

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

O. JOHN BENISEK, *et al.*,

*Plaintiffs,*

v.

LINDA H. LAMONE, *et al.*,

*Defendants.*

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Case No. 13-cv-3233

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**MOTION FOR REVIEW BY THREE-JUDGE COURT AND FOR STAY**

For the reasons stated in the accompanying memorandum, Thomas V. Mike Miller, Jr., President of the Maryland Senate, Michael E. Busch, Speaker of the Maryland House of Delegates, Jeanne Hitchcock, Richard Stewart, and Senator Richard S. Madaleno, through counsel, move for review by the three-judge court of the January 31, 2017 and February 3, 2017 orders of Judge James K. Bredar, denying their motions for protective order and granting Plaintiffs' motion to compel, pursuant to 28 U.S.C. § 2284(b)(3), and for a stay of those orders pending review by the three-judge court.

A proposed order is attached.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland

Dated: February 9, 2017

\_\_\_\_/s/\_\_\_\_Jennifer L. Katz\_\_\_\_\_  
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Michael E. Busch, Jeanne Hitchcock, Richard  
Stewart, and Richard S. Madaleno

**IN THE UNITED STATES DISTRICT COURT  
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**MEMORANDUM IN SUPPORT OF MOTION FOR  
REVIEW OF THREE-JUDGE COURT AND FOR STAY**

Maryland Senate President Thomas V. Mike Miller, Maryland House of Delegates Speaker Michael E. Busch, Jeanne Hitchcock, and Richard Stewart, all non-party members of the Governor's Redistricting Advisory Council, seek three-judge court review of the opinion and order of a single judge, entered January 31, 2017, compelling the GRAC members to testify at deposition about their legislative motives and intent regarding their legislative activity in developing Maryland's 2011 congressional redistricting plan.<sup>1</sup> The

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<sup>1</sup> The movants are perplexed at the contents of the Plaintiffs' motion for an order of the full court approving or otherwise directing compliance with the courts January 31, 2017 and February 3, 2017 discovery orders. Plaintiffs, in consultation with movants, agreed to forgo previously scheduled depositions for purposes of allowing time for movants to prepare and file this motion. Ex. 2. The email exhibit submitted by the Plaintiffs sets forth the movants express intent to file this motion by the end of this week. Moreover, the Plaintiffs did not object or condition their cooperation in any way on a schedule for filing the instant motion. Further, movants provided deposition dates within the newly-extended discovery period, and the Plaintiffs have served the subpoenas for these depositions. *See* Ex. 5.

legislator GRAC members, as of this filing, have complied with the January 31 Order in part so far as it granted the Plaintiffs' motion to compel documents related to the congressional redistricting plan. President Miller and Speaker Busch continue to withhold selected communications between legislators and communications between legislators and their close aides containing opinions and advice, as to which several courts have concluded the legislative privilege is strongest, in order to guard against any contention that by disclosing such documents, the legislators could be found to have waived legislative privilege as to motive and legislative intent. *See* Ex. 3, privilege logs

In addition, non-party legislators Senator C. Anthony Muse and Delegate Curtis S. Anderson seek review of the single judge's subsequent order of February 3, 2017, compelling them to testify about their legislative motives and intent in supporting or opposing the congressional redistricting plan. These two legislators were not members of the GRAC nor were they involved in developing the plan. Further, Senator Richard S. Madaleno challenges the January 31 order in so far as it compels him to disclose communications he had with fellow legislators debating and discussing a proposed alternative plan. *See* Ex. 3.

Because the non-party movants' legislative privilege against compulsory process should not be forced to yield under the circumstances of this case, the three-judge court should vacate the single judge's orders. The non-party movants further request that, pending resolution by this three-judge court of these issues, the January 31, 2017 and February 3, 2017 orders be stayed as to the depositions and remaining withheld documents.

Because compliance with the January 31 and February 3, 2017 Orders would waive the non-parties' assertions of legislative privilege that could not be cured, a stay of discovery pending review by the three-judge court pursuant to 28 U.S.C. § 2284 is warranted.

## **ARGUMENT**

### **I. THE SUBJECTS OF THE SUBPOENAS HAVE A TESTIMONIAL PRIVILEGE PROTECTING THEM FROM COMPULSORY PROCESS AIMED AT DISCOVERING THEIR MOTIVATION IN ENGAGING IN LEGISLATIVE ACTIVITY.**

The Supreme Court has cautioned that a federal court's setting aside of state legislative privilege presents a "substantial intrusion" on a coordinate branch of government, and is warranted only in "extraordinary instances." *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 268 & n.18 (1977). In anything but "extraordinary instances" legislative privilege applies to state actors' engagement in legislative activity. *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 Court cited cases and treatises dating back to the late Nineteenth Century explaining that the motives of individual legislators cannot be

“inquired into[.]” *Id.* at 51-52 (citing *Jones v. Loving*, 55 Miss. 109 (1877); 1 J. Dillon, *Law of Municipal Corporations* § 313, 326–27 (3d ed. 1881)); *see also Village of Arlington Heights*, 429 U.S. at 268 n.18 (recognizing “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.’”).

The Fourth Circuit has acknowledged that the “parallel concept[s]” of absolute legislative immunity and legislative privilege “safeguard . . . republican values” and, together, enable “legislators to be free, not only from ‘the consequences of litigation’s results, *but also from the burden of defending themselves.*”” *E.E.O.C. v. Washington Suburban Sanitary Comm’n*, 631 F.3d 174, 181 (4th Cir. 2011) (“WSSC”) (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). “Because 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.” *Id.* at 181.

The Plaintiffs have acknowledged that they seek the testimony of sitting legislators solely to question them about the legislative motive and intent in creating or debating legislation. *See* ECF No. 120 at 3 (requesting movants be ordered to “answer questions at deposition concerning legislative motive and intent” while silent on any other potential deposition topic). Notably, the Plaintiffs have ample evidence of the “contemporaneous record in the redistricting process,” *Bethune-Hill v. Virginia State Bd. of Elecs.*, 114 F. Supp. 3d 323, 341 (E.D. Va. 2015) (citation omitted), including public hearing minutes,

proposals submitted by third parties to the GRAC, statements made by lawmakers during debate, newspaper articles, census reports, registered voter data, and election returns. *See Committee for a Fair and Balanced Map v. Illinois State Bd. of Elecs.*, No. 11 C. 5065, 2011 WL 4837508, at \*8 (noting that the “availability” of these data sources “favors non-disclosure” of legislatively-privileged documents containing non-factual communications that contain legislators’ opinions). Moreover, the legislator GRAC members have disclosed all of their documents “containing objective facts” upon which the GRAC relied in drawing the 2011 map, *id.* at \*11, in addition to other documents containing statements and communications about the potential effects of the legislation.

