

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

Barbara Diamond, Steven Diamond, Samuel
Bashioum, Tracy Baton, Nancy Chiswick,
William Cole, Patrick Costello, Stephen
Dupree, Ronald Fairman, Joseph Foster,
Colleen Guiney, Robert Kefauver, Elizabeth
King, Gillian Kratzer, James Landis, Matthew
Munsey, Deborah Noel, Zachary Rubin,
Thomas Spangler, Margaret Swoboda, Susan
Wood, and Pamela Zidik,

Plaintiffs,

v.

Robert Torres, Acting Secretary of the
Commonwealth of Pennsylvania, and
Jonathan Marks, Commissioner of the Bureau
of Elections, in their official capacities,

Defendants.

CIVIL ACTION

No. 17-05054

**ANSWER OF ACTING SECRETARY TORRES AND COMMISSIONER MARKS
TO PLAINTIFFS' FIRST AMENDED COMPLAINT WITH AFFIRMATIVE DEFENSES**

This matter challenges Pennsylvania's 2011 Congressional redistricting legislation, which was drafted in response to 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, Acting Secretary Torres did not hold public office within the Department of State. Neither 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' First Amended Complaint as follows:

1. This paragraph contains Plaintiffs' characterization of the First Amended Complaint and/or conclusions of law, to which no response is required.

2. Admitted 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. It is further admitted that during the 2010-2011 congressional redistricting cycle, Pennsylvania's General Assembly was majority Republican. The remaining allegations of this paragraph set forth conclusions of law to which no response is required. To the extent that further response is required, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to admit or deny the remaining averments contained in this paragraph; however, a Pennsylvania Commonwealth Court judge has issued a report and recommendation finding that the 2011 Plan was purposefully drawn to favor Republican candidates.

3. Admitted, upon information and belief, that official election returns support Plaintiffs' averments in this paragraph regarding the statewide congressional vote in Pennsylvania in 2012, 2014 and 2016. By way of further answer, those election returns speak for themselves.

4. This paragraph sets forth a legal conclusion to which no response is required. To the extent further response is required, the congressional district maps speak for themselves, and any characterization thereof is denied.

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

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

PARTIES

7. Admitted only that Barbara Diamond is a registered Democrat in Pennsylvania's

15th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

8. Admitted only that Steven Diamond is a registered Democrat in Pennsylvania's 15th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

9. Admitted only that Nancy Chiswick is a registered Democrat in Pennsylvania's 5th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

10. Admitted only that William Cole is a registered Democrat in Pennsylvania's 3rd Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

11. Admitted only that Ronald Fairman is a registered Democrat in Pennsylvania's 9th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

12. Admitted only that Colleen Guiney is a registered Democrat in Pennsylvania's 1st Congressional District who has supported Democratic candidates for Pennsylvania's congressional delegation in the past. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

13. Admitted only that Gillian Kratzer is a registered Democrat in Pennsylvania's 9th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

14. Admitted only that Deborah Noel is a registered Democrat in Pennsylvania's 7th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen

and will have been a citizen for at least one month on the day of the next election. 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.

15. Admitted only that Margaret Swoboda is a registered Democrat in Pennsylvania's 5th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

16. Admitted only that Susan Wood is a registered Democrat in Pennsylvania's 6th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

17. Admitted only that Pamela Zidik is a registered Democrat in Pennsylvania's 11th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

18. Admitted only that Samuel Bashioum is a registered Democrat in Pennsylvania's

18th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

19. Admitted only that Tracy Baton is a registered Democrat in Pennsylvania's 14th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

20. Admitted only that Patrick Costello is a registered Democrat in Pennsylvania's 13th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

21. Admitted only that Stephen Dupree is a registered Democrat in Pennsylvania's 12th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

22. Admitted only that Joseph Foster is a registered Democrat in Pennsylvania's 2nd Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

23. Admitted only that Robert Kefauver is a registered Democrat in Pennsylvania's 4th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

