

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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LEAGUE OF WOMEN VOTERS OF  
PENNSYLVANIA, et al.,

*Petitioners,*

v.

COMMONWEALTH OF  
PENNSYLVANIA, et al.,

*Respondents.*

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OF PENNSYLVANIA  
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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH  
SUBPOENA DIRECTED TO THE HONORABLE THOMAS W. CORBETT

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Non-party, the Honorable Thomas W. Corbett (“Governor Corbett”), by and through his undersigned counsel, hereby submits this Memorandum of Law in support of the Motion to Quash the subpoena served by Petitioners on November 22, 2017, in the above-referenced matter. For all the following reasons, and those set forth in the Motion filed contemporaneously herewith, this Court should grant Governor Corbett’s Motion and quash the instant subpoena.

**I. PROCEDURAL BACKGROUND**

On August 11, 2017, Petitioners served all Respondents with a Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 (the “Notice”), attached to which was a subpoena (the “Subpoena”) addressed to non-party Governor Corbett. At 5:57 p.m. on the eve of Thanksgiving, November 22, 2017, the undersigned was served with the subpoena on behalf of Governor Corbett.

The Subpoena proposes to direct Governor Corbett’s appearance at a deposition on December 1, 2017,<sup>1</sup> and to compel the production of documents from Governor Corbett described in a request for production attached to the Subpoena

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<sup>1</sup> In addition to the reasons supporting Governor Corbett’s Motion to Quash the Subpoena, it is noted, and Petitioners’ counsel was previously advised, that the undersigned is otherwise unavailable on Friday, December 1, 2017, to participate in any deposition in Pittsburgh, Pennsylvania as the undersigned is scheduled to be in New York City on that date. Similarly, Governor Corbett is also unavailable on December 1, 2017, as he too is scheduled to be in New York City at the time noticed in the Subpoena. Accordingly, irrespective of the outcome of the within Motion, neither counsel nor Governor Corbett are available on the date and time set forth in the Subpoena.

and entitled “Requests.” (See Exhibit “A”.) The document “Requests” are for “[a]ll documents referring or relating to the 2011 [Congressional Redistricting] Plan, including, but not limited to” seven (7) subcategories of documents and communications relating to the Plan, which are separately enumerated and identified as (a) through (g) in the attachment to the Subpoena. (*Id.*) Additionally, the Subpoena lists seven corresponding “Deposition Topics” concerning the 2011 Plan.

However, all of the documents<sup>2</sup> and/or information sought from Governor Corbett in the Subpoena are protected from disclosure by a number of privileges, most notably, the executive privilege, the deliberative process privilege, and the attorney-client privilege. Accordingly, this Court should grant this motion and quash the instant subpoena so as to safeguard these bedrock evidentiary and testimonial privileges.

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<sup>2</sup> As the Court is aware, and as the Office of General Counsel has advised Petitioners, Governor Corbett left office in January 2015. As of that date, all documents and related information in the possession of Governor Corbett in his capacity as the Governor of Pennsylvania were left in the care, custody and control of custodians of Governor Corbett’s archives, namely the Pennsylvania Historical Museum Commission and Lebanon Valley College. Copies of the agreements with each entity relating to Governor Corbett’s archived materials have been provided to Petitioners’ counsel previously. Accordingly, Governor Corbett is not in possession of any of the documents, even if they existed, identified in Petitioners’ subpoena, or potentially responsive thereto. Of course, no matter the location of any responsive documents, if any exist, the privileges asserted herein apply to any such documents and the Subpoena should be quashed.

## II. LEGAL ARGUMENT

In Pennsylvania, although the “executive privilege” and the “deliberative process privilege” are two distinct privileges, they are very closely related in that both privileges prohibit disclosure of similar types of information.<sup>3</sup> Each privilege applies to the Office of the Governor and Governor Corbett. *See Office of the Governor v. Scolforo*, 65 A.3d 1095, 1100 (Pa. Cmwlth. Ct. 2013); *Hayes v. Reed*, 1997 U.S. Dist. LEXIS 2992 (E.D. Pa. Mar. 13, 1997) (applying Pennsylvania law). In addition, privileges such as the attorney-client and work product privilege unquestionably apply to Governor Corbett. *Ario v. Deloitte & Touche, LLP (In re Objections of Liquidator to the Defendants' Notices of Intent)*, 934 A.2d 1290, 1294 (Pa. Commw. Ct. 2007); *Sedat, Inc. v. Dep't of Env'tl. Res.*, 641 A.2d 1243, 1244 (Pa. Commw. Ct. 1994).

