IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR PROTECTIVE ORDER FROM RULE 30(B)(6) DEPOSITION

The Plaintiffs have served the Defendants, the State Administrator of Elections and the Chair of the State Board of Elections (together the "Elections Officials"), with a Rule 30(b)(6) deposition notice that seeks to hold the Elections Officials responsible for designating and preparing deponents to testify about information that is not within the knowledge of the Elections Officials or anyone employed by them or the agencies they represent, but that is instead held by two independent State departments, a non-governmental entity, and 24 individuals who are not current or former employees or members of the State Board of Elections. *See* Ex. 3, Rule 30(b)(6) Dep. Notice. These other individuals include former Governor Martin O'Malley, Maryland Senate President Thomas V. Mike Miller, Jr., Maryland House of Delegates Speaker Michael E. Busch, and numerous of their current and former staffers; all members of the General Assembly. The Plaintiffs contend that this deposition is proper because the State Board of Elections has been able to obtain certain documents from other governmental entities, although much of

the information the plaintiffs seek through this deposition has *not* been provided to the State Board of Elections, but rather has been withheld on the basis of legislative privilege. For the reasons that follow, this Court should enter a protective order significantly limiting the scope of the Rule 30(b)(6) notice or striking the majority of the topics in their entirety.[1]

BACKGROUND

Because the Plaintiffs' rationale for serving their exceedingly broad Rule 30(b)(6) deposition notice is based largely on the prior willingness of the Defendants, through their counsel, to obtain information from other State entities in the discovery process, a discussion of undersigned counsel's efforts to expedite discovery and related communications with Plaintiffs' counsel is warranted.[2]

On October 6, 2016, counsel engaged in a teleconference to discuss preliminary discovery and scheduling matters. At that time, undersigned counsel expressed their

[1] The Defendants have agreed to produce a Rule 30(b)(6) deponent – on a mutually agreeable date – to testify to certain topics in the notice. Specifically, the deponent would testify in response to: (1) topics 30-35, to the extent the testimony is relevant to this litigation and within the scope of information known or reasonably available to the Elections Officials, if, following proper consideration of burden and receipt of responses to substantially identical requests which are not yet due, it is still required; and (2) topics 26-28, subject to the similar restrictions, with the understanding that the Plaintiffs' questioning on these topics will not seek the legal basis for the Defendants' affirmative defenses nor seek attorney work-product. *See Fidelity Mgmt. & Research Co. v. Actuate Corp.*, 275 F.R.D. 63, 64 (D. Mass. 2011) (explaining that a 30(b)(6) deposition is not the best method for obtaining information about a defendant's affirmative defenses, which are better sought through contention interrogatories, because "drawing the line between questions which seek to elicit facts and questions which will lead to a revelation of work-product matters can be difficult").

[2] A lengthier discussion of counsels' conduct during discovery is included in the Defendants' response to the Plaintiffs' motions to compel, which is being served on the Plaintiffs contemporaneously with this motion pursuant to Local Rule 104.8.

willingness to engage in informal discovery mechanisms to limit or eliminate the need for non-party subpoenas and to expedite any non-party subpoena requests to other potential fact-witness State agencies and officials through coordination with colleagues within the Maryland Office of the Attorney General ("OAG"). By way of explanation, undersigned counsel stated that the OAG, unlike the offices in some other states, provides representation to all state entities and State officials and employees. The scope of this representation is set forth by statute in Md. Code Ann., State Gov't § 6-106.

Separately during this call, undersigned counsel explained that the OAG would move to quash deposition subpoenas served on members of the Governor's Redistricting Advisory Committee ("GRAC") on legislative privilege grounds.

Thereafter, undersigned counsel, on behalf of the Defendants, attempted to facilitate the collection of documents and information relevant to the subject matter of this proceeding from a number of state agencies and actors who are not in the control of the Elections Officials or the OAG, but who it was believed may nonetheless be willing to cooperate in certain aspects of that initial effort; that included the Maryland Department of Planning, the Maryland Department of Legislative Services, individual members of the GRAC, and staffers to the legislator members of the GRAC. Many of these efforts were coordinated through colleagues within the OAG who represent these persons and entities.

