

EXHIBIT S

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Maryland

O. John Benisek, et al.

Plaintiff

v.

Linda Lamone, et al.

Defendant

Civil Action No. JKB-13-3233

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Richard Madaleno; Miller Senate Office Building, 3 West Wing, 11 Bladen Street, Annapolis, MD 21401

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Exhibit A

Table with 2 columns: Place and Date and Time. Place: Lerch, Early & Brewer, Chtd. 3 Bethesda Metro Center, Suite 460 Bethesda, MD 20814. Date and Time: 12/23/2016 9:30 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time. Both fields are empty.

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

Date: 12/13/2016

CLERK OF COURT

OR

Handwritten signature

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

O. John Benisek, et al., who issues or requests this subpoena, are:

Micah D. Stein, Esq., Mayer Brown LLP, 1999 K Street NW, Washington, DC 20006, 202-263-3279
mstein@mayerbrown.com

Notice to the person who issues or requests this subpoena

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

Civil Action No. JKB-13-3233

PROOF OF SERVICE

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

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

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____.

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

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

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

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

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

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

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

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

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

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

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

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

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

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

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

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

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

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) *Claiming Privilege or Protection.*

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

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

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

(g) *Contempt.*

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

EXHIBIT A TO SUBPOENA

DOCUMENTS TO BE PRODUCED

REQUEST FOR PRODUCTION NO. 1:

All Documents and Communications concerning Your September 13, 2011 statement to the *Maryland Juice* website: “What you see going on elsewhere is clearly in other states that are Republican controlled they are drawing maps to try to take out Democrats, so I think there is pressure on saying look, if they are playing that game elsewhere, then in states like Maryland where democrats control we’ve got to do the opposite.” (available at: https://www.youtube.com/watch?v=by_mclshZv8).

REQUEST FOR PRODUCTION NO. 2:

All Documents and Communications concerning Your September 13, 2011 statement to the *Maryland Juice* website: “This is a conflict between, what you could say, the heart and the mind of the Democratic party. The heart is ‘Frank Kratovil had that seat [the 1st District] before, Frank Kratovil won before, he made hard votes on behalf of Barack Obama, we should find a way to reward our friend Frank Kratovil.’ The head is telling you, ‘Look, western Maryland, a new district focused toward western Maryland is one that you could actually pick up easier...’ Do you reach out and help your good old friend Frank Kratovil, or do you go for where, in fact, you probably have a better chance at a pick up.” (available at: https://www.youtube.com/watch?v=by_mclshZv8).

REQUEST FOR PRODUCTION NO. 3:

All Documents and Communications concerning Your September 13, 2011 statement to the *Maryland Juice* website: “If you go with a competitive western Maryland district, the way that works is clearly that district comes further into Montgomery county, substantially into

Montgomery county.” (available at: <https://www.youtube.com/watch?v=7bTNNn6zLj8>).

REQUEST FOR PRODUCTION NO. 4:

All Documents and Communications concerning Your September 13, 2011 statement to the *Maryland Juice* website: “I think trying to achieve both makes it a little more difficult for everyone trying to draw the maps. But you’re dealing with—one of the things that’s interesting is—you’re dealing with people like a Mike Miller or some of the staff of the legislature who have done this several cycles, so it’s not like they are a bunch of people experimenting for the first time on how to do this.” (available at: <https://www.youtube.com/watch?v=ddqQcOKzAT0>).

REQUEST FOR PRODUCTION NO. 5:

All external Communications between or among Your office (including its staff or agents) and third parties (including consultants, experts, constituents, or members of the press) relating in any way to Maryland’s 2011 congressional redistricting process, its goals, or its results.

REQUEST FOR PRODUCTION NO. 6:

All interim or draft maps or reports related to Maryland’s 2011 congressional redistricting plan, whether electronic or in hard copy, provided to You by any third party or by You to any third party.

REQUEST FOR PRODUCTION NO. 7:

All external Communications between or among Your office (including its staff or agents) and third parties (including consultants, experts, constituents, or members of the press) related to the implications of Maryland’s 2011 congressional redistricting plan for future elections, including but not limited to responsive Documents and Communications concerning the 2012 Maryland Redistricting Referendum, from the time period January 1, 2011 to

November 30, 2012.

DEFINITIONS

1. Plaintiffs hereby incorporate by reference all definitions in Appendix D of the Local Rules of the United States District Court for the District of Maryland, *available at* <http://www.mdd.uscourts.gov/publications/forms/LocalRules.pdf>.

2. The term “Communication” means the transmittal of information by any means, and includes letters, memoranda, facsimile transmissions, telephone conversations, telephone logs and records, electronic mail messages, voicemail messages, press releases, and any and all “cc” or “bcc” copies of the above.

3. The term “Governor” means former Maryland Governor Martin O’Malley and any staff member working for him or his official office.

4. The terms “Governor’s Redistricting Advisory Committee” or “GRAC” mean the committee appointed by the Governor on July 4, 2011 for the purpose of drafting a redistricting plan and proposing a congressional map for Maryland’s eight congressional districts following the 2010 United States Census results.

5. The term “2012 Maryland Redistricting Referendum” refers to the statewide referendum Question 5 on the 2012 ballot, asking voters whether they were “for” or “against” the Maryland law “[e]stablish[ing] the boundaries for the State’s eight United States Congressional Districts based on recent census figures, as required by the United States Constitution.”

INSTRUCTIONS

1. Unless otherwise indicated, each of these Requests seeks materials for the time period January 1, 2011 to November 30, 2011, including any records or communications dated, generated, received, sent, or in effect during this time period (the “Relevant Time Period”).

2. With regard to any record or communication withheld by You, such as on the basis of a claim of attorney-client privilege or work product protection or some other form of immunity, Identify the Document by its: date; type (e.g., e-mail); subject matter; author or originator; addressee or addressees; and the alleged ground or grounds for withholding production (e.g., attorney-client privilege).