must be particularized, see Fed. R. Civ. P. 26(b)(5)(A), and it must be accompanied by the information required by this Court's Discovery Guidelines . . . Failure to do so may result in waiver of the privilege or work product protection.") (citation omitted); *Mezu*, 269 F.R.D. at 577; *Victor Stanley, Inc. v. Creative Pipe, Inc*., 250 F.R.D. 251, 267 (D. Md. 2008).

Rule 26(b)(5)(a)(2)(5) provides in part: "When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must: . . . (ii) **describe the nature of the documents, communications, or tangible things not produced or disclosed**—and do so in a manner that, without revealing information itself privileged or protected, **will enable other parties to assess the claim**." The "party asserting privilege has the burden of demonstrating its applicability." *NLRB v. Interbake Foods, LLC*, 637 F.3d 492, 501 (4th Cir. 2011).

The required level of "specificity can be accomplished by providing a privilege log that 'identifies each document withheld, information regarding the nature of the privilege/protection claimed, the name of the person making/receiving the communication, the date and place of the communication, and the document's general subject matter.'" *Richardson*, 270 F.R.D. at 228 (quoting *Victor*, 250 F.R.D. at 264). The "responding party also bears the burden of demonstrating that the claimed privileges apply on a document-by-document basis." *Buonauro v. City of Berwyn*, No. 08 C 6687, 2011 WL 116870, at *2 (N.D. Ill. Jan. 10, 2011). A litigant "cannot withhold documents after it is served with discovery requests based merely on its own decision that a privilege exists, and the failure to provide a privilege

log can result in a waiver of the protection that would otherwise be available." *Id.* *See also Novelty, Inc. v. Mountain View Marketing, Inc*., 265 F.R.D. 370, 375 (S.D. Ind. 2009) (stating that general objections, "whether placed in a separate section or repeated by rote in response to each requested category, are not 'objections' at all—and will not be considered.").

Defendants failed to provide any justifications for such privilege objections, let alone a privilege log identifying each document withheld. Thus, their objections are waived. For instance, in *Anderson*, this Court held that the following objection was boilerplate and thus, inadequate: "Defendant objects to plaintiff's request on the grounds it seeks documents and/or information protected by the attorney client privilege or attorney work product doctrine." 2011 U.S. Dist. LEXIS 117058, at *6-8.

In *Adams*, the party likewise objected to a document request, stating as Defendants do here that such "information subject to privilege, including attorney work product." 2012 U.S. Dist. LEXIS 100366, at* 16-18. The Court held that such an objection was "boilerplate" and thus, insufficient to object to the requests. *Id.* The Court reasoned that "[p]ursuant to Fed. R. Civ. P. 26(b)(5)(A), discovery objections based on attorney-client privilege or work product protection must be particularized." *Id.* at *17 (citation omitted). Because that party "failed to provide the required level of specificity in her privilege and work product-based objections," the court granted the other party's motion to compel the production of those documents, regardless of whether they were privileged. *Id.* at *17.

Even in cases where the litigant supplied a privilege log, which Defendants clearly failed to do here, the Court has still required the litigant to provide a detailed explanation as to why each item is covered by either the privilege or the work-product doctrine. *See Marens*, 196 F.R.D. at 38. In *Marens*, this Court explained that "defendant has failed to demonstrate . . . why the attorney client privilege and work product doctrine apply to those documents described in the privilege log. Instead, defendant sweepingly asserts, at page 14-15 of its opposition memorandum, that a particularized showing that these privileges apply would be unduly burdensome to it. This will not do." *Id.* The Court emphasized: "The requirement to particularize the basis for assertions of the work product doctrine or attorney client privilege stems from the fact that there are many elements to each of these privileges, and a failure to

show the existence of each element renders the privilege inapplicable, and moreover, even if applicable, **privileges may be waived**. . . . [T]he responding party must then do more than rely on a privilege log that gives two word justifications for the assertion of the privilege." *Id.*

> Substantively, a party claiming the privilege must show that:
>
> (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or is his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.

