IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

O. John Benisek, et al., *Plaintiffs*, v. Linda H. Lamone, et al., *Defendants*.	Case No. 13-cv-3233 Three-Judge Court

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE PORTIONS OF THE DECLARATION OF MICAH D. STEIN

In our supplemental brief supporting summary judgment, we attached the declaration of Micah D. Stein, which described and appended publicly-available documents and data, downloaded from the State Board of Elections' own website.[1] Despite the non-controversial nature of these documents and data, the State has moved to strike (1) campaign finance reports that were certified as true and correct under penalty of perjury and filed publicly with the State Board of Elections, and (2) the basic arithmetic that Mr. Stein performed on precinct-level election data.

The State's arguments are unpersuasive. To begin with, the State misunderstands the standard for introducing evidence during summary judgment briefing: The question is not whether facts put forward in, or the documents appended to, Mr. Stein's declaration are *presently* admissible; it is whether they could be put in admissible form *at trial*. They plainly could be. Besides that, this and other courts routinely take judicial notice of public filings mandated by law and filed under penalty of perjury. Courts also uniformly hold that lay witness testimony based on simple mathematical operations—like the rote addition

[1] The State complains that we "represented to the Court that further discovery was unnecessary." Mot. to Exclude 2. Not true. We stated in the joint status report that "plaintiffs will not move to reopen discovery" (Dkt. 209, at 1)—but that was because further discovery was infeasible as a matter of timing.

and division performed by Mr. Stein—is permitted under Rule 701. The State's quibble with the reliability of its own precinct-level data goes to the weight of the evidence, not its admissibility. The Court accordingly should deny the State's motion.

A. The Court may consider the campaign finance reports attached to Mr. Stein's declaration

1. The campaign finance reports are declarations and therefore may be considered under Civil Rule 56(c)(1)(A)

The State's bid to exclude the campaign finance reports should be rejected for a simple threshold reason: The reports are "unsworn statements declared to be true under penalty of perjury," and they are thus "declarations" for purposes of Rule 56. *Williams v. Long*, 585 F. Supp. 2d 679, 685 (D. Md. 2008) (citing 2A C.J.S. Affidavits § 1, at 215 (2003)). The reports are therefore properly before the Court to establish "that a fact cannot be or is genuinely disputed" under Rule 56(c)(1)(A). No more is needed.

2. The campaign finance reports will be admissible at trial and therefore may be considered under Civil Rule 56(c)(2)

Even if the campaign finance reports were not declarations that may be considered under Rule 56(c)(1)(A), they alternatively may be considered under Rule 56(c)(2). As the State correctly recognizes at the outset of its motion, Rule 56(c)(2) permits the consideration of any facts that are "*capable* of being 'presented in a form that would be admissible in evidence'" at trial, regardless whether they are admissible in their *present* form. Mot. to Exclude 1 (emphasis added) (quoting Fed. R. Civ. Proc. 56(c)(2)). According to that standard, our burden is *either* "to show that the material is admissible as presented *or* to explain the admissible form that is anticipated." *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 539 (4th Cir. 2015) (emphasis added) (quoting Rule 56, advisory committee note).

We easily meet that requirement here, in two ways. To begin with, the campaign finance reports at issue here would be admissible in their present form because they are

excepted from the hearsay rule as records of regularly conducted activity. *See Doali-Miller v. SuperValu, Inc.*, 855 F. Supp. 2d 510, 519 (D. Md. 2012) ("an unsworn statement given under penalty of perjury" that is "made pursuant to Rule 902(11)" satisfies "the foundational requirements of Rule 803(6)") (citation omitted); *see also* Fed. R. Evid. 902 advisory committee note to 2000 amendment) ("A declaration that satisfies 28 U.S.C. § 1746 would satisfy the declaration requirement of Rule 902(11), as would any comparable certification under oath."). Each report is also self-authenticating as "a copy of a document that was recorded or filed in a public office as authorized by law." *Id.* 902(4). The campaign finance reports are therefore admissible in their present forms.

Even supposing that Rules of Evidence 803(6), 902(4) and 902(11) were inapplicable here, we would introduce the campaign finance reports through the testimony of the committee treasurers and chairpersons who signed them. Either way, the campaign finance reports attached to Mr. Stein's declaration unquestionably would be admissible at trial. The Court may therefore consider them for purposes of the cross-motions for summary judgment under Rule 56(c)(2).

