IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

O. JOHN BENISEK, *et al.*,	*	
Plaintiffs,	*	
v.	*	Case No. 13-cv-3233
LINDA H. LAMONE, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * * * * * * * * *

MOTION FOR PROTECTIVE ORDER AND TO QUASH NON-PARTY DEPOSITION SUBPOENAS SERVED ON DELEGATE CURTIS S. ANDERSON AND SENATOR C. ANTHONY MUSE

For the reasons stated in the accompanying memorandum, Curtis S. Anderson, a Maryland State Delegate, and C. Anthony Muse, a Maryland State Senator, through counsel, move pursuant to Fed. R. Civ. P. 45(d)(3)(A) for a protective order and to quash the non-party deposition subpoenas served on them by the Plaintiffs, on the ground that their legislative privilege against compulsory evidentiary process protects them from being compelled to testify in this matter about their legislative activity.

A proposed order is attached.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

Dated: January 23, 2017

___/s/__Jennifer L. Katz_____
JENNIFER L. KATZ (Bar No. 28973)
SARAH W. RICE (Bar No. 29113)
Assistant Attorneys General

Office of the Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-7005 (tel.); (410) 576-6955 (fax)
jkatz@oag.state.md.us

KATHRYN M. ROWE (Bar No. 09853)
Assistant Attorney General
104 Legislative Services Building
90 State Circle
Annapolis, Maryland 21401
(410) 946-5600 (tel.); (410) 946-5601 (fax)
krowe@oag.state.md.us

Attorneys for Curt Anderson and C. Anthony Muse

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

O. JOHN BENISEK, *et al.*,	*	
Plaintiffs,	*	
v.	*	Case No. 13-cv-3233
LINDA H. LAMONE, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND TO QUASH NON-PARTY DEPOSITION SUBPOENAS SERVED ON DELEGATE CURTIS S. ANDERSON AND SENATOR C. ANTHONY MUSE

On January 11 and 19, 2017, Plaintiffs' counsel served subpoenas for deposition on Maryland State Delegate Curtis S. Anderson and Maryland State Senator C. Anthony Muse, respectively, two non-parties in this matter. *See* Ex. 2. Delegate Anderson and Senator Muse have legislative privilege against compulsory evidentiary process regarding any matter relevant to this litigation, and thus the subpoenas for their depositions should be quashed. Moreover, neither legislator served on the Governor's Redistricting Advisory Committee ("GRAC") in connection with the 2011 redistricting process, and neither legislator has been identified in discovery as being involved in the 2011 congressional redistricting process, other than voting for Senate Bill 1 in the case of Delegate Anderson or against Senate Bill 1in the case of Senator Muse (ECF No. 104 ¶ 37). That neither sitting legislator has any relevant testimony to provide in this case is another justification for

quashing the deposition subpoenas, which seek to compel these sitting legislators to testify during the brief three-month session of the Maryland General Assembly.[1]

BACKGROUND

The redrawing of the boundaries of congressional districts in Maryland is done by ordinary legislation, passed in the ordinary manner, although it is developed and introduced by the Governor. For this reason, the Maryland Attorney General's Office has consistently advised that the bill specifying congressional districts, like most bills, may be petitioned to referendum. 46 *Opinions of the Attorney General* 90, 90-91 (1961). In fact, the law by which the congressional boundaries were drawn in 1961 was petitioned to referendum and rejected by the voters in 1962. *See* Laws of Maryland 1963 at 2251. The 2011 map at issue here was enacted as Chapter 1 during a special session of the General Assembly in 2011. That bill was also petitioned to referendum, but this time voters approved the redistricting plan in the 2012 general election.[2]

Governor O'Malley announced the formation of the Governor's Redistricting Advisory Committee for the 2011 redistricting process on July 4, 2011. The five-member committee was created to "hold public hearings, receive public comment, and draft a recommended plan for the State's legislative and congressional redistricting." Press

[1] *See* http://mgaleg.maryland.gov/Pubs-current/current-session-dates.pdf.

[2] The Maryland State Board of Elections website publishes election results. The 2012 election results for the referred question on the congressional plan, which was Question 5, can be found at www.elections.maryland.gov/elections/2012/results/general/gen_qresults_2012_4_00_1.html. The results show that 64.1 percent voted "For" the redistricting plan and 35.9 percent voted "Against."

Release, Office of the Governor, *O'Malley Announces Members of The Governor's Redistricting Advisory Committee* (July 4, 2011) *available at* http://www.pgpost.com/1.html (last accessed January 6, 2017). Neither Delegate Anderson nor Senator Muse was a member of the GRAC. Both Delegate Anderson and Senator Muse have been served with document subpoenas in this case seeking documents relating to 2011 congressional redistricting process. Delegate Anderson responded that he had no responsive documents in his possession, custody, or control. *See* Ex. 3, letter from S. Brantley to S. Medlock. Senator Muse provided responsive documents that have nothing to do with the subject matter of this case – alleged partisan gerrymandering – and instead relate to his opposition to Senate Bill 1 based on concerns about minority vote dilution. *See* Ex. 4, email from B. Calhoun to M. Stein and attachments. Not only are Senator Muse's concerns about minority vote dilution not relevant to the Plaintiffs' claim in this case, but issues relating to alleged minority vote dilution were litigated and fully resolved in *Fletcher v. Lamone*, 831 F. Supp. 2d 887 (D. Md. 2011), *aff'd*, 133 S. Ct. 29 (2012).

Given the broad scope of objective evidence the Plaintiffs have received in this case, including thousands of pages of non-privileged documents; 76 joint stipulations, including stipulations as to the existence of legislators' public statements, audio files of legislative proceedings, demographic and political data files; and draft maps considered by the GRAC, these deposition subpoenas should be quashed because they seek nothing more than to invade Delegate Anderson's and Senator Muse's subjective legislative motivations and intent in voting for or against the Plan or their speculation about others' legislative intent.

ARGUMENT

I. THE SUBJECTS OF THE SUBPOENAS HAVE A TESTIMONIAL PRIVILEGE PROTECTING THEM FROM COMPULSORY PROCESS AIMED AT DISCOVERING THEIR LEGISLATIVE MOTIVE AND INTENT.

Under Maryland law, as members of the General Assembly, legislators and their staff are protected from liability for or inquiry into their legislative activities by an absolute constitutional privilege contained in Maryland Declaration of Rights Article 10 and Maryland Constitution Article III, § 18. *Mandel v. O'Hara*, 320 Md. 103, 113 (1990); *Blondes v. State*, 16 Md. App. 165 (1972). This immunity applies to all acts that are legislative in nature. *Mandel*, 320 Md. at 106. "The policy is to free the officer from the necessity of submitting [the officer's] purposes, motives and beliefs to the uncertain appraisal of juries or even judges." *Id.* This immunity and the attendant legislative privilege is not qualified or conditional, but absolute. *Id.* at 107, 134.