Here, the subpoena served on Governor Corbett must be quashed because the subpoena plainly seeks documents and information that is protected from disclosure by the executive, deliberative process, and attorney-client privileges. Indeed, the very nature of the documents requests and the deposition topics propounded by Petitioners reveal that the subject matter sought by the Subpoena,

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<sup>3</sup> The Commonwealth Court has referred to the two privileges as “coterminous,” however, the case law indicates that there are two distinct analyses that apply to each respective privilege. *See Van Hine v. Dep't of State*, 856 A.2d 204, 212 (Pa. Commw. Ct. 2004) (“The similarities with executive privilege are apparent, and in the Court's view the two doctrines are coterminous.”)

and about which Governor Corbett is proposed to be questioned, is precisely the type of information that is protected by the cited privileges.

**A. The Executive Privilege Prohibits Disclosure of Any Documents and/or Testimony that Pertain to the Function of the Executive Branch or Concern the Decisional and Consultative Responsibilities of the Governor.**

“[A]s chief executive,” the Governor is afforded the power “to protect the confidentiality of communications pertaining to the function of the executive branch.” *Hayes*, 1997 U.S. Dist. LEXIS 2992, at \*30 n.8. As the United States District Court for the Eastern District of Pennsylvania explained:

Confidentiality is vital not only because it serves to protect government sources of information but also because it enhances the effectiveness of investigative techniques and procedures. More importantly, **this executive privilege protects and insulates the sensitive decisional and consultative responsibilities of the Governor which can be discharged most effectively with privacy and security.**

*Id.* (emphasis added); see also *Van Hine v. Dep’t of State*, 856 A.2d 204, 208 (Pa. Cmwlth. Ct. 2004) (explaining that the executive privilege is designed to prevent disclosure of documents or communications because disclosure “would seriously hamper the function of government.”). Indeed, the executive privilege is designed to “safeguard free expression in giving intragovernmental advice by eliminating the possibility of outside examination as an inhibiting factor.” *Haber v. Evans*, 2004 U.S. Dist. LEXIS 7961, at \*8-9 (E.D. Pa. May 4, 2004).

Accordingly, if the communications and/or documents sought by Petitioners “pertain[] to the function of the executive branch,” *Hayes*, 1997 U.S. Dist. LEXIS 2992, at \*30 n.8, the communications and/or documents are protected by the executive privilege.

**B. The Deliberative Process Privilege Prohibits Disclosure of Any Documents and/or Testimony Concerning Confidential Deliberations or Reflecting Opinions, Recommendations, or Advice Related to the Re-Districting Plan.**

Although the Pennsylvania Supreme Court has not formally adopted the deliberative process privilege, the Pennsylvania Superior Court recently held that “nothing in that Court’s decisions causes us to doubt the privilege’s validity.” *Commonwealth v. McClure*, 2017 PA Super 334 n.23 (Pa. Super. Ct. 2017). Indeed, the Court in *McClure* noted that “[i]n *Tribune-Review Publ’g Co. v. Dep’t of Cmty. & Econ. Dev.*, 580 Pa. 80, 859 A.2d 1261, 1266 n.2, 1269 (Pa. 2004), while again noting that it had not yet formally adopted the privilege, the Court stated that it ‘agree[s] with the principles we articulated in *Vartan*.’”<sup>4</sup> *Id.*

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<sup>4</sup> In *Commonwealth v. Vartan*, 733 A.2d 1258 (Pa. 1999), a plurality of the Court applied the deliberative process privilege, however, it has never been formally adopted by a majority of the Pennsylvania Supreme Court. Although judicial opinion in the Commonwealth has not been uniform as to whether the deliberative process privilege is a cognizable privilege in Pennsylvania, the prevailing view is that the privilege is applicable. Notably, the authority from the more recent decisions of courts in this Commonwealth is decidedly in favor of the privilege, including the Superior Court’s statement *less than a month ago* that “nothing in [the Pennsylvania Supreme Court’s] decisions causes us to doubt the privilege’s validity.” *McClure*, 2017 PA Super 334 n.23. See also *In re Interbranch Comm’n on Juvenile Justice*, 988 A.2d 1269, 1277-78 (Pa. 2010) (plurality decision) (“Under the deliberative process privilege, government officials may refuse to testify and may withhold documents containing ‘confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice.’”