24. Admitted only that Elizabeth King is a registered Democrat in Pennsylvania's 8th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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 James Landis is a registered Democrat in Pennsylvania's 16th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

26. Admitted only that Matthew Munsey is a registered Democrat in Pennsylvania's 17th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

27. Admitted only that Zachary Rubin is a registered Democrat in Pennsylvania's 8th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

28. Admitted only that Thomas Spangler is a registered Democrat in Pennsylvania's 10th Congressional District who consistently votes. By way of further answer, to register to vote in the Commonwealth of Pennsylvania, a registrant must declare that he or she is a United States citizen and will have been a citizen for at least one month on the day of the next election. 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.

29. Admitted only that Robert Torres is the designated Acting Secretary of the

Commonwealth of Pennsylvania. By way of further answer, under the Election Code and other laws, the Secretary of the Commonwealth is charged with specific, discrete and enumerated tasks, duties and powers related to the conduct of elections, including Pennsylvania's federal Congressional elections. By way of further answer, the remainder of this paragraph sets forth a legal conclusion to which no response is required.

30. Admitted only that Jonathan Marks is the Commissioner of the Bureau of Elections in Pennsylvania. By way of further answer, the Commissioner of the Bureau of Elections carries out some of the specifically enumerated tasks and duties of the Secretary of the Commonwealth on behalf of the Secretary of the Commonwealth. By way of further answer, the remainder of this paragraph sets forth a legal conclusion to which no response is required.

JURISDICTION AND VENUE

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

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

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

FACTUAL ALLEGATIONS

34. 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.

35. Admitted, upon information and belief, only that Republicans won control of the Pennsylvania House of Representatives and the governorship in the 2010 general election, and that Republicans also retained control of the Pennsylvania Senate in the 2010 general election. 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.

36. Admitted. By way of further answer, legislation may also lapse into law without the Governor's action.

37. 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.

38. Admitted only that Senate Bill 1249 was introduced on September 14, 2011. The bill speaks for itself, and any characterization thereof is denied. 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.

39. Admitted only that Senate Bill 1249 was amended on December 14, 2011, to include verbal descriptions of each of the congressional districts, and that the Senate passed the bill on that same date. The bill speaks for itself, and any characterization thereof is denied. In further answer, the legislative history of the 2011 Plan is a public record that speaks for itself. 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.

40. Admitted.

41. Admitted only that Senator Jay Costa introduced an amendment to Senate Bill 1249 on December 14, 2011. By way of further answer, the averments of this paragraph refer to statements made by Senator Costa recorded in the Senate Legislative Journal, a document that speaks for itself. 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.

42. Admitted, upon information and belief. By way of further answer, the averments of this paragraph refer to statements made by Senator Anthony Williams recorded in the Senate Legislative Journal, a document that speaks for itself.

43. Admitted, upon information and belief. By way of further answer, the averments of this paragraph refer to statements made by Representative Babette Josephs recorded in the House Legislative Journal, a document that speaks for itself.

44. 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. By way of further response, the averments in this paragraph characterize remarks and writings made by a political analyst. Those remarks and writings speak for themselves.

45. Admitted, upon information and belief. By way of further answer, the averments of this paragraph refer to statements made by Representative Dan Frankel recorded in the House Legislative Journal, a document that speaks for itself.

46. 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.

47. 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.

48. Admitted that 13 of 18 districts elected Republican candidates in the 2012 general election. It is further admitted that Democratic congressional candidates received more of the two-party statewide congressional vote in the 2012 general election than did Republican congressional

candidates. 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.

49. 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.

50. 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.

51. Admitted, upon information and belief, that official election returns support Plaintiffs' averments in this paragraph regarding the statewide congressional vote in Pennsylvania in 2012. By way of further answer, those election returns speak for themselves.

52. Admitted, upon information and belief, that official election returns support Plaintiffs' averments in this paragraph regarding each party's approximate share of the average two-party vote in congressional districts in 2012. By way of further answer, those election returns speak for themselves.