As a result of these efforts, Defendants, through undersigned counsel, provided to Plaintiffs' counsel nearly 3,000 pages of Bates numbered documents, including all of the transcripts of the GRAC hearings; testimony and comments submitted to the GRAC; third-party plans submitted to the GRAC; Census data compiled by the Department of Planning

and provided to the GRAC; a copy of the briefing book compiled by the Department of Planning for use by members of the GRAC; the GRAC's public statements on the proposed congressional plan; public comments submitted in response to the proposed congressional plan; copies of the bill files for SB1 and the alternative bills considered by the General Assembly, in addition to a copy of the files generated by Maptitude that were translated into the text of SB1; and an audio file of the legislative hearings on SB1. Many of these documents were attached as exhibits to the parties' Joint Stipulations (ECF No. 104). In addition, the Department of Legislative Services provided non-privileged information used to craft the Defendants' proposed joint stipulations.

Thereafter, plaintiffs' counsel made proposals about the scope of formal discovery, proposing that each side be limited to 25 interrogatories, 25 requests for admission, 30 requests for the production of documents, and 10 fact-witness depositions. At the same time, a date proposed by the plaintiffs for the conclusion of fact discovery was discussed with those limits in mind. The defendants, through counsel, agreed to these proposals, which were subsequently memorialized in an order of this Court (ECF No. 108).

On November 17, 2016, counsel for Plaintiffs sent, by electronic mail, the plaintiffs' first set of requests for production, first set of interrogatories, and first set of requests for admissions. These three documents requested information in the possession of non-party state entities, including former GRAC members, members of the General Assembly, the former Governor, and other state agencies like the Department of Planning. *See* Ex. 4, Doc. Reqs. 3-5 (requesting "All Documents reviewed or relied on by" the GRAC, the

General Assembly, and the Governor in developing the 2011 congressional redistricting plan).

In response to these discovery requests, Defendants, through undersigned counsel, provided responsive information obtained from non-parties. The vast majority of this information came from the Department of Planning in the form of documents relating to the 2011 and prior redistricting processes generally. In their responses to discovery and in meet and confer sessions conducted with the Plaintiffs on December 20 and 21, 2016, the Defendants, through undersigned counsel, explained that although they had sought responsive documents from GRAC members Thomas V. Mike Miller, Jr., the President of the Maryland Senate, and Michael E. Busch, the Speaker of the Maryland House of Delegates, both President Miller and Speaker Busch had asserted legislative privilege over documents and information about their legislative activities related to the 2011 congressional redistricting process, and so had not provided any such documents. At no time during the pendency of this litigation or prior to the initiation of this litigation have the Defendants had access to these materials.

During this time, on December 7, 2016, Plaintiffs served non-party document subpoenas on President Miller, Speaker Busch, former GRAC Chair Jeanne Hitchcock, and former GRAC member Richard Stewart. Of particular relevance here, both President Miller and Speaker Busch (a) provided responsive documents that were not protected by legislative privilege, (b) asserted legislative privilege over documents reflecting their legislative activities and the legislative activities of their office staff, and (c) waived

legislative privilege over draft maps created by the GRAC in order to facilitate this litigation. *See* Ex. 5, S. Brantley letter to S. Medlock.

Despite the Defendants' repeated representations that they did not have access to material that was being withheld by President Miller and Speaker Busch on legislative privilege grounds, and the assertions of these privileges by President Miller and Speaker Busch in response to non-party subpoenas, the Plaintiffs have moved to compel this information from the Defendants, arguing that the Defendants have control over documents within the possession of every member of the GRAC and indeed every member of the General Assembly. (Pls.' Mot. to Compel Defs. (served pursuant to L.R. 104.8) at 4.) Within days, the plaintiffs also moved to compel this information from the non-parties who are asserting the privilege. (ECF No. 111.)