Like the executive privilege, the deliberative process privilege “recognizes that if governmental agencies were forced to operate in a fishbowl, the frank exchange of ideas and opinions would cease and the quality of administrative decisions would consequently suffer.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 381 (Pa. Cmwlth. Ct. 2014); *Van Hine*, 856 A.2d at 212 (“purpose of the privilege is to allow the free exchange of ideas and information within government agencies.”). Accordingly, the deliberative process privilege “permits the government to withhold documents containing confidential deliberations of law or policymaking, reflecting opinions, recommendations, or advice.” *Ario*, 934 A.2d at 1293. This includes “deliberations relating to a budget recommendation,

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(quoting *Vartan*, 733 A.2d at 1263)); *id.* at 1283 (Bear, J., concurring and dissenting) (explaining that the party did not “articulate an argument under the deliberative process privilege” and also noting that a privilege concerning the “deliberative process” is a “legally cognizable” objection); *Commonwealth v. Lytle*, 2017 Pa. Super. Unpub. LEXIS 1297, \*5 (Pa. Super. Ct. Apr. 7, 2017) (“Deliberative process privilege ‘permits the government to withhold documents containing confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice.’” (quoting *Vartan*, 733 A.2d at 1263)); *KC Equities v. Dep’t of Pub. Welfare*, 95 A.3d 918, 934 (Pa. Commw. Ct. 2014) (“The deliberations to which Little Steps sought access are protected by the deliberative process privilege” (citing *Vartan* and *In re Interbranch Comm’n*); *Scolforo*, 65 A.3d at 1100 (explaining that Pennsylvania’s Right to Know Law codified the common law deliberative process privilege). *But see* *Rae v. Pa. Funeral Directors Ass’n*, 925 A.2d 197, 205 (Pa. Commw. Ct. 2007), *vacated on other grounds* 977 A.2d 1121 (Pa. 2009). Moreover, although the Commonwealth Court in *Rae* refused to apply the deliberative process privilege to the executive branch employees in that case, the Court explained that it was possible that the deliberative process privilege *did exist* in Pennsylvania, but that it was limited to “high ranking government officials,” which was not the case in *Rae* because the employees were “two staff attorneys and an investigator.” *Id.* at 205 n.8. In contrast, here, Governor Corbett would plainly qualify as a “high ranking government official” to which the deliberative process privilege would apply. But, in any event, as the foregoing makes clear, *Rae*’s refusal to recognize the privilege is not in line with the more recent case law of this Commonwealth on the subject.

legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.” *Scolforo*, 65 A.3d at 1100 (quoting 65 P.S. § 67.708(b)(10)(i)).<sup>5</sup>

Unlike the executive privilege, however, documents and/or communications are only protected under the deliberative process privilege if the document and/or communication is both “predecisional and deliberative.” *Scolforo*, 65 A.3d at 1101. “[I]nformation is pre-decisional if it reflects matters leading to a final decision of an agency.” *Ario*, 934 A.2d at 1293. “[I]nformation is deliberative if it reflects the process the agency used to reach the decision.” *Id.* Notably, the privilege applies even if the documents and/or communications do not actually *reveal* the processes used to make a decision; rather, the document and/or communication must merely *reflect*, “or, in other words, ‘mirrors’ or ‘shows,’ that the agency engaged in the deliberative *process*.” *McGowan*, 103 A.3d at 383. If the agency carries its burden of showing that the documents and/or communications sought are both “predecisional” and “deliberative,” then the privilege applies and the information is protected from disclosure.

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<sup>5</sup> Although this quote is derived from Pennsylvania’s Right to Know Law, the Court in *Scolforo* held that the “predecisional deliberative exception set forth in Section 708(b)(10)(i) codifies the [common law] deliberative process privilege.” *Scolforo*, 65 A.3d at 1100.

**C. The Application of The Cited Privileges, and the Attorney-Client Privilege, to the Subpoena Served on Governor Corbett Requires This Court to Quash the Subpoena.**

**1. Document Requests**

The Subpoena requests Governor Corbett to produce “[a]ll documents referring or relating to the 2011 [Congressional Redistricting] Plan, including, but not limited to” the following seven (7) subcategories of documents and communications relating to the Plan. (*See* Exhibit “A”.) As discussed below, these document requests plainly seek material protected by the executive and deliberative process privileges, as well as a number of other privileges.

