

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

Louis Agre, William Ewing,	)	
Floyd Montgomery, Joy Montgomery,	)	
and Rayman Solomon,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 17-4392
v.	)	
	)	
Thomas W. Wolf, Governor of Pennsylvania	)	
Pedro Cortes, Secretary of State of	)	
Pennsylvania, and Jonathan Marks,	)	
Commissioner of the Bureau of Elections,	)	
in their official capacities,	)	
	)	
Defendants.	)	

**STATEMENT OF UNDISPUTED FACTS AND ADMISSIONS IN SUPPORT**

Legislative Defendants hereby submit the following undisputed facts and admissions:

1. The Legislative Defendants admit that the state lost a Congressional District as a result of the 2010 Census. Joint Statement of Stipulated and Undisputed Facts, ¶ 58.
2. Going from 19 districts to 18 necessarily means the boundary lines had to change, and the shape of the map would be significantly impacted. *See id.* at ¶¶ 58, 59.
3. The Legislative Defendants admit that the legislature had in its possession the following:
  - a. U.S. Census population data at the block level;
  - b. Maps showing boundaries of cities, counties, towns, municipalities, precincts, and census blocks;
  - c. The home addresses of the incumbent State House, State Senate and Congressional members; and
  - d. Election return information going back to 2000.

4. The Court should take judicial notice of the fact that the 2011 Plan split fewer counties, cities, and municipalities than were split in the 2002 Plan. *See* Exp. Rep. of Gimpel at 23.
5. Professor Gimpel’s report on page 23 contains the following undisputed chart showing this:

Plan Year	1992	2002	2011
Counties	27	42	39
MCDs (Municipalities)	17	97	73
Source: Pennsylvania General Assembly Legislative Data Processing Center			

6. Legislative Defendants admit that two Democratic members of Congress were paired.
7. The Court can take judicial notice that other than the single pairing in the western portion of the state, no other incumbent member of Congress (Republican or Democrat) was paired with another in the same district in any other part of the state.<sup>1</sup>

### **STATEMENTS OF PLAINTIFFS**

8. Based on Plaintiffs statements at deposition, Plaintiffs have either suffered no harm as a result of the 2011 plan or have only suffered what amount to “generalized grievances” relating to the conduct of their government.

### **SOME PLAINTIFFS HAVE CLAIMED NO HARM AS A RESULT OF THE 2011 PLAN**

9. Multiple plaintiffs state that they have suffered *no* harm as a result of the 2011 Plan.
  - a. Plaintiff R. Solomon:

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<sup>1</sup> *See* Caitlin Huey-Burns, *Critz Defeats Altmire in Key Pa. Congressional Race*, RealClearPolitics (Apr. 25, 2012), [https://www.realclearpolitics.com/articles/2012/04/25/critz\\_defeats\\_altmire\\_in\\_key\\_pa\\_congressional\\_race\\_113948.html](https://www.realclearpolitics.com/articles/2012/04/25/critz_defeats_altmire_in_key_pa_congressional_race_113948.html)

Q. Do you believe you've been harmed as a federal citizen by having Mr. Evans as your congressman?

A. No.

Q. Do you believe you've been harmed as a federal citizen by having Mr. Evans represent you?

A. No.

Q. Do you believe you've been harmed as a Pennsylvania citizen by having Mr. Evans represent you?

A. No.

(R. Solomon Dep. at 62-63).

b. Plaintiff W. Ewing:

Q. Sir, how is your being represented by Congressman Evans harming your rights as a federal citizen?

A. I don't think my being represented by him is harming my rights.

(W. Ewing Dep. at 86-87).

c. Plaintiff D. Graham

Q. You've already said that your district hasn't harmed you, correct, because of the shape of it. Its shape hasn't harmed you?

A. Correct.

10. Nearly every Plaintiff admitted that their Congressional representative has not harmed him or her as a federal citizen or as a Pennsylvania citizen. (*See, e.g.* R. Solomon Dep. at 62-63, *supra*; W. Ewing Dep. at 86-87, *supra*; D. Graham Dep. at 29; F. Montgomery Dep. Tr. 37-38).

a. Plaintiff D. Graham

Q. What are your thoughts of Representative Coyne?

A. I don't know that I can give you an answer on that as well. I believe he's doing a good job for his constituency. I don't get into individual issues to see what he does, but I haven't heard a ton of complaints about him as well either. I think he has done a fairly good job. That doesn't mean I wouldn't like to see other choices occasionally to choose from. I don't think he has done a bad job, but I don't know if I would give a letter of recommendation either. I don't know if I have enough to form that.