3. The campaign finance reports may be judicially noticed under Evidence Rule 201

Because the Court may consider the campaign finance reports under the plain terms of Rules 56(c)(1)(A) and (c)(2), the Court need not address the question whether the reports are judicially noticeable. If the Court is nevertheless inclined to reach that issue, it should hold that the campaign finance reports at issue here *are* noticeable. The State's contrary argument is squarely inconsistent with settled precedent.

a. The campaign finance reports at issue here are required by law to be filed with the State Board of Elections. *See* Md. Code, Elec. Law § 13-304(a)(1). The reports are made publicly available on the State Board of Elections' website. *See* Stein Decl. ¶¶ 29–35. And they are required to be filed under oath or affirmation, subject to penalty of perjury. Md.

Code, Elec. Law §§ 13-304(a)(2), 13-601(a); *see, e.g.*, Dkt. 210-11 at 3 (Washington County Republican Central Committee report, signed under penalty of perjury).

In these crucial respects, the campaign finance reports closely resemble other kinds of public filings that are regularly subject to judicial notice. For example, forms filed under penalty of perjury with the U.S. Securities and Exchange Commission "are routinely accepted by courts" in securities cases "and are considered for the truth of their contents." *Malin v. XL Capital Ltd.*, 499 F. Supp. 2d 117, 133 (D. Conn. 2007) (collecting cases), *aff'd*, 312 F. App'x 400 (2d Cir. 2009). Thus, in *Yates v. Municipal Mortgage & Equity, LLC*, 744 F.3d 874, 881 (4th Cir. 2014), the Fourth Circuit "t[ook] judicial notice of the content of relevant SEC filings and other publicly available documents." *See also In re PEC Sols., Inc. Sec. Litig.*, 418 F.3d 379, 390 n.10 (4th Cir. 2005) (affirming that "documents publicly filed . . . with the SEC [are ones] of which this court can take judicial notice"). As the Second Circuit has explained, moreover, "a district court may take judicial notice of the contents of relevant public disclosure documents required to be filed with the SEC" *because* they are "facts 'capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be determined.'" *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991) (quoting Fed. R. Evid. 201(b)(2)).

Courts' treatment of public SEC filings reflect the rule, not the exception. For example, retirement plans must publicly file Forms 5500 with the Department of Labor to satisfy their annual reporting requirements under ERISA. Because a Form 5500 "is a publicly-available document" filed with a government agency under penalty of perjury, "judicial notice of this document is appropriate." *Hilton Worldwide, Inc. Glob. Benefits Admin. Comm. v. Caesars Entm't Corp.*, 532 B.R. 259, 269 n.6 (E.D. Va. 2015). Other courts uniformly agree. *See, e.g.*, *Powell v. Unum Life Ins. Co. of Am.*, 2016 WL 8731383, at *1 n.2 (E.D. Cal. Sept. 30, 2016); *Rosen v. Prudential Ret. Ins. & Annuity Co.*, 2016 WL 7494320, at *9 (D. Conn. Dec. 30, 2016), *aff'd* 718 F. App'x 3 (2d Cir. 2017).

In cases implicating prior bankruptcy proceedings, too, courts have taken judicial notice of "bankruptcy filings [that] are public documents filed under penalty of perjury." *Ash v. OneWest Bank, FSB*, 2010 WL 375744, at *3 (E.D. Cal. Jan. 26, 2010). This Court, for example, has taken judicial notice of "financial statements [that] were apparently filed with the United States Bankruptcy Court." *Helfand v. W.P.I.P., Inc.*, 165 F. Supp. 3d 392, 397 n.6 (D. Md. 2016) (Bredar, J.); *see also Grant v. Shapiro & Burson, LLP*, 871 F. Supp. 2d 462, 466 n.2 (D. Md. 2012) ("The court may also take judicial notice of 'matters of public record.'") (quoting *Clark v. BASF Salaried Emps.' Pension Plan*, 329 F. Supp. 2d 694, 697 (W.D.N.C.2004), *aff'd as modified by* 142 F. App'x 659 (4th Cir. 2005)).

The routine judicial notice of reports filed publicly with government entities under penalty of perjury reflects the common sense conclusion that the accuracy of such reports "cannot reasonably be questioned" unless directly impeached. F. Rule Evid. 201(b)(2).[2]

2. On this reasoning, at least two Circuit Judges have concluded that campaign finance reports—just like the reports at issue here—are properly subject to judicial notice. *See Landell v. Sorrell*, 382 F.3d 91, 175 (2d Cir. 2004) (Winter, J., dissenting) ("Campaign finance reports of Vermont candidates provide ample evidence, of which we may take judicial notice, that contested elections in Vermont involve spending well in excess of [prescribed limits]."), *rev'd sub nom. Randall v. Sorrell*, 548 U.S. 230 (2006) (internal citations omitted); *Republican Party of Minn. v. White*, 361 F.3d 1035, 1055 n.16 (8th Cir.

