

## **Memo of Record Regarding DOJ Action Against Eagle Forum of Alabama**

From: Margaret S. Clarke, General Counsel, Eagle Forum of Alabama

To: Eagle Forum of Alabama 501(c) (4) board members

Date: September 2, 2022

On August 10<sup>th</sup>, the Department of Justice (DOJ), as an intervenor party, served a subpoena on Eagle Forum of Alabama (EFA), a non-party, for the production of all information involving details of EFA's legislative activities since 2017 related to The Vulnerable Child Compassion and Protection Law (VCAP). ***This is an unprecedented request by the United States Department of Justice to a non-party 501(c)(4) private social welfare organization. This should cause every single advocacy group or individual in America engaged in the legislative process to pause and consider the potential ramifications if any part of this subpoena is allowed to stand.***

EFA is a non-profit Alabama social welfare advocacy organization operating under the 501(c)(4) of the Internal Revenue Code for the benefit of the citizens in the state of Alabama. By definition, a 501(c)(4) social welfare advocacy organization is legally authorized and expected to fully participate in the legislative processes through education and lobbying efforts.

EFA has been engaged in the legislative process in Alabama for over 45 years. It supports strong families, constitutional liberty, personal responsibility, the sanctity of life, and the principle of free government through the education of citizens and government officials including legislators, grassroots public policy initiatives and advocacy of legislative reform. In over 45 years of policy and legislative reform efforts, to my knowledge, neither EFA nor any of its sister-state organizations, nor the national Eagle Forum working in Washington have ever been subpoenaed pertaining to their legislative reform efforts. This would completely undermine the entire process by threatening advocates, pro or con, with record production.

The Alabama Legislature debated, amended and passed VCAP after extensive consideration over three successive legislative sessions beginning in 2020. It included seven public hearings with expert testimony from all sides. Passionate legislative campaigns were conducted by both proponent and opponent advocacy groups and individuals. Pro and con advocates participated and were allowed an equal number of witnesses in every hearing. In addition, there was extensive floor debate before final passage by large majorities in both chambers. The Alabama Legislature passed the VCAP into law. It was signed by Governor Kay Ivey, and became effective May 8, 2022.

The Constitutionality of VCAP is being challenged in court. EFA is not a party to the lawsuit. The legality of VCAP is measured by the U.S. Constitution. By rules of evidence, the intent of the law is determined by its content not by what an individual intended, including an individual legislator, much less any advocacy group, pro or con. Now the DOJ is singling out EFA for its advocacy because it supported VCAP. This subpoena, if enforced, will have the effect of punishing Alabama private citizens and organizations for exercising their Constitutional right to advocate political positions that might be opposed by the current administration in Washington.

The Rules of Civil Procedure require subpoenas be issued in good-faith and only request discovery relevant to the issues and in proportion to the needs of the case. The subpoena in question asks for the production of all documents by EFA , emails, social media posts, summaries, analysis, fact sheets, talking points, drafts of legislation including those from third parties, policies, goals, strategies, initiatives, polling, public opinion data, minutes, records, presentations, interviews, mass mailouts, emails, videos and all communications with government and non-government organizations or individuals including member legislators, employees, the Attorney General, lobbyists, consultants, etc., from 2017 which detail EFA's legislative activities related to the VCAP.

### **Summary**

On its face, this subpoena from an intervenor party to a non-party appears to be an overreach of power without legitimate need or relevancy to the underlying lawsuit. This is potentially a case of political harassment. The voluminous requests would be a massive and undue burden on EFA which is comprised almost entirely of volunteer Alabama citizens. This is an unwarranted and oppressive burden by the United States government to place on those who are exercising their constitutional rights to political free speech and conscience, freedom of association, and freedom to petition the government. ***If this subpoena is enforced it will have an unprecedented chilling effect on historically protected Constitutional rights and legislative advocacy in Alabama and possibly around America.***

John Mark Graham, Esq., with Phelps Dunbar, LLP, will file a motion to Quash on behalf of EFA on Wednesday, September 7, 2022.