

EXHIBIT 3

BRIAN E. FROSH
ATTORNEY GENERAL

SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY



ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

KATHRYN M. ROWE
DEPUTY COUNSEL

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

DONNA HILL STATON
DEPUTY ATTORNEY GENERAL

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

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

December 30, 2016

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

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

Dear Mr. Medlock:

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

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

Stephen M. Medlock
December 30, 2016
Page 2

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Benson Brantley". The signature is fluid and cursive, with the first name "Sandra" being the most prominent.

Sandra Benson Brantley
Counsel to the General Assembly