53. Admitted, upon information and belief, that official election returns support Plaintiffs' averments in this paragraph regarding the approximate average winning percentages in congressional districts in 2012. By way of further answer, those election returns speak for themselves.

54. Admitted, upon information and belief, that official election returns support Plaintiffs' averments in this paragraph regarding the statewide congressional vote and each party's approximate share of the two-party average vote in congressional districts in 2014. By way of

further answer, those election returns speak for themselves.

55. Admitted, upon information and belief, that official election returns support Plaintiffs' averments in this paragraph regarding the statewide congressional vote and each party's approximate share of the two-party average vote in congressional districts in 2016. By way of further answer, those election returns speak for themselves. Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to admit or deny the remaining averments contained in this paragraph; however, a Pennsylvania Commonwealth Court judge has issued a report and recommendation finding that the 2011 Plan was purposefully drawn to favor Republican candidates.

56. This paragraph sets forth a legal conclusion to which no response is required. To the extent further response is required, Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to admit or deny the remaining averments contained in this paragraph; however, a Pennsylvania Commonwealth Court judge has issued a report and recommendation finding that the 2011 Plan was purposefully drawn to favor Republican candidates.

57. Admitted, upon information and belief, that the illustration in this paragraph accurately represents the shape of the 7th Congressional District. By way of further answer, the illustration and district boundaries speak for themselves.

58. Admitted, upon information and belief, only that official election returns support Plaintiffs' averments in this paragraph regarding the winning percentages in the 7th Congressional District in Pennsylvania in 2012, 2014 and 2016. By way of further answer, those election returns speak for themselves. Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the remaining averments or

characterizations contained in this paragraph, and they are therefore denied.

59. Admitted, upon information and belief, that under the 2011 Plan, Reading is located in the 16th Congressional District. By way of further answer, the illustration and district boundaries speak for themselves. Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments or characterizations contained in this paragraph, and they are therefore denied.

60. Admitted only that the 2011 Plan splits Montgomery County among five congressional districts, Berks County among four congressional districts, and Chester County between three congressional districts. By way of further answer, the illustration and district boundaries speak for themselves. Acting Secretary Torres and Commissioner Marks lack knowledge or information sufficient to form a belief as to the truth of the averments or characterizations contained in this paragraph, and they are therefore denied.

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

62. 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. By way of further answer, the study speaks for itself.

63. 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. By way of further answer, the study speaks for itself.

64. 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. By way of further answer, the study speaks for itself.

65. 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.

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

CAUSES OF ACTION

COUNT I

67. Acting Secretary Torres and Commissioner Marks incorporate paragraphs 1-66 as if fully set forth herein.

68. This paragraph sets forth a legal conclusion to which no response is required. To the extent this paragraph quotes portions of the U.S. Constitution and U.S. Supreme Court opinions, those documents speak for themselves.

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

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

COUNT II

71. Acting Secretary Torres and Commissioner Marks incorporate paragraphs 1-70 as if fully set forth herein.

72. This paragraph sets forth a legal conclusion to which no response is required. To the extent this paragraph cites to an opinion of the U.S. Supreme Court, that document speaks for itself.

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

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

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

COUNT III

76. Acting Secretary Torres and Commissioner Marks incorporate paragraphs 1-75 as if fully set forth herein.

77. This paragraph sets forth a legal conclusion to which no response is required. To the extent this paragraph quotes a portion of the U.S. Constitution, that document speaks for itself.

78. This paragraph sets forth a legal conclusion to which no response is required. To the extent this paragraph cites to U.S. Supreme Court opinions, those opinions speak for themselves.

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

PRAYER FOR RELIEF

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' First Amended 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.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: January 5, 2018

By: /s/ Mark A. Aronchick

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Legislation, in their official capacities*

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2018, I caused a true and correct copy of the foregoing Answer of Acting Secretary Torres and Commissioner Marks to Plaintiffs' First Amended 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