

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

COMMON CAUSE FLORIDA, et al.,

Plaintiffs,

v.

Case No. 4:22-cv-109-AW-MAF

**CORD BYRD, in his official capacity as
Florida Secretary of State,**

Defendant.

_____ /

ORDER GRANTING MOTION TO COMPEL

Plaintiffs moved to compel compliance with a deposition subpoena issued to nonparty Thomas Bryan—a redistricting consultant. ECF No. 162-1.¹ Mr. Bryan did not move to quash the subpoena, but he opposes Plaintiffs’ motion because, in his view, the legislative privilege covers any questions Plaintiffs may ask. ECF No. 163 at 7. We directed Plaintiffs to reply to Mr. Bryan’s response, ECF No. 173, and they did, ECF No. 175.

This is not the first time we have been confronted with the issue of legislative privilege. Plaintiffs earlier sought to depose members of the Governor’s staff and Florida Legislators. When those nonparties moved to quash asserting legislative

¹ Plaintiffs originally filed the motion in the United States District Court for the Eastern District of Virginia, which transferred the motion to this court under Rule 45(f). *See Common Cause Florida et al. v. Byrd*, No. 3:23-mc-6 at ECF No. 5 (E.D. Va.).

privilege, we granted their motions—concluding that they satisfied their burden of showing Plaintiffs only sought privileged testimony. ECF No. 157.

We incorporate our earlier discussion of legislative privilege into this order. *See id.* at 2-4. We conclude here, though, that Mr. Bryan has not shown that we should bar his deposition altogether because of legislative privilege. *See Republic of Ecuador v. Hinchee*, 741 F.3d 1185, 1189 (11th Cir. 2013) (noting that a party invoking a privilege in response to motion to compel compliance with a subpoena bears the burden of showing it applies). In other words, we are unpersuaded that legislative privilege shields him from all questions Plaintiffs intend to ask him.

The motion to compel (ECF No. 162-1) is GRANTED. Mr. Bryan must sit for his deposition. Consistent with Plaintiffs' agreement, the deposition is limited to four hours. *See* ECF No. 175 at 4. Legislative privilege may be invoked in response to individual questions. The parties must cooperate with respect to scheduling.

SO ORDERED on August 23, 2023.

s/ Allen Winsor
United States District Judge
for the Three-Judge Court