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VIA FAX

The Honorable D. Brooks Smith
U.S. Court of Appeals for the Third Circuit
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1798 Plank Road
Duncansville, PA 16635
Fax: (814) 693-0575

The Honorable Patty Schwartz
U.S. Court of Appeals for the Third Circuit
Frank R. Lautenberg U.S. Post Office and Courthouse Building
2 Federal Square, Room 447
Newark, NJ 07101
Fax: (973) 645-6478

The Honorable Michael M. Baylson
U.S. District Court for the Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
Fax: (267) 299-5078

Re: *Agre, et al. v. Wolf, et al.*, Case No. 17-cv-4392

Dear Judges Smith, Schwartz, and Baylson,


Since the parties did not brief the standard of proof for an *intent* to gerrymander in violation of the Elections Clause, plaintiffs respectfully submit this letter. To establish the unlawful intent or purpose sufficient to violate the Elections Clause, the standard of proof should certainly be no greater than the standard used to determine intent in a racial gerrymander. See *Alabama Black Legislative Caucus v. Alabama*, 135 S. Ct. 1257, 1270 (2015). Under this standard, plaintiffs would show that there was a legislative intent to dictate electoral outcomes or to favor or disfavor a class of candidates... and that such intent was the "predominant motivating factor," though not of course the sole factor, in determining the particular shape of the map. Plaintiffs can meet this standard at trial.


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However plaintiffs' position is that this standard is too high when the plaintiffs are challenging the authority of the state legislature under the Elections Clause. As stated in *Thornton v. U.S. Term Limits*, 514 U.S. 779, 834 (1996), the state legislature has no grant of authority except to issue procedural regulations—not to influence the outcome. To state a violation of the Elections Clause under this standard, it should be enough to establish that a deliberate attempt was made to influence the outcome of the election in favor of one party or another, or that this was a substantial or motivating factor in how the boundaries were drawn. Stated differently, the plaintiffs must show that the map-drawers made a knowing and deliberate effort to influence the outcome of an election in favor of one party or another. If there was any such knowing or deliberate effort to influence the outcome of elections to Congress for such a partisan reason, then the state legislature was acting outside of its authority under the Elections Clause.

Respectfully submitted,


Thomas H. Geoghegan


Alice W. Ballard

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CC: All Counsel of Record