[2] To be sure, this Court has suggested, at the motion-to-dismiss stage, that it may take judicial notice of the contents of SEC and similar filings, but that it may not assume the truth of the facts contained within those filings. *E.g. In re Mun. Mortg. & Equity, LLC, Sec. & Derivative Litig.*, 876 F. Supp. 2d 616, 626 (D. Md. 2012), *aff'd sub nom. Yates v. Mun. Mortg. & Equity, LLC*, 744 F.3d 874 (4th Cir. 2014). But the justification for that limitation—namely, the assumption of truth accorded to the factual allegations within "the four corners of [the] Complaint" (*Helfand*, 165 F. Supp. 3d at 397 n.6)—is not present at the summary judgment stage. Instead, the Court may draw the "*reasonable* inference[]" (*Columbia Union Coll. v. Clarke*, 159 F.3d 151, 164 (4th Cir. 1998)) at the summary judgment stage that the contents of an unimpeached document filed with a state agency under penalty of perjury are accurate.

2004) (Beam, J., concurring in part and dissenting in part) ("I take judicial notice . . . of candidate filings contained in Minnesota Board of Campaign Finance and Public Disclosure Reports . . . that reveal that large law firms and their members contribute substantial sums of money to judicial candidates[.]"), *reh'g en banc granted, judgment vacated* (May 25, 2004).[3]

3. The State asserts (Mot. to Exclude 3) that judicial notice would be inappropriate because campaign finance reports are inherently unreliable. Yet the only evidence that the State offers in support of this dubious claim are two anecdotal news articles; these articles, the State asserts (*id.*), demonstrate that *other* campaign finance reports have on *rare occasion* been "subject to challenge from opposing parties and candidates."

That is unpersuasive. As an initial matter, the news reports on which the State relies concern filings by individual candidates with no connection to the county committees whose reports are at issue here. There is no basis for extrapolating from two isolated incidents involving different people and different organizations that all campaign finance reports must be suspect. That is especially so because the State's news articles report only allegations, not conclusions of wrongdoing.

The State has not offered any basis to doubt the accuracy of the specific campaign finance reports offered here. The observation that *other* reports have been "subject to challenge" by *other* parties for *case-specific* reasons is no basis for striking the reports in this case.[4] Indeed, if that State's position were correct, courts could never take judicial

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[3] Other courts have taken an even broader approach, approving judicial notice of information or documents "made publicly available by government entities" on their websites. *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (citing *In re Amgen Inc. Sec. Litig.*, 544 F. Supp. 2d 1009, 1023-1024 (C.D. Cal. 2008) (taking judicial notice of drug labels taken from the FDA's website); *Cty. of Santa Clara v. Astra USA, Inc.*, 401 F. Supp. 2d 1022, 1024 (N.D. Cal. 2005) (taking judicial notice of information posted on a Department of Health and Human Services web site)).

[4] The State notes that it "conducts audits of the reports" but admits that the audits provide no basis for questioning the "accuracy of the reports." Mot. to Exclude 3.

notice of any public filings. After all, companies sometimes file false SEC reports. *See, e.g.*, Calley Hair, *Former finance chief for Washington company charged with falsified SEC filings*, The Seattle Times (Sept. 21, 2018), perma.cc/6FRM-K3SW. And ERISA plan administrators sometimes file false 5500 forms. *See, e.g.*, Parker Poe, *Retirement Plan Sponsor Official Makes False Form 5500 Statement Resulting in Felony Conviction and Order to Pay Over $150,000*, Client Alerts (Apr. 18, 2008), perma.cc/763Q-54QZ. Yet these SEC and Department of Labor filings are still routinely noticed by courts.

In sum, the campaign finance reports may be considered at this stage for three independent reasons: They are declarations that may be considered under Civil Rule 56(c)(1)(A); they convey facts that are capable of being presented in admissible form under Civil Rule 56(c)(2); and the are judicially noticeable under Evidence Rule 201. The State's motion to strike them accordingly must be denied.

B. The results of simple arithmetic applied to precinct-level election returns are admissible as lay testimony

The State also asserts that the portions of Mr. Stein's declaration that report simple arithmetic using election returns must be struck. Mot. to Exclude 4-9. That, too, is wrong.