- (a) *All proposals, analyses, memoranda, notes, and calendar entries in whatever medium (e.g., paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2011 Plan.*

The documents and/or information sought by this request are protected from disclosure by both the executive privilege and the deliberative process privilege. With respect to the deliberative process privilege, any “proposals,” “analyses,” “memorandum,” or “notes” that are responsive to this request would necessarily reflect “that the agency engaged in the deliberative *process*.” *McGowan*, 103 A.3d at 383 (finding that documents such as an “internal briefing memo” and “proposed courses of action” were protected from disclosure). Indeed, the deliberative process privilege expressly protects against disclosure of “deliberations relating to a budget recommendation, legislative proposal, legislative amendment,

**contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.”** *Scolforo*, 65 A.3d at 1100 (emphasis added). Accordingly, this request expressly seeks documents and/or information that are plainly protected by the deliberative process privilege.

Moreover, any proposals, memos, analyses, or notes that were sent to or prepared by the Office of the Governor implicate the “decisional and consultative responsibilities of the Governor.” *Hayes*, 1997 U.S. Dist. LEXIS 2992, at \*30 n.8. As the courts have made clear, the executive privilege “protects and insulates” these sensitive responsibilities because these responsibilities are “discharged most effectively with privacy and secrecy.” *Id.* Accordingly, the express wording of this request makes clear that any documents responsive to this request would be protected from disclosure pursuant to the deliberative process and executive privileges.

- (b) *All documents referring or relating to all considerations or criteria that were used to develop the 2011 Plan, such as compactness, contiguity, keeping political units or communities together, equal population, race or ethnicity, incumbent protection, a voter or area's likelihood of supporting Republican or Democratic candidates, and any others.*

Petitioners' Request (b) also seeks information covered by both the deliberative process and executive privileges. Notably, the request expressly seeks documents and/or information concerning the “considerations” used “to develop the 2011 Plan” and thus seeks documents that are “predecisional,” *i.e.*, that concern

matters “leading to a final decision” – the 2011 Plan. *Ario*, 934 A.2d at 1293. This request also seeks documents reflecting the “considerations” used to develop the 2011 Plan, which are deliberative in nature. For example, in *McGowan*, the Commonwealth Court found that documents and/or information concerning “the underlying issues and factors that impact the Department’s assessment on such matters, in order to ultimately arrive at the Department’s final position” fell within the protection of the deliberative process privilege. *McGowan*, 103 A.3d at 384. That is precisely what Request (b) seeks here.

- (c) *All documents referring or relating to how each consideration or criteria was measured, including the specific data and specific formulas used in assessing compactness and partisanship.*

Request (c) seeks documents and/or information that are protected by the deliberative process and executive privileges. By its express terms, Request (c) seeks to discover documents concerning the *underlying process* as to how certain criteria were “consider[ed],” “measured,” and/or “asses[ed]” in order to arrive at a final decision. However, as explained *supra*, any documents or information concerning “the underlying issues and factors that impact the . . . assessment . . . in order to ultimately arrive at [a] final position” is protected from disclosure by the deliberative process privilege. *McGowan*, 103 A.3d at 384. Accordingly, any documents responsive to Request (c) would be privileged pursuant to the deliberative process privilege and the executive privilege, *see Hayes*, 1997 U.S.

Dist. LEXIS 2992, at \*30 n.8 (executive privilege prevents disclosure of documents or communications concerning the “decisional and consultative responsibilities of the Governor.”).

- (d) *All documents referring or relating to how each consideration or criterion affected the 2011 Plan, including any rule or principle guiding the use of each consideration or criteria in developing the 2011 Plan.*

Request (d) expressly seeks to discover documents concerning “how” specific criteria “affected the 2011 Plan” during the development of the 2011 Plan. Again, as with Request (b) and (c), Request (d) therefore plainly seeks documents and/or information concerning “the underlying issues and factors that impact the . . . assessment . . . in order to ultimately arrive at [a] final position.” *McGowan*, 103 A.3d at 384. Accordingly, as with Requests (b) and (c), any documents responsive to this request would be protected from disclosure pursuant to the deliberative process privilege and the executive privilege. *See id.*; *Hayes*, 1997 U.S. Dist. LEXIS 2992, at \*30 n.8