Maryland legislators are also immune from suit arising from their legislative activities and protected from compulsion to testify about their legislative activities under federal law. *See Tenney v. Brandhove*, 341 U.S. 367, 372-76 (1951) (extending legislative immunity and legislative privilege to state legislators as an application of federal common law). In *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998), the Supreme Court highlighted the "venerable tradition" of protecting State legislators from liability for their legislative activities by application of an absolute immunity from suit. As the Court recognized, whether at the federal, state, or local level, "the exercise of legislative discretion should not be inhibited by judicial interference or distorted by the fear of personal liability." *Id.* at 52.

The Fourth Circuit treats a state legislator's absolute legislative immunity from suit and legislative privilege against compulsory evidentiary process as "parallel concept[s]." *E.E.O.C. v. Washington Suburban Sanitary Comm'n*, 631 F.3d 174, 180 (4th Cir. 2011) (hereinafter "*WSSC*"). This is because the legislative privilege "exists to safeguard . . . legislative immunity and to further encourage the republican values it promotes." *Id.* at 181. Legislative immunity's "practical import is difficult to overstate. As members of the most representative branch, legislators bear significant responsibility for many of our toughest decisions, from the content of the laws that will shape our society to the size, structure, and staffing of the executive and administrative bodies carrying them out." *Id.* at 181. *See also McCray v. Maryland Dept. of Transportation*, 741 F.3d 480, 485 (4th Cir. 2014); *Kensington Volunteer Fire Dep't, Inc. v. Montgomery Cty., Md.*, 684 F.3d 462, 470 (4th Cir. 2012).

"Absolute immunity enables legislators to be free, not only from 'the consequences of litigation's results, *but also from the burden of defending themselves.*'" *Id.* (quoting *Burtnick v. McLean*, 76 F.3d 611, 613 (4th Cir. 1996) (quoting *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967))) (emphasis added in *WSSC*). And "[b]ecause litigation's costs do not fall on named parties alone," the Fourth Circuit has explained that legislative "privilege applies whether or not the legislators themselves have been sued." *WSSC*, 631 F.3d at 181. Accordingly, in the Fourth Circuit, legislative privilege is treated as absolute, and where a party seeks "to compel information from legislative actors about their legislative activities, they would not need to comply." *Id.* (citing *Burtnick*, 76 F.3d at 613); *see also*

Burtnick, 76 F.3d at 613 (noting that the plaintiff would have to make a prima facie ADEA case without testimony from city council members unless they waived the privilege).

Delegate Anderson and Senator Muse, as sitting members of the General Assembly who voted on Senate Bill 1, are protected from a legislative privilege from being compelled to testify about their legislative motives in voting for or against Senate Bill 1, or from speculating about others' legislative motives or intent. In a precisely analogous cause of action challenging state legislation on the theory that it was unconstitutional under the First Amendment because it was enacted to retaliate against the plaintiffs for their engagement in certain political activities, the Fourth Circuit held that it was error for a trial court to admit the testimony of sixteen current and former legislators on the topic of their motivation in enacting the statute. *South Carolina Education Ass'n v. Campbell*, 883 F.2d 1251, 1260 (4th Cir. 1989). With regard to the compelled testimony of the legislators about "the content of their speeches and the statements made by colleagues in the legislative chamber"; "their motives in supporting or opposing various legislative actions"; and their "speculat[ion] about the motives of colleagues," the Fourth Circuit stated, at 1262:

> Such an inquiry is inimical to the independence of the legislative branch and inconsistent with the constitutional concept of separation of powers. Moreover, probing inquiries by federal courts into the motivations of legislatures by calling representatives to testify concerning their motivations and those of their colleagues will doubtlessly have a chilling effect on the legislative process.

The Supreme Court has never held that the legislative privilege should yield in a challenge to a redistricting law because of the nature of the constitutional claim. *Contrast United States v. Gillock*, 445 U.S. 360, 373 (1980) (privilege yields in criminal

prosecutions). And when discussing types of evidence that may shed light on whether an "invidious discriminatory purpose was a motiving factor" of a legislative act in the absence of objective direct and circumstantial evidence, the Court was careful to note that while there may be "some extraordinary instances" when legislators "might be called to the stand at trial to testify concerning the purpose of the official action, . . . *even then* such testimony frequently will be barred by privilege." *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 268 (1977) (emphasis added) (discussing methods of proof of intent in equal protection zoning case). *Id.* At the same time, the Court also pointed out that it "has recognized, ever since *Fletcher v. Peck*, 6 Cranch 87, 130-131, 3 L. Ed. 162 (1810), that judicial inquiries into legislative or executive motivation represent a substantial intrusion into the workings of other branches of government. Placing a decisionmaker on the stand is therefore 'usually to be avoided.'" 429 U.S. at 268 n.18.

Notably, this is not a case where the Plaintiffs must adduce evidence of subjective legislative motivation to prevail. Rather, the Plaintiffs seek to gather evidence of subjective intent when such evidence would be *insufficient* to prove their claim. (ECF No. 88 at 33-34.) This Court has held that plaintiffs must prove their cause of action through objective evidence of intent, not subjective evidence, thus making clear that this is not an "extraordinary instance" as contemplated in *Village of Arlington Heights*.

Moreover, it is unclear what possible relevant evidence Delegate Anderson or Senator Muse could provide, given that neither legislator was a member of the GRAC, and neither legislator has been identified through discovery in this case as having been involved in drawing the proposed map (*see* Ex. 5, Defs.' Resp. to Interrog. 6). Other than making a

handful of contemporaneous statements at the time the Plan was enacted over five years ago, these legislators were merely briefed on the Plan during a legislative session and voted for or against the Plan, *see* ECF No. 104 ¶¶ 35, 37.

Accordingly, to the extent this Court adopts and applies the five-factor test put forth by the Plaintiffs' in their motion to compel legislator testimony in this case, the test weighs strongly against compelling either State legislator to testify here. This five-factor "test examines: '(i) the relevance of the evidence sought to be protected; (ii) the availability of other evidence; (iii) the 'seriousness' of the litigation and the issues involved; (iv) the role of government in the litigation;' and (v) the purposes of the privilege." *Bethune-Hill v. Virginia State Bd. of Elections*, 114 F. Supp. 3d 323, 338 (E.D. Va. 2015) (involving allegations of racial gerrymandering in violation of the Equal Protection Clause) (quoting *Page v. Virginia State Bd. of Elections*, 15 F. Supp. 3d 657, 666 (E.D. Va. 2014) (same)).

As to relevancy, as discussed neither legislator was a member of the GRAC, and neither legislator has been identified in discovery as having any involvement in drafting the plan submitted by the Governor. Thus, to the extent subjective intent of those drafting the legislation even is relevant to the Plaintiffs' claims, these two legislators would have no relevant testimony to provide. Moreover, this Court has stated that the plaintiffs "must produce *objective* evidence" of specific intent, (ECF No. 88 at 33-34 (emphasis added)), a type of evidence that cannot be adduced through two legislators who voted for or against the Plan. Second, there is ample other relevant evidence available to the Plaintiffs in this case. The Plaintiffs have received through their numerous party and non-party discovery and public information act requests thousands of pages of documents, recordings of

legislator statements, transcripts of public hearings of the GRAC, electronic versions of maps, election and voter data, bill files, and draft maps considered by the GRAC.