Given the extensive documentary record in this case, this is not an “extraordinary instance” as identified in *Village of Arlington Heights* where legislator testimony is necessary. Moreover, the Fourth Circuit has squarely refused to pierce state legislative privilege in an 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, the court stated:

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.

*Id.* at 1261-62. Allowing any cause of action requiring proof of legislative intent to set aside legislative privilege merely because the action related to redistricting would vitiate the meaning of “extraordinary.” The National Conference of State Legislators compiled data after the 2000 census demonstrating that the redistricting plans of some 40 states were challenged in dozens and dozens of lawsuits.<sup>2</sup>

Moreover, compelling legislators to testify about the subjective motivations and intent in developing or deliberating over legislation goes far beyond how courts typically have applied the five-factor balancing test to claims of legislative privilege in redistricting challenges. The 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*, 114 F. Supp. 3d at 338 (citation omitted).

In *Committee for a Fair and Balanced Map*, 2011 WL 4837508, the court quashed plaintiffs’ requests for documents containing the “motives, objectives, plan, reports and/or procedures created, formulated or used by lawmakers to draw the 2011 Map prior to the passage of the Redistricting Act,” *id.* at \*11, and expressed its concern that these requests “suggest[ed] an attempt by plaintiffs to gain insight to the thought processes of these individuals, if not now, then perhaps later through depositions,” *id.* at \*3. The court

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<sup>2</sup> Data can be found at [www.ncsl.org/research/redistricting/2000s-redistricting-case-summaries.aspx#CA](http://www.ncsl.org/research/redistricting/2000s-redistricting-case-summaries.aspx#CA).



permitted discovery of “facts or information available to lawmakers at the time of their decision” but concluded that “the legislative privilege shields from disclosure pre-decisional, non-factual communications that contain opinions, recommendations or advice about public policies or possible legislation.” *Id.* at \*10; *see also Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 96, 103 (S.D.N.Y.) (plaintiffs were not seeking depositions of legislators, but rather were seeking “limited discovery” in the form of documents “concerning the operations” of a GRAC-like redistricting committee), *aff’d*, 293 F. Supp. 2d 302 (S.D.N.Y. 2003). Similarly, in *Hall v. Louisiana*, No. CIV.A. 12-657-BAJ, 2014 WL 1652791 (M.D. La. Apr. 23, 2014), the court struck the same balance and applied the privilege to “any documents or information that contains or involves opinions, motives, recommendations or advice about legislative decisions between legislators or between legislators and their staff.” *Id.* at \*10. The court quashed deposition subpoenas served on legislators because they sought only privileged information. *Id.* at \*12. In both of those cases the Plaintiffs brought claims requiring proof of discriminatory intent. *Comm. for a Fair and Balanced Map*, 2011 WL 4837508, at \*2; *Hall*, 2014 WL 1652791, at \*1.

Similarly, in *Favors v. Cuomo*, No. 11-CV-5632 DLI RR, 2015 WL 7075960 (E.D.N.Y. Feb. 8, 2015), the court found that the five-factor balancing test weighed in favor of the selective disclosure of pre-existing documents. *Id.* at \*11-15. However, the court applied a “more exacting balancing test” to interrogatories issued to legislators because “responses to interrogatories are more akin to testimony than to disclosure of pre-existing documents” in that they “seek after-the-fact accounts of and explanations for the deliberative decisionmaking process.” *Id.* at \*15. The court, relying on *Village of*

*Arlington Heights*, 429 U.S. at 268, explained that “[i]n only the rarest of circumstances will courts compel testimony from legislators asserting legislative privilege.” *Id.* The court, thus, granted protective orders from providing responses to interrogatories that asked legislators “to provide their reasons for advocating and/or voting for the Senate Plan on the floor of the Legislature” because “[r]equiring legislators to explain their motives for legislative decisions and actions strikes at the core of the legislative privilege.” *Id.*

Recent cases decided in the Eastern District of Virginia have made similar distinctions between factual information and legislators’ subjective motivations. In *Bethune-Hill*, the court found that “selective disclosure” of privileged documents in the House of Delegates’ possession was warranted, distinguishing between “documents or communications reflecting strictly factual information” that were not protected by the privilege, and “opinions expressed by legislators” that were protected. 114 F. Supp. 3d at 342, 343. In *Page v. Virginia State Bd. of Elections*, 15 F. Supp. 3d 657 (E.D. Va. 2014), the court found that the factors weighed in favor of disclosing documents related to redistricting, *id.* at 665-68, but observed that “any effort to disclose the communications of legislative aides and assistants who are otherwise eligible to claim the legislative privilege on behalf of their employers threatens to impede future deliberations by the legislature. Other courts have taken this threat quite seriously, and have sought to mitigate it.” *Id.* at 667 (citing *Rodriguez v. Pataki*, 280 F. Supp. 2d 89 (S.D.N.Y. 2003)). Notably, in neither *Bethune-Hill* nor *Page* did the court compel any testimony of legislators.<sup>3</sup>

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<sup>3</sup> In prior briefing, the Plaintiffs noted that a legislator testified in *Bethune-Hill*, 114 F. Supp. 3d 323, but did not cite to any order compelling the testimony. It appears that in

Moreover, the cases where courts denied motions seeking protective orders relating to depositions are wholly distinguishable. In *Baldus v. Brennan*, No. 11-CV-562, 2011 WL 6122542 (E.D. Wisc. Dec. 8, 2011), the court denied a motion to quash depositions of a consultant and a legislative aide who were involved in drafting the redistricting map. There, no depositions of legislators were ordered, and the court held that the non-legislators had to testify and produce documents “relating to *how* the Legislature reached its decision on the 2011 redistricting maps[.]” *Id.* at \*1 (emphasis added). Here, the non-parties have disclosed documents relating to *how* the GRAC developed the Plan, and the Plaintiffs have acknowledged that they seek to depose GRAC members and other legislators solely about *why* they developed the Plan or voted on the Plan or both. In *Perez v. Perry*, No. SA-11-CV-360-OLG, 2014 WL 106927 (W.D. Tex. Jan. 8, 2014), the individual legislators were not seeking to quash the depositions, and instead sought to narrow the scope of their testimony to prohibit questions about legislators’ legislative motives and intent. *See id.* at \*1; *see also Perez v. Perry*, No. SA-11-CV-360-OLG, Dkt. No. 102 (W.D. Tex. Aug. 1, 2011) (attached as Exhibit 3). In that distinct posture, the court ordered that the deponents could raise the privilege in response to individual questions and that a determination of whether the privilege applied would be determined if the plaintiffs sought to use the