- (e) *All communications since January 1, 2009 with any affiliate of the Republican Party, including, but not limited to, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2011 Plan.*

The executive privilege recognizes that “as chief executive” the Governor is afforded the power “to protect the confidentiality of communications pertaining to

the function of the executive branch,” particularly where the communications concern the “sensitive and consultative responsibilities of the Governor.” *Hayes*, 1997 U.S. Dist. LEXIS 2992, at \*30 n.8. Therefore, any documents responsive to this request would plainly be protected from disclosure because they would disclose Governor Corbett’s communications concerning decisions he made, and consultations he may have sought, in his role as Governor.

(f) *All communications with any consultants, advisors, attorneys, or political scientists referring or relating to the 2011 Plan.*

Request (f) likewise seeks communications protected by the Executive Privilege. Indeed, this Request expressly seeks communications with “consultants, advisors, attorneys, or political scientists” which would, without a doubt, lead to the disclosure of communications made while Governor Corbett was exercising his “sensitive decisional and *consultative* responsibilities of the Governor.” *Id.* (emphasis added). Moreover, any communications with attorneys concerning legal advice related to the 2011 Plan would be protected from disclosure by the attorney-client privilege. *Ario*, 934 A.2d at 1294; *Sedat, Inc.*, 641 A.2d at 1244 (“The existence of the attorney-client privilege and work product doctrine when attorneys act in their professional capacity for governmental agencies is well established.”).

- (g) *All communications with any committees, legislators, or legislative staffers referring or relating to the 2011 Plan.*

Any documents responsive to Request (g) would implicate the “sensitive decisional and consultative responsibilities of the Governor” and are thereby covered by the executive privilege. *Hayes*, 1997 U.S. Dist. LEXIS 2992, at \*30 n.8. Moreover, Judge Brobson concluded in his opinion granting in part the Respondents’ motion to quash in this action that this Court could not “compel production of testimony or documents with respect to matters protected by the Speech and Debate Clause of the Pennsylvania Constitution.” (*See* Dkt. 110-1, at p.13.) Accordingly, any documents responsive to Request (g) would be protected from disclosure pursuant to the executive privilege and the Speech and Debate Clause of the Pennsylvania Constitution.

## **2. Deposition Topics**

In addition to the above document requests, which seek only privileged material, the Subpoena seeks to depose Governor Corbett on the below seven (7) topics, listed (1)-(7) in the Subpoena, relating to the 2011 Plan. The deposition topics track closely to the document requests in the Subpoena, and thus, as with the document requests, the information sought from Governor Corbett in the stated deposition topics is protected from disclosure by the foregoing privileges.



- (1). *Governor Corbett's involvement in the creation, passage, and signing into law of the 2011 Plan.*

Courts have made clear that “the sensitive decisional and consultative responsibilities” of the Governor are “discharged most effectively with privacy and security” and thus it benefits the public to “protect[] and insulate[]” all aspects of the Governor’s exercise of those responsibilities. *Hayes*, 1997 U.S. Dist. LEXIS 2992, at \*30 n.8. Here, Deposition Topic 1 seeks to invade this privilege by probing Governor Corbett’s exercise of these “sensitive” responsibilities, to the detriment of the public.

Moreover, in *Ario*, the Pennsylvania Superior Court quashed a deposition subpoena served on members of the Governor’s staff because the proposed deposition topics implicated the deliberative process privilege. In that case, the proponent of the testimony sought to depose certain members of the Governor’s staff and the Insurance Commissioner’s staff concerning their involvement in regulatory matters that lead to the insolvency of an insurance company. *Ario*, 934 A.2d at 1292. The Superior Court held that the Governor’s staff could not be deposed on their involvement in the matter because “[t]he information is part of the deliberative process since it reveals the decision making process and legal advice that was given . . . before action was taken regarding the insolvency of Reliance.” *Id.* at 1293.

Here, as in *Ario*, Petitioners seek to depose Governor Corbett on his “involvement” with the 2011 Plan leading up to its passage. But, as in *Ario*, Governor Corbett cannot be deposed on his involvement with the 2011 Plan, because that “information is part of the deliberative process.” *Id.* Accordingly, both the executive and deliberative process privileges prohibit Governor Corbett from testifying on these matters.

