

EXHIBIT 5

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

O. JOHN BENISEK, *et al.*,

Plaintiffs,

v.

LINDA H. LAMONE, *et al.*,

Defendants.

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Case No. 13-cv-3233

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**DEFENDANTS' 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.

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.

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.

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.

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).

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.

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 INTERROGATORY 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 INTERROGATORY 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 INTERROGATORY 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.

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 INTERROGATORY 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.

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.

BRIAN E. FROSH
Attorney General of Maryland

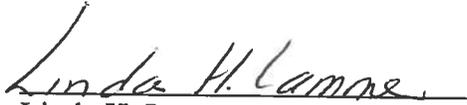
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Dated: January 13, 2017

Attorneys for Defendants

VERIFICATION

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


Linda H. Lamone