

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

O. John Benisek, et al.,

Plaintiffs,

v.

Linda Lamone, et al.,

Defendants.

Case No. 13-cv-3233

Three-Judge Court

STIPULATED ORDER REGARDING CONFIDENTIALITY OF DISCOVERY
MATERIAL

Maryland Senate President Thomas V. Mike Miller, Maryland House of Delegates Speaker Michael E. Busch, and Senator Richard S. Madaleno (hereafter the “non-party legislators”)—non-parties to this litigation—Plaintiffs O. John Benisek, et al., (hereafter “Plaintiffs”) and Defendants Linda Lamone, et al. (hereafter “Defendants”) in case 13-cv-3233 (the “Redistricting Litigation”) pending in the U.S. District Court for the District of Maryland hereby stipulate to and request the Court enter the following Protective Order (“Protective Order” or “Order”).

Accordingly, it is this 31 day of March, 2017, by the United States District Court for the District of Maryland, **ORDERED**:

1. PURPOSE

Disclosure and discovery activity in the Redistricting Litigation may involve production of confidential, proprietary, and/or sensitive information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation are warranted. Plaintiffs, Defendants, and the non-party legislators acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery requests and that the protections it affords extends only to the information or items that are entitled to a protective order under Federal

Rule of Civil Procedure 26(c). Plaintiffs, Defendants, and the non-party legislators further acknowledge that the Protective Order is subject to Local Rule 105.11, which sets forth the procedures and standards that are applied when a party seeks permission to file material under seal, and that all documents designated as "Confidential" under this Order must be filed under seal in keeping with Local Rule 105.11.

This Protective Order shall govern the production, exchange, and use of any documents (including email communications, maps, and data files), information, or other discovery produced after the date of this Order by the non-party legislators in response to the Subpoenas dated December 19 and 23, 2016, which were served by Plaintiffs in the Redistricting Litigation. This Protective Order shall not govern any other production, exchange, and/or use of any documents (including email communications, maps, and data files), information, or other discovery requested, produced, or exchanged by any party or non-party other than the non-party legislators.

2. DEFINITIONS

2.1 Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

2.2 CONFIDENTIAL Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible items that qualify for protection under Federal Rule of Civil Procedure 26(c) and designated as CONFIDENTIAL by the non-party legislators pursuant to this Protective Order, including information copied or extracted from Confidential Information, all copies, excerpts, summaries, or compilations of Confidential Information, and any testimony, conversations, or presentations by Plaintiffs or Defendants or their Counsel that might reveal Confidential Information. Disclosure of such information or items would create a substantial risk of serious harm, including, but not limited to competitive harm, the diminution of effective

representation by members of the General Assembly, and a chilling effect on communications between the non-party legislators and their constituents and stakeholders.

2.3 Counsel (without qualifier): All Counsel to Plaintiffs, Defendants, and non-party legislators as well as their support staff.

2.4 Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, but not limited to, testimony, transcripts, and tangible items), that are produced or generated in disclosures or responses to discovery requests in this matter.

2.5 Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.6 Party: Any party to this action, including all of its officers, directors, employees, consultants (including, but not limited to, electronic discovery and trial graphics vendors), retained experts, and Counsel (and their support staffs).

2.7 Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.8 Protected Material: Any Disclosure or Discovery Material that is designated as CONFIDENTIAL by the non-party legislators.

2.9 Receiving Party: A Party that receives Disclosure or Discovery Material from the non-party legislators.

2.10 Subpoena: The subpoenas dated December 19 and 23, 2016 served on the non-party legislators by Plaintiffs, copies of which are attached hereto.

3. SCOPE

The protections conferred by this Protective Order do not apply to the following

information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party, or becomes part of the public domain after its disclosure to a Receiving Party as a result of dissemination not involving a violation of this Order, including becoming part of the public record through trial or otherwise; (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the non-party legislators; or (c) any information obtained by Plaintiffs independently of any disclosure of Confidential Information by the non-party legislators.