This available evidence is consistent with the types of evidence the Supreme Court described in *Village of Arlington Heights*, circumstantial or direct, that a plaintiff could use to sufficiently show improper legislative motive. Examples of such evidence include the historical background of the legislation, the specific sequence of events leading up to the legislation, departures from the normal procedural process, substantive departures, "particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached." Additionally, the legislative history may be highly relevant, including "contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." 429 U.S. at 267-68. Notably, the Plaintiffs already have access to Delegate Anderson's and Senator Muse's contemporaneous public statements.

Finally, although constitutional challenge to a redistricting plan is no doubt a serious matter,[3] as the Supreme Court, the Fourth Circuit and numerous other courts have continuously emphasized, allowing litigants to subject legislators to compulsory process should only be allowed in the most extraordinary of circumstances. "Inquiries into congressional motives or purposes are a hazardous matter." *United States v. O'Brien*, 391

[3] Notably, the Plaintiffs waited to bring suit until nearly one year after the first election under the plan had taken place and did not bring claims involving motives or the intent of the legislature until they filed their second amended complaint in March, 2016. *Compare* ECF No. 1 at 3 *with* ECF No. 44. Therefore while serious, the Plaintiffs have not pressed their claims with any particular urgency.

U.S. 367, 383-84 (1968). Intrusion into the inner workings of a sister branch of government should be limited, and allowing depositions of individuals engaged in legislative activity after *Bogan v. Scott-Harris* would be a break with a consistent application in the Fourth Circuit of legislative privilege as an absolute testimonial privilege. Moreover, the Plaintiffs seek to depose the non-party legislators during the brief three-month session of the Maryland General Assembly, posing an even greater intrusion into the legislature's work.

CONCLUSION

For the reasons set forth above, this Court should enter a protective order and quash the non-party deposition subpoenas served on Curt Anderson and C. Anthony Muse.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

Dated: January 23, 2017

___/s/__Jennifer L. Katz_____
JENNIFER L. KATZ (Bar No. 28973)
SARAH W. RICE (Bar No. 29113)
Assistant Attorneys General
Office of the Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-7005 (tel.); (410) 576-6955 (fax)
jkatz@oag.state.md.us

KATHRYN M. ROWE (Bar No. 09853)
Assistant Attorney General
104 Legislative Services Building
90 State Circle
Annapolis, Maryland 21401
(410) 946-5600 (tel.); (410) 946-5601 (fax)
krowe@oag.state.md.us

Attorneys for Curt Anderson and C. Anthony Muse

TABLE OF EXHIBITS

Exhibit No. Title

1. Intentionally left blank

2. Deposition subpoenas served on Curt Anderson and C. Anthony Muse

3. Letter from Sandra Brantley to Stephen Medlock, Dec. 30, 2016

4. Email from Brandi Calhoun, Chief of Staff to Senator Muse, to Micah Stein and attachments, Dec. 20, 2016

5. Defendants' Supplemental Responses to Plaintiffs' First Set of Interrogatories

EXHIBIT 2

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

O. John Benisek

Plaintiff

v.

Linda Lamone, et al.

Defendant

Civil Action No. 13-3233-JKB

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Delegate Curtis S. Anderson, c/o Sarah W. Rice, Esq., Assistant Attorney General, Office of the Attorney General, 200 St. Paul Street, 20th Floor, Baltimore, MD 21202

(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Lerch, Early & Brewer, Chtd. 3 Bethesda Metro Center, Suite 460 Bethesda, MD 20814	01/30/2017 9:30 am

The deposition will be recorded by this method: Stenography and/or video.

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/11/2017

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* O John Benisek, et al., who issues or requests this subpoena, are:
Stephen M. Medlock, Esq., Mayer Brown LLP, 1999 K Street, N.W., Washington, D.C. 20006-1101; 202-263-3221; smedlock@mayerbrown.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 13-3233-JKB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

O. John Benisek, et al.

Plaintiff

v.

Linda H. Lamone, et al.

Defendant

Civil Action No. 13-cv-3233-JKB

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: C. Anthony Muse, c/o Jennifer Katz, Esq., Office of the Attorney General, 200 Saint Paul Place, 20th Floor, Baltimore, MD 21202

(Name of person to whom this subpoena is directed)

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Lech, Early & Brewer, Ctd. 3 Bethesda Metro Center, Suite 460 Bethesda, MD 20814	01/30/2017 9:30 am

The deposition will be recorded by this method: Stenography and/or video

❒ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/19/2017

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Stephen M. Medlock

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* O. John Benisek, et al., who issues or requests this subpoena, are:

Stephen M. Medlock, Esq., Mayer Brown LLP, 1999 K Street, N.W., Washington, D.C. 20006-1101, (202) 263-3221, smedlock@mayerbrown.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 13-cv-3233-JKB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

EXHIBIT 3

BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL

DONNA HILL STATON
DEPUTY ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

December 30, 2016

Stephen M. Medlock
Mayer Brown, LLP
1999 K Street, NW
Washington, DC 20006

Re: *Benisek v. Lamone*, No. JKB-13-3233 (D. Md.)

Dear Mr. Medlock:

Enclosed are documents in response to the subpoenas served on Senate President Thomas V. Mike Miller, Jr., Speaker of the House Michael E. Busch, and Senator Richard S. Madaleno, Jr. You also served a subpoena on Delegate Curt Anderson. He has no materials responsive to the subpoena. We have also enclosed a privilege log each for President Miller, Speaker Busch, and Senator Madaleno, indicating that some documents and information have been withheld because they are protected under either the attorney-client privilege or the legislative privilege.

The Fourth Circuit recognizes that "[l]egislative privilege clearly falls within the category of accepted privileges." *E.E.O.C. v. Washington Suburban Sanitary Comm'n*, 631 F.3d 174, 180 (4th Cir. 2011) (hereinafter "*WSSC*") (citing *Burtnick v. McLean*, 76 F.3d 611, 613 (4th Cir. 1996)). In *Burtnick*, the court announced that "[t]he existence of testimonial privilege is the prevailing law" in the Fourth Circuit. 76 F.3d at 613. Plaintiffs seek, through the subpoenas, to invade individual General Assembly members' deliberations over the drafting of legislation by seeking documents compiled by legislators, or their close aides at their direction, to produce the legislation. Accordingly, legislative privilege applies because the members' activities and contribution to any draft maps, reports, or other materials that resulted in Senate Bill 1 are legislative in nature. The Fourth Circuit declared in *WSSC* that if the parties "sought to compel information from legislative actors about their legislative activities, they would not need to comply." *WSSC*, 631 F.3d at 181. Moreover, "[a] litigant does not have to name members or their staffs as parties to a suit in order to distract them from their legislative work. Discovery procedures can prove just as intrusive." *Id. See also North Carolina State Conf. v. McCrory*, 2015 WL 12683665 (M.D.N.C. Feb. 4, 2015) (protecting all communications

between legislators or legislators and staff and also declining to order a privilege log because to do so would "undermine the very purpose and function of legislative privilege, unduly intruding into legislative affairs and imposing significant burdens on the legislative process"). Thus, any effort to compel information about the legislative activity of those engaging in the legislative activity should be rejected.