(D. Graham Dep. Tr. 29).

b. Plaintiff B. Burychka

Q. How has being represented by Brendan Boyle harmed your rights as a federal citizen.

[Objection]

A. Brendan Boyle himself has not harmed me. So him representing me as a person, as an elected official, has not harmed me, if that's your question.

...

Q. How has being represented by Brendan Boyle, your current congressperson, harmed your rights as a Pennsylvania citizen?

[Objection]

A. I think I now understand what your question was for the previous one. What my belief is, is that partisan gerrymandering has caused the extremes to become more -- gain more traction, and there's less interest for politicians to work across

the political aisle. So Brendan Boyle as a person hasn't done anything negatively, but then he's also on my side of the political aisle.

(B. Burchka Dep. Tr. 58-59).

11. No Plaintiff has testified that their particular Congressional representative harmed their rights. (*See, e.g.,* W. Ewing Dep. Tr. 86-87, *supra*; R. Solomon Dep. Tr. 62-63, *supra*).

a. F. Montgomery

Q. Have your rights been harmed by being represented by a Republican? I'm sorry. Congressman.

A. Have my rights?

Q. Yes.

A. Only to the extent that I think my voting – because of the gerrymandering – loses some of the fairness. But have they been violated, no.

(F. Montgomery Dep. Tr. 37-38).

12. Several of the Plaintiffs admitted the shape of their Congressional districts has caused them no harm:

a. Plaintiff J. Davis:

Q. When you voted, did the shape of the 9<sup>th</sup> Congressional district harm you?

A. I don't know that it harmed me. I don't think it harmed me in the sense that I voted....Me personally, no....

(J. Davis Dep. at 37).

b. Plaintiff D. Graham:

Q. Do you feel your Congressional district is fairly drawn?

A. I would have to say ours is, yeah. It's a geographical—it fits in with the rest of our neighborhood. I think it's a fair representation of our neighborhood in our area.

...

Q. Is it fair to say then that the shape of your Congressional district hasn't caused you any harm?

A. I think it's fair to say that mine, yes, has not caused me harm.

(D. Graham Dep. Tr. 29-30, 32).

c. Plaintiff L. Congdon:

Q. In 2010, did the shape of the Fifth District harm you in terms of your ability to vote or elect your Congressman?

A. No.

Q. What about in 2012?

A. No.

Q. 2014?

A. No.

Q. 2016?

A. No.

(L. Congdon Dep. Tr. 22).

**SOME PLAINTIFFS HAVE CLAIMED “GENERALIZED GRIEVANCES” AS A RESULT OF THE 2011 PLAN**

13. Other Plaintiffs have claimed that they have been harmed only to the extent that their districts were “no longer what [they] consider to be ... competitive district[s].” (*See, e.g.*, R. Solomon Dep. Tr. 76-78; L. Agre Dep. Tr. 59-60; J. Magidson Dep. Tr. 98).

a. Plaintiff R. Solomon

Q. So one way you were harmed by the shape of your district in 2012 as compared with 2010 is because the fact that it's no longer what you consider to be a competitive district, you didn't enjoy it as much. Is that a fair point?

A. Yes.

Q. Did you suffer any other harm as a result of the change in shape of your district between 2010 and 2012?

A. Not to my knowledge.

(R. Solomon Dep. Tr. 76-78).

b. Plaintiff L. Agre

Q. Have you suffered any harm by the fact that Mr. Evans is your current congressman?

A. Have I suffered any harm? I've suffered harm because it's not a com – these districts are not competitive. I've suffered lots of harm.

(L. Agre Dep. Tr. 59-60).

c. Plaintiff J. Magidson

Q. I think I asked you what you consider a fair district to be.

A. Okay. So I would think the districts should be competitive. . . .

(J. Magidson Dep. Tr. 98).

d. Plaintiff W. Ewing

Q. Now, you voted for Congressman Fattah in 2012, right?

A. I did.

Q. And that was your choice, correct?

A. It didn't matter. I mean, his opponent had no chance of winning. Did I vote for him? Yeah, I voted for him. Did I think he was better than his opponent?

Probably. But it really wasn't a meaningful choice.