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*Bethune-Hill*, the testimony of Delegate S. Chris Jones was offered by the Virginia House of Delegates as the defendant-intervenors in that case and was not compelled. *See id.* at 330 (explaining that the state legislator expected to testify as a fact witness for the defendant-intervenors); Defendant-Intervenors’ Pre-Trial Disclosures, *Bethune-Hill*, 114 F. Supp. 3d 323 (ECF No. 79). Similarly, although legislators testified in *Harris v. McCrory*, 159 F. Supp. 3d 600, 617 (M.D.N.C. 2016), there is no indication that any of the legislators who testified were compelled to do so.

testimony at trial. *Id.* The court noted the plaintiffs’ concerns that the legislators would “use the privilege as both a sword and a shield,” Ex. 3, Dkt. 102 at 1.

Here, in contrast, the legislators are invoking their testimonial legislative privilege to quash the deposition subpoenas, and thus do not seek to use the privilege as both a sword and a shield by offering self-serving testimony while shielding other testimony on privilege grounds.<sup>4</sup> In light of how the five-factor balancing test has been applied by other courts and given the fairly extensive documentary record in this case, the balance here weighs in favor of quashing the deposition subpoenas. This is particularly so given the Supreme Court’s admonition that compelling testimony from legislators about their legislative motivations is appropriate only in an “extraordinary instances.” *Village of Arlington Heights*, 429 U.S. at 268. First, as to relevance, this Court has stated that the plaintiffs “must rely on *objective* evidence” of specific intent, ECF No. 88 at 33 (emphasis added), a type of evidence that cannot be discerned from the testimony of individuals acting in a

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<sup>4</sup> In *Nashville Student Organizing Comm. v. Hargett*, 123 F. Supp. 3d 967, 969 (M.D. Tenn. 2015), a challenge to Tennessee’s voter identification law, the court adopted a similar approach to *Perez*. Notably, in that case the plaintiffs were not able to access any documents through Rule 45 subpoenas because all of the documents had been destroyed, and only thereafter served the deposition subpoenas in question. The court noted the “dearth of available documentary evidence” when conducting the five-factor balancing test. *Id.* at 970-71. Here, in contrast, the Plaintiffs have been able to access numerous responsive documents, including documents containing facts or information available to lawmakers at the time of their decision. See *Comm. for a Fair and Balanced Map*, 2011 WL 4837508, at \*10. Moreover, in *Nashville*, the defendants had not expressly opposed plaintiff’s proposal to conduct *in camera* depositions, allowing for question-by-question assertion of the privilege, nor had they even argued that the depositions would have a chilling effect. 123 F. Supp. 3d at 970, 971 n.7. In contrast, the movants here would oppose any *in camera* deposition and have strongly asserted the potential chilling effect of the Plaintiffs’ aims to question them about their legislative motive and intent.

legislative capacity about their subjective intent to “commit the acts comprising the constitutional violation alleged in the complaint,” the only testimony Plaintiffs purport to seek. (ECF No. 120 at 12). Plaintiffs have never proffered a lack of objective evidence as a rationale for the depositions sought here. Any potential for adducing additional objective evidence from the deposition, as opposed to the subjective statements Plaintiffs seek, even if this court were to determine it potentially relevant, “is not central to the outcome of this case.” *Comm. for a Fair and Balanced Map*, 2011 WL 4837508, at \*8. Accordingly, this factor weighs against compelling legislators and non-legislator GRAC members to testify about their legislative motive and intent.

Second, there is ample other relevant evidence available to the Plaintiffs in this case. As discussed above, Plaintiffs have not and do not complain about a lack of objective evidence, instead seeking only testimony about the intents and motives of the legislative actors. 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, draft maps considered by the GRAC, and documents “containing objective facts” upon which the GRAC relied in drawing the 2011 map, *Comm. for a Fair and Balanced Map*, 2011 WL 4837508, at \*11. These documents and other tangible items, along with other material in the public record, are the objective evidence of legislative intent; it is with this material that plaintiffs’ must prove their case. Given this “considerable information at [the Plaintiffs’] fingertips,” this factor weighs against disclosure. *Comm. for a Fair and Balanced Map*, 2011 WL 4837508, at \*8.

Third, the non-parties acknowledge that a constitutional challenge to the method by which our representative democracy is conducted is serious.

Fourth, the GRAC members played a central role in drafting the Plan, although the other legislators subpoenaed to testify did not. While movants are non-parties, the burdens of litigation weigh equally upon them and this factor does not favor disclosure.

Finally, the fifth factor weighs heavily against disclosure. The very core of the rationale for affording state legislators a testimonial privilege is at stake here. Legislative privilege exists to “further encourage the republican values [legislative immunity] promotes.” WSSC, 631 F.3d at 181. State legislators “bear significant responsibility for many of our toughest decisions” in their role as “members of the most representative branch.” *Id.* In carrying out these tasks, the law has long afforded “legislators with the breathing room necessary to make these choices in the public’s interest, in a way ‘uninhibited by judicial interference.’” *Id.* (quoting *Bogan*, 523 U.S. at 52) (internal alterations omitted). Imposing restrictions “on a legislator’s freedom undermines the ‘public good’ by interfering with the rights of the people to representation in the democratic process.” *Bogan*, 523 U.S. at 52 (quoting *Spallone v. United States*, 493 U.S. 265, 279 (1990)). Subjecting legislators to compulsory process in order to interrogate them as to their internal motivations in passing legislation constrains legislators’ modes of future action— “[l]egislators face competing demands from constituents, lobbyists, party leaders, special interest groups and others.” *Comm. for a Fair and Balanced Map*, 2011 WL 4837508, \*8. In order to engage in “earnest discussion within governmental walls,” legislators “must be able to confer with one another without fear of public disclosure.” *Id.*

at \*8, 9 (internal quotation omitted). Such discussion in the redistricting context could include “the ability of party leaders to synthesize competing interests of constituents, special interest groups and lawmakers” to draw a map that will gain enough support to become law. *Id.* at \*9. Chilling this “important and undeniable part of the legislative process” is a consequence courts seek to avoid. *Id.*; *Bethune-Hill*, 114 F.Supp.3d at 342 (potential for future “timidity” by legislature a “serious” consideration); *Page*, 15 F. Supp. 3d at 667; *Hall*, 2014 WL 1652791, at \*10.