A final note about the maps on the enclosed CD, which are in response to Question 3. The maps labeled Option 1, Option 2, Option 3 and Option 4, were, upon his best information and belief, generated by the personal legislative aide of President Miller. As the events took place more than five years ago, President Miller's aide could not accurately recall whether those maps were provided to any third party. To the extent that the maps are protected by legislative privilege, President Miller waives privilege to the maps.

Sincerely,

Sandra Benson Brantley
Counsel to the General Assembly

EXHIBIT 4

[redacted]

From: Brandi Calhoun [blc31@aol.com]
Sent: Tuesday, December 20, 2016 11:00 PM
To: Stein, Micah D.
Subject: Fwd: Congressional Redistricting: Draft Talking Point and Maps
Attachments: Black_VAP[1].jpg; ATT00001.htm; Asian_VAP[1].jpg; ATT00002.htm; Hispanic_VAP[1].jpg; ATT00003.htm; Unadjusted_Total_Minority_VAP[1].jpg; ATT00004.htm; Maryland_-_Redistricting_Talking_Points[rev].docx; ATT00005.htm

Hi Micah,

Per our conversation yesterday, I did a search in my emails and I am sending you every communication that I have that deals with redistricting.

Thanks,

Brandi Calhoun
COS, Senator Muse

From: Aisha Braveboy <anbraveboy@gmail.com>
Date: Mon, 10 Oct 2011 09:18:55 -0400
To: Aisha Braveboy<anbraveboy@gmail.com>
Subject: Fwd: Congressional Redistricting: Draft Talking Point and Maps

Attached are more comprehensive talking points and maps to illustrate the minority vote dilution (across the board) that would occur as a result of the maps proposed by the Governor's Advisory Committee.

Thanks,
Aisha

DRAFT TALKING POINTS

Congressional Redistricting -- October 8 2011

Governor O'Malley and the Redistricting Advisory Committee's proposal is far too costly to Maryland Democrats and to minority voters. The proposal is a clear threat to minority voting rights, shifting minority voters to achieve certain partisan interests while reducing the strength of majority-black districts, and diluting minority voters across the board.

1. The Plan would reduce the adjusted Black share of the voting age population in Districts 4, 5 and 7:

	Current	Advisory Committee
4	56.3%	54.5%
5	36.1%	35.8%
7	55.4%	54.5%

While these numbers may appear to be de minimis, the impact of these shifts are significant to the outcomes of elections, especially in Congressional District 5. Using as a benchmark, the 2006 Mfume/Cardin primary race, Mfume would have received approximately 50% of the primary vote in current District 5. In the reconstituted 5th Congressional District, as proposed by the Committee, Mfume would have received approximately 40% of the votes. This 10% drop appears to be caused by the reduction of black and other minority voters in the 5th, as well as the loss of white voters who were willing to vote for a Black candidate.

2. Congressional District 8 currently has an overall minority voting age population (Hispanics plus non-Hispanic minorities) of 50.4 percent. The Advisory Committee's proposed plan reconfigures District 8 to have a 66 percent non-Hispanic-white voting age population, going into parts of Fredrick and Carroll Counties.
3. Montgomery County is a majority-minority County, with an overall minority population of 50.7 percent. While District 4 currently provides minority representation to Montgomery County, the Advisory Committee's proposal takes District 4 entirely out of Montgomery County, leaving virtually no possibility of electing a minority candidate at the Congressional level in Montgomery County for the foreseeable future.

4. The majority of the Black voting strength in Montgomery County is put into District 3, while the balance is in 8 and 6.

5. The Asian population in Montgomery County is taken out of District 8 and put into District 6, as well as into District 3, which has its base in the Baltimore Region. (See attached Map)

6. Hispanic voting strength is split in Montgomery between Districts 6 and 8. (See attached Map)

7. The Advisory Committee's proposed plan increases the Democratic performance in majority-white Districts 2 and 3 at the expense of black voting strength, not just in majority-black Districts 4 and 7,

but especially in District 5, where the black population has continued to grow.

8. Both Maryland Legislative Caucus plans made District 4 much more compact than it currently is, while the Advisory Committee's proposed plan takes District 4 into Anne Arundel County, connecting it by a thin stretch of roadway. This configuration combines politically and regionally diverse, non synergistic populations from Prince George's and Anne Arundel Counties, and invites a gerrymandering challenge.

9. The Governor's Redistricting Committee failed to provide a detailed summary or tables to go along with the proposed maps. It provided only equivalency files, which require redistricting software that costs thousands of dollars in order to analyze the maps, making it virtually impossible for the average citizen see, evaluate and comment on the proposal.

Frederick
8
Carroll
Howard
7
Montgomery
6
3
5
4
Prince George's
Ballenger Creek
Buckeystown
Urbana
Adamstown
Point of Rocks
Barnesville
Poolesville
Damascus
Clarksburg
Laytonsville
Columbia
Montgomery Village
Brookeville
Highland
Germantown
Gaithersburg
Washington Grove
Redland
Derwood
Darnestown
North Potomac
Rockville
Travilah
Potomac
Olney
Ashton-Sandy Spring
Spencerville
Burtonsville
Leisure World
Aspen Hill
Layhill
Cloverly
Fairland
Glenmont
Colesville
North Bethesda
Wheaton
Kemp Mill
North Kensington
White Oak
Kensington
Chevy Chase View
Forest Glen
Four Corners
Hillandale
Silver Spring
North Chevy Chase
Chevy Chase
Adelphi
Langley Park
Takoma Park
Chevy Chase Section Five
Martin's Additions
Bethesda
Cabin John
Glen Echo
Chevy Chase Village
Friendship Heights Village
Brookmont
Chillum
University Park
Riverdale Park
Edmonston
Brentwood
Bladensburg
Cheverly
Fulton
Beltsville
Konterra
Calverton
Greenbelt
Eldersburg
Ellicott City

Maryland 2011 Congressional Redistricting

Voting District
Census Place
Districts
County

2010 % Adjusted Asian Voting Age Pop.

- 0.00% to 10.00%
- 10.00% to 25.00%
- 25.00% to 40.00%
- 40.00% to 50.00%
- 50.00% to 100.00%
- Other

District Status

- Locked
- Completed

0 1.5 3 4.5
Miles

Governor's Advisory Commission Plan

Jefferson
Ballenger Creek
Bartonsville
Mount Airy
Carroll
Sykesville
Eldersburg
Frederick
Monrovia
Rosemont
Buckeystown
Urbana
Brunswick
Adamstown
Howard
Ellicott City
Point of Rocks
Damascus
Clarksburg
Barnesville
Laytonsville
Columbia
Montgomery Village
Brookeville
Highland
Germantown
Olney
Fulton
Poolesville
Washington Grove
Ashton-Sandy Spring
Montgomery
Scaggsville
Redland
Spencerville
Burtonsville
Gaithersburg
Derwood
Leisure World
Darnestown
North Potomac
Layhill
Glenmont
Rockville
Travilah
Wheaton
North Bethesda
North Kensington
Kemp Mill
Beltsville
Kensington
Four Corners
Hillandale
Forest Glen
Prince George's
Potomac
North Chevy Chase
Silver Spring
Adelphi
College Park
Greenbelt
Chevy Chase
Lakeland Park
Chevy Chase Section Five
Martin's Additions
Takoma Park
Bethesda
Cabin John
Glen Echo
Chevy Chase Village
Friendship Heights Village
University Park
Riverdale Park
Brookmont
Edmonston
North Brentwood
Landover Hills
Cottage City
Colmar Manor
Landover
Fairmount Heights
Peppermill Village

6
8
7
3
5
4

Maryland 2011 Congressional Redistricting

Voting District
Census Place
Districts
County

2010 % Adjusted Black Voting Age Pop.

