

# **EXHIBIT 5**

**From:** Rowe, Kathryn  
**Sent:** Thursday, February 9, 2017 2:37 PM  
**To:** Brantley, Sandra; Rice, Sarah; Katz, Jennifer  
**Subject:** FW: Documents  
**Attachments:** MillerDocuments02\_09.pdf; BuschDocuments02\_09.pdf; MadalenoDocuments02\_09.pdf

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**From:** Rowe, Kathryn  
**Sent:** Thursday, February 09, 2017 2:21 PM  
**To:** 'Medlock, Stephen M.' <SMedlock@mayerbrown.com>  
**Subject:** Documents

Dear Mr. Medlock –

Attached are additional documents from President Miller, Speaker Busch and Senator Madaleno. Electronic documents will be mailed on a CD today.

Kathryn M. Rowe  
Assistant Attorney General

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**From:** Weissmann, Yaakov <Yaakov.Weissmann@mlis.state.md.us>  
**Sent:** Wednesday, December 14, 2016 12:30 PM  
**To:** Rowe, Kathryn  
**Subject:** Fw: Litigation Hold

**Importance:** High

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**From:** Friedman, Dan <dfriedman@oag.state.md.us>  
**Sent:** Monday, October 31, 2011 5:09:26 PM  
**To:** Weissmann, Yaakov  
**Cc:** Murray, Patrick  
**Subject:** Fw: Litigation Hold

You too.

Dan Friedman  
Counsel to the General Assembly  
Office of the Attorney General  
(410) 946-5600

**From:** Friedman, Dan  
**Sent:** Monday, October 31, 2011 04:47 PM  
**To:** Hitchcock, Jeanne <jhitchcock@gov.state.md.us>; 'thomas.v.mike.miller@senate.state.md.us' <thomas.v.mike.miller@senate.state.md.us>; 'Busch, Michael Delegate' <Michael.Busch@house.state.md.us>; 'jjking22@aol.com' <jjking22@aol.com>; Richard Stewart (rstewartmm@aol.com) <rstewartmm@aol.com>; Richard Eberhart Hall (rhall@mdp.state.md.us) <rhall@mdp.state.md.us>; jmcdonough@sos.state.md.us <jmcdonough@sos.state.md.us>  
**Cc:** 'Elizabeth Harris' <eharris@gov.state.md.us>; Gruber, Vicki <victoria.gruber@mlis.state.md.us>; 'Jones, Kristin' <kristin.jones@mlis.state.md.us>; 'Murray, Patrick' <Patrick.Murray@mlis.state.md.us>; Baker, Jeremy <Jeremy.Baker@mlis.state.md.us>; Darsie, Jeffrey; Conn, Amanda; Sullivan, Steven; Wherthey, Kathleen; Rowe, Kathryn  
**Subject:** Litigation Hold

#### **Attorney-Client Privileged**

A petition was filed by Howard Gorrell ("Gorrell Petition") in U.S. Federal District Court on October 27, 2011 against Governor Martin O'Malley arising out of the adoption of the 2011 Congressional Districts through Senate Bill 1. Senate Bill 1 was adopted by the General Assembly and signed into law by the Governor on October 20, 2011. The Gorrell Petition alleges that Senate Bill 1 violates the U.S. Constitution, the State failed to comply with the guidelines established for congressional redistricting, and the congressional districts fail to preserve communities of interest. The Office of the Attorney General is preparing a vigorous defense.

**The State of Maryland, its officers, agents and employees, are under a legal obligation to preserve all documents potentially relevant to this lawsuit and to congressional redistricting. By this email, we direct all recipients listed to immediately preserve and protect such documents regardless of the form in which they are stored. This is known as a "litigation hold." The obligations under this litigation hold are continuing and apply equally to documents created after, as well as before, this email was sent.**

Just because we are asking you to preserve all potentially relevant documents, however, does not mean that they will necessarily be produced in litigation. Numerous evidentiary privileges exist and will be interposed to prevent disclosure of these documents, including, but not limited to, executive privilege, legislative privilege, attorney/client privilege, and attorney work product.

Dan Friedman is the attorney responsible for coordinating this litigation hold. Please contact him at 410-946-5600 if you have any questions or if you believe that the list of persons receiving this email needs to include others. This litigation hold may be followed by a questionnaire that will ask you to more specifically identify the type, location, and amount of potentially relevant documents in your possession, custody, or control.

Until then, and in addition to the above:

- (1) You are instructed to identify places where potentially relevant paper documents and files, and other tangible materials may be stored and to make appropriate arrangements for their preservation.
- (2) You are instructed to identify places where potentially relevant electronic stored information ("ESI") including emails may be stored and to make appropriate arrangements for its preservation. Please contact your information technology specialists, if appropriate, for assistance in the preservation of all electronic information including emails related to congressional redistricting.
- (3) You are instructed to defer running compression disk defragmentation or other computer optimization or automated maintenance programs and to reasonable safeguard and preserve portable or removal electronic storage media containing potentially relevant ESI.
- (4) You are directed to suspend any existing practice regarding the destruction of ESI that might be related to congressional redistricting. Also, please defer any significant hardware/software upgrade, repair, or replacement that might impact the identification and preservation of ESI relation to congressional redistricting. Any significant upgrade, replacement, or disposal or hardware or software should be discussed with us in advance.

As this matter is now in litigation, all communications with and through Dan Friedman, Kathy Rowe, Steve Sullivan, Kathleen Wherthey, Jeff Darsie, and Amanda Conn (collectively, the Attorney General's Redistricting Litigation Workgroup) are privileged and confidential – including this e-mail – and such communications are not to be discussed or shared.

We remind you that your e-mails are the subject of this litigation hold, and may be subject to disclosure to the other parties and the public. We recommend that you exercise caution and discretion when communicating in this fashion.

Thank you in advance for your cooperation in this matter.

Dan Friedman  
Steve Sullivan  
Kathryn Rowe  
Kathleen Wherthey

Jeffrey Darsie  
Amanda Conn