Moreover, the burden of litigation itself can be a significant deterrent to legislators. “[W]here the part-time citizen-legislator remains commonplace,” “the time and energy required to defend” against compulsory process is “of particular concern.” *See Bogan*, 523 U.S. at 52. Maryland’s General Assembly meets for only ninety days out of the calendar year outside of extraordinary sessions, Md. Const. art. III, § 15, and the citizen-legislators of Maryland must accomplish all of the necessary yearly public business during that time. Moreover, in the state legislature, “where prestige and pecuniary rewards may pale in comparison to the” burdens of complying with compulsory process, broad susceptibility to that process may well “deter service.” *See Bogan*, 523 U.S. at 52; *see also Bethune-Hill*, 114 F.Supp.3d at 342 (noting that “a request for testimony” is more burdensome than the request for documents at issue). This deterrent may be particularly acute for voluntary commissions, like the GRAC, which rely on citizen-members. And, while *Bogan* was specifically addressing legislative immunity, the same considerations apply equally to compelled testimony of nonparties. *See MINPECO, S.A.*, 844 F.2d at 859; *Bogan*, 50-51 (“inquiry into” legislative motive was treated equivalently to individual legislator liability

at common law and early cases) (quoting *Jones v. Loving*, 55 Miss. 109 (1877); 1 J. Dillon, *Law of Municipal Corporations* § 313, 326-27 (3d ed. 1881)).

Furthermore, if legislative privilege is stripped from legislators in a broad-based way, legislators may also foreseeably be subjected to “political wars of attrition in which their opponents try to defeat them through litigation rather than at the ballot box.” *WSSC*, 631 F.3d at 181. Without protection of intimate deliberative processes and subjective motives of legislators from compulsory process, an important “reinforce[ment to] representative democracy” is lost, imperiling “public decisionmaking by public servants for the right reasons.” *Id.*

## **II. THE FIVE-FACTOR BALANCING TEST WEIGHS AGAINST COMPELLING PRODUCTION OF DOCUMENTS WITHHELD BY INDIVIDUAL LEGISLATORS.**

For the reasons discussed above, Senate President Miller and House Speaker Busch are properly withholding documents “contain[ing] opinions, recommendations or advice” about Senate Bill 1 in the form of communications between the legislators and their aides and among legislators. *Comm. for a Fair and Balanced Map*, 2011 WL 4837508, at \*10 (concluding legislative privilege shielded such documents from disclosure). As other courts have recognized in redistricting challenges, “[t]he legislative privilege is strongest as applied to communications among legislators and between legislators and their immediate aides.” *Bethune-Hill*, 114 F. Supp. 3d at 343 (citing *Gravel v. United States*, 408 U.S. 606, 616-17 (1972) (“The day-to-day work of such aides is so critical to the Members’ performance that they must be treated as the latter’s alter egos.”)); *Page*, 15 F. Supp. 3d at 667 (noting in redistricting challenge that “any effort to disclose the



communications of legislative aides and assistants who are otherwise eligible to claim the legislative privilege on behalf of their employers threatens to impede future deliberations by the legislature”); *Hall*, 2014 WL 1652791, at \*10 (shielding from disclosure “any documents or information that contains or involves opinions, motives, recommendations or advice about legislative decisions between legislators or between legislators and their staff”); *Comm. for a Fair and Balanced Map*, 2011 WL 4837508, at \*8 (“The need for confidentiality between lawmakers and their staff is of utmost importance.”); *see also North Carolina State Conf. v. McCrory*, No. 1:13CV658, 2015 WL 12683665, at \*6 (M.D.N.C. Feb. 4, 2015) (denying, in challenge to voter identification law, compelled disclosure of “communications among legislators and between legislators and their staff,” because “the potential intrusion into the legislative process outweighs the countervailing factors”).

For these same reasons set forth in the cases cited above, Senator Madaleno is properly withholding communications “contain[ing] opinions, recommendations or advice” about Senate Bill 1 in the form of communications between Senator Madaleno and other individual legislators that took place after the GRAC’s proposed plan was made available to the public. *Comm. for a Fair and Balanced Map*, 2011 WL 4837508, at \*10; *see also Rodriguez*, 280 F. Supp. 2d at 102–03 (denying motion to compel insofar as “the plaintiffs seek information concerning the actual deliberations of the Legislature—or individual legislators—which took place outside” of the GRAC-like process).

## CONCLUSION

For the reasons set forth above, this Court should quash the non-party deposition subpoenas served on Thomas V. Mike Miller, Jr., Michael E. Busch, Jeanne Hitchcock, Richard Stewart, C. Anthony Muse, and Curtis S. Anderson. In addition, this Court should deny the Plaintiffs' Motion to Compel documents as to the limited communications withheld by President Miller, Speaker Busch, and Senator Richard S. Madaleno.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland

Dated: February 9, 2017

\_\_\_\_\_/s/\_\_\_\_Jennifer L. Katz\_\_\_\_\_  
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Attorneys for Thomas V. Mike Miller, Jr.,  
Michael E. Busch, Jeanne Hitchcock, Richard  
Stewart, Richard Madaleno, C. Anthony Muse,  
and Curtis S. Anderson

## TABLE OF EXHIBITS

Exhibit No. Title

1. Intentionally left blank
2. Emails exchanged between J. Katz and S. Medlock
3. Privilege logs of Senate President Thomas v. Mike Miller, Jr., Maryland House of Delegates Speaker Michael E. Busch, and Senator Richard S. Madaleno
4. *Perez v. Perry*, No. SA-11-CV-360-OLG, Dkt. No. 102 (W.D. Tex. Aug. 1, 2011)
5. Deposition subpoenas

# **EXHIBIT 2**

**Katz, Jennifer**

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**From:** Katz, Jennifer  
**Sent:** Thursday, February 02, 2017 3:05 PM  
**To:** 'Medlock, Stephen M.'; Kimberly, Michael B.; Hughes, Paul W.; Webb, Brantley; Stein, Micah D.  
**Cc:** Rice, Sarah  
**Subject:** RE: Benisek v. Lamone, Busch deposition [MB-AME.FID1259210]

Thank you, Steve.