NLRB, 637 F.3d 492 at 501-02 (citation omitted). And "in claiming the work-product privilege, the party must demonstrate that the documents in question were created 'in preparation for litigation.'" *Id.* at 502 (citations omitted). Moreover, "the attorney-client privilege does not apply simply because documents were sent to an attorney[.]" *Id.* Indeed, the "attorney-client privilege is to be strictly construed, in order to harmonize it, to the extent possible, with the truthseeking mission of the legal process." *United States v. Tedder*, 801 F.2d 1437, 1441 (4th Cir. 1986).

In this case, because Defendants "did not provide specific objections supported by particularized facts, [**they] waived [any] improperly-raised objections**[.]"*Mezu*, 269 F.R.D. at 573-74.

III. PLAINTIFFS' ITEMIZED OBJECTIONS TO EACH INADEQUATE RESPONSE

A. Request #1: All Documents and ESI relating to, mentioning, concerning, or regarding the decision to include prayers at Carroll County Board Meetings.

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

Defendants' first objection is baseless as they are not in any way entitled to legislative immunity, *supra*. Furthermore, because Defendants' immunity objection is non-specific and boilerplate, the objection is waived.

Defendants' second objection is waived because the language "overbroad, and unduly burdensome" is non-specific and boilerplate. In any event, the request is neither overbroad nor unduly burdensome. *See, e.g.*, *Burke v. Ability Ins. Co.*, 291 F.R.D. 343, 350 (D. S.D. 2013) (granting a discovery request for "any and all e-mails to or from Ray Nelson, Donald Charsky, Donald Catchcart [sic], Michael Crow, Douglas Kaden, Imran Siddiqui, or Fred Yosua, related to establishing reserves, setting reserves, or changes in reserves"). In *Capital One*, the plaintiff requested: "any and all documents which in any way relate to or regard any Capital One customer or Capital One." 2008 U.S. Dist. LEXIS 76385, at *10-11. The defendant objected by "arguing that the request is overbroad" and "unduly burdensome, requiring [it] to review each client file where the files are not currently organized in a manner to expedite the request." *Id.* The court rejected defendant's objection, observing that it had "not provided any specific information on the amount of projected hours or effort it would require to obtain the information, nor any specific details on the costs involved." *Id.*

Defendants' third objection is baseless for the reasons set forth above, as this request is reasonably calculated to lead to relevant evidence regarding the legislative prayer practice.

B. **Request #2: All emails between the Carroll County Commissioners, including emails from one Commissioner to another, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2009 until 2011.**

   i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

For the reasons set forth above, Defendants' legislative immunity objection is baseless; and because it is boilerplate, it is also waived. Defendants' second objection claiming "overbroad" and "unduly burdensome" are non-specific and boilerplate and thus waived. Furthermore, the request is not unduly broad or burdensome. *See, e.g.*, *United States v. Carter*, 2014 WL 2605460, at *3 (E.D. Mich. June 11, 2014) (granting motion to compel production of "[a]ll e-mails, letters, or correspondence related to the filing, preparing, or signing of federal tax returns by [Defendant], E–File Tax Pros LLC

and Tax King for any individuals or entities since 2009"); *Black Hills Molding, Inc. v. Brandom Holdings, LLC*, 295 F.R.D. 403, 418 (D.S.D. 2013) (granting motion to compel production of "all of Black Hills Molding's internal emails containing any to reference Brandom Holdings, LLC from 2006 through the inception of the current litigation"); *Burke*, 291 F.R.D. at 350 (granting a discovery request for "any and all e-mails to or from [seven individuals], related to establishing reserves, setting reserves, or changes in reserves"); *Lyon v. Bankers Life and Cas. Co.*, 2011 WL 124629, at *10-11 (D.S.D. Jan. 14, 2011) (granting a discovery request for "[a]ll e-mails, claim notes, letters, memos, articles, or any other documents on data contained on Defendant's computer system which contain any of the following terms: a. activities of daily living; b. ADL's or ADLs; c. cognitive; d. medically necessary; e. medical necessity; f. functionally incapacitated; g. functional incapacity; h. chronically ill"); *Aguilar v. Immigration and Customs Enforcement Div. of U.S. Dept. of Homeland Sec.*, 255 F.R.D. 350, 364 (S.D.N.Y. 2008) (directing defendants to produce "any emails that OPLA received with metadata attached in a form that contains that metadata"); *Zaloga v. Borough of Moosic*, 2012 WL 1899665, at *1, *5 (M.D. Pa. May 12, 2012) (granting motion to compel production of any non-privileged emails created in or after 2005 "which included the following terms: Zaloga or Zalogas, Ed or Edward, Jeanne, 910 Johns Drive or 910 John's Drive, Jack Williams or Williams or JWT, Pasonick, Ash, Wingfoot, Berm, and Brazil").