In the meantime, undersigned counsel became aware that Plaintiffs' counsel was engaging in ex parte contact with persons who were known or reasonably should have been known by Plaintiff's counsel to be represented in this matter by the Office of the Attorney General, including President Miller, Speaker Busch, Jeanne Hitchcock, and Richard Stewart. *See* Ex. 6, S. Rice letters to S. Medlock. Plaintiffs' counsel termed this unauthorized, undisclosed, ex parte communication with represented parties "informal discovery." Ex. 7, S. Medlock email to J. Katz. Following undersigned counsel's repeated requests that Plaintiffs' counsel cease this conduct, to the extent they were not seeking to redress their clients' grievances (*see* Md. Rule 19-304.2(c)), the Plaintiffs requested that the Defendants consent to increasing the number of depositions in this matter from 10 to 15. *Id.* The Defendants objected but offered to engage in proper "informal discovery"

with Plaintiffs. Ex. 8 (emails exchanged between J. Katz and S. Medlock) at 4, 6 (explaining the Defendants' objections to the increased number of depositions and undersigned counsel's understanding of "informal discovery"). The parties were unable to arrive at agreeable terms on the scope of this "informal discovery," with the Plaintiffs increasing with each communication the scope of the proposed terms. *See id.* at 1-2 (plaintiffs' counsel stating that plaintiffs' informal discovery proposal would not be limited to the initial proposal of 10 legislators, but would be unlimited and include legislators, legislative staff members, or staffers in the Governor's office).

The Rule 30(b)(6) deposition notice served on the Defendants, seeking information from 24 individuals unaffiliated with the State Board of Elections, every member of the General Assembly, two independent state entities, and a non-governmental organization, is a bald attempt to skirt the deposition limit in this case and to continue to try to gain access to privileged material through the State Board of Elections, despite the Defendants' repeated assertions that they have no access to this privileged material.

ARGUMENT

Under Rule 30(b)(6), a governmental agency shall designate one or more individuals to testify on the agency's behalf "as to matters known or reasonably available" to the governmental agency on which examination is requested. Fed. R. Civ. P. 30(b)(6). As Judge Messitte has explained, "[t]he 30(b)(6) procedure is meant to 'curb the bandying' of organizations where a series of organizational employees are 'deposed in turn but each disclaims knowledge of facts that are clearly known to the persons in the organization and thereby to it.'" *Wilson v. Lakner*, 228 F.R.D. 524, 528 (D. Md. 2005) (quoting Fed. R. Civ.

P. 30(b)(6) Advisory Committee Notes (internal quotation marks omitted)). In other words, the purpose of the Rule 30(b)(6) requirement that an entity "review all matters known or reasonably available to it . . . is necessary in order to make the deposition a meaningful one and to prevent the 'sandbagging' of an opponent by conducting half-hearted inquiry before the deposition but a thorough and vigorous one before the trial." *Paul Revere Life Ins. Co. v. Jafari*, 206 F.R.D. 126, 127–28 (D. Md. 2002) (quoting *United States v. Taylor*, 166 F.R.D. 356, 361-62 (M.D.N.C. 1996)).

To effectuate this purpose, the rule imposes a "duty to prepare the designee[ ] . . . [that] goes beyond matters personally known to the designee or to matters in which that designee was personally involved." *Id.* (quoting *Poole v. Textron, Inc.*, 192 F.R.D. 494, 504 (D. Md. 2000) (citations omitted)). A designee must "provide [the agency's] interpretation of documents and events" and the agency's "subjective beliefs and opinions." *Taylor*, 166 F.R.D. at 361. "[P]roblems with lack of corporate memory 'do not relieve a corporation from preparing its Rule 30(b)(6) designee to the extent matters are reasonably available, whether from documents, past employees, or other sources.'" *Martinez-Hernandez v. Butterball, LLC*, No. 5:07-CV-174-H, 2010 WL 2089251, at *7 (E.D.N.C. May 21, 2010), *order aff'd in part, vacated in part on other grounds*, No. 5:07-CV-174-H(2), 2011 WL 4549101 (E.D.N.C. Sept. 29, 2011) (quoting *Taylor*, 166 F.R.D. at 361). As such, the agency's designee "is not testifying as to his personal knowledge of events, but instead is speaking for the entity as a whole." *Covington v. Semones*, No. CIV A 706CV00614, 2007 WL 1052460, at *1–2 (W.D. Va. Apr. 5, 2007) (citing *Int'l Ass'n of Machinists and Aerospace Workers v. Werner-Masuda*, 390 F. Supp. 2d 479, 487 (D. Md.