As a starting point, the State concedes that it is "appropriate to take judicial notice of election results, which appear on the State Board of Elections website," including "information that is derived by simple compilation of these reports." Mot. to Exclude 2, 4. On this point, the parties agree. Yet the State next asserts that the results of Mr. Stein's simple addition and division using this data are inadmissible as lay testimony, because those results are "based on scientific, technical, or other specialized knowledge." *Id.* at 6 (citing Fed. R. Evid. 701(c)). That position is insupportable.

1. As the State's own authorities make plain, no specialized expertise is required to compile or perform simple mathematical operations on data. *See, e.g.*, *United States v. Hamaker*, 455 F.3d 1316, 1331 (11th Cir. 2006) (lay opinion admissible where witness

"simply added and subtracted numbers from a long catalogue of [business] records, and then compared those numbers in a straightforward fashion"). That is because "[s]imple arithmetic, such as ordinary multiplication, is a paradigmatic example of the type of every-day activity that goes on in the normal course of human existence." *United States v. Sepulveda-Hernandez*, 752 F.3d 22, 34–35 (1st Cir. 2014). "Anyone conversant with the principles of elementary mathematics and basic bookkeeping [can do] the same." *Radio Parts Co. v. Lowry*, 125 B.R. 932, 944-45 (D. Md. 1991) (internal quotation marks omitted).

This is not a controversial point; every court we have found that has passed on this question agrees. *See United States v. Shaw*, 891 F.3d 441, 454 (3d Cir. 2018) (lay opinion admissible where witness's "testimony was based on subtraction, not 'scientific, technical, or other specialized knowledge within the scope of Rule 702.'") (citation omitted); *Bryant v. Farmers Ins. Exch.*, 432 F.3d 1114, 1124 (10th Cir. 2005) ("A mathematical calculation [*i.e.*, calculating an average] well within the ability of anyone with a grade-school education is . . . aptly characterized as a lay opinion under Fed. R. Evid. 701."); *Radio Parts Co.*, 125 B.R. at 944-45 (lay opinion properly admitted where witness's opinion was "based on his review of the records and simple arithmetic"). The State cites nothing to the contrary.

As Mr. Stein explained in his declaration, the compilation of the data that makes up Exhibit C-1 (Dkt. 210-4) proceeded in simple steps. ***First***, precinct-level election-results data files were downloaded from the State's website. Stein Decl. ¶¶ 5-10. The State makes these data available in separate Microsoft Excel files for each county; thus, these individual county spreadsheets were compiled into a single spreadsheet. *Id.* ***Next***, each precinct was assigned a category ("retained," "removed," or "added") based purely on whether it was kept in, removed from, or added to the Sixth District as a result of the 2011 redistricting. *Id.* ¶ 12. This step required no specialized expertise; the State publishes a list of precincts and their assigned congressional districts for each election. *Id.* ¶ 11. All that was required was to compare the 2010 list (pre-redistricting) to the 2012 list (post-

redistricting), to see whether or not a precinct appeared in the Sixth District for each time period. ***Finally***, the vote tallies for the Republican candidate were added up within each category ("retained," "removed," or "added"), and then divided by the total number of votes within that category. The results are the percentages relied on in our summary judgment brief. *Id.* ¶¶ 12–15; *see also* Suppl. Summ. J. Br. 8.

This is exactly the kind of "[s]imple arithmetic" that courts uniformly allow under Rule 701. *Sepulveda-Hernandez*, 752 F.3d at 34; *Hamaker*, 455 F.3d at 1331.

2. The State raises several particularized objections to Mr. Stein's analysis, but none persuades. The State first asserts that Mr. Stein's declaration does not "make any mention" of the fact that the data omits early and absentee votes. Mot. to Exclude 5. Not true. Mr. Stein's declaration says plain as day (at ¶ 3 (emphasis added)) that he used "data files for each election cycle containing general *election-day results* broken down by county and precinct." And our supplemental summary judgment brief (at 8 (emphasis added)) reported the results of Mr. Stein's arithmetic in a table titled "Vote share for Republican candidate as a percentage of all *election-night votes* cast."

