

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Louis Agre, William Ewing, Floyd	:	
Montgomery, Joy Montgomery, and Rayman	:	
Solomon,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 17-04392
	:	
Thomas W. Wolf, Governor of Pennsylvania,	:	
Robert Torres, Acting Secretary of State of	:	
Pennsylvania, and Jonathan Marks,	:	
Commissioner of the Bureau of Elections,	:	
in their official capacities,	:	
	:	
Defendants.	:	
	:	

**ANSWER OF GOVERNOR WOLF, ACTING SECRETARY TORRES, AND
COMMISSIONER MARKS TO PLAINTIFFS’ COMPLAINT
WITH AFFIRMATIVE DEFENSES**

This matter challenges Pennsylvania’s 2011 Congressional redistricting legislation, which was drafted after the completion of the 2010 national census conducted under Article I, Section 2 of the United States Constitution. At the time that this legislation was drafted and enacted, neither Governor Thomas W. Wolf nor Acting Secretary Robert Torres held public office. Neither Governor Wolf, Acting Secretary Torres, nor Commissioner of the Bureau of Elections Jonathan Marks (together, “Defendants”) had any substantive legal role in the passage of the challenged legislation. Defendants state, as a preliminary matter, that they are required to execute and administer laws of the Commonwealth of Pennsylvania, including the challenged legislation, unless and until ordered to do otherwise by this Court or another competent Court.

Within this framework, Defendants answer Plaintiffs’ Complaint as follows:

Introduction

1. It is admitted only that the Pennsylvania General Assembly passed the Congressional Redistricting Act of 2011 (“2011 Plan”), and that then-Governor Tom Corbett signed the 2011 Plan into law. The remaining allegations in this paragraph set forth legal conclusions to which no response is required. To the extent that further response is required, Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph and specifically deny that they have violated the U.S. Constitution or any law.

2. This paragraph sets forth legal conclusions to which no response is required. To the extent that Plaintiffs have directly quoted Article I, Section 4 of the U.S. Constitution, that document speaks for itself and any characterization of the document is denied.

3. This paragraph sets forth legal conclusions to which no response is required. To the extent that Plaintiffs cite a concurring opinion written by Justice Kennedy in *Cook v. Gralike*, 531 U.S. 510, 527 (2010), that opinion speaks for itself.

4. This paragraph sets forth legal conclusions to which no response is required.

5. Admitted only that *Gill v. Whitford* (16-1161) is currently pending before the United States Supreme Court. The allegations of this paragraph purport to characterize the trial court’s decision in that case, which speaks for itself, and any characterization thereof is denied. The remaining allegations of this paragraph set forth legal conclusions to which no response is required.

6. Admitted only that the 2011 Plan continues to be a law of the Commonwealth of Pennsylvania; such laws are executed until repealed, replaced, or invalidated or enjoined by a court of competent jurisdiction. The remainder of this paragraph sets forth legal conclusions to

which no response is required. To the extent that further response is required, Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph and specifically deny that they have violated the U.S. Constitution or any other applicable law.

7. Admitted only that the 2011 Plan continues to be a law of the Commonwealth of Pennsylvania; that such laws are executed until repealed, replaced, or invalidated or enjoined by a court of competent jurisdiction; and that such plan established 18 Congressional districts. The remainder of this paragraph sets forth legal conclusions to which no response is required. To the extent that further response is required, Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph and specifically deny that they have violated the U.S. Constitution or any other applicable law.

8. Admitted only that the 2011 Plan continues to be a law of the Commonwealth of Pennsylvania; such laws are executed until repealed, replaced, or invalidated or enjoined by a court of competent jurisdiction. The remainder of this paragraph sets forth legal conclusions to which no response is required. To the extent that further response is required, Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph and specifically deny that they have violated the U.S. Constitution or any other applicable law.

9. Admitted only that, per the Complaint, Plaintiffs seek injunctive relief prior to the 2018 Congressional elections. In further answer, this paragraph sets forth legal conclusions to which no response is required.

10. Admitted only that, per the Complaint, Plaintiffs seek the relief alleged in the

averments of this paragraph. In further answer, this paragraph sets forth legal conclusions to which no response is required.

Parties

11. Admitted only that Louis Agre is a registered voter in the Commonwealth of Pennsylvania. In further answer, in order to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he/she is a resident of Pennsylvania and of his/her election district at least thirty (30) days before the next election.

12. Admitted only that William Ewing, Floyd Montgomery, Joy Montgomery, and Ryan Solomon are registered voters in the Commonwealth of Pennsylvania. In further answer, in order to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he/she is a resident of Pennsylvania and of his/her election district at least thirty (30) days before the next election.