2005)). "This necessarily implies that the individual must review and investigate into the matters known to or reasonably known to the entity." *Id.* (citing *Werner-Masuda*, 390 F. Supp. 2d at 487; *Poole ex rel. Elliot v. Textron, Inc.*, 192 F.R.D. 494, 504 (D. Md. 2000)).

However, as a number of federal courts have made clear, "[t]here is no duty imposed to inquire into the knowledge of another entity." *DSM Desotech Inc. v. 3D Sys. Corp.*, No. 08 C 1531, 2011 WL 117048, at *8 (N.D. Ill. Jan. 12, 2011) (concluding Rule 30(b)(6) "does not require one entity which is not under the control of a second entity to inquire into and testify as to the knowledge of the second entity"); *Covington*, 2007 WL 1052460, at *1–2 (quashing Rule 30(b)(6) deposition notice seeking to have defendant governmental entity investigate a second governmental entity and provide information where two entities "maintain[ed] a close relationship" but where second entity was not an employee of, subject to, or under the control of the defendant); *Taylor*, 166 F.R.D. at 360 (stating that the purpose of Rule 30(b)(6) is to allow for the streamlined discovery of information known to a particular entity by allowing for the designation of one, or more, specific individuals who would provide binding testimony as to the knowledge of that entity regarding given matters). Even when entities are affiliated with each other, the duty of a Rule 30(b)(6) designee extends only to those matters in which the deposed entity was involved and has knowledge, and, thus, a "designee need not acquire knowledge from an affiliate on matters in which the deposed [entity] was entirely uninvolved." *Coryn Grp. II, LLC v. O.C. Seacrets, Inc.*, 265 F.R.D. 235, 239 (D. Md. 2010).

Here, the Plaintiffs' 30(b)(6) deposition notice seeks to make the State Board of Elections responsible for preparing a designee to testify about information known to two

other State entities, a non-governmental organization (the Maryland Democratic Party), every member of the Maryland General Assembly, and 25 individuals who are not current or former employees of the State Board of Elections, including former Governor O'Malley, the five members of the GRAC, the former Secretary of the Department of Planning, one former and one current employee of the Department of Legislative Services, a former State Senator, former Secretary of State John McDonough, and 13 current and former staffers to Senate President Miller, House Speaker Busch, and former Governor O'Malley. As such, the deposition notice far exceeds the proper scope of a 30(b)(6) deposition.

On its face, the deposition topics seeking this information are so patently overbroad, unduly burdensome, and oppressive, that they should be stricken in their entirety. *See Nicholas v. Wyndham Int'l, Inc.*, 373 F.3d 537, 543 (4th Cir. 2004) ("[U]pon motion of a party and 'for good cause shown,' the court in the district in which a deposition is to be taken may 'make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,' including an order that the discovery not be had.") (quoting Fed. R. Civ. P. 26(c).) The deposition notice lists 58 topics when subparts are considered. For eleven of the topics, the Plaintiffs ask for responses on behalf of "Relevant Individuals," a term the Plaintiffs define to include 214 named or referenced natural persons, including all 188 members of the Maryland General Assembly, and three organizations. One of the organizations is the Maryland Democratic Party, which is a nongovernmental entity.

Without even considering the approximately 531 additional individuals employed within the Department of Legislative Services and the Department of Planning,[3] when the 11 topics must be prepared for on behalf of 214 "Relevant Individuals," there are nearly 2,500 separate topics specified in the 30(b)(6) notice. Another federal court struck a notice containing only 70 topics, which the court found required the corporate designee to "testify on topics so vast in number, so vast in scope, so open ended, and so vague that compliance with the notice would be impossible." *RM Dean Farms v. Helena Chemical Co.*, No. 2:11CV00105, 2012 WL 169889 at *1 (E.D. Ark. Jan 19, 2012).

