

**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’ REPLY TO PLAINTIFFS’ STATEMENTS IN
RESPONSE TO THE COURT’S DECEMBER 12, 2017 ORDER (ECF No. 192)**

Legislative Defendants file this Reply in response to Plaintiffs’ Statements Regarding Heather Turnage (ECF No. 193) and Dana Kellerman (ECF No. 194), both of which were submitted yesterday in response to the Court’s directives in its December 12, 2017 Order (ECF No. 192).

I. Plaintiffs’ Statement Regarding Heather Turnage (ECF No. 193)

In the Court’s Order, Plaintiffs were directed to “identify by page and line number where [Ms. Turnage] testified she sustained ‘injury in fact.’” In their Statement, Plaintiffs cite the following as purported evidentiary support for the claim that Ms. Turnage suffered an “injury in fact”:

Ms. Turnage is a 45-yr-old [sic] bank teller who was let go from her job. She is active in Indivisible and appears to be well-informed by Fair Districts PA.

Ms. Turnage believes that the statewide map as a whole is unfair, in that the Districts are neither contiguous nor compact but were drawn to benefit one party over another. (Turnage Tr. at 22:18 – 23:12)

A fairly drawn district would not have political motivation playing any role in the drawing of the map. (Turnage Tr. at 47:4 – 18; 49:2 – 50:3).

(ECF No. 193 at ¶ 3).

Plaintiffs acknowledge that “[c]ounsel for Defendants limited their questions to Ms. Turnage about harm to her caused by the shape of her particular district.” (*Id.* at ¶ 4; Turnage Tr. at 50:11 – 23). However, Plaintiffs fail to recite the following excerpt of Ms. Turnage’s testimony wherein she failed to identify any particular injury that she has allegedly suffered as a result of the shape of her district:

Q. As to District 4, the district that you live in, do you think it is drawn fairly?

A. I think my particular district is not very gerrymandered. It’s one of the more compact ones, but I have not looked in detail at all the borders and communities.

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

A. I would have to say I’m not really sure.

...

Q. In 2012, how did the shape of the district harm you?

A. How did the shape of my district harm me?

Q. Yes.

A. I’m not sure.

Q. How about 2014?

A. I’m not sure.

Q. Did it harm you?

A. The shape of my district?

Q. Yes.

A. I can’t really say.

Q. 2016?

A. Again, I can’t.

Turnage Tr. at 48: 2-12; 50: 11-23.

In light of this testimony and for the reasons argued in Legislative Defendants’ Motion for Judgment Pursuant to Fed.R.Civ.P. 50 or 52(c) (ECF No. 185), Plaintiffs have failed to meet their burden of proof that each and every named Plaintiff has sustained an “injury in fact” as required in order to demonstrate Article III standing.

II. Plaintiffs’ Statement Regarding Dana Kellerman and Request to Reopen the Record To Add Her Deposition Transcript (ECF No. 194)

Plaintiffs have not offered any reason or excuse for their “inadvertent” failure to seek the

admission of the designated portions of Plaintiff Dana Kellerman's deposition transcript at trial while the record was still open. Plaintiffs were apparently unaware of their "inadvertence" until the Court's prompting of Plaintiffs to address the issue a week after Plaintiffs rested. They now seek leave of Court to reopen the record to admit Ms. Kellerman's transcript as Plaintiffs' Exhibit P-55. (*See* ECF No. 194).

Legislative Defendants acknowledge that it is within the Court's discretion whether to permit the record to be reopened and supplemented a week after trial concluded in this case. *Friends of Coral Bay v. Reliance Housing Foundation, Inc.*, No. 2007-20, 2008 WL 467391, at *3 (D.V.I. Feb. 1, 2008) (citing *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 331 (1971)); *see also Gibson v. Mayor and Council of City of Wilmington*, 355 F.3d 215, 229 (3d Cir. 2004) (in determining whether to supplement the record, the Court must "avoid perpetrating any type of injustice."). Legislative Defendants do not consent to Plaintiffs' request to reopen the record to add Plaintiff Dana Kellerman's deposition transcript as this request is the result of Plaintiffs' failure to diligently establish a full record at the appropriate time during their case in chief.

Dated: December 14, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 14, 2017, the foregoing was served upon the following Counsel of Record via the Court's ECF system:

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Dated: December 14, 2017

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