4. DURATION

Even after final disposition of the Redistricting Litigation, the confidentiality obligations imposed by this Protective Order shall remain in effect until the non-party legislators agree otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims in the Redistricting Litigation, with or without prejudice and conclusion of any subsequent alternative dispute resolution procedures; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of the Redistricting Litigation, including the time limits for filing any motions or applications for extension of time pursuant to applicable law. This Court shall retain jurisdiction to hear and resolve any disputes arising out of this Order, whether during or after the final disposition of the Redistricting Litigation.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. The non-party legislators must take care to limit any confidentiality designation to specific material

that qualifies under the appropriate standards under the Federal Rules of Civil Procedure. To the extent it is practical to do so, the non-party legislators must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. If it comes to the non-party legislators' attention that information or items that it has designated for protection do not qualify for protection, the non-party legislators must promptly notify all Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced. Designation in conformity with this Order requires:

(a) For information in documentary form, that the non-party legislators affix the legend CONFIDENTIAL to each page that contains Protected Material, or, if the Plaintiffs' counsel agree at the time, that the material be clearly designated as CONFIDENTIAL in an accompanying oral or written communication at the time it is first disclosed, which designation, if oral, must thereafter be confirmed in writing. If only a portion or portions of the material on a page qualifies for protection, the non-party legislators also must clearly identify the protected portion(s) (e.g., by making markings in the margins).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as CONFIDENTIAL does not, standing alone, waive the non-party legislators' right to secure protection under this Order for such material. Upon timely correction of a designation, a Receiving Party must make reasonable efforts to assure that the

material is treated in accordance with the provisions of this Order including, but not limited to, returning or securely destroying all material or testimony that was not designated properly, in exchange for properly designated material.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time ("Challenging Party"). Unless a prompt challenge to the non-party legislators' confidentiality designation is necessary to avoid foreseeable substantial unfairness, unwarranted economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice to the non-party legislators of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this paragraph of the Protective Order. The Challenging Party and the non-party legislators shall attempt to resolve each challenge in good faith and must begin the process by conferring directly within 14 days of the date of service of notice. The Challenging Party must explain the basis for its challenge and must give the non-party legislators an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet-and-confer process first or establishes that the non-party legislators are unwilling to participate in the meet-and-confer process in a timely manner.

6.3 Judicial Intervention. If a challenge cannot be resolved without court intervention, the Challenging Party shall file and serve a motion challenging confidentiality in the U.S. District Court for the District of Maryland according to the Federal Rules of Civil Procedure and the Local Rules for the District of Maryland. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet-and-confer requirements imposed in the preceding paragraph. In any court proceeding regarding the propriety of the designation of CONFIDENTIAL material, the burden of proof with respect to the propriety or correctness of the designation of information as CONFIDENTIAL shall rest upon the non-party legislators. Until the court rules on the challenge, all parties shall continue to treat the material in question as Protected Material and afford it the level of protection to which it is entitled under this Order.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Limitation of Use and Disclosure. A Receiving Party may use CONFIDENTIAL Information only for the purpose of prosecuting, defending, or attempting to settle the Redistricting Litigation, and not for any other purpose whatsoever, including without limitation any other litigation or administrative or ethics-related complaint, in relation to any political activities, or for any other professional or personal purpose or function. Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order. When the Redistricting Litigation has been terminated, a Receiving Party must comply with the provisions of section 14 below (FINAL DISPOSITION).

7.2 Disclosure of Protected Materials. Unless otherwise ordered by the U.S.

District Court for the District of Maryland or permitted in writing by the non-party legislators, a Receiving Party may only disclose Protected Materials or an item designated CONFIDENTIAL to:

- (a) The Parties' Counsel in the Redistricting Litigation;
- (b) Experts of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the Agreement To Be Bound by the Protective Order included here as Exhibit A;
- (c) The Court and its personnel (including, for purposes of clarity, any appellate court and its personnel hearing any appeal or petition for certiorari in this action);
- (d) A duly appointed arbitrator, mediator, or other alternative dispute resolution professional and his/her personnel, employed in connection with the Redistricting Litigation;
- (e) Court reporters and their staffs (including, for purposes of clarity, any officer designated to take a deposition);
- (f) Professional trial consultants who have signed the Agreement To Be Bound by the Protective Order included here as Exhibit A;
- (g) Professional Vendors to whom disclosure is reasonably necessary for the Redistricting Litigation and for whom an authorized representative has signed the Agreement To Be Bound by the Protective Order included here as Exhibit A;
- (h) Witnesses in the Redistricting Litigation to whom disclosure is reasonably necessary and who have signed the Agreement To Be Bound by the Protective Order included here as Exhibit A;
- (i) Non-parties, who or which have been, as of February 13, 2017, served with a subpoena in this action, including all of his or its officers, directors, and employees to whom

disclosure is reasonably necessary and who have signed the Agreement To Be Bound by the Protective Order included here as Exhibit A; and