0.00% to 10.00%
10.00% to 25.00%
25.00% to 40.00%
40.00% to 50.00%
50.00% to 100.00%
Other
Locked
Completed

0 2 4 6
Miles

Governor's Advisory Commission Plan

Frederick
Carroll
Howard
7
Ballenger Creek
Buckeystown
Urbana
Monrovia
Adamstown
Point of Rocks
Damascus
Clarksburg
Barnesville
Laytonsville
Montgomery Village
Germantown
Gaithersburg
Washington Grove
Poolesville
6
Redland
Montgomery
Derwood
Darnestown
North Potomac
Rockville
Travilah
Potomac
Olney
Ashton-Sandy Spring
3
Spencerville
Burtonsville
Leisure World
Layhill
Aspen Hill
Glenmont
Wheaton
North Bethesda
North Kensington
Kensington
Chevy Chase View
Forest Glen
8
Silver Spring
North Chevy Chase
Chevy Chase
Chevy Chase Section Five
Martin's Additions
Bethesda
Cabin John
Glen Echo
Chevy Chase Village
Friendship Heights Village
Brookmont
Four Corners
Takoma Park
Brookeville
Ellicott City
Columbia
Highland
Fulton
Scaggsville
Cloverly
Fairland
Colesville
Calverton
Beltsville
White Oak
Hillandale
Adelphi
College Park
5
Greenbelt
Langley Park
Prince George's
University Park
Chillum
Riverdale Park
Edmonston
Brentwood
Bladensburg
Landover Hills
4
Cheverly
Landover

Maryland 2011 Congressional Redistricting

Voting District
Census Place
Districts
County

2010 % Hispanic Voting Age Pop.

- 0.00% to 10.00%
- 10.00% to 25.00%
- 25.00% to 40.00%
- 40.00% to 50.00%
- 50.00% to 100.00%
- Other

District Status

- Locked
- Completed

0 1.5 3 4.5
Miles

Governor's Advisory Commission Plan

Jefferson
Ballenger Creek
Frederick
8
Carroll
Eldersburg
Buckeystown
Urbana
Howard
7
Adamstown
Ellicott City
Point of Rocks
Damascus
Clarksburg
Barnesville
Laytonsville
Columbia
Montgomery Village
Brookeville
Highland
Germantown
Ashton-Sandy Spring
Olney
Fulton
Gaithersburg
Washington Grove
3
Poolesville
6
Redland
Spencerville
Burtonsville
Montgomery
Derwood
Leisure World
Darnestown
North Potomac
Rockville
Aspen Hill
Layhill
Loverly
Fairland
Konterra
Travilah
Glenmont
Colesville
Calverton
North Bethesda
Wheaton
Kemp Mill
North Kensington
White Oak
Beltsville
Kensington
Chevy Chase View
Forest Glen
Four Corners
Hillandale
Potomac
Silver Spring
North Chevy Chase
Adelphi
Greenbelt
Chevy Chase
Langley Park
5
Chevy Chase Section Five
Martin's Additions
Takoma Park
Prince George's
Bethesda
Cabin John
Glen Echo
Chevy Chase Village
University Park
Chillum
Friendship Heights Village
Riverdale Park
Brookmont
Edmonston
Brentwood
Bladensburg
Landover
4
Cheverly

Maryland 2011 Congressional Redistricting

Voting District
Census Place
Districts
County

2010 % Unadjusted Minority Voting Age Pop.

- 0.0000 to 0.1000
- 0.1000 to 0.2500
- 0.2500 to 0.4000
- 0.4000 to 0.5000
- 0.5000 to 1.0000
- Other

District Status

- Locked
- Completed

0 1.5 3 4.5
Miles

Governor's Advisory Commission Plan

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

O. JOHN BENISEK, *et al.*,	*	
Plaintiffs,	*	
v.	*	Case No. 13-cv-3233
LINDA H. LAMONE, *et al.*,	*	
Defendants.	*	

* * * * * * * * * * * * * * * * * * * *

DEFENDANTS' SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendants Linda H. Lamone and David J. McManus, Jr., state as follows for their responses and objections to Plaintiffs' interrogatories:

PRELIMINARY STATEMENT

The Information supplied in these answers is not based solely on the knowledge of the executing parties, but also includes the knowledge of their agents, representatives, and attorneys, unless privileged. The language, word usage and sentence structure is that of the attorney assisting in the preparation of these Answers and does not purport to be the precise language of the executing party. The Defendants have not yet completed discovery or gathering of facts and documents relating to this action and therefore reserve the right to revise, correct, add to, supplement, and clarify the responses set forth below.

Each response to the Plaintiffs' First Set of Interrogatories is made subject to these preliminary statements and objections. By responding to an interrogatory in as complete a manner as possible subject to the stated objections, Defendants do not in any way waive any applicable objection or the right to seek appropriate protection orders, if necessary.

GENERAL OBJECTIONS

1. As to the Interrogatories generally, and as to each and every interrogatory individually, Defendants object to the extent that they request information protected by the attorney-client privilege, the work product doctrine, the deliberative or executive privilege, legislative privilege, or that is otherwise privileged, protected, or exempt from discovery.

2. Defendants object to these requests to the extent that they request information already within the possession and control of Plaintiffs and/or their counsel, on the grounds that such requests are duplicative and unduly burdensome.

3. Defendants object to these requests to the extent that they are overbroad, oppressive, duplicative, or cumulative.

4. Defendants object to these requests to the extent that they are vague, ambiguous, fail to specify with reasonable particularity the information sought, or otherwise are incomprehensible.

5. The Defendant objects to these requests to the extent they seek material that is not relevant to the subject matter involved in this action or is beyond the scope of what is required to be provided by the Federal Rules of Civil Procedure, the local rules of this Court, or the Orders of the Court in this matter.

6. Defendants object to these requests to the extent that they require the Defendants to make legal conclusions and/or presuppose legal conclusions or assume the truth of matters that are disputed.

7. Defendants object to these requests to the extent that the information sought is a matter of public record and is equally accessible and available to Plaintiffs, on the grounds that compiling such information would impose an unreasonable burden and expense upon the Defendants and constitute attorney work product.