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**From:** Medlock, Stephen M. [mailto:SMedlock@mayerbrown.com]  
**Sent:** Thursday, February 02, 2017 2:52 PM  
**To:** Katz, Jennifer <jkatz@oag.state.md.us>; Kimberly, Michael B. <MKimberly@mayerbrown.com>; Hughes, Paul W. <PHughes@mayerbrown.com>; Webb, Brantley <BWebb@mayerbrown.com>; Stein, Micah D. <MStein@mayerbrown.com>  
**Cc:** Rice, Sarah <srice@oag.state.md.us>  
**Subject:** RE: Benisek v. Lamone, Busch deposition [MB-AME.FID1259210]

Jennifer:

That is correct. We will not go forward with Speaker Busch's deposition tomorrow. As discussed, we reserve our right to take Speaker Busch's deposition and will do so once we agree upon a date and location for the deposition.

Regards,

Steve

**Stephen M. Medlock**

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**From:** Katz, Jennifer [mailto:[jkatz@oag.state.md.us](mailto:jkatz@oag.state.md.us)]  
**Sent:** Thursday, February 02, 2017 1:40 PM  
**To:** Medlock, Stephen M.; Kimberly, Michael B.; Hughes, Paul W.; Webb, Brantley; Stein, Micah D.  
**Cc:** Rice, Sarah  
**Subject:** Benisek v. Lamone, Busch deposition

Steve,

I wanted to memorialize our conversation with respect to our mutual understanding that you would not be going forward with Speaker Busch's deposition on Friday, given that we will be seeking review by the three-judge court of Judge Bedar's order compelling him to appear for a deposition. We are still working to get you future dates.

Best,  
Jennifer

Jennifer Katz  
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Office of the Attorney General  
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(410) 576-7005

Please consider the environment before printing this email

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# **EXHIBIT 3**

*Benisek v. Lamone*  
Revised Privilege Log for Speaker Michael E. Busch

| Document No. | Date         | Description  | Reason for Withholding   |
|--------------|--------------|--|--|
| 1            | October 2011 | Email from Speaker's staff to staff of Speaker, President and Governor re scheduling   | Produced   |
| 2            | October 2011 | Email from Speaker's staff to DLS staff re Special Session   | Produced   |
| 3            | 3/25/2011    | Email from Delegate Cardin to his close legislative aide and the close legislative aides of Speaker Busch regarding constituent request for input into map-drawing process   | Legislative Privilege –legislator to legislator and close aides not shared with others   |
| 4            | 8/1/2011     | Email from DLS staff to Speaker's staff re research request  | Produced   |
| 5            | 10/17/2011   | Email from President's staff to staff of Speaker, President and Governor containing opinions and recommendations developed for legislators regarding Rep. Edwards' proposed plan exchanged while SB1 was pending in the General Assembly | Legislative Privilege—legislative close aides not shared with others   |
| 6            | 10/24/2011   | Email from County staff to Speaker's staff for information on Congressional Districts in County  | Produced previously  |
| 7            | 7/6/2011     | Speaker's Staff to President's staff regarding opinions and recommendations about the approach to passing an eventual redistricting plan   | Legislative Privilege – discussion of legislative close aides not shared with others   |
| 8            | 9/15/2011    | Speaker's staff to Delegate regarding schedule for consideration of congressional redistricting plan   | Legislative Privilege – legislator to legislator communication not shared with others  |
| 9            | 10/7/2011    | Email Delegate to Speaker's staff regarding availability of congressional plan   | Legislative Privilege—legislator to legislator communication not shared with others  |
| 10           | 10/17/2011   | Attachment to Item 5. Spreadsheet prepared by the President's staff as part of his job duties in preparing drafts of SB1 containing plan summaries of congressional districts which may have been used by the President's and Speakers's | Legislative Privilege – legislative close aides not shared with others. Withheld only as an attachment to otherwise privileged communication |



|    |      |  |          |
|----|------|--|----------|
|    |      | staff in preparing and analyzing draft and proposed legislation in the special session   |          |
| 11 | 2011 | Spreadsheet containing plan summaries of congressional districts, which may have been used by President Miller's and Speaker Busch's personal legislative staff and Governor's staff while they were performing their job duties in preparing drafts of SB1 for consideration. | Produced |

*Benisek v. Lamone*

## Revised Privilege Log for Senator Thomas V. Mike Miller, Jr.

| Document No.    | Date                         | Description   | Reason for Withholding  |
|-----------------|------------------------------|---|---|
| 1               | 4/25/11                      | Email from one member of the President's staff to another forwarding email from Dan Friedman concerning <i>Martin</i> case.   | Produced  |
| 2               | 10/13/11                     | Email from President Miller to members of Senate and Staff about Special Session  | Produced  |
| 3               | 10/14/11                     | Email from President Miller to members of Senate and Staff about Special Session  | Produced  |
| 4               | 10/20/11                     | Email from Planning Staff to GRAC members and staff and Secretary of State about equivalency files  | Produced  |
| 5               | 10/31/11                     | Email from Dan Friedman, Assistant Attorney General to GRAC members, staff, and other Assistant Attorneys General re litigation   | Produced  |
| 6               | 11/10/11                     | Same as above   | Produced  |
| 7               | 11/18/11                     | Same as above   | Produced  |
| 8               | 11/21/11                     | Same as above   | Produced  |
| 9               | 11/29/11                     | Same as above   | Produced  |
| 10              | 2011                         | Data compiled from internal and external sources, which may have been used by President Miller's and Speaker Busch's personal legislative staff while they were performing their job duties in preparing plan drafts for consideration. | Produced—Content of CD  |
| 11              | 10/3/11                      | Senate Democratic Caucus Meeting Agenda Draft authored by Pat Murray, then Chief of Staff   | Produced  |
| 12 <sup>1</sup> | Undated, likely October 2011 | Pat Murray-authored draft of remarks to be provided by Senate President Miller to Senator Robey   | Legislative privilege—legislator to legislator communication not shared with others |
| 13              | July 6, 2011                 | Pat Murray-authored notes for presentation to be given by Senate  | Legislative privilege—close legislative aide to legislator                          |