By way of example, in *Capital One*, the plaintiff Capital One requested: "copies of any and all advertisements or solicitations employed by, issued at the request of, issued in furtherance of, or which in any way mention, relate to or regard to any defendant or a number of listed individuals." 2008 U.S. Dist. LEXIS 76385, at *9-10. The defendant objected, "arguing that the request is overbroad[.]" *Id.* The court disagreed, explaining that "[t]he request is not overbroad, as it identifies the specific individuals associated with the advertisements." *Id.* The court ordered: "[p]roduction shall, therefore, be undertaken." *Id.* In another request, Capital One sought "any and all documents demonstrating payment or transfer of funds from CCCA, or its employees, agents, or affiliates, to any defendant in the lawsuit, including employees, agents, and affiliates." *Id.* at *11. The court held that "[t]he request specifies the transfers

that Capital One is interested in, and is not, therefore, overbroad." *Id.* Plaintiffs' request in this case is far more specific and narrowly tailored than the request in *Capital One.* Plaintiffs' request "identifies the specific individuals" Plaintiffs are interested in obtaining emails from, the specific subject matter of the emails, and a short time-frame for the request.

The final objection is unjustified because, as explained in detail above, this is not an adequate objection to discovery. Plaintiffs' request seeks relevant information about Defendants' legislative prayer practice.

C. **Request #3: All emails between the Carroll County Commissioners, including emails from one Commissioner to another, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2011 until 2012.**

    i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth in detail above and *supra,* at B.

D. **Request #4: All emails between the Carroll County Commissioners, including emails from one Commissioner to another, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2011 until 2013.**

    i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above and, *supra,* at B.

E. **Request #5: All emails between the Carroll County Commissioners, including emails from one Commissioner to another, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2013 until present.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above and, *supra,* at B.

F. **Request #6: All emails or letters sent by members of the public to the Carroll County Commissioners, including emails to any one Commissioner, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2010 until present.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise baseless for the reasons set forth, *supra,* at B. In addition, such documents are reasonably calculated to lead to relevant evidence regarding (but not limited to): 1) the County's decision to adopt and maintain a legislative prayer practice and 2) the divisiveness and public nature of the County's prayer practice. These are material facts pursuant to the *Marsh-Galloway* "fact-sensitive" analysis. (See Plaintiffs' Memorandum of Law in Support of Summary Judgment).

G. **Request #7: All emails or letters sent by a Carroll County Commissioner, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2010 until 2012.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above. In addition, such documents are reasonably calculated to lead to relevant evidence regarding (but not limited to): 1) the County's decision to adopt and maintain a legislative prayer practice; 2) the divisiveness and public nature of the County's prayer practice; 3) the degree to which the Commissioners are exploiting the legislative prayer opportunity to advance and/or proselytize Christianity; and 4) the County's treatment of non-participants and supporters of their prayers. These are material facts pursuant to the *Marsh-Galloway* "fact-sensitive" analysis.

H. **Request #8: All emails or letters sent by a Carroll County Commissioner, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2012 until present.**

   i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above.

I. **Request #9: All emails or letters sent by, or received by, Commissioner Frasier, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2010 until present.**

   i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above.

J. **Request #10: All emails or letters sent by, or received by, Commissioner Rothschild, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2010 until present.**

   i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to

establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above.

K. **Request #11: All emails and other written communications between Commissioner Frazier and Michelle Jefferson from 2013 until present.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above.

L. **Request #12: All emails and other written communications between Commissioner Rothschild and Bruce Holstein from 2013 until present.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth, *supra*. In addition, this request seeks relevant information regarding the relationship between a Commissioner and a person who delivered a sectarian legislative prayer at the Board's meeting after the preliminary injunction was in place. It also seeks relevant impeachment evidence.