The declaration of Linda H. Lamone, the State Administrator of Elections, states that neither she nor any staff or member of the State Board of Elections was involved in the 2011 congressional redistricting process, beyond providing publicly-available elections data to the Department of Planning for use by the GRAC in the redistricting process. Ex. 9, Decl. of Linda H. Lamone, ¶ 5. No staff or member of the Board was a member of the GRAC, staffed the GRAC, or was involved in drawing any of the maps created during the 2011 redistricting process. *Id.* In short, the State Board of Elections had no role in the 2011 redistricting process, outside of the provision of data to a principal department of the Executive branch. There is thus no reason to believe that the Board of Elections has, or ever had, any of the information sought in the 30(b)(6) notice.

[3] *See* Maryland Manual Budget Page for Department of Planning, http://msa.maryland.gov/msa/mdmanual/21dop/html/dopb.html; Maryland Manual Budget Page for Department of Legislative Services, http://msa.maryland.gov/msa/mdmanual/07leg/legser/html/legserb.html.

Moreover, the information sought is not reasonably available to the State Board of Elections because the independent entities and individuals from which the plaintiffs seek this information are not employees of, subject to, or under the control of the State Board of Elections. Indeed, even more so that with respect to many other state entities, the other state entities and individuals about whom the Plaintiffs seek knowledge through the 30(b)(6) deposition are not even under common control with the State Board of Elections. The State Board of Elections is governed by its five-member board. The board members are appointed by the Governor with the advice and consent of the Senate, and they can only be removed for good cause shown by the Governor. Md. Code Ann., Elec. § 2-101(c). The State Administrator is appointed by the Board, with advice and consent of the Senate, and serves at the pleasure of the Board. *Id.* § 2-103(b). By contrast, along with the General Assembly members and their staffers (including former staff members to the extent they possess privileged information), the Department of Legislative Services is part of the Legislative Branch of the State Government. Md. Const. art. III, § 1; Md. Code Ann., State Gov't § 2-1202. Former Governor O'Malley and his staffers, to the extent they possess privileged information, are under the control of the former Governor. The Department of Planning is a principal department of the Executive Branch under the control of its Secretary, who in turn reports to the current Governor. Md. Code Ann, State Gov't § 8-201(b)(15).

As such, the State Board of Elections cannot offer testimony as to the extent of these entities' and individuals' knowledge of matters related to this lawsuit, and cannot be required to obtain information from other entities and individuals. *Covington*, 2007 WL

1052460, at *1–2. Here, like in *Covington*, "plaintiffs essentially ask one entity, [the State Board of Elections], to investigate" various other entities and unaffiliated individuals, "and then provide such information to the plaintiffs during the course of a deposition." *Id.* As a separate entity, the State Board of Elections does not have "a duty to inquire into or provide information as to" these other entities' and individuals' "knowledge regarding the matters at issue." *Id.*; c*f. Coryn Grp. II*, 265 F.R.D. at 239 (allowing 30(b)(6) deposition of corporate entity "about the relationship and flow of money" among corporation and its affiliates where corporate entity "provide[d] no facts to support its lack of responsive knowledge" and where evidence showed entity and its affiliates "operat[ed] as a unit, shar[ed] information amongst themselves . . . [and] share[d] many corporate officers in common"). Although these entities, and the State officials who represent these entities, occasionally work cooperatively, they do not have the same "goals or missions and do not have the ability to share or control the agency's agenda, documents or personnel." *N.Y. ex rel. Boardman v. Nat'l R.R. Passenger Corp.*, 233 F.R.D. 259, 264 (N.D.N.Y. 2006) (citing federalism and comity and finding that two independent state agencies "are not interrelated" for discovery purposes when they "do not have a similar mission, and are situated at different spectrums of New York State governance as established by the constitution and legislation").