(2). *Communications involving Governor Corbett referring or relating to the 2011 Plan.*

“[A]s chief executive,” the Governor is afforded the power “to protect the confidentiality of communications pertaining to the function of the executive branch.” *Hayes*, 1997 U.S. Dist. LEXIS 2992, at \*30 n.8. Deposition Topic 2 expressly seeks to invade that privilege by seeking all communications relating to Governor Corbett’s involvement with the 2011 Plan. Because these communications are plainly protected by the executive privilege, Governor Corbett cannot be compelled to testify on these matters. Moreover, as just discussed *supra* with Deposition Topic 1, testimony concerning Governor Corbett’s involvement with the 2011 Plan also implicates the deliberative process privilege. *See Ario*, 934 A.2d at 1293.

- (3). *Involvement of the REDistricting Majority Project (REDMAP), the RNC, or any non-Pennsylvania organizations with development of the 2011 Plan.*

As explained *supra*, in *Ario*, the Pennsylvania Superior Court held that members of the Governor's staff could not be compelled to testify concerning the involvement of the Governor's office and another agency, the Pennsylvania Insurance Department, relating to certain regulatory matters. *Ario*, 934 A.2d at 1293. Here, as in *Ario*, Petitioners seek testimony concerning the involvement of certain entities in the "development" of the 2011 Plan. In other words, this Deposition Topic seeks to discover information relating to "the decision making process" that was used "before action was taken regarding [the 2011 Plan]," which is clearly protected by the deliberative process and executive privileges. *See id.* at 1293.

- (4). *The considerations or criteria that were used to develop the 2011 Plan, such as compactness, contiguity, keeping political units or communities together, equal population, race or ethnicity, incumbent protection, a voter or area's likelihood of supporting Republican or Democratic candidates, and any others.*

Topic 4 corresponds with Petitioners' Document Request (b), and thus, for the reasons set forth *supra* in Part II.C.1(b), which is incorporated herein by reference, this Court cannot compel Governor Corbett to be deposed on this topic.

- (5). *How each consideration or criterion was measured, including the specific data and specific formulas used in assessing compactness and partisanship.*

Topic 5 corresponds with Petitioners' Document Request (c), and thus, for the reasons set forth *supra* in Part II.C.1(c), which is incorporated herein by reference, this Court cannot compel Governor Corbett to be deposed on this topic.

- (6). *How each consideration or criterion or affected the 2011 Plan, including any rule or principle guiding the use of each consideration or criteria in developing the 2011 Plan.*

Topic 6 corresponds with Petitioners' Document Request (d), and thus, for the reasons set forth *supra* in Part II.C.1(d), which is incorporated herein by reference, this Court cannot compel Governor Corbett to be deposed on this topic.

- (7). *The goals and expected election outcomes of the 2011 Plan.*

Finally, Governor Corbett cannot be compelled to testify concerning his goals and/or expected outcomes of the 2011 Plan because any such testimony would clearly invade the confidentiality attached to the Governor's "decisional and consultative responsibilities." *Hayes*, 1997 U.S. Dist. LEXIS 2992, at \*30 n.8. Moreover, any testimony concerning the "goals and expected outcomes" of any member of the Legislature would be protected pursuant to the Speech and Debate Clause of the Pennsylvania Constitution. (See Dkt. 110-1, at p. 13.)

### **III. CONCLUSION**

For all the foregoing reasons, Governor Corbett respectfully requests that this Court grant the instant Motion to Quash, and quash the subpoena served upon him by Petitioners. Any and all documents responsive to the Petitioners' Document Requests are plainly protected from disclosure by the executive, deliberative process, and attorney-client privileges, as well as the Speech and Debate Clause of the Pennsylvania Constitution. Moreover, Governor Corbett cannot be compelled to testify on the Petitioners' corresponding Deposition Topics because any testimony on these Topics would implicate these same privileges, and thus are protected from disclosure. Accordingly, this Court should quash the instant subpoena in the interest of promoting the "frank exchange of ideas and opinions" and to "safeguard free expression in giving intragovernmental advice." *McGowan*, 103 A.3d at 381; *Haber*, 2004 U.S. Dist. LEXIS 7961, at \*8-9; *see also Van Hine*, 856 A.2d at 208 (explaining that the executive privilege and deliberative process privilege are designed to prevent disclosure of documents or communications because disclosure "would seriously hamper the function of government.").

Respectfully submitted,

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Dated: November 27, 2017

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