M. **Request #13: All emails and other written communications sent by or received by a Carroll County Commissioner or Commissioners, relating to, mentioning, or concerning, any of the Plaintiffs in this lawsuit, from 2012 until present.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to

establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, some such communications are protected by attorney- client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above.

N. **Request #14: All Documents and ESI in the Defendants' possession, custody or control, relating in any way to the American Humanist Association or "AHA," excluding documents that have already been filed with the court in this above-captioned lawsuit.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. Additionally, some such communications are protected by attorney-client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above. In addition, Defendants failed to produce a privilege log or produce any relevant non-privileged information. Their failure to justify the privilege beyond a boilerplate objection constitutes a waiver, *supra.*

O. **Request #15: All Documents and ESI relating to, mentioning, concerning, or regarding, the prayer delivered by Commissioner Fra[z]ier on March 27, 2014.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, some such communications are protected by attorney- client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above. In addition, Defendants failed to produce a privilege log or produce any relevant non-privileged

information. Their failure to justify the privilege beyond a boilerplate objection constitutes a waiver, *supra.*

P. **Request #16: All emails, Facebook messages and other written communications sent to Carroll County or any Commissioner or Commissioners relating to or concerning the prayer delivered by Commissioner Frazier on March 27, 2014.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above and also specifically, *supra*, at G.

Q. **Request #17: All emails, Facebook messages and other written communications sent to Carroll County or any Commissioner or Commissioners relating to or concerning prayer delivered at Board Meetings.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above and also specifically, *supra*, at G.

R. **Request #18: All Documents and ESI relating in any way to the delivery of sectarian prayers at Board Meetings.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, some such communications are protected by attorney-client privilege or work- product privilege under *Upjohn* and its Fourth Circuit progeny. Additionally, Defendants object on the grounds that this Request is overbroad, and

unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above. In addition, Defendants failed to produce a privilege log or produce any relevant non-privileged information. Their failure to justify the privilege beyond a boilerplate objection constitutes a waiver, *supra.*

S. **Request #19: Documents and ESI relating in any way to the delivery of prayers in Carroll County government buildings.**

i. RESPONSE: Insofar as any such documents would pertain to prayers other than legislative prayers, they are not relevant to establishing any material fact in this lawsuit. To the extent any such documents pertain to legislative prayers, for the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, some such communications are protected by attorney-client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Finally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above. In addition, Defendants failed to produce a privilege log or produce any relevant non-privileged information. Their failure to justify the privilege beyond a boilerplate objection constitutes a waiver, *supra.* Furthermore, as previously noted, the information sought in this request is relevant as examples of the Commissioners using their official positions to promote religion.

T. **Request #20: Documents and ESI relating in any way to prayers by Commissioner Fra[z]ier in Carroll County government buildings.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, some such communications are protected by attorney- client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Finally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above, and also specifically, *supra*, at S.

U. **Request #21: All Documents and ESI containing the text or transcript of any prayer delivered at any Carroll County Board Meeting.**

i. RESPONSE: All prayers are equally available to Plaintiffs and Defendants have previously provided their list of prayer texts to the Court. Consequently, there is no need for discovery to establish those facts, and searching for and reproducing many years' worth of prayers would be an unwarranted burden. This request therefore cannot be relevant to establishing any material fact, and is therefore beyond the proper scope of discovery. *See* FED. R. CIV. P. 26(b)(1). Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above. In addition, this request specifically seeks documents in *Defendants' possession* containing "the text or transcript" of any prayer delivered at Board Meetings. It is no defense that Plaintiffs have access to some of the prayers delivered at the meetings via the County's website videos. For one thing, many of the prayers are cut-off in the videos posted on Defendants' website. In any event, it is no defense that certain items may already be in the Plaintiffs' possession. *See Romanyk*, 2013 U.S. Dist. LEXIS 89485, at *15-17 ("Even if Defendant does have Plaintiff's invoices and receipts showing travel expenses, Plaintiff is still required to provide the information . . . Therefore, Plaintiff's arguments that Interrogatory No. 2 is unduly burdensome and that it does not have to provide information already known to Defendant are without merit."); *Clean Earth*, 2011 U.S. Dist. LEXIS 118146, at *20-21 ("The fact that the information sought is already known to the interrogator is not a valid ground for objection"); 8 Charles Alan Wright et. al., Federal Practice and Procedure §2014 (3d ed. 1998) (stating that party seeking discovery can ask for matters already within its knowledge "since the purpose of the discovery rules is not only to elicit unknown facts, but also to narrow and define the issues, and for this purpose it is often necessary to use discovery about known facts").