(W. Ewing Dep. Tr. 92).

14. Some Plaintiffs stated they have been harmed by the fact that a candidate they did not support was elected (*see, e.g.*, J. Davis Dep. Tr. 27; M. Kats Dep. Tr. 26-27; J. Montgomery Dep. Tr. 29).

a. Plaintiff J. Davis

Q. All right. Has being represented by a Republican harmed your rights as a federal citizen?

A. I guess it's all how you look at politics. . . . I mean, I don't -- I mean, being represented by a Republican, has it in and of itself harmed my rights? I disagree with him on some issues.

Q. Sure.

A. So, I guess, to that degree, I guess that's how we want to define it.

(J. Davis Dep. Tr. 27).

b. Plaintiff M. Kats

Q. Do you believe that being represented by a Democrat has harmed your rights as a federal citizen?

A. I believe that it doesn't reflect my view.

...



Q. Do you feel that being represented by a Democrat in your congressional district has harmed your rights as a Pennsylvania citizen?

A. Same answer.

(M. Kats Dep. Tr. 26-27).

c. Plaintiff J. Montgomery

Q. . . . Did the 2011 congressional map stop you from voting for the candidate of your choice in the congressional district?

A. It stopped me from getting my choice.

(J. Montgomery Dep. Tr. 29).

15. Other Plaintiffs admit that their Congressional representatives advance the positions the Plaintiffs favor with respect to legislation, (*see, e.g.*, A. Diakatos Dep. Tr. 81).

a. Plaintiff A. Diakatos

Q. Okay. And that he [Congressman Brady] tends to vote in a way that's aligned with how you prefer; is that true?

A. Generally, yes.

(A. Diakatos Dep. Tr. 81).

16. Some Plaintiffs asserted a generalized statewide harm:

e. The Pennsylvania citizenry is harmed only “in general” because “the representation in the state and other states is not—doesn’t accurately reflect the voting patterns of the population.” (W. Ewing. Dep. Tr. 88).

f. “[M]y claim says that gerrymandering is affecting the way the election works, not my voting rights.” (M. Kats Dep. Tr. 18).

- g. “these districts are not competitive.” (L. Agre Dep. Tr. 59).
  - h. “my district has no strong opposition party ... it’s harmed me having a Democrat that many years that I don’t have a choice.” (D. Graham Dep. Tr. 28).
  - i. “Fayette County has a whole lot in common with Greene and Washington County, but yet we don’t share the same Congressional district, which we did historically. For example, we have the same issues, natural gas, coal. These are big issues in our counties, but yet they have us—currently, Fayette County is tied in with counties that have no real—nothing going on in those industries when you get up to Fulton and Indiana and those counties.” (J. Davis Dep. Tr. 31-32).
  - j. “I think it [gerrymandering] harms you in the – perception or – or your – that you are underrepresented as a citizen, that you feel that you’re not really participating in the electoral process, and I think that harms you absolutely, you know, as a citizen, you know, as you put it – put it there in that – just because of the demographic interests of most of our district, which differs significantly from Lower Marion.” (J. Zebrowitz Dep. Tr. 69).
17. Some Plaintiffs assert a generalized national harm, (*see e.g.* J. Magidson Sep. Tr. 73-75; L. Agre Dep. Tr. 60-64)
- a. Plaintiff J. Magidson
    - Q. Okay. Can you tell me specifically how you were harmed by the shape of your district?
    - A. Yes. There – there’s several ways I’ve been harmed. I guess, the – the – the one that’s top of mind is that I feel – I feel I don’t have a voice in certain things. Like, I feel like the President of the United States took an oath of office to protect the

Constitution. Not only – not only is he not following that, but he’s also actively trying to destroy the U.S. Constitution.

And I feel that since I'm not able to have influence because of the -- the shape and where I am in the Seventh District, I'm not able to influence my Congressman, plus I also think that this redistricting plan from 2011, the way it's changed the number of Republicans to 13 to 5 against Democrats in the Congress, I've lost my voice.

So I believe the President of the United States should be impeached, 1 and he's done a number of things, things like the emoluments clause, and I don't feel that -- I feel I'm harmed because -- I mentioned also before this risk of nuclear war and stuff, and I think that he is very dangerous to our -- our democracy, and I feel like I don't have a voice with my congressman because of the -- the gerrymandering in the district, and so I -- I feel, I guess -- I guess, my -- my voting rights are -- are influenced, my, you know, equal protection from the 14th Amendment, that's -- that's influenced diversely, and I'm not able to have my constitutional rights because of this in that respect with regard to whether the President -- you know, whether I feel I should influence my Congressman to -- to vote to -- you know, for Articles of Impeachment.

