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

RICHARD VIETH AND NORMA JEAN
VIETH,

Plaintiffs,

3 : CV - 01 - 2439

v.

Civil Action No. _____

THE COMMONWEALTH OF
PENNSYLVANIA; MARK S.
SCHWEIKER, in his official capacity as
Governor of Pennsylvania; KIM
PIZZINGRILLI, in her official capacity as
Secretary of the Commonwealth of
Pennsylvania; RICHARD FILLING, in his
official capacity as Commissioner of the
Bureau of Commissions, Elections, and
Legislation of the Pennsylvania
Department of State; ROBERT C.
JUBELIRER, in his official capacity as
Lieutenant Governor of Pennsylvania and
President of the Pennsylvania Senate;
MATTHEW J. RYAN, in his official
capacity as Speaker of the Pennsylvania
House of Representatives,

Defendants.

**FILED
SCRANTON**

DEC 21 2001

PER M
DEPUTY CLERK

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The plaintiffs – Richard Vieth and Norma Jean Vieth – have brought this action to enforce voting rights guaranteed to them by the United States Constitution and federal law. As registered voters in the Commonwealth of Pennsylvania, the plaintiffs have exercised, and wish to continue exercising, their right to vote for their preferred candidates for United States Representative from Pennsylvania’s Sixteenth Congressional District, both in general elections and in Democratic Party primary elections. As recently released census data demonstrate, however, population shifts during the last decade have now diluted plaintiffs’ voting strength and rendered Pennsylvania’s congressional districting plan unconstitutional under the rule of “one person, one vote.”

PARTIES

2. Plaintiff Richard Vieth resides at 632 Laurel Lane, Lancaster, Pennsylvania, 17601. Plaintiff Norma Jean Vieth resides at 632 Laurel Lane, Lancaster, Pennsylvania, 17601.

3. Defendants are the Commonwealth of Pennsylvania and officials thereof who have duties and responsibilities under the laws of the Commonwealth to redraw congressional districts in Pennsylvania following the release of population data from each federal decennial census and then to conduct elections

in those districts. Defendant Mark S. Schweiker is the Governor of Pennsylvania. Defendant Kim Pizzingrilli is the Secretary of the Commonwealth and oversees Pennsylvania's electoral process. Defendant Richard Filling is the Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State, which is charged with administering functions related to Pennsylvania's electoral process. Defendant Robert C. Jubelirer is the Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate. Defendant Matthew J. Ryan is the Speaker of the Pennsylvania House of Representatives. All defendants are sued in their official capacities.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), 1357, 2201, 2202, and 2284. Venue is proper in this district under 28 U.S.C. § 1391(b).

BASIS OF CLAIMS

5. Section 2 of Article I of the United States Constitution, as amended by Section 2 of the Fourteenth Amendment, provides, in part, that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States" and that "Representatives shall be apportioned

among the several States according to their respective numbers, counting the whole number of persons in each State” The Equal Protection Clause of Section 1 of the Fourteenth Amendment prohibits any State from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” Those provisions create a constitutional guarantee of “one person, one vote” – requiring a State’s congressional districts to achieve population equality as nearly as is practicable.

6. Under Section 2a of Title 2 of the United States Code, the President of the United States is required, every ten years, to transmit to Congress a statement showing the number of persons in each State (as ascertained under the federal decennial census of population) and the number of Representatives to which each State is therefore entitled.

7. On December 28, 2000, the Secretary of Commerce reported to the President of the United States the tabulation of population for each of the fifty States, including the defendant Commonwealth of Pennsylvania, as determined in the 2000 decennial census. Those population figures show that Pennsylvania is now entitled to only nineteen (19) Representatives in Congress – a decrease of two Representatives since the 1990 census. The census data also show that Pennsylvania’s resident population as of April 1, 2000, was 12,281,054 persons,

or slightly more than 646,371 persons for each of the nineteen congressional districts.

8. In March 1992, the Supreme Court of Pennsylvania ordered into effect a congressional districting plan establishing Pennsylvania's twenty-one (21) current congressional districts. According to the 1990 census, the populations of those districts ranged between 565,760 and 565,817 – a total deviation of 57 persons, or less than 0.011% of the ideal population of a district.

9. In Census Bureau Public Law 94-171, the United States Bureau of the Census issued population data covering every county and municipality in Pennsylvania. Those figures show that population shifts during the last decade have generated substantial inequality among Pennsylvania's twenty-one congressional districts, whose populations now range from a low of 515,560 for the First Congressional District to a high of 647,575 for the Sixteenth Congressional District. Thus, the total deviation is now 132,015 persons – more than 2,000 times the deviation that existed a decade ago.

10. According to the latest population data from the United States Bureau of the Census and the Pennsylvania State Data Center, the Sixteenth Congressional District, which contains fast-growing parts of Chester and Lancaster Counties, has significantly increased its population during the last

decade and now contains substantially more than one-nineteenth (1/19) of Pennsylvania's total population. Hence, the Sixteenth District is overpopulated relative to congressional districts elsewhere in the Commonwealth and elsewhere in the Nation.

11. The existing malapportionment of congressional districts in Pennsylvania dilutes the voting strength of plaintiffs in the overpopulated Sixteenth Congressional District, as the weight or value of each plaintiff's vote is less than that of any voter residing in an underpopulated congressional district.