V. **Request #22: All Documents and ESI containing any notations, edits, deletions, additions, or suggestions to any prayer or prayers.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, some such communications are protected by attorney-client privilege or work- product privilege under *Upjohn* and its Fourth Circuit progeny. Finally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above. In addition, Defendants failed to produce a privilege log or produce any relevant non-privileged information. Their failure to justify the privilege beyond a boilerplate objection constitutes a waiver, *supra.*

W. **Request #23: All Documents and ESI in the Defendants' possession, custody or control, relating in any way to the letters or emails sent to the Defendants from the American Humanist Association or "AHA" or AHA's attorneys.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, some such communications are protected by attorney- client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Finally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above. In addition, Defendants failed to produce a privilege log or produce any relevant non-privileged information. Their failure to justify the privilege beyond a boilerplate objection constitutes a waiver, *supra.*

X. **Request #24: All Documents and ESI relating in any way to any complaints, whether formal or informal, regarding prayer at Board Meetings.**

i. RESPONSE: Plaintiffs generally lack standing to assert the interests of third parties not before the Court. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992). The issue in this litigation is whether Carroll County's legislative prayer custom violates Plaintiffs' rights under the Establishment Clause. This request is therefore not relevant to establishing any material fact in this litigation, and so is beyond the proper scope of

discovery. *See* FED. R. CIV. P. 26(b)(1). Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above. In addition, this request *does not* seek to "assert the interests of third parties not before the Court." It merely seeks information regarding the legislative prayer practice. *See D.J.'s Diamond*, 2013 U.S. Dist. LEXIS 46730, at *27-28 (requiring production of documents which sought "emails sent and received by Defendant Allen relating to the subject matter of this litigation."). It is relevant to Plaintiffs' claims and Defendants' defenses (particularly *Monell*) if Defendants were warned that their prayer practice was unconstitutional and continued to engage in such unconstitutional activity anyway. It is also relevant to determine the degree to which the prayer practice is deemed a public matter rather than an "internal" one for the benefit of the Board, which is a material fact under the *Marsh-Galloway* test.

Rule 34 requires a party to produce those documents that are within the party's "possession, custody, or control." FED. R. CIV. P. 34(a)(1). Even where a party does not have legal ownership or physical possession of the documents at issue, "[d]ocuments are considered to be under a party's control when that party has the right, authority, or practical ability to obtain the documents from a non-party." *Goodman v. Praxair Servs., Inc*., 632 F. Supp. 2d 494, 515 (D. Md. 2009).

Y. **Request #25: All Documents and ESI relating in any way to support, whether formal or informal, regarding prayer at Board Meetings.**

i. RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

All of these objections are waived and are otherwise unfounded for the reasons set forth above, and for the reasons specifically set forth in X, *supra.*

IV. DISCOVERY SANCTIONS ARE WARRANTED

Defendants' deliberate refusal to respond to legitimate discovery requests and use boilerplate objections instead not only renders those objections waived, *supra*, but is also sanctionable. *See Webb*, 2012 U.S. Dist. LEXIS 104953, at *7. For instance, in *Webb*, this Court held that the defendant's use of boilerplate objections was "particularly disturbing," as the law is so well-settled as to the requirement of particularity and specificity in discovery responses. Accordingly, the Court ordered the defendant "to show cause within fourteen (14) days why it should not be sanctioned pursuant to Fed. R. Civ. P. 26(g)(3)."

CONCLUSION

In view of the above, Plaintiffs respectfully request that Defendants produce every document sought in Plaintiffs' Request for Documents.