13. Admitted only that Governor Wolf is the elected Governor of Pennsylvania. In further answer, the remainder of this paragraph sets forth legal conclusions to which no response is required. In further answer, Governor Wolf took office on January 20, 2015, and did not hold public office when the 2011 Plan was enacted.

14. Admitted only that as of the date of the filing of the Complaint, Pedro Cortés was the appointed Secretary of the Commonwealth of Pennsylvania. In further answer, Pedro Cortés resigned as Secretary of the Commonwealth on October 11, 2017, and Governor Wolf appointed Robert Torres as Acting Secretary of the Commonwealth. Otherwise, this paragraph sets forth legal conclusions as to which no response is required.

15. Admitted only that Commissioner Marks is the Commissioner of the Bureau of Elections in Pennsylvania. In further answer, the remainder of this paragraph sets forth legal conclusions to which no response is required.

16. This paragraph sets forth a legal conclusion to which no response is required.

17. This paragraph sets forth legal conclusions to which no response is required.

18. Admitted only that some of the Defendants reside in this judicial district. In further answer, the remainder of this paragraph sets forth legal conclusions to which no response is required.

Facts

19. It is admitted only that there have been past legal challenges to gerrymandering in Pennsylvania; any characterization of these challenges is denied. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph, and they are therefore denied.

20. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and they are therefore denied.

21. The allegations of this paragraph purport to characterize a website, which speaks for itself, and any characterization is denied. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and they are therefore denied.

22. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and they are therefore denied.

23. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and they are therefore denied.

24. Admitted only that Senate Bill 1249 was introduced on September 14, 2011, by Republican primary sponsors Majority Floor Leader Dominic F. Pileggi, President Pro Tempore Joseph B. Scarnati, III, and Senator Charles T. McIlhinney, Jr., and that Senate Bill 1249 was amended twice and passed by the Senate on December 14, 2011. The Pennsylvania House of Representatives passed the amended bill. The Pennsylvania House of Representatives signed the bill on December 20, 2011 and the Senate signed the bill on December 22, 2011. The legislation was presented to and signed by Governor Corbett on December 22, 2011. It is specifically denied that the “efforts” of Governor Wolf, Acting Secretary Torres, or Commissioner Marks “resulted in the [2011] Congressional districting plan.” Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph, and they are therefore denied.

25. Admitted only that the 2011 Plan divides Pennsylvania into 18 Congressional Districts. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph, and they are therefore denied. In further answer, the Congressional district maps, as well as any digital or computer models cited by Plaintiffs, speak for themselves.

26. The Congressional district maps speak for themselves, and any characterization thereof is denied. Any digital or computer models cited by Plaintiffs also speak for themselves. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or

information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph.

27. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and they are therefore denied. In further answer, any digital or computer models cited by Plaintiffs speak for themselves.

28. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph, and they are therefore denied. In further answer, any expert reports cited by Plaintiffs speak for themselves, and this paragraph sets forth legal conclusions to which no response is required. To the extent that further response is required, Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph.

29. Admitted only that Senate Bill 1249 was amended twice on December 14, 2011. In further answer, the legislative history of the 2011 Plan is a public record that speaks for itself. To the extent that further response is required, Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph, and they are therefore denied.

30. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph. By way of further answer, since 2011, Pennsylvania has elected 13 Republican candidates and 5 Democratic candidates to Congress in each Congressional election. Any other characterization is denied.

31. Admitted only that Plaintiffs' averments in this paragraph regarding the percentage and number of congressional seats won by Republicans in the 2014 and 2016 general elections, and the number of overall Congressional districts of the State, reflect the official election returns within the custody of the Pennsylvania Department of State. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph.

32. Admitted only that Plaintiffs' averments in this paragraph regarding the votes cast for Democrats and Republicans in the statewide congressional races in 2014 and 2016 reflect official election returns within the custody of the Pennsylvania Department of State. To the extent that further response is required, Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph, and they are therefore denied.

Count I

33. Admitted only that the 2011 Plan continues to be a law of the Commonwealth of Pennsylvania; such laws are executed until repealed, replaced, or invalidated or enjoined by a court of competent jurisdiction. The remainder of this paragraph sets forth legal conclusions as to which no response is required. It is specifically denied that Governor Wolf, Acting Secretary Torres or Commissioner Marks have violated the U.S. Constitution or any other applicable law.

35. This paragraph sets forth legal conclusions to which no response is required.

36. Admitted only that the 2011 Plan continues to be a law of the Commonwealth of Pennsylvania; such laws are executed until repealed, replaced, or invalidated or enjoined by a court of competent jurisdiction. It is specifically denied that Governor Wolf, Acting Secretary Torres or Commissioner Marks have violated the U.S. Constitution or any other applicable law.

The remainder of this paragraph sets forth legal conclusions as to which no response is required.