8. In addition to these General Objections, Defendants also state, where appropriate, specific objections to individual requests. By setting forth such specific objections, the Defendants neither intends to, nor does, limit or restrict or waive the General Objections, which shall be deemed incorporated in each of the responses to the specific requests.

Without waiving, subject to, and notwithstanding these General Objections, Defendants provide the following:

SPECIFIC OBJECTIONS AND ANSWERS

INTERROGATORY NO. 1: Identify all persons and entities who reviewed or had access to the final or any interim or alternative drafts of the Proposed Congressional Plan, other than the members of the GRAC, members of the General Assembly, and the Governor prior to the final draft of the Proposed Congressional Plan being made available to the general public.

ANSWER TO INTERROGATORY NO. 1: The Defendants object to this interrogatory on the grounds that it is vague, overly broad, and unduly burdensome. Without waiving these objections, the Defendants believe, as of the date of this answer, that the following persons reviewed or had access to the final or any interim or alternative drafts of the Proposed Congressional Plan prior to the final draft of the Proposed Congressional Plan being made available to the general public:

1. Patrick Murray, former legislative aide to Senate President Thomas v. Mike Miller.
2. Yaakov Weissman, legislative aide to Senate President Thomas v. Mike Miller.
3. Jeremy Baker, legislative aide to House Speaker Michael E. Busch.
4. Joseph Bryce, aide to former Governor Martin O'Malley.
5. John McDonough, former Secretary of State in the administration of former Governor Martin O'Malley
6. Hon. Daniel Friedman, former Assistant Attorney General serving as Counsel to the General Assembly.
7. Michele Davis, Senior Policy Analyst, Department of Legislative Services.
8. Karl Arro, former Executive Director, Department of Legislative Services.
9. Bruce E. Cain, Ph.D., Professor, Stanford University, Y2E2 Building, Room 173 473 Via Ortega, Stanford, CA 94305-4225, (650) 725-1320, consultant hired in anticipation of litigation by the Office of the Attorney General.

With the exception of Bruce E. Cain, whose contact information is provided, all identified persons are represented by the Office of the Attorney General in connection with this matter, and all correspondence should be directed to undersigned counsel.

INTERROGATORY NO. 2: If you contend that the General Assembly of Maryland, the GRAC, and/or the Governor did not intend to burden the representational rights of

certain citizens and/or to dilute the voting strength of certain citizens because of how they voted in the past or because of the political party with which they had affiliated, state the factual basis for your contention and identify all facts, documents, and communications related to your contention.

ANSWER TO INTERROGATORY NO. 2: The Defendants object to this interrogatory on the grounds that it is a premature "contention interrogatory" and it requests all facts, documents, and communications concerning defenses to matters alleged in the second amended complaint when discovery has not concluded. *See* Fed. R. Civ. P. 33(a)(2). The Defendants further object because the interrogatory calls for statements of subjective intent of legislators acting within their legislative capacities in enacting legislation, which is information protected by legislative privilege. The Defendants additionally object because the interrogatory is vague and not reasonably particular, as there is no definition of "certain citizens" or "representational rights." Without waiving any objections, the Defendants state that each district in the Proposed Congressional Plan achieved precise mathematical equality of population consistent with the No Representation Without Population Act, except for District Eight, which has one fewer person. Therefore, the vote of each citizen of Maryland has equal strength as the vote of each other citizen in Congressional elections under the current plan.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 2: The Defendants object based on relevance because the interrogatory calls for statements of subjective intent of individuals acting within their legislative capacities in proposing, creating, and enacting legislation, which is information protected by legislative privilege. The members

of the GRAC and the Governor, through counsel, have expressed their intent to assert legislative privilege over information about their legislative activities, and the Defendants have no independent knowledge of the subjective intent of the members of the General Assembly, the members of the GRAC, or the Governor as it relates to the Proposed Congressional Plan. The Defendants additionally object because the interrogatory is vague and not reasonably particular, as there is no definition of "certain citizens" or "representational rights." Without waiving any objections, the Defendants state that each district in the Proposed Congressional Plan achieved precise mathematical equality of population consistent with the No Representation Without Population Act, except for District Eight, which has one fewer person. Therefore, the vote of each citizen of Maryland has equal strength as the vote of each other citizen in Congressional elections under the current plan. The Defendants further identify the public statements of the GRAC in creating the proposed plan that have been produced to the Plaintiffs at MCM002454-2468. The Defendants further identify the following objective evidence relating to the creation of the Proposed Congressional Plan that has been produced to the Plaintiffs at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824, MCM002871-2928, the audio file produced as Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50.

INTERROGATORY NO. 3: If you contend that the General Assembly of Maryland, the GRAC, and/or the Governor did not use and/or was not influenced by data reflecting prior voting patterns, voter history, or party affiliation in deciding where to draw the lines

of the Sixth Congressional District under the Proposed Congressional Plan, state the factual basis for your contention and identify all facts, documents and communications related to your contention.

ANSWER TO INTERROGATORY NO. 3: The Defendants object to this interrogatory on the grounds that it is a premature "contention interrogatory" and it requests all facts, documents, and communications concerning defenses to matters alleged in the second amended complaint when discovery has not concluded. *See* Fed. R. Civ. P. 33(a)(2).

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 3: The Defendants object because the interrogatory calls for information from legislative actors about their legislative activities, which is information protected by legislative privilege. The members of the GRAC and the Governor, through counsel, have expressed their intent to assert legislative privilege over information about their legislative activities, and the Defendants have no independent knowledge of whether data reflecting prior voting patterns, voter history, or party affiliation was used by or influenced the members of the General Assembly, the members of the GRAC, or the Governor in deciding where to draw the lines of the Sixth Congressional District under the Proposed Congressional Plan. Without waiving any objections, the Defendants identify the following objective evidence relating to the creation of the Proposed Congressional Plan that has been produced to the Plaintiffs at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824, MCM002454-2468, MCM002871-2928, the audio file produced as

Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50.

INTERROGATORY NO. 4: If you contend that the General Assembly's, the GRAC's, and/or the Governor's consideration of data reflecting prior voting patterns, voter history, or party affiliation did not affect the drawing of the lines of the Sixth Congressional District in such a way that such consideration altered the outcome of the congressional elections in the Sixth Congressional District after 2011, state the factual basis for your contention and identify all facts, documents and communications related to your contention.

ANSWER TO INTERROGATORY NO. 4: The Defendants object to this interrogatory on the grounds that it is a premature "contention interrogatory" and it requests all facts, documents, and communications concerning defenses to matters alleged in the second amended complaint when discovery has not concluded. *See* Fed. R. Civ. P. 33(a)(2).