<sup>1</sup> Items 12 through 16 were originally located when searching in response to the subpoena issued to Yaakov Weissman. However, consistent with practice in disclosing staff documents in response to the subpoena for documents issued to Senate President Miller, they are included on this privilege log. No documents other than those disclosed on this privilege log are withheld in response to the subpoena to Mr. Weissman.

|    |                 |   |   |
|----|-----------------|---|---|
|    |                 | President Miller to the Redistricting Advisory Committee  | communication not shared with others  |
| 14 | August 18, 2011 | Pat Murray-authored notes for remarks to be given at the Maryland Democratic Party Trustees Reception | Legislative privilege—close legislative aide to legislator communication not shared with others |
| 15 | May 11, 2011    | Pat Murray-authored notes for remarks to be given at the Calvert County Democratic Club               | Legislative privilege—close legislative aide to legislator communication not shared with others |
| 16 | October 3, 2011 | Pat Murray-authored notes for remarks to be given at Democratic Caucus Meeting                        | Legislative privilege—close legislative aide to legislator communication not shared with others |

*Benisek v. Lamone*

## Revised Privilege Log for Senator Richard S. Madaleno, Jr.

| Document No. | Date       | Description   | Reason for Withholding   |
|--------------|------------|---|--|
| 1            | 8/19/2011  | Email to Senator Madaleno re proposed meeting about congressional redistricting plan  | Produced   |
| 2            | 9/15/2011  | Redacted portion of email chain containing email from David Churchill in which Senator Madaleno and his aide discuss the email                                      | Produced   |
| 3            | 9/28/2011  | Emails between Senator Madaleno and his aide concerning letter from constituent   | Produced   |
| 4            | 10/4/2011  | Email between Delegate Sandy Rosenberg and Senator Madaleno on several subjects, including same sex marriage and news articles about the proposed Congressional map | Legislative privilege – legislator to legislator deliberative process about future legislation   |
| 5            | 10/4/2011  | Email relating to Congressional redistricting plan  | Produced   |
| 6            | 10/5/2011  | Email relating to Congressional redistricting plan  | Produced   |
| 7            | 10/10/2011 | Email conversations between Senator Madaleno and, separately, Delegate Aisha Braveboy, Jamie Raskin, and David Lublin regarding an alternative proposed map         | Conversation between Senator Madaleno and Jamie Raskin withheld because it was not shared with David Lublin and is legislatively privileged—legislator to legislator deliberative process about future legislation |
| 8            | 10/11/2011 | Email between Senator Madaleno and a Delegate Bill Frick regarding the proposed congressional redistricting plan  | Legislative privilege – legislator to legislator deliberative process about future legislation   |
| 9            | 10/6/2011  | Redacted portion of email chain containing email from Brian Brooks in which Senator Madaleno and his aide discuss the email   | Produced   |

# **EXHIBIT 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

AUG - 1 2011

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY                      DEPUTY CLERK

SHANNON PEREZ; HAROLD  
DUTTON, JR.; GREGORY TAMEZ;  
SERGIO SALINAS; CARMEN  
RODRIGUEZ; RUDOLFO ORTIZ;  
NANCY HALL and DOROTHY DEBOSE

Plaintiffs

-and-

EDDIE BERNICE JOHNSON, SHEILA  
JACKSON-LEE, and ALEXANDER  
GREEN, MEMBERS OF THE UNITED  
STATES CONGRESS

-and-

TEXAS LEGISLATIVE BLACK  
CAUCUS, TEXAS HOUSE OF  
REPRESENTATIVES

-and-

TEXAS STATE CONFERENCE OF  
NAACP BRANCHES; HOWARD  
JEFFERSON, JUANITA WALLACE and  
REV. BILL LAWSON

Plaintiff-Intervenors

v.

STATE OF TEXAS; RICK PERRY,  
in his official capacity as Governor of the  
State of Texas; DAVID DEWHURST,  
in his official capacity as Lieutenant  
Governor of the State of Texas; JOE  
STRAUS, in his official capacity as Speaker  
of the Texas House of Representatives;  
HOPE ANDRADE, in her official  
capacity as Secretary of State of the  
State of Texas

Defendants

CIVIL ACTION NO.  
11-CA-360-OLG-JES-XR  
[Lead case]

MEXICAN AMERICAN LEGISLATIVE  
CAUCUS, TEXAS HOUSE OF  
REPRESENTATIVES (MALC)

Plaintiffs

-and-

THE HONORABLE HENRY CUELLAR,  
Member of Congress, CD 28; THE TEXAS  
DEMOCRATIC PARTY and BOYD  
RICHIE, in his official capacity as Chair of  
the Texas Democratic Party; and LEAGUE  
OF UNITED LATIN AMERICAN  
CITIZENS (LULAC) and its individually  
named members

Plaintiff-Intervenors

v.

STATE OF TEXAS; RICK PERRY,  
in his official capacity as Governor of the  
State of Texas; DAVID DEWHURST,  
in his official capacity as Lieutenant  
Governor of the State of Texas; JOE  
STRAUS, in his official capacity as Speaker  
of the Texas House of Representatives;

Defendants

CIVIL ACTION NO.  
SA-11-CA-361-OLG-JES-XR  
[Consolidated case]

TEXAS LATINO REDISTRICTING  
TASK FORCE, JOEY CARDENAS,  
ALEX JIMENEZ, EMELDA  
MENENDEZ, TOMACITA OLIVARES,  
JOSE OLIVARES, ALEJANDRO ORTIZ,  
AND REBECCA ORTIZ

Plaintiffs

v.

RICK PERRY, in his official capacity  
as Governor of the State of Texas

Defendants

CIVIL ACTION NO.  
SA-11-CA-490-OLG-JES-XR  
[Consolidated case]

MARGARITA V. QUESADA; ROMEO  
MUNOZ; MARC VEASEY; JANE  
HAMILTON; LYMAN KING; and  
JOHN JENKINS

Plaintiffs

v.

RICK PERRY, in his official capacity  
as Governor of the State of Texas; and  
HOPE ANDRADE, in her official  
capacity as Secretary of State for the  
State of Texas

Defendants

CIVIL ACTION NO.  
SA-11-CA-592-OLG-JES-XR  
[Consolidated case]

JOHN T. MORRIS

Plaintiff

v.