37. This paragraph sets forth legal conclusions to which no response is required.

38. This paragraph sets forth legal conclusions to which no response is required.

39. This paragraph sets forth legal conclusions to which no response is required.

40. This paragraph sets forth legal conclusions to which no response is required.

WHEREFORE, Governor Wolf, Acting Secretary Torres, and Commissioner Marks respectfully request that the Court deny Plaintiffs' claims and enter judgment in Defendants' favor, together with such further relief as the Court deems just and appropriate.

Count II

41. Admitted only that the 2011 Plan continues to be a law of the Commonwealth of Pennsylvania; such laws are executed until repealed, replaced, or invalidated or enjoined by a court of competent jurisdiction. The remainder of this paragraph sets forth legal conclusions as to which no response is required. It is specifically denied that Governor Wolf, Acting Secretary Torres or Commissioner Marks have violated the U.S. Constitution or any other applicable law.

42. Admitted only that the 2011 Plan continues to be a law of the Commonwealth of Pennsylvania; such laws are executed until repealed, replaced, or invalidated or enjoined by a court of competent jurisdiction. Governor Wolf, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph. It is specifically denied that Governor Wolf, Acting Secretary Torres or Commissioner Marks have violated the U.S. Constitution or any other applicable law.

43. This paragraph sets forth legal conclusions to which no response is required.

44. Admitted only that development of the 2011 Plan was entrusted to the General

Assembly, rather than Governor Wolf, Acting Secretary Torres or Commissioner Marks. It is specifically denied that Governor Wolf, Acting Secretary Torres or Commissioner Marks have violated the U.S. Constitution or any other applicable law. In further answer, this paragraph sets forth legal conclusions to which no response is required.

45. This paragraph sets forth legal conclusions to which no response is required.

46. Admitted only that the 2011 Plan continues to be a law of the Commonwealth of Pennsylvania; such laws are executed until repealed, replaced, or invalidated or enjoined by a court of competent jurisdiction. The remaining averments of this paragraph set forth legal conclusions to which no response is required. To the extent the averments are deemed to be factual in nature, they are denied, and it is specifically denied that Governor Wolf, Acting Secretary Torres or Commissioner Marks have violated the U.S. Constitution or any other applicable law.

47. This paragraph sets forth legal conclusions to which no response is required. To the extent the averments are deemed to be factual in nature, they are denied, and it is specifically denied that Governor Wolf, Acting Secretary Torres or Commissioner Marks have violated the U.S. Constitution or any other applicable law.

48. This paragraph sets forth legal conclusions to which no response is required. It is specifically denied that Governor Wolf, Acting Secretary Torres or Commissioner Marks have violated the U.S. Constitution or any other applicable law.

WHEREFORE, Governor Wolf, Acting Secretary Torres, and Commissioner Marks respectfully request that the Court deny Plaintiffs' claims and enter judgment in Defendants' favor, together with such further relief as the Court deems just and appropriate.

Count III

49. This paragraph sets forth legal conclusions to which no response is required.

50. This paragraph sets forth legal conclusions to which no response is required.

51. This paragraph sets forth legal conclusions to which no response is required.

52. Admitted only that the 2011 Plan continues to be a law of the Commonwealth of Pennsylvania; such laws are executed until repealed, replaced, or invalidated or enjoined by a court of competent jurisdiction. It is specifically denied that Governor Wolf, Acting Secretary Torres or Commissioner Marks have violated any Constitution or other relevant law. The remainder of this paragraph sets forth legal conclusions to which no response is required.

WHEREFORE, Governor Wolf, Acting Secretary Torres, and Commissioner Marks respectfully request that the Court deny Plaintiffs' claims and enter judgment in Defendants' favor, together with such further relief as the Court deems just and appropriate.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

One or more counts of Plaintiffs' Complaint may fail to state a claim as to which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs may have failed to join indispensable or necessary parties.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs cannot recover fees and costs from Defendants.

FOURTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' claims may be barred by laches.

FIFTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' claims may be barred under the doctrine of legislative immunity.

SIXTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' claims may be barred by the Eleventh Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

Governor Wolf, Acting Secretary Torres, and Commissioner Marks respectfully request that the Court deny Plaintiffs' claims and enter judgment in Defendants' favor, together with such further relief as the Court deems just and appropriate.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: October 23, 2017

By: /s/ Mark A. Aronchick

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2017, I caused a true and correct copy of the foregoing Answer of Governor Wolf, Acting Secretary Torres, and Commissioner Marks to Plaintiffs' Complaint With Affirmative Defenses to be electronically filed pursuant to the court's electronic court filing system, and that the filing is available for downloading and viewing from the electronic court filing system by counsel for all parties.

/s/ Mark A. Aronchick

Mark A. Aronchick