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 4: The Defendants object because the interrogatory calls for information from legislative actors about their legislative activities, which is information protected by legislative privilege. The members of the GRAC and the Governor, through counsel, have expressed their intent to assert legislative privilege over information about their legislative activities, and the Defendants have no independent knowledge whether data reflecting prior voting patterns, voter history, or party affiliation was considered by the members of the General Assembly, the members of the GRAC, or the Governor in such a manner that it affected the drawing of

the lines of the Sixth Congressional District in such a way that such consideration altered the outcome of the congressional elections in the Sixth Congressional District after 2011. Further, the Defendants state that it is not possible to determine whether the General Assembly's, GRAC's, and/or Governor's consideration of any particular data source had an effect on any particular election outcome to a reasonable degree of certainty. Without waiving any objections, the Defendants identify the following objective evidence relating to the creation of the Proposed Congressional Plan that has been produced to the Plaintiffs at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824, MCM002454-2468, MCM002871-2928, the audio file produced as Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50. The Defendants further identify Senate Bill 1; elections outcomes data for 2012, 2014, and 2016 available at the State Board of Elections website; and documents provided to the Plaintiffs in response to subpoenas served on Senate President Thomas V. Mike Miller, Jr., and the Maryland Public Information Act request issued to the Department of Legislative Services, which documents also have been provided to Defendants.

INTERROGATORY NO. 5: If you contend that there are any justifications for the boundaries of the Sixth Congressional District (such as respect for communities of interest), state the factual basis for all such justifications and identify all facts, documents, and communications supporting all such justifications.

ANSWER TO INTERROGATORY NO. 5: The Defendants object to this interrogatory on the grounds that it is a premature "contention interrogatory" and it

requests all facts, documents, and communications concerning defenses to matters alleged in the second amended complaint when discovery has not concluded. *See* Fed. R. Civ. P. 33(a)(2). Without waiving those objections, the Defendants identify documents produced to the Plaintiffs with the Joint Stipulations and in response to Plaintiffs First Request for Production of Documents.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 5: The Defendants state that the objectives of the GRAC in creating the Proposed Congressional Plan, which included the Sixth District, have been stated in public documents produced to the Plaintiffs at MCM002454-2468. The Defendants further state that each district in the Proposed Congressional Plan achieved precise mathematical equality of population consistent with the No Representation Without Population Act, except for District Eight, which has one fewer person. The Defendants further identify documents produced at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824, MCM002871-2928, the audio file produced as Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50.

INTERROGATORY NO. 6: Identify all Persons who were involved in planning, developing, drawing, and/or approving the Proposed Congressional Plan and any alternative plans not adopted. For each Person identified, state that Person's involvement with respect to the Proposed Congressional Plan.

ANSWER TO INTERROGATORY NO. 6: The Defendants object to this interrogatory on the grounds that it is vague, overly broad, and unduly burdensome. Without waiving these objections, the Defendants believe that, in addition to the members

of the GRAC and the Governor, the following persons were involved in planning, developing, drawing, and/or approving the Proposed Congressional Plan and any alternative drafts:

1. Patrick Murray, in his capacity as legislative aide to Senate President Thomas v. Mike Miller, was involved in developing and drawing the Proposed Congressional Plan.

2. Yaakov Weissman, in his capacity as legislative aide to Senate President Thomas v. Mike Miller, was involved in developing and drawing the Proposed Congressional Plan.

3. Jeremy Baker, in his capacity as legislative aide to House Speaker Michael E. Busch, was involved in developing and drawing the Proposed Congressional Plan.

4. Joseph Bryce, in his capacity as aide to former Governor Martin O'Malley, was involved in developing and drawing the Proposed Congressional Plan.

5. John McDonough, in his capacity as a high-ranking member of Governor O'Malley's administration and at the request of the Governor, was involved in developing and drawing the Proposed Congressional Plan.

All identified persons are represented by the Office of the Attorney General in connection with this matter, and all correspondence should be directed to undersigned counsel. To the extent this Interrogatory seeks information concerning third-party alternative plans, the Defendants object on the ground that the request is not relevant to the Plaintiffs' claims and thus exceeds the scope of discovery. Fed. Rule Civ. P. 26(b)(1). Without waiving this objection, the Defendants identify the third-party plans submitted to the GRAC already provided to the Plaintiffs at Bates range MCM000908-1134, and additional documents concerning third-party plans produced in response to Plaintiffs' First Request for Production of Documents.

INTERROGATORY NO. 7: Identify all experts, consultants, and/or other third parties with whom You, the GRAC, the Governor, or members of the Maryland General Assembly communicated during the planning, development, and/or preparation of the Proposed Congressional Plan and/or any alternative congressional plans not adopted. For each expert, consultant, or other third party, state the time period of the Person's involvement.

ANSWER TO INTERROGATORY NO. 7: The Defendants object to this interrogatory on the grounds that it is vague, overly broad, not reasonably particular, and unduly burdensome. Without waiving these objections, and to the extent Interrogatory No. 7 intends to identify persons with whom communications were had specifically concerning the drafting of the Proposed Congressional Plan and/or any alternative drafts, the Defendants cannot identify any experts, consultants, and/or third parties because the Defendants, having made reasonable inquiries, believe that no such communications took place. To the extent this Interrogatory seeks information concerning third-party alternative plans submitted to the GRAC that were not adopted, the Defendants object on the ground that the request is not relevant to the Plaintiffs' claims and thus exceeds the scope of discovery. Fed. Rule Civ. P. 26(b)(1).

INTERROGATORY NO. 8: If you contend that Plaintiffs' complaint is barred, in whole or part, by the doctrine of laches, state the factual basis for your laches defense and identify all facts, documents, and communications related to your laches defense.

ANSWER TO INTERROGTORY NO. 8: The Defendants object to this interrogatory on the grounds that it is a premature "contention interrogatory" and it requests all facts, documents, and communications concerning defenses to matters alleged in the second amended complaint when discovery has not concluded. *See* Fed. R. Civ. P. 33(a)(2). Without waiving those objections, the Defendants identify all of the Plaintiffs' pleadings filed in this lawsuit.

SUPPLEMENTAL ANSWER TO INTERROGTORY NO. 8: The Defendants state that the particular cause of action presented for the first time in the Plaintiffs' Second Amended Complaint, filed March 3, 2016, was brought nearly four and a half years after the enactment of the challenged legislation and approximately sixteen months after the 2014 Gubernatorial Election was held on November 4, 2014. Moreover, the initial Complaint in this matter was filed November 5, 2013, nearly one year after the first Presidential Election under the plan took place on November 6, 2012 and approximately sixteen months after the appeal in *Gorrell v. O'Malley* was affirmed for lack of standing in the Fourth Circuit. *Gorrell v. O'Malley*, 474 F. App'x 150, 151 (4th Cir. Jul. 12, 2012) (unpublished). Further, Plaintiffs have named only the State Board of Elections Chair and State Administrator of Elections as defendants in this action.

The Defendants also state that the initial complaint stated that plaintiffs' claims did "not rely on the reason or intent of the legislature" and that the requested relief "does not include changing the overall . . . partisan make-up of the enacted districts." Defendants further state that they relied on these and other statements made in the Complaint to their detriment.

The Defendants identify the Plaintiffs' pleadings filed in this lawsuit as ECF Nos. 1, 11, and 44. The Defendants further identify all statements made by Stephen M. Shapiro to the public or Maryland governmental officials and entities.

INTERROGATORY NO. 9: If you contend that Plaintiffs' complaint is barred, in whole or part, by the doctrine of waiver, state the factual basis for your waiver defense and identify all facts, documents, and communications related to your waiver defense.