The State next leaps to the conclusion that because Mr. Stein's calculations do not include early and absentee voting returns, they are "inaccurate" and should be excluded from consideration altogether. Mot. to Exclude 5. The State is confused. The numbers are not inaccurate—they are, in fact, an accurate report of exactly what they purport to be: the percentage of election-day votes cast in favor of the respective parties. We of course agree that precinct-level data including early and absentee voting would have been preferable; but, as the State acknowledges (*id.*), Maryland does not make that data publicly available. Election night votes undeniably constitute a majority of the votes cast in any election.[5] The State, therefore, cannot deny that data concerning election night votes sheds

[5] *See* "Recent Voter Turnout at General Elections," perma.cc/T4WJ-PJXJ (showing election day votes constitute the majority of votes cast in the 2008, 2010, 2012, 2014, and 2016 elections).

meaningful light on the breakdown of votes cast in—and, over time, the political stability of—precincts.[6]

The State also maintains that precinct-level analysis is "difficult" and requires expertise because precincts are sometimes split or merged. Mot. to Exclude 4-5, 7-8. As the State sees it, Mr. Stein's calculations thus "required judgments about assigning precincts to districts." *Id.* at 7. Nonsense. The State itself made those assignments in the datasets that it made publicly available. Mr. Stein simply downloaded spreadsheets from the Board of Elections website; those spreadsheets assign precincts to congressional districts for each election. Stein Decl. ¶ 11. There were no "judgments" required.

The State also raises the specter of shifting precinct boundaries lines between election cycles. Mot. to Exclude 7. That is a red herring. Mr. Stein utilized precinct-level data only because precincts were the smallest geographical unit for which the State provides election vote tallies. None of his mathematical calculations (or the conclusions we derived from them in our briefing) were tied substantively to the geographic identity of the precincts. Mr. Stein's declaration testified to the share of election-day voters who voted for each party in the precincts that were *collectively* "removed," *collectively* "added," or *collectively* "retained" in the district. What matters, for that purpose, are the sums of the voters in the precincts within each category, not the geographic identity of the precincts. By way of illustration, no amount of precinct shuffling in Garrett, Allegany, or Washington Counties could have affected Mr. Stein's calculations, since those counties are entirely within the Sixth District both before and after the redistricting.[7]

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[6] The State is in no position to say otherwise, given that it relied on these very datasets in its discovery responses. Defs.' Second Suppl. Resps. to Pls.' First Set of Interrogs., Answer to Interrog. No. 4 (Ex. A, at 10).

[7] The only possible basis for concluding that a change to a precinct's boundary lines might have affected Mr. Stein's calculations is if the shape of a pre-gerrymander precinct changed and now straddles the boundary of the new Sixth District, or the shape of the post-gerrymander precinct changed and now straddles the boundary of the old Sixth

Finally, the State claims that the expert reports in this case reveal that precinct-level analysis is "not a matter of simple addition and subtraction." Mot. to Exclude 6 (describing a supposed "dispute about interpretation of precinct-level electoral results given deficits in State Board of Elections data"). But the "dispute" identified by the State concerns how to estimate early and absentee returns in light of the State's incomplete data. *Compare* McDonald Opening Rpt. 9 n.11, *with* Lichtman Opening Rpt. 41, *and* McDonald Rebuttal Rpt. 16–17. As we have explained, Mr. Stein's simple arithmetic calculations avoided that issue by considering election-night votes *only*.

In any case, the State is wrong when it asserts (Mot. to Exclude 9) that "[p]reserving the line between lay and expert testimony" is "essential" in this case. Policing the line between lay and expert testimony under Rule 702 is ultimately about protecting juries from baseless opinions smuggled in under the misleading guise of "expert" analysis. But this cause would be tried to the Court, not a jury—and the Rule 702 gatekeeper doctrine "is largely irrelevant in the context of a bench trial." *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 852 (6th Cir. 2004). After all, "[t]here is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself." *United States v. Brown*, 415 F.3d 1257, 1269 (11th Cir. 2005); *see also, e.g.*, *United States v. Flores*, ---F.3d---, 2018 WL 4086975, at *10 (9th Cir. Aug. 28, 2018) ("[W]here the factfinder and the gatekeeper are the same, the court does not err in admitting the evidence subject to the ability later to exclude it or disregard it if it turns out not to meet the standard of reliability established by Rule 702.") (quoting *In re Salem*, 465 F.3d 767, 777 (7th Cir. 2006)).

The Court is fully capable of assessing the probative value of Mr. Stein's calcula-

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District, so that he could not accurately say that the precinct was "removed" from or "added" to the District because, in fact, the precinct was split up. But that, again, is a question of the weight of the evidence, not its admissibility. In any event, a review of the relevant precinct maps suggests that just 13 precincts of the 328 total precincts meet this description, and most in the very slightest of ways. Removing those precincts from the calculus would not materially change the results of Mr. Stein's calculations.

tions, bearing in mind the reliability of the underlying data and the simple arithmetic procedures he used. Thus even if all that we had said above were wrong, there still wouldn't be any reason to exclude the calculations outright.

CONCLUSION

The Court should deny the State's motion to exclude.

Respectfully submitted.