Respectfully submitted,
June 23, 2014

/s/ Monica L. Miller
MONICA L. MILLER, Esq.
American Humanist Association
1777 T Street N.W., Washington, D.C, 20009
202-238-9088, mmiller@americanhumanist.org
facsimile (202) 238-9003
CA Bar: 288343 / DC Bar: 101625

DAVID A. NIOSE
Law Offices of David Niose
348 Lunenburg Street, Suite 202, Fitchburg, MA 01420
978-343-0800, dniose@nioselaw.com

STEPHEN R PICKARD
Stephen R Pickard PC
115 Oronoco St, Alexandria, VA 22314
703-836-3505, srpickard@aol.com

DANA DEMBROW
1226 Canterbury Dr., Sykesville, MD 21784
410-795-1502, DanaDembrow@aol.com

ATTORNEYS FOR PLAINTIFFS

PROPOSED ORDER

Upon consideration of Plaintiffs' Motion to Compel, it is ORDERED that Plaintiffs' Motion to Compel be granted, and it is FURTHER ORDERED that Defendants provide all of the documents requested pursuant to Plaintiffs' Document Request to Plaintiffs within _____ days of this Order.

_____

this _____ day of _____, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has served the following counsel of record with the foregoing Motion to Compel via email, to the following on this day of June 23, 2014:

David C Gibbs, III, Kenneth Alan Klukowski, Daniel Lewis Cox
dcox@coxlawcenter.com, bweller@gibbsfirm.com,
dgibbs@gibbsfirm.com, kenklukowski@gmail.com

June 23, 2014

/s/ Monica L. Miller

MONICA L. MILLER, Esq.
American Humanist Association
1777 T Street N.W., Washington, D.C, 20009
202-238-9088, mmiller@americanhumanist.org
facsimile (202) 238-9003
CA Bar: 288343 / DC Bar: 101625

DAVID A. NIOSE
Law Offices of David Niose
348 Lunenburg Street, Suite 202, Fitchburg, MA 01420
978-343-0800, dniose@nioselaw.com

STEPHEN R PICKARD
Stephen R Pickard PC
115 Oronoco St, Alexandria, VA 22314
703-836-3505, srpickard@aol.com

DANA DEMBROW
1226 Canterbury Dr., Sykesville, MD 21784
410-795-1502, DanaDembrow@aol.com

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION
Case No.: 1:13-cv-1312-WDQ

BRUCE A. HAKE, et al.	)	
	)	DEFENDANT'S
Plaintiffs,	)	RESPONSE TO PLAINTIFFS'
	)	FIRST REQUEST FOR
v.	)	PRODUCTION
	)	
CARROLL COUNTY, MARYLAND, by its BOARD of COUNTY COMMISSIONERS,	)	
	)	
Defendant.	)	

1. All Documents and ESI relating to, mentioning, concerning, or regarding the decision to include prayers at Carroll County Board Meetings.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

2. All emails between the Carroll County Commissioners, including emails from one Commissioner to another, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2009 until 2011.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

3. All emails between the Carroll County Commissioners, including emails from one Commissioner to another, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2011 until 2012.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

4. All emails between the Carroll County Commissioners, including emails from one Commissioner to another, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2011 until 2013.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly

burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

5. All emails between the Carroll County Commissioners, including emails from one Commissioner to another, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2013 until present.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

6. All emails or letters sent by members of the public to the Carroll County Commissioners, including emails to any one Commissioner, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2010 until present.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

7. All emails or letters sent by a Carroll County Commissioner, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2010 until 2012.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

8. All emails or letters sent by a Carroll County Commissioner, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2012 until present.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

9. All emails or letters sent by, or received by, Commissioner Frasier, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2010 until present.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

10. All emails or letters sent by, or received by, Commissioner Rothschild, relating to, mentioning, or concerning prayer or prayers, or "Jesus Christ" or "Jesus" or "Christ" or "Savior," from 2010 until present.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

11. All emails and other written communications between Commissioner Frazier and Michelle Jefferson from 2013 until present.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

12. All emails and other written communications between Commissioner Rothschild and Bruce Holstein from 2013 until present.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

13. All emails and other written communications sent by or received by a Carroll County Commissioner or Commissioners, relating to, mentioning, or concerning, any of the Plaintiffs in this lawsuit, from 2012 until present.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, some such communications are protected by attorney-client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

14. All Documents and ESI in the Defendants' possession, custody or control, relating in any way to the American Humanist Association or "AHA," excluding documents that have already been filed with the court in this above-captioned lawsuit.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. Additionally, some such communications are protected by attorney-client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