ANSWER TO INTERROGTORY NO. 9: The Defendants object to this interrogatory on the grounds that it is a premature "contention interrogatory" and it requests all facts, documents, and communications concerning defenses to matters alleged in the second amended complaint when discovery has not concluded. *See* Fed. R. Civ. P. 33(a)(2). Without waiving those objections, the Defendants identify all of the Plaintiffs' pleadings filed in this lawsuit.

SUPPLEMENTAL ANSWER TO INTERROGTORY NO. 9: The Defendants state that the particular cause of action presented for the first time in the Plaintiffs' Second Amended Complaint, filed March 3, 2016, was brought nearly four and a half years after the enactment of the challenged legislation and approximately sixteen months after the 2014 Gubernatorial Election was held on November 4, 2014. Moreover, the initial Complaint in this matter was filed November 5, 2013, nearly one year after the first Presidential Election under the plan took place on November 6, 2012 and approximately sixteen months after the appeal in *Gorrell v. O'Malley* was affirmed for lack of standing in the Fourth Circuit. *Gorrell v. O'Malley*, 474 F. App'x 150, 151 (4th Cir. Jul. 12, 2012)

(unpublished). Further, Plaintiffs have named only the State Board of Elections Chair and State Administrator of Elections as defendants in this action.

The Defendants also state that the initial complaint stated that plaintiffs' claims did "not rely on the reason or intent of the legislature" and that the requested relief "does not include changing the overall . . . partisan make-up of the enacted districts." Defendants further state that they relied on these and other statements made in the Complaint to their detriment.

The Defendants identify the Plaintiffs' pleadings filed in this lawsuit as ECF Nos. 1, 11, and 44. The Defendants further identify all statements made by Stephen M. Shapiro to the public or Maryland governmental officials and entities.

INTERROGATORY NO. 10: If you contend that Plaintiffs' complaint is barred, in whole or part, by the doctrine of estoppel, state the factual basis for your estoppel defense and identify all facts, documents, and communications related to your estoppel defense.

ANSWER TO INTERROGTORY NO. 10: The Defendants object to this interrogatory on the grounds that it is a premature "contention interrogatory" and it requests all facts, documents, and communications concerning defenses to matters alleged in the second amended complaint when discovery has not concluded. *See* Fed. R. Civ. P. 33(a)(2). Without waiving those objections, the Defendants identify all of the Plaintiffs' pleadings filed in this lawsuit.

SUPPLEMENTAL ANSWER TO INTERROGTORY NO. 10: The Defendants state that the particular cause of action presented for the first time in the Plaintiffs' Second Amended Complaint, filed March 3, 2016, was brought nearly four and a half years after

the enactment of the challenged legislation and approximately sixteen months after the 2014 Gubernatorial Election was held on November 4, 2014. Moreover, the initial Complaint in this matter was filed November 5, 2013, nearly one year after the first Presidential Election under the plan took place on November 6, 2012 and approximately sixteen months after the appeal in *Gorrell v. O'Malley* was affirmed for lack of standing in the Fourth Circuit. *Gorrell v. O'Malley*, 474 F. App'x 150, 151 (4th Cir. Jul. 12, 2012) (unpublished). Further, Plaintiffs have named only the State Board of Elections Chair and State Administrator of Elections as defendants in this action.

The Defendants also state that the initial complaint stated that plaintiffs' claims did "not rely on the reason or intent of the legislature" and that the requested relief "does not include changing the overall . . . partisan make-up of the enacted districts." Defendants further state that they relied on these and other statements made in the Complaint to their detriment.

The Defendants identify the Plaintiffs' pleadings filed in this lawsuit as ECF Nos. 1, 11, and 44. The Defendants further identify all statements made by Stephen M. Shapiro to the public or Maryland governmental officials and entities.

INTERROGATORY NO. 11: Describe all facts, documents, and communications supporting the October 4, 2011 statement made by GRAC Chair Jeanne Hitchcock: "The map we are submitting today conforms with State and federal law and incorporates the 331 comments we received from the public during our 12 regional hearings around the State."

ANSWER TO INTERROGTORY NO. 11: The Defendants object to this interrogatory on the grounds that it is premature and requests all facts, documents, and

communications when discovery has not concluded. Without waiving those objections, the Defendants identify documents provided to the Plaintiffs during the joint stipulations at Bates ranges MCM000001-704 and MCM000705-906, and the documents responsive to Plaintiffs' sixth request for production of documents.

INTERROGATORY NO. 12: Describe all facts, documents, and communications supporting the statement in the PowerPoint presentation prepared by the GRAC to accompany its recommended plan: "Congressional Districts 6 and 8 are drawn to reflect the North-South connections between Montgomery County, the I-270 Corridor, and western portions of the State."

ANSWER TO INTERROGTORY NO. 12: The Defendants object to this interrogatory on the grounds that it is premature and requests all facts, documents, and communications when discovery has not concluded. Without waiving those objections, the Defendants identify documents provided to the Plaintiffs during the joint stipulations at Bates ranges MCM000001-704, MCM000705-906, MCM001135-1389, MCM001392-1824.

INTERROGATORY NO. 13: Describe all facts, documents, and communications supporting the statement in the PowerPoint presentation prepared by the GRAC to accompany its recommended plan: "Public testimony in this region expressed a desire to have a Congressional map that better reflects patterns in this region – the growth in Southern Maryland from Prince George's County, and the growth of the suburbs along the I-270 Corridor."

ANSWER TO INTERROGTORY NO. 13: The Defendants object to this interrogatory on the grounds that it is premature and requests all facts, documents, and communications when discovery has not concluded. Without waiving those objections, the Defendants identify documents provided to the Plaintiffs during the joint stipulations at Bates ranges MCM000001-704, MCM000705-906, MCM001135-1389, MCM001392-1824.

BRIAN E. FROSH
Attorney General of Maryland

___/s/__Jennifer L. Katz_____
JENNIFER L. KATZ (Bar No. 28973)
SARAH W. RICE (Bar No. 29113)
Assistant Attorneys General
Office of the Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-7005 (tel.); (410) 576-6955 (fax)
jkatz@oag.state.md.us

Dated: January 13, 2017

Attorneys for Defendants

VERIFICATION

I, Linda H. Lamone, under penalty of perjury, declare that the foregoing answers to Plaintiffs' First Set of Interrogatories are true and correct to the best of my knowledge, information, and belief.

Linda H. Lamone

Linda H. Lamone

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

O. JOHN BENISEK, *et al.*,	*	
Plaintiffs,	*	
v.	*	Case No. 13-cv-3233
LINDA H. LAMONE, *et al.*,	*	
Defendants.	*	

* *

ORDER

Upon consideration of the motion for protective order and to quash non-party deposition subpoenas served on Curtis S. Anderson and C. Anthony Muse, and opposition thereto, it is this _____ day of _____, 2017, ORDERED:

That the motion for protective order and to quash non-party deposition subpoenas is GRANTED, and

That the subpoenas for deposition served on non-parties Curtis S. Anderson and C. Anthony Muse are hereby QUASHED.

_____
United States District Judge
James K. Bredar