For these reasons, topics 1, 2, 3, 4, 5, 10, 11, 12, 18, 20, 21, 22, and 23 should be stricken or, in the alternative, should be limited to seek information within the control of the State Board of Elections, which includes documents produced by the Defendants in this litigation, and not any independent entity or unaffiliated individual.

Further, even if not for the other issues already discussed, the deposition notice also seeks information that is patently unavailable to the defendants under any circumstances because the individuals who possess the information have asserted legislative privilege. Because topics 1, 2, 3, 9, 10, 11, 12, 17, and 18 all seek information about legislative activities related to the 2011 congressional redistricting, they should be stricken, or, in the alternative, limited to seeking information within the control of the State Board of Elections, which includes documents produced by the Defendants in this litigation, and not any independent entity or unaffiliated individual. These issues related to legislative privilege have been addressed in the memorandum in support of the motion for protective order to quash non-party deposition subpoenas served on President Miller, Speaker Busch, former GRAC Chair Jeanne Hitchcock, and Richard Stewart (ECF No. 114-1), and in the non-parties' response in opposition to the plaintiffs' motion to compel material protected by legislative privilege, which is being filed contemporaneously with this motion, and the Defendants incorporate the arguments made in both of those briefs as though fully stated herein. Moreover, because no employee of the State Board of Elections was involved in the 2011 congressional redistricting process beyond providing publicly-available elections data to the Department of Planning for use by the GRAC in the redistricting process, *see* Ex. 9 (Lamone Decl.) ¶ 5, the Board has no relevant information to provide on this topic. For the reasons discussed above, the Board is not required to prepare a designee on these topics, which would require attempting to interview and gather documents from numerous individuals who were never affiliated with the State Board of Elections and who have asserted legislative privilege over the relevant material.

Deposition topics 15, 21, 22, 23, and 25 should also be stricken because they seek information "more appropriately discoverable through contention interrogatories and/or expert discovery." *Trustees of Boston Univ. v. Everlight Elecs. Co.*, No. 12-CV-11935-PBS, 2014 WL 5786492, at *4 (D. Mass. Sept. 24, 2014) (holding that a party "may properly resist a Rule 30(b)(6) deposition" on these grounds) (citing *SmithKline Beecham Corp. v. Apotex Corp.*, 2004 WL 739959, at *2 (E.D. Pa. March 23, 2004)). For example, topic 15 seeks information on "[a]ny statistical measure that you contend demonstrates that the boundaries of the Sixth Congressional District were drawn for Constitutionally legitimate reasons"; and topic 22 seeks information on "[w]hether You contend that the General Assembly of Maryland, the GRAC, and/or the Governor intended to dilute the voting strength of Republican voters in the Sixth Congressional District because of the political party with which they had affiliated, and the factual basis for Your contention."

As a number of courts have recognized, a "Rule 30(b)(6) deposition is an overbroad, inefficient, and unreasonable means of discovering an opponent's factual and legal basis for its claims." *Id.*; *see also SmithKline Beecham Corp. v. Apotex Corp.*, No. 98 C 3952, 2000 WL 116082, at * 9 (N.D. Ill. Jan. 24, 2000); *Indep. Serv. Org. Antitrust Litig.*, 168 F.R.D. 651, 654 (D. Kan. 1996); *United States v. District Council of New York City*, No. 90 CIV. 5722 (CSH), 1992 WL 208284, at *15 (S.D.N.Y. Aug. 18, 1992). The State Board of Elections "is not required to have counsel 'marshall all of its factual proof' and prepare a witness to be able to testify on a given defense or [ ]claim." *Id.* (quoting *Indep. Serv. Org. Antitrust Litig.*, 168 F.R.D. at 654); *see also Wilson*, 228 F.R.D. at 529 n.8 ("Whereas the *facts* of a relevant incident or incidents are proper for 30(b)(6) inquiry, the *contentions*,

i.e. theories and legal positions, of an organizational party may be more suitably explored by way of interrogatories and the Court may properly order . . . that contentions only be inquired into in this fashion."); *Fidelity Mgmt. & Research Co. v. Actuate Corp.*, 275 F.R.D. 63, 64 (D. Mass. 2011) (explaining that a 30(b)(6) deposition is not the best method for obtaining answers to contention interrogatories, in part, because "drawing the line between questions which seek to elicit facts and questions which will lead to a revelation of work-product matters can be difficult"). The same is true for topic 6, to the extent this topic extends to the interrogatories identified as contention interrogatories in the Defendants' responses to the Plaintiffs' first set of interrogatories.