STATE OF TEXAS; RICK PERRY, in his  
official capacity as Governor of the State  
of Texas; DAVID DEWHURST, in his  
official capacity as Lieutenant Governor of  
the State of Texas; JOE STRAUS, in his  
official capacity as Speaker of the Texas  
House of Representatives; and HOPE  
ANDRADE, in her official capacity as  
Secretary of State of the State of Texas

Defendants

CIVIL ACTION NO.  
SA-11-CA-615-OLG-JES-XR  
[Consolidated case]

EDDIE RODRIGUEZ, MILTON GERARD  
WASHINGTON, BRUCE ELFANT,  
ALEX SERNA, SANDRA SERNA,  
BETTY F. LOPEZ, DAVID GONZALEZ,  
BEATRICE SALOMA, LIONOR SOROLA-  
POHLMAN; ELIZA ALVARADO;  
JUANITA VALDEZ-COX; JOSEY  
MARTINEZ; NINA JO BAKER; TRAVIS  
COUNTY and CITY OF AUSTIN

Plaintiffs

v.



RICK PERRY, in his official capacity  
as Governor of the State of Texas;  
DAVID DEWHURST, in his  
official capacity as Lieutenant Governor  
of the State of Texas; JOE STRAUS,  
in his official capacity as Speaker of  
the Texas House of Representatives;  
HOPE ANDRADE, in her official  
capacity as Secretary of State of the  
State of Texas; STATE OF TEXAS;  
BOYD RICHIE, in his official capacity  
as Chair of the Texas Democratic Party;  
and STEVE MUNISTERI, in his official  
capacity as Chair of the Republican  
Party of Texas

Defendants

CIVIL ACTION NO.  
SA-11-CA-635-OLG-JES-XR  
[Consolidated case]

## ORDER

Pending before the Court is Defendants' Motion for Protective Order (Dkt. # 62). The Texas Democratic Party (TDP) and Boyd Richie filed a response (Dkt. # 74). The Texas Latino Redistricting Task Force (LULAC) and its individuals members also filed a response (Dkt. # 88). The NAACP Plaintiff-Intervenors filed a response as well (Dkt. # 87).

In their motion, Defendants seek a protective order to "preserve the legislative privilege of witnesses called to testify in this case." (Dkt. # 62, p. 2). Defendants assert that their witnesses will likely face questioning on issues that are integral to the legislative process and that answering such questions will "invade the witnesses' legislative privilege." (Dkt. # 62, p. 2).

The TDP and Mr. Richie contend that a protective order is unwarranted. They claim that Defendants intend to use the privilege as both a sword and a shield and the privilege, if applicable, is qualified and may be waived. The LULAC Plaintiffs contend that the privilege does not apply or, alternatively, that it should be narrowly construed. The NAACP Plaintiffs contend that a blanket protective order would clearly be inappropriate, and if the Court makes any ruling, it should be based on the question being posed to each particular witness.

The Court understands that depositions will begin tomorrow; thus, it has reviewed the motion, response and applicable law in advance thereof. After such review, it clearly appears that any sort of blanket protective order that would insulate witnesses from testifying would be inappropriate. As an evidentiary and testimonial privilege, the legislative privilege is limited and qualified. In re Grand Jury, 821 F.2d 946, 957-58 (3<sup>rd</sup> Cir. 1987). The privilege may obviously be asserted by legislators and congressmen, who have a function and role in the legislative process. The privilege may also apply to staffers, aides or employees, with certain limitations. Gravel v. United States, 408 U.S. 606, 621-22, 92 S.Ct. 2614 (1972). However, the privilege does not apply to every person who may be deposed in this case, nor does it apply to every question that may be asked during deposition. The privilege is personal to each person who may be entitled to invoke it, and that person may choose to waive the privilege. Even if the deponent is entitled to invoke the privilege, the application of the privilege depends on the question being posed. Even if the privilege is asserted, it may be waived and/or the Court may find that it should not be enforced based on the information being sought and/or other circumstances that may not be readily apparent, such as whether the evidence is available from other sources.

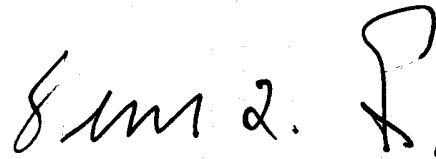
For these reasons, the Court finds that the assertion of the privilege is premature.<sup>1</sup> The Court cannot provide blanket protection to every person who may choose to assert the privilege during the discovery process. Instead, the parties should proceed with depositions and the deponents must appear and testify even if it appears likely that the privilege may be invoked in response to certain questions. The deponents may invoke the privilege in response to particular questions, but the deponent must then answer the question subject to the privilege. Those portions of the deposition

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<sup>1</sup>Florida Association of Rehabilitation Facilities, Inc. v. State of Florida, 164 F.R.D. 257, 260 (N.D. Fla. 1995)(question as to whether privilege applied was not ripe when witnesses had not appeared and asserted privilege in the context of specific questions).

transcript may then be sealed and submitted to the Court for *in camera* review, along with a motion to compel, if the party taking the deposition wishes to use the testimony in these proceedings. In other words, the testimony will not be disclosed or used unless the Court finds that the privilege does not apply, has been waived and/or should not be enforced.

It is therefore ORDERED that Defendants' Motion for Protective Order (Dkt. # 62) is DENIED without prejudice.



---

ORLANDO L. GARCIA  
UNITED STATES DISTRICT JUDGE

*And on behalf of:*

Jerry E. Smith  
United States Circuit Judge  
U.S. Court of Appeals, Fifth Circuit

-and-

Xavier Rodriguez  
United States District Judge  
Western District of Texas

# **EXHIBIT 5**

## UNITED STATES DISTRICT COURT

for the  
District of Maryland

O. John Benisek, et al.

*Plaintiff*

v.

Linda Lamone, et al.