/s/ *Michael B. Kimberly*

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

* *

DEFENDANTS' SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES

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

PRELIMINARY STATEMENT

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

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

GENERAL OBJECTIONS

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

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

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

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

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

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

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

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

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

SPECIFIC OBJECTIONS AND ANSWERS

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

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

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

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

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

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

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

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

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

SECOND SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 2.: The Defendants object because the interrogatory is vague and not reasonably particular, as there is no definition of "certain citizens" or "representational rights." Without waiving

any objections, the Defendants state that each district in the Proposed Congressional Plan achieved precise mathematical equality of population consistent with the No Representation Without Population Act, except for District Eight, which has one fewer person. Therefore, the vote of each citizen of Maryland has equal strength as the vote of each other citizen in Congressional elections under the current plan. The Defendants further identify the public statements of the GRAC in creating the proposed plan that have been produced to the Plaintiffs at MCM002454-2468. The Defendants further identify the following objective evidence relating to the creation of the Proposed Congressional Plan that has been produced to the Plaintiffs at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824, MCM002871-2928, the audio file produced as Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50. Defendants additionally identify documents produced to plaintiffs since January 13, 2017, all reports of all disclosed experts from both parties, and the deposition transcripts of all plaintiffs, Eric Hawkins, Richard Stewart, Jeanne Hitchcock, Governor O'Malley, Robert Garagiola, Senate President Thomas V. "Mike" Miller, Jr., House Speaker Michael Busch, Delegate Curt Anderson and Senator C. Anthony Muse.

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

basis for your contention and identify all facts, documents and communications related to your contention.

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

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 3: The Defendants object because the interrogatory calls for information from legislative actors about their legislative activities, which is information protected by legislative privilege. The members of the GRAC and the Governor, through counsel, have expressed their intent to assert legislative privilege over information about their legislative activities, and the Defendants have no independent knowledge of whether data reflecting prior voting patterns, voter history, or party affiliation was used by or influenced the members of the General Assembly, the members of the GRAC, or the Governor in deciding where to draw the lines of the Sixth Congressional District under the Proposed Congressional Plan. Without waiving any objections, the Defendants identify the following objective evidence relating to the creation of the Proposed Congressional Plan that has been produced to the Plaintiffs at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824, MCM002454-2468, MCM002871-2928, the audio file produced as Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50.

SECOND SUPPLEMENTAL ANSWER TO INTERROGATORY NO.3: Without waiving any objections, the Defendants identify the following objective evidence relating to the creation of the Proposed Congressional Plan that has been produced to the Plaintiffs at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824, MCM002454-2468, MCM002871-2928, the audio file produced as Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50. Defendants additionally identify documents produced to plaintiffs since January 13, 2017, all reports of all disclosed experts from both parties, and the deposition transcripts of all plaintiffs, Eric Hawkins, Richard Stewart, Jeanne Hitchcock, Governor O'Malley, Robert Garagiola, Senate President Thomas V. "Mike" Miller, Jr., Speaker Michael Busch, Delegate Curt Anderson and Senator C. Anthony Muse.

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

ANSWER TO INTERROGATORY NO. 4: The Defendants object to this interrogatory on the grounds that it is a premature "contention interrogatory" and it requests all facts, documents, and communications concerning defenses to matters alleged

in the second amended complaint when discovery has not concluded. *See* Fed. R. Civ. P. 33(a)(2).

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 4: The Defendants object because the interrogatory calls for information from legislative actors about their legislative activities, which is information protected by legislative privilege. The members of the GRAC and the Governor, through counsel, have expressed their intent to assert legislative privilege over information about their legislative activities, and the Defendants have no independent knowledge whether data reflecting prior voting patterns, voter history, or party affiliation was considered by the members of the General Assembly, the members of the GRAC, or the Governor in such a manner that it affected the drawing of the lines of the Sixth Congressional District in such a way that such consideration altered the outcome of the congressional elections in the Sixth Congressional District after 2011. Further, the Defendants state that it is not possible to determine whether the General Assembly's, GRAC's, and/or Governor's consideration of any particular data source had an effect on any particular election outcome to a reasonable degree of certainty. Without waiving any objections, the Defendants identify the following objective evidence relating to the creation of the Proposed Congressional Plan that has been produced to the Plaintiffs at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824, MCM002454-2468, MCM002871-2928, the audio file produced as Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50. The Defendants further identify Senate Bill 1; elections outcomes data for 2012, 2014, and 2016 available at the State Board of Elections website;

and documents provided to the Plaintiffs in response to subpoenas served on Senate President Thomas V. Mike Miller, Jr., and the Maryland Public Information Act request issued to the Department of Legislative Services, which documents also have been provided to Defendants.