(j) Any other person with the written prior consent of the non-party legislators.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION

If a Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in the Redistricting Litigation as CONFIDENTIAL, that Party must promptly notify in writing the non-party legislators, promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order; and cooperate with respect to all reasonable procedures sought to be pursued by the non-party legislators in defense of the Protected Material that may be affected. If the non-party legislators timely seek a protective order, the Party served with the subpoena or court order shall not produce any information designated in the Redistricting Litigation as CONFIDENTIAL before a determination by the court from which the subpoena or order issued, unless the Party has obtained the non-party legislators' written permission.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the non-party legislators of the unauthorized disclosures, (b) immediately take all reasonable measures to retrieve the improperly disclosed Protected Material and to ensure that no further unauthorized disclosure and/or use thereof is made, (c) inform the person or persons to whom unauthorized disclosures were made of

all the terms of this Order, and (d) request such person or persons to execute the Agreement To Be Bound by the Protective Order included here as Exhibit A. Unauthorized or inadvertent disclosure does not change the status of the Protected Material nor waive the right to hold the material that has been improperly disclosed as Protected Material. Unauthorized or inadvertent disclosure of Protected Material may expose the Party responsible for having made such disclosure to sanctions in this Court and/or damages to the Producing Party.

10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

If information is inadvertently produced in discovery that is subject to a claim of attorney-client privilege or of protection as trial preparation or work product material ("privilege"), the non-party legislators may notify the Receiving Party of such; inadvertent production or disclosure does not operate as a waiver of any privilege associated with any such production or disclosure. After being notified that information subject to a claim of privilege was inadvertently produced, a Receiving Party: (1) must promptly return or destroy the specified information and any copies it has, (2) must not use or disclose the information until the claim is resolved, and (3) must take reasonable steps to retrieve the information if the Party disclosed it before being notified. The matter shall be resolved in accordance with the Federal Rules of Civil Procedure and governing law pertaining to the privilege(s) claimed.

11. MISCELLANEOUS

11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the U.S. District Court for the District of Maryland in the future.

11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, neither the Plaintiffs nor the non-party legislators waive any right they otherwise

would have to object to disclosing or producing any information or item on grounds not addressed in this Protective Order.

11.3 No Restrictions on Independent Information Gathering and Disclosure.

Nothing in this Protective Order prevents any Party from collecting, using, disclosing, or reporting information obtained independently of any Disclosure or Discovery Material designated as CONFIDENTIAL in accordance with the terms of this Protective Order. For avoidance of doubt, no Party shall be permitted to collect, use, disclose or report information that is derived, directly or indirectly, from any Disclosure or Discovery Material designated as CONFIDENTIAL by the non-party legislators in accordance with the terms of this Protective Order; any such collection, use, or disclosure must be truly independent from CONFIDENTIAL materials produced by the non-party legislators during discovery.

11.4 Any violation of this Order shall constitute a violation of an order of the Court and shall be punishable as such.

12. FILING PROTECTED MATERIAL

If a Party wishes to file, in the Redistricting Litigation or in this Court in connection with proceedings related to this Order, a document that has been designated CONFIDENTIAL by the non-party legislators, or if a Party wishes to refer in a court filing to information so designated by the non-party legislators, the submitting Party must file and serve the document, or the filing that refers to the document, under seal in an envelope marked CONFIDENTIAL, must notify the non-party legislators of such filing on the same day as the filing, and must simultaneously submit a motion and accompanying order pursuant to Local Rule 105.11.

13. FINAL DISPOSITION

Within 60 days after the final disposition of the Redistricting Litigation, as defined in

section 4, each Receiving Party must return all Protected Material to the Non-party legislators to destroy such material or to the Clerk of the U.S. District Court for the District of Maryland to return to the non-party legislators or destroy any Protected Material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the non-party legislators by the 60-day deadline that (1) certifies that all the Protected Material has been returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial transcripts, deposition transcripts, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

So Ordered.

Dated: March 31, 2017



United States District Judge

WE SO MOVE and agree to abide by the terms of this Order

Dated: March 27, 2017

/s/ Sarah W. Rice

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Respectfully submitted,

/s/ Stephen M. Medlock

*(signed by Sarah W. Rice with permission
of Stephen M. Medlock)*

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EXHIBIT A

AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the District of Maryland on _____ in the case of *O. John Benisek, et al. v. Linda Lamone, et al.*, No. 13-3233. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Maryland for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____