12. In the wake of the 1990 census, when confronted with severely malapportioned congressional districts, the Pennsylvania General Assembly was unable to reach a timely agreement on a new congressional districting map. Although the Census Bureau had released the new reapportionment data in December 1990, legislative stalemate continued into the winter of 1992, when Pennsylvania citizens filed lawsuits seeking to vindicate their voting rights under federal and state law. Even with active judicial intervention, however, deadlines for filing nominating petitions and for delivering absentee ballots had to be reset, and the timing of the 1992 election cycle was disrupted. For the 2002 elections, early guidance from this Court will help prevent any similar delays of the February 19, 2002 opening of the nomination petition circulation period and thus could

spare the Commonwealth of Pennsylvania and its citizens considerable confusion and expense. Moreover, this Court's intervention may be necessary to protect each plaintiff's federal and state rights to cast an undiluted vote for Congress.

CLAIM I

13. Plaintiffs incorporate by reference Paragraphs 1 through 12.

14. The facts herein alleged constitute a denial or abridgement of the plaintiffs' right to vote for their Representative to the United States Congress, in violation of Section 2 of Article I of the United States Constitution, as amended by Section 2 of the Fourteenth Amendment.

CLAIM II

15. Plaintiffs incorporate by reference Paragraphs 1 through 14.

16. The facts herein alleged constitute a denial to the plaintiffs of the equal protection of the laws as guaranteed to them by the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the United States Constitution.

CLAIM III

17. Plaintiffs incorporate by reference Paragraphs 1 through 16.

18. The facts herein alleged constitute an abridgment of the privileges and immunities of citizenship guaranteed to the plaintiffs by the Privileges or Immunities Clause of Section 1 of the Fourteenth Amendment to the United States Constitution.

CLAIM IV

19. Plaintiffs incorporate by reference Paragraphs 1 through 18.

20. The facts herein alleged constitute a denial or abridgement of the plaintiffs' right to vote as guaranteed to them by Section 1 of the Fifteenth Amendment to the United States Constitution.

CLAIM V

21. Plaintiffs incorporate by reference Paragraphs 1 through 20.

22. The facts herein alleged constitute a deprivation of plaintiffs' rights under Section 1983 of Title 42 of the United States Code.

CLAIM VI

23. Plaintiffs incorporate by reference Paragraphs 1 through 22.

24. The facts herein alleged constitute a violation of Section 2c of Title 2 of the United States Code because the number of congressional districts established by the Supreme Court of Pennsylvania in 1992 no longer equals the number of Representatives to which the Commonwealth of Pennsylvania is entitled under federal law.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

- A. Assume jurisdiction of this matter and convene as a three-judge District Court pursuant to Section 2284 of Title 28 of the United States Code;
- B. Enter a declaratory judgment that the congressional districting plan that the Supreme Court of Pennsylvania ordered into effect in 1992 violates plaintiffs' rights under the aforesaid provisions of the United States Constitution and federal law;
- C. Enjoin permanently the defendants, their officers, agents, employees, attorneys, successors in office, and all persons in active concert or participation with them, from conducting primary or general elections using the 1992

congressional districting plan or any other congressional districting plan that violates the United States Constitution or federal law;

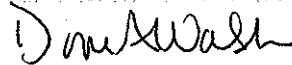
D. Set a reasonable deadline of February 1, 2002, pursuant to the principles of federalism and comity set forth in *Grove v. Emison*, 507 U.S. 25, 32-37 (1993), for state authorities to enact or adopt a new plan partitioning the territory of the Commonwealth of Pennsylvania into nineteen (19) substantially equipopulous congressional districts, and thus allow the 2002 election cycle to proceed on schedule with the February 19, 2002 beginning of the circulation of nomination petitions, as mandated in 25 P.S. § 2868;

E. If the state authorities fail to enact or adopt a new, legally valid congressional redistricting plan by that deadline, impose by Court order a new congressional redistricting plan that meets the requirements of the United States Constitution and federal and state law;

F. Grant plaintiffs their reasonable attorneys' fees, litigation expenses, and court costs; and

G. Grant plaintiffs any other relief that the Court finds appropriate and equitable.

Respectfully submitted,



Daniel T. Brier, Esquire

Donna A. Walsh, Esquire

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Brian P. Hauck
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Washington, D.C. 20005
(202) 639-6000

Attorneys for Plaintiffs Richard Vieth
and Norma Jean Vieth

Dated: December 21, 2001

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Richard Vieth and Norma Jean Vieth
632 Laurel Lane
Lancaster, PA 17601

(b) County of Residence of First Listed Plaintiff Lancaster County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Daniel T. Brier, Esquire
Donna A. Walsh, Esquire
Myers, Brier & Kelly, LLP
425 Spruce Street, Suite 200
Scranton, PA 18503

DEFENDANTS

The Commonwealth of Pennsylvania, Mark S. Schweiker, Kim Pizzigrilli,
Richard Filling, Robert C. Jubelirer, Matthew J. Ryan

County of Residence of First Listed _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State 1 1 DEF Incorporated or Principal Place of Business In This State 4 4 DEF
- Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5 DEF
- Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
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V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- X 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify) _____
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiffs seek a declaratory judgment that the Commonwealth of Pennsylvania's congressional districting plan violates their rights under the United States Constitution and federal law and an Order permanently enjoining the Defendants from using the current congressional districting plan or any other congressional districting plan that violates the United States Constitution or federal law.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **CHECK YES only if demanded in complaint: JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): _____ **JUDGE** _____ **DOCKET NUMBER** _____

DATE 12-21-01 **SIGNATURE OF ATTORNEY OF RECORD** Donna A Walsh

FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44 (Rev. 3/99)

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Attorneys (If Known) **31 CV-01-2439**

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DATE 12-21-01 SIGNATURE OF ATTORNEY OF RECORD Donna A. Walsh

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