SECOND SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 4: The Defendants state that it is not possible to determine whether the General Assembly's, GRAC's, and/or Governor's consideration of any particular data source had an effect on any particular election outcome to a reasonable degree of certainty. Without waiving any objections, the Defendants identify the following objective evidence relating to the creation of the Proposed Congressional Plan that has been produced to the Plaintiffs at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824, MCM002454-2468, MCM002871-2928, the audio file produced as Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50. The Defendants further identify Senate Bill 1; elections outcomes data for 2012, 2014, and 2016 available at the State Board of Elections website; and documents provided to the Plaintiffs in response to subpoenas served on Senate President Thomas V. Mike Miller, Jr., and the Maryland Public Information Act request issued to the Department of Legislative Services, which documents also have been provided to Defendants. Defendants additionally identify documents produced to plaintiffs since January 13, 2017, all reports of all disclosed experts from both parties, and the deposition transcripts of all plaintiffs, Eric Hawkins, Richard Stewart, Jeanne Hitchcock, Governor O'Malley, Robert Garagiola, Senate President Thomas V. "Mike"

Miller, Jr., House Speaker Michael Busch, Delegate Curt Anderson and Senator C. Anthony Muse.

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

ANSWER TO INTERROGATORY NO. 5: The Defendants object to this interrogatory on the grounds that it is a premature "contention interrogatory" and it requests all facts, documents, and communications concerning defenses to matters alleged in the second amended complaint when discovery has not concluded. *See* Fed. R. Civ. P. 33(a)(2). Without waiving those objections, the Defendants identify documents produced to the Plaintiffs with the Joint Stipulations and in response to Plaintiffs First Request for Production of Documents.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 5: The Defendants state that the objectives of the GRAC in creating the Proposed Congressional Plan, which included the Sixth District, have been stated in public documents produced to the Plaintiffs at MCM002454-2468. The Defendants further state that each district in the Proposed Congressional Plan achieved precise mathematical equality of population consistent with the No Representation Without Population Act, except for District Eight, which has one fewer person. The Defendants further identify documents produced at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824,

MCM002871-2928, the audio file produced as Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50.

SECOND SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 5: The Defendants state that the objectives of the GRAC in creating the Proposed Congressional Plan, which included the Sixth District, have been stated in public documents produced to the Plaintiffs at MCM002454-2468. The Defendants further state that each district in the Proposed Congressional Plan achieved precise mathematical equality of population consistent with the No Representation Without Population Act, except for District Eight, which has one fewer person. The Defendants further identify documents produced at MCM000001-704, MCM000705-906, MCM001135-1389, MCM001390-1391, MCM001392-1824, MCM002871-2928, the audio file produced as Exhibit 8 during the joint stipulations process (ECF No. 104-11), and statements contained in ECF No. 104 ¶¶ 49-50. Defendants additionally identify documents produced to plaintiffs since January 13, 2017, all reports of all disclosed experts from both parties, and the deposition transcripts of all plaintiffs, Eric Hawkins, Richard Stewart, Jeanne Hitchcock, Governor O'Malley, Robert Garagiola, Senate President Thomas V. "Mike" Miller, Jr., House Speaker Michael Busch, Delegate Curt Anderson and Senator C. Anthony Muse.

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

ANSWER TO INTERROGATORY NO. 6: The Defendants object to this interrogatory on the grounds that it is vague, overly broad, and unduly burdensome. Without waiving these objections, the Defendants believe that, in addition to the members of the GRAC and the Governor, the following persons were involved in planning, developing, drawing, and/or approving the Proposed Congressional Plan and any alternative drafts:

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

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

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

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

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

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

concerning third-party plans produced in response to Plaintiffs' First Request for Production of Documents.

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

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

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 7: The Defendants object to this interrogatory on the grounds that it is vague, overly broad, not reasonably

particular, and unduly burdensome. Without waiving these objections, and to the extent Interrogatory No. 7 intends to identify persons with whom communications were had specifically concerning the drafting of the Proposed Congressional Plan and/or any alternative drafts, Defendants identify:

Brian Romick

Eric Hawkins

Congressman Steny Hoyer

Congressman Elijah Cummings

Congressman Roscoe Bartlett

Congressman Dutch Ruppersberger

Congresswoman Donna Edwards

Congressman Andy Harris

Congressman John Sarbanes

Congressman Chris Van Hollen

Defendants do not possess enough information to state the time period of these individuals' involvement.