*Defendant*

Civil Action No. JKB-13-3233

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Senate President Thomas V. Mike Miller, Jr., c/o Sarah Rice, Esq., Assistant Attorney General,  
Office of the Attorney General, 200 St. 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: Lerch, Early & Brewer, Chtd,<br>3 Bethesda Metro Center, Suite 460<br>Bethesda, MD 20814 | Date and Time:<br>03/03/2017 1:00 pm |
|---|--------------------------------------|

The deposition will be recorded by this method: Stenography; audio 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: 02/08/2017

CLERK OF COURT

OR

/s/ Stephen M. Medlock

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 NW, Washington, DC 20006; 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. JKB-13-3233

**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.

## UNITED STATES DISTRICT COURT

for the  
District of Maryland

O. John Benisek, et al.

*Plaintiff*

v.

Linda Lamone, et al.

*Defendant*

Civil Action No. JKB-13-3233

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Martin O'Malley c/o Sarah Rice, Esq., Assistant Attorney General, Office of the Attorney General,  
200 St. 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: Lerch, Early & Brewer, Chtd,<br>3 Bethesda Metro Center, Suite 460<br>Bethesda, MD 20814 | Date and Time:<br>03/03/2017 9:00 am |
|---|--------------------------------------|

The deposition will be recorded by this method: Stenography; audio 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: 02/08/2017

CLERK OF COURT

OR

/s/ Stephen M. Medlock

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 NW, Washington, DC 20006; 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. JKB-13-3233

**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.

## UNITED STATES DISTRICT COURT

for the  
District of Maryland

O. John Benisek, et al.

*Plaintiff*

v.

Linda Lamone, et al.

*Defendant*

Civil Action No. JKB-13-3233

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Del. Curt Anderson c/o Sarah Rice, Esq., Assistant Attorney General, Office of the Attorney General,  
200 St. 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: Lerch, Early & Brewer, Chtd,<br>3 Bethesda Metro Center, Suite 460<br>Bethesda, MD 20814 | Date and Time:<br>02/27/2017 8:00 am |
|---|--------------------------------------|

The deposition will be recorded by this method: Stenography; audio 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: 02/08/2017

CLERK OF COURT

OR

/s/ Stephen M. Medlock

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 NW, Washington, DC 20006; 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. JKB-13-3233

**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
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  - (i) is a party or a party's officer; or
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**(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.

## UNITED STATES DISTRICT COURT

for the  
District of Maryland

O. John Benisek, et al.

*Plaintiff*

v.

Linda Lamone, et al.

*Defendant*

Civil Action No. JKB-13-3233

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Speaker Michael E. Busch c/o Sarah Rice, Esq., Assistant Attorney General, Office of the Attorney General,  
200 St. 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: Lerch, Early & Brewer, Chtd,<br>3 Bethesda Metro Center, Suite 460<br>Bethesda, MD 20814 | Date and Time:<br>02/24/2017 10:00 am |
|---|---------------------------------------|

The deposition will be recorded by this method: Stenography; audio 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: 02/08/2017

CLERK OF COURT

OR

/s/ Stephen M. Medlock

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 NW, Washington, DC 20006; 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. JKB-13-3233

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

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(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:

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**(g) Contempt.**

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## UNITED STATES DISTRICT COURT

for the  
District of Maryland

O. John Benisek, et al.

*Plaintiff*

v.

Linda Lamone, et al.

*Defendant*

Civil Action No. JKB-13-3233

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Richard Stewart c/o Sarah Rice, Esq., Assistant Attorney General, Office of the Attorney General,  
200 St. 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: Lerch, Early & Brewer, Chtd,<br>3 Bethesda Metro Center, Suite 460<br>Bethesda, MD 20814 | Date and Time:<br>02/21/2017 9:00 am |
|---|--------------------------------------|

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

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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: 02/08/2017

CLERK OF COURT

OR

/s/ Stephen M. Medlock

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 NW, Washington, DC 20006; 202-263-3221;  
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Civil Action No. JKB-13-3233

**PROOF OF SERVICE**

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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.**

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- (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.

## UNITED STATES DISTRICT COURT

for the  
District of Maryland

O. John Benisek, et al.

*Plaintiff*

v.

Linda Lamone, et al.

*Defendant*

Civil Action No. JKB-13-3233

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Sen. C. Anthony Muse c/o Sarah Rice, Esq., Assistant Attorney General, Office of the Attorney General,  
200 St. 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: Lerch, Early & Brewer, Chtd,<br>3 Bethesda Metro Center, Suite 460<br>Bethesda, MD 20814 | Date and Time:<br>02/17/2017 9:00 am |
|---|--------------------------------------|

The deposition will be recorded by this method: Stenography; audio 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: 02/08/2017

CLERK OF COURT

OR

/s/ Stephen M. Medlock

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 NW, Washington, DC 20006; 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. JKB-13-3233

**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.

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

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

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## UNITED STATES DISTRICT COURT

for the  
District of Maryland

O. John Benisek, et al.

*Plaintiff*

v.

Linda Lamone, et al.

*Defendant*

Civil Action No. JKB-13-3233

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Jeanne Hitchcock c/o Sarah Rice, Esq., Assistant Attorney General, Office of the Attorney General,  
200 St. 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: Lerch, Early & Brewer, Chtd,<br>3 Bethesda Metro Center, Suite 460<br>Bethesda, MD 20814 | Date and Time:<br>02/26/2017 4:00 pm |
|---|--------------------------------------|

The deposition will be recorded by this method: Stenography; audio 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: 02/08/2017

CLERK OF COURT

OR

/s/ Stephen M. Medlock

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 NW, Washington, DC 20006; 202-263-3221;  
smedlock@mayerbrown.com

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Civil Action No. JKB-13-3233

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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.:



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  - (i) is a party or a party's officer; or
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

O. JOHN BENISEK, *et al.*,

*Plaintiffs,*

v.

LINDA H. LAMONE, *et al.*,

*Defendants.*

\*

\*

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Case No. 13-cv-3233

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\* \* \* \* \*

**ORDER**

Upon consideration of the motion seeking review by the three-judge court filed by Thomas V. Mike Miller, Jr., Michael E. Busch, Jeanne Hitchcock, Richard Stewart, and Richard S. Madaleno, and any opposition thereto, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2017, ORDERED:

That the motion is GRANTED,

That the subpoenas for deposition served on non-parties Thomas V. Mike Miller, Jr., Michael E. Busch, Jeanne Hitchcock, and Richard Stewart are hereby QUASHED, and

That the Plaintiffs' motion to compel documents that remain withheld by Thomas V. Mike Miller, Jr., Michael E. Busch, and Richard S. Madaleno is hereby DENIED.

\_\_\_\_\_  
Judge