Similarly, topic 24 should be stricken because it seeks information about the State Board of Elections' "justifications for the boundaries of the Sixth Congressional District under the Proposed Congressional Plan, Senate Bill 1, and/or the Maryland Redistricting Referendum, including but not limited to respect for communities of interest." The topic should be stricken as overly broad, inefficient, and unreasonable because it seeks the theories and legal positions of defendants. *See Wilson*, 228 F.R.D. at 529 n.8 (theories and legal positions more suitably explored by interrogatory than 30(b)(6) deposition).

Topics 9 and 13 should also be stricken because they are unreasonably vague, overly broad, and inefficient. Topic 9 seeks information about the "intent and purpose of the Proposed Congressional Plan, Senate Bill 1, and/or the Maryland Redistricting Referendum with regard to Maryland's Sixth Congressional District." This topic is unreasonably vague because it does not specify whose intent or purpose it was to take what action with respect to the Proposed Congressional Plan, Senate Bill 1, and/or the Maryland

Redistricting Referendum. To the extent this topic seeks information related to the subjective intent or purpose of the Relevant Individuals related to the presentation of the Proposed Congressional Plan to the Governor, the passage of Senate Bill 1, and/or the passing of the Maryland Redistricting Referendum, the topic is not relevant to the cause of action asserted in this case, *see* ECF No. 88 at 33-34, and therefore is outside the scope of discovery. Fed. R. Civ. P. 26(b)(1). Moreover, as to the Maryland Redistricting Referendum, the topic is unreasonably overbroad because the intent or purpose of the passage of the Maryland Redistricting Referendum is impossible to ascertain because the Referendum was passed with the affirmative votes of 1,549,511 people, each of whom had their own intent or purpose in voting for the referendum. To the extent this topic seeks information related to the objective intent or purpose of the Relevant Individuals related to the presentation of the Proposed Congressional Plan to the Governor, the passage of Senate Bill 1, and/or the passing of the Maryland Redistricting Referendum, the topic is unreasonably vague and cumulative because the topic could subsume any aspect of factual information available about the congressional redistricting process and the information reasonably available to the Defendants is available to the public or has been produced to the Plaintiffs.

Topic 13 seeks information about "[s]ocio-economic, educational, homeownership, and income differences between western Montgomery County and Garrett, Allegany, Washington, and Frederick Counties." This topic is unreasonably overbroad because the State Board of Elections has no role in gathering these data and these topics are not within the State Board of Election's expertise. Further, this discovery "is obtainable from some

other source that is more convenient, less burdensome, or less expensive," and thus is not properly served on the State Board of Elections. *Nicholas*, 373 F.3d at 543; Fed. R. Civ. P. 26(c)(i).

CONCLUSION

For the reasons set forth above, this Court should enter a protective order striking deposition topics 1-25 and 29 in their entirety or, in the alternative, modifying the notice in the manner specified above.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

Dated: January 16, 2017

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

Attorneys for Defendants

TABLE OF EXHIBITS

Exhibit No. Title

1. Intentionally left blank
2. Defendants' Certificate of Compliance with Local Rule 104.7
3. Plaintiffs' Rule 30(b)(6) Deposition Notice
4. Plaintiffs' First Requests for Production of Documents
5. Letter from Sandra Brantley to Stephen Medlock, Dec. 30, 2016
6. Letters from Sarah Rice to Stephen Medlock, Nov. 30, Dec. 6, and Dec. 9, 2016
7. Email from Stephen Medlock to Jennifer Katz, Dec. 13, 2016
8. Emails exchanged between Stephen Medlock and Jennifer Katz, Dec. 13, 2016–Jan. 3, 2017
9. Declaration of Lamone H. Lamone