- b. Plaintiff L. Agre listed the harms that affect him as an American, which include: healthcare, gun control, the tax system, student loans, and income inequality. *See* (L. Agre Dep. Tr. 60-64).

- c. Plaintiff B. Shah is “very very concerned about [her congressman’s] inaction on gun control . . . disappointed about his votes on ObamaCare. . . .” (B. Shah Dep. Tr. 35).

18. None of the Plaintiffs have been prevented from registering, organizing, voting, fund raising, or campaigning:

- a. Plaintiff M. Kats

Q. Have you ever been prohibited from voting, Mr. Montgomery?

A. No.

Q. Do you know of any law that would prohibit you from voting?

A. No.

...

Q. Did any government official or anyone ever try to prohibit you from making political contributions?

A. No.

(F. Montgomery Dep. Tr. 19-20; *accord* J. Montgomery Dep. Tr. 31).

Q. Are you aware of any law or government official that has impinged or restricted your right to vote?

A. No.

...

Q. You’re not aware of any law that’s prevented you from being involved with or contributing to any political party; correct?

A. Correct.

Q. Have you participated in any kind of public protest or demonstration?

A. No.

Q. Do you feel that you've ever been prevented by either a law or government official from doing so?

A. No.

Q. Are you aware of a law or government official that's prevented you or restricted your right to participate in any other kind of civic activity?

A. No.

(M. Kats Dep. Tr. 17, 23).

b. Plaintiff R. Hauer

Q. Have you ever been stopped from making a political contribution that you wanted to make?

A. No.

Q. Have you ever been ... stopped from campaigning for any political candidate or party when you wanted to?

A. No.

...

Q. Have you ever been prevented from participating in a public protest when you wanted to?

A. No.

...

Q. Have you ever been prevented from participating in any [civic] activities?

A. No.

(R. Hauer Dep. Tr. 22-24).

c. Plaintiff J. Landis

Q. Did any governmental official ever stop you from campaigning or speaking on behalf of any political candidate?

A. No.

Q. Did any government official ever stop you from campaigning or speaking on behalf of any political party?

A. No.

Q. Did any government official ever stop you from being involved with your chosen political party?

A. No.

Q. To your knowledge, has any law stopped you from campaigning on behalf of any political candidate?

A. No.

Q. Has any law stopped you on speaking on behalf of a political party?

A. No.

(J. Landis Dep. Tr. 19-20; *accord* R. Solomon Dep. Tr. 22).

d. Plaintiff D. Graham

Q. To your knowledge, have you ever been prohibited from voting as the result of any law?

A. No.

Q. Has a government official ever prevented you from voting?

A. No.

...

Q. You're not aware of any law that prevented or restricted your rights to make political contributions?

A. No.

...

Q. Do you feel that since the 2011 Congressional district plan became law that you've been prevented from expressing your views to your Congressman?

A. No.

(D. Graham Dep. Tr. 14, 16, 66; *accord* J. Davis Dep. Tr. 9-10, 13-16).

19. Plaintiff Joseph Zebrowitz framed the issue most concisely when he testified: “the makeup of a political district certainly doesn’t prevent me from voting or expressing opinion or whatnot.” (J. Zebrowitz Dep. Tr. 92).

20. Several Plaintiffs have attempted to describe a “harm” borne out of their residency in a “watered down” or less competitive district, which they surmise frustrates strong challengers or causes some incumbents to run unopposed. (*See, e.g.*, J. Davis. Dep. Tr. 33 (“I just think we’re doing—our political class is doing a lot of things that impact voter activity that have

increased voter apathy, that have caused people to be disengaged in the process, and I think it's bad for the democracy.'"))).

21. Plaintiff Barbara Shah acknowledged:

Q. There was no law that prevented a Democrat from running, was there, Ms. Shah?

A. When you say no law that prevented a Democrat from running, they were not—they are not prevented from putting their names on the ballot.

(B. Shah Dep. Tr. 19).

Dated: December 1, 2017

Respectfully submitted,

**BLANK ROME LLP**

**CIPRIANI & WERNER PC**

/s/

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