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

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

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

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

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

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

The Defendants also state that the initial complaint stated that plaintiffs' claims did "not rely on the reason or intent of the legislature" and that the requested relief "does not include changing the overall . . . partisan make-up of the enacted districts." Defendants

further state that they relied on these and other statements made in the Complaint to their detriment.

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

The Defendants identify transcripts of the depositions taken in this case.

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

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

SUPPLEMENTAL ANSWER TO INTERROGTORY NO. 9: The Defendants state that the particular cause of action presented for the first time in the Plaintiffs' Second Amended Complaint, filed March 3, 2016, was brought nearly four and a half years after the enactment of the challenged legislation and approximately sixteen months after the 2014 Gubernatorial Election was held on November 4, 2014. Moreover, the initial Complaint in this matter was filed November 5, 2013, nearly one year after the first Presidential Election under the plan took place on November 6, 2012 and approximately

sixteen months after the appeal in *Gorrell v. O'Malley* was affirmed for lack of standing in the Fourth Circuit. *Gorrell v. O'Malley*, 474 F. App'x 150, 151 (4th Cir. Jul. 12, 2012) (unpublished). Further, Plaintiffs have named only the State Board of Elections Chair and State Administrator of Elections as defendants in this action.

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

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

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

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

SUPPLEMENTAL ANSWER TO INTERROGTORY NO. 10: The Defendants state that the particular cause of action presented for the first time in the Plaintiffs' Second Amended Complaint, filed March 3, 2016, was brought nearly four and a half years after the enactment of the challenged legislation and approximately sixteen months after the 2014 Gubernatorial Election was held on November 4, 2014. Moreover, the initial Complaint in this matter was filed November 5, 2013, nearly one year after the first Presidential Election under the plan took place on November 6, 2012 and approximately sixteen months after the appeal in *Gorrell v. O'Malley* was affirmed for lack of standing in the Fourth Circuit. *Gorrell v. O'Malley*, 474 F. App'x 150, 151 (4th Cir. Jul. 12, 2012) (unpublished). Further, Plaintiffs have named only the State Board of Elections Chair and State Administrator of Elections as defendants in this action.

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

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

INTERROGATORY NO. 11: Describe all facts, documents, and communications supporting the October 4, 2011 statement made by GRAC Chair Jeanne Hitchcock: "The

map we are submitting today conforms with State and federal law and incorporates the 331 comments we received from the public during our 12 regional hearings around the State."

ANSWER TO INTERROGTORY NO. 11: The Defendants object to this interrogatory on the grounds that it is premature and requests all facts, documents, and communications when discovery has not concluded. Without waiving those objections, the Defendants identify documents provided to the Plaintiffs during the joint stipulations at Bates ranges MCM000001-704 and MCM000705-906, and the documents responsive to Plaintiffs' sixth request for production of documents.

SUPPLEMENTAL ANSWER TO INTERROGTORY NO. 11: The Defendants identify documents provided to the Plaintiffs during the joint stipulations at Bates ranges MCM000001-704 and MCM000705-906, documents produced to Plaintiffs by defendants and in response to third party subpoenas, reports of the defendants' disclosed experts, and transcripts of depositions taken in this case.

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

ANSWER TO INTERROGTORY NO. 12: The Defendants object to this interrogatory on the grounds that it is premature and requests all facts, documents, and communications when discovery has not concluded. Without waiving those objections, the Defendants identify documents provided to the Plaintiffs during the joint stipulations

at Bates ranges MCM000001-704, MCM000705-906, MCM001135-1389, MCM001392-1824.

SUPPLEMENTAL ANSWER TO INTERROGTORY NO. 12: The Defendants identify documents provided to the Plaintiffs during the joint stipulations at Bates ranges MCM000001-704, MCM000705-906, MCM001135-1389, MCM001392-1824, documents produced to Plaintiffs by defendants and in response to third party subpoenas, reports of the defendants' disclosed experts, and transcripts of depositions taken in this case.

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

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

SUPPLEMENTAL ANSWER TO INTERROGTORY NO. 13: The Defendants identify documents provided to the Plaintiffs during the joint stipulations at Bates ranges

MCM000001-704, MCM000705-906, MCM001135-1389, MCM001392-1824, documents produced to Plaintiffs by defendants and in response to third party subpoenas, reports of the defendants' disclosed experts, and transcripts of depositions taken in this case.

BRIAN E. FROSH
Attorney General of Maryland

___/s/__Jennifer L. Katz_____
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Dated: June 2, 2017

Attorneys for Defendants

VERIFICATION

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

Linda H. Lamone

Linda H. Lamone