

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

Louis Agre <i>et al.</i>,	:	
	:	
Plaintiffs,	:	Civil Action No. 2:17-cv-4392
	:	
v.	:	
	:	
Thomas W. Wolf <i>et al.</i>,	:	
	:	
Defendants.	:	

**LEGISLATIVE DEFENDANTS’ SUPPLEMENT TO THEIR MOTION TO DISMISS
THE AMENDED COMPLAINT**

Legislative Defendants submit this Supplement to their Motion to Dismiss the Amended Complaint filed on November 22, 2017 (ECF No. 108). On November 7, 2017, the Court granted Plaintiffs “leave to amend their Complaint to add one voter from each Congressional district in the Commonwealth of Pennsylvania, also by November 17, 2017.” (ECF No. 74).¹ On November 17, 2017, Plaintiffs filed their Amended Complaint. (ECF No. 88). Plaintiff Edwin Gragert is the only Plaintiff identified in the Amended Complaint who allegedly lives in the 10th Congressional District. (ECF No. 88).

On November 22, 2017, the Court entered an Order requiring every Plaintiff to appear for a deposition to testify regarding, among other things, the “harm” they have suffered as a result of the 2011 Plan. (ECF 112). That day, Legislative Defendants filed a Motion to Dismiss the Amended Complaint. (ECF No. 108).

¹ The Court’s Order implicitly recognized that, to have standing to challenge Pennsylvania’s 2011 Congressional District Map (the “2011 Plan”) on a statewide basis, Plaintiffs would need to allege that a Plaintiff living in every Congressional District suffered harm as a result of the enactment of the 2011 Plan. (ECF No. 83 at 4).

On November 24, 2017, Plaintiffs for the first time disclosed to Legislative Defendants that Mr. Gragert will be traveling abroad at least until December 8, 2017 and that he will only be available for a deposition via Skype from Argentina. But, under the Hague Convention, Argentina does not allow voluntary depositions to take place in Argentinian territory absent permission. *See* <https://travel.state.gov/content/travel/en/legalconsiderations/judicial/country/argentina.html> (“The taking of voluntary depositions of willing witnesses outside of making a formal request under the Hague Evidence Convention is not permitted in Argentina, regardless of the nationality of the witness.”) (emphasis added). Because there is insufficient time for any party to make a formal request to depose Mr. Gragert in Argentina, a deposition of Mr. Gragert would necessarily violate international and Argentinian law.

Mr. Gragert is therefore not be available for his Court-Ordered deposition.² As such, the Amended Complaint should be dismissed as to Mr. Gragert for lack of standing because he cannot demonstrate that he has suffered individualized harm, or otherwise provide his Court-Ordered testimony. And, because Mr. Gragert is the only Plaintiff who lives in the 10th Congressional District, Plaintiffs do not have standing to challenge the 2011 Plan on a statewide basis. For this reason, and the other reasons set forth in the Motion to be Dismiss (ECF No. 108), Plaintiffs’ Amended Complaint should be dismissed.

² Given Mr. Gragert’s anticipated return date, it is also unlikely that he will be available for trial.

Dated: November 27, 2017

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 27, 2017, the foregoing was served upon the following Counsel of Record via the Court's ECF system:

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Dated: November 27, 2017

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