15. All Documents and ESI relating to, mentioning, concerning, or regarding, the prayer delivered by Commissioner Frasier on March 27, 2014.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, some such communications are protected by attorney-client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

16. All emails, Facebook messages and other written communications sent to Carroll County or any Commissioner or Commissiners relating to or concerning the prayer delivered by Commmissioner Frazier on March 27, 2014.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

17. All emails, Facebook messages and other written communications sent to Carroll County or any Commissioner or Commissiners relating to or concerning prayer delivered at Board Meetings.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

18. All Documents and ESI relating in any way to the delivery of sectarian prayers at Board Meetings.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, some such communications are protected by attorney-client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

19. Documents and ESI relating in any way to the delivery of prayers in Carroll County government buildings.

RESPONSE: Insofar as any such documents would pertain to prayers other than legislative prayers, they are not relevant to establishing any material fact in this lawsuit. To the extent any such documents pertain to legislative prayers, for the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, some such communications are protected by attorney-client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Finally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

20. Documents and ESI relating in any way to prayers by Commissioner Frasier in Carroll County government buildings.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, some such communications are protected by attorney-client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Finally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and

Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

21. All Documents and ESI containing the text or transcript of any prayer delivered at any Carroll County Board Meeting.

RESPONSE: All prayers are equally available to Plaintiffs and Defendants have previously provided their list of prayer texts to the Court. Consequently, there is no need for discovery to establish those facts, and searching for and reproducing many years' worth of prayers would be an unwarranted burden. This request therefore cannot be relevant to establishing any material fact, and is therefore beyond the proper scope of discovery. *See* FED. R. CIV. P. 26(b)(1). Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

22. All Documents and ESI containing any notations, edits, deletions, additions, or suggestions to any prayer or prayers.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is barred by legislative immunity. Additionally, some such communications are protected by attorney-client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Finally, Defendants object on the

grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

23. All Documents and ESI in the Defendants' possession, custody or control, relating in any way to the letters or emails sent to the Defendants from the American Humanist Association or AHA" or AHA's attorneys.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, some such communications are protected by attorney-client privilege or work-product privilege under *Upjohn* and its Fourth Circuit progeny. Finally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

24. All Documents and ESI relating in any way to any complaints, whether formal or informal, regarding prayer at Board Meetings.

RESPONSE: Plaintiffs generally lack standing to assert the interests of third parties not before the Court. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992). The issue in this litigation is whether Carroll County's legislative prayer custom violates Plaintiffs' rights under the Establishment Clause. This request is therefore not relevant to establishing any material fact

in this litigation, and so is beyond the proper scope of discovery. *See* FED. R. CIV. P. 26(b)(1). Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

25. All Documents and ESI relating in any way to support, whether formal or informal, regarding prayer at Board Meetings.

RESPONSE: For the reasons set forth above and in Defendants' Memorandum Supporting Defendants' Motion for Summary Judgment, this request is not relevant to establishing any material fact justiciable under 42 U.S.C. § 1983 under *Monell*. In the alternative, it is also barred by legislative immunity. Additionally, Defendants object on the grounds that this Request is overbroad, and unduly burdensome; and Plaintiffs have asserted in their Cross Motion for Summary Judgment that they do not need these discovery responses.

Dated: June 16, 2014

Respectfully Submitted,

/s/ David C. Gibbs III

David C. Gibbs III
D.C. Bar No.: 448476
Gibbs Law Firm, P.A.
President, National Center for
Life and Liberty
PO Box 270548
Flower Mound, TX 75027
Ph: 727-362-3700
Fax: 727-398-3907
dgibbs@gibbsfirm.com

/s/ Daniel L. Cox
Daniel L. Cox - Local MD Counsel
Maryland Bar No.: 28245
The Cox Law Center, LLC
P.O. Box 545
7 East Main Street
Emmitsburg, MD 21727
Ph: (301) 447-2600
Fax: (301) 447-1900
dcox@coxlawcenter.com

/s/Kenneth A. Klukowski
Indiana Bar No. 28272-06
Liberty University School of Law
1971 University Blvd.
Lynchburg, Virginia 24502
Phone (434) 592-5300
Facsimile (434) 592-5400
kklukowski@liberty.edu
Counsel for Defendants