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

RICHARD VIETH and NORMA JEAN VIETH,
Plaintiffs

v.

THE COMMONWEALTH OF PENNSYLVANIA,
et al.,
Defendants

NO. 1:CV-01-2439

(JUDGES RAMBO ✓
NYGAARD, YOHN)

**DEFENDANTS GOVERNOR SCHWEIKER,
SECRETARY PIZZINGRILLI AND COMMISSIONER FILLING'S
JOINDER IN THE PRESIDING OFFICERS' OPPOSITION TO
PLAINTIFFS' MOTION TO DIVIDE MARCH 11-12 HEARING**

Defendants Governor Schweiker, Secretary of the Commonwealth Pizzingrilli, and Commissioner Filling (collectively the Executive Officers)¹, through their undersigned counsel hereby joins in Lt. Governor Jubelirer and Speaker Ryan's (the Presiding Officers) Opposition to Plaintiffs' Motion to Divide March 11-12 Hearing filed on this date in the above-captioned action.

Plaintiffs' motion concerns the shifting burdens of evidence with respect to the sole claim remaining in this action, one person/one vote. The Executive Officers write separately to emphasize precisely what subject matter those shifting burdens of evidence concern.

This Court has determined that the lone remaining issue in this action is whether Pennsylvania's congressional redistricting enactment, Act 1-2002 (Act 1) satisfies the one person/one vote requirements of Article I, §2 of the United States Constitution. This provision requires that as nearly as practicable, a good faith effort

¹The Commonwealth of Pennsylvania had also been named as a defendant. This Court has dismissed the Commonwealth from this action.

is to be made to achieve population equality in congressional districts. *Karcher v. Daggett*, 462 U.S. 725, 730 (1983).

In *Karcher*, the United States Supreme Court outlined a two-part test for determining whether the one person/one vote requirement of Article I, §2 has been satisfied. Under the first part of the “*Karcher* test,” the party challenging the constitutionality of a congressional redistricting plan bears the burden of showing that “the population differences among districts could have been reduced or eliminated altogether by a good faith effort to draw districts of equal population.” *Id.* at 730-731 (emphasis added); *Stone v. Hechler*, 782 F.Supp. 1116, 1124 (N.D. W.Va. 1992); *Anne Arundel County Republican Central Committee v. Great Admin. Board of Election Laws*, 781 F.Supp. 394, 396 (D.Md. 1991) (both quoting *Karcher*).

Plaintiffs assert that they can satisfy their burden and establish that population differences in Act 1 were not the result of a good faith effort to draw districts of equal population. No evidence has yet been presented to satisfy that burden, and whether it is met is a question that is yet to be determined by this Court. What is clear from *Karcher* itself is that the good faith element of the *Karcher* test concerns the effort to “draw districts of equal population.” Assuming *arguendo* that plaintiffs do, in fact, satisfy the first *Karcher* test, the caselaw is equally clear as to the State’s burden in satisfying the second *Karcher* test.

Under that second *Karcher* test, the burden shifts to the State. In satisfying that burden, justification must be made for population deviation with

particularity. *Karcher, supra*, at 739. The law is also specific as to what those particular justifications are to address.

. . . [A]ppellees' success in proving that the Feldman Plan was not the product of a good faith effort to achieve population equality means only that the burden shifted to the state to prove that *the population deviations in its plan* were necessary to achieve some legitimate state objective.

Id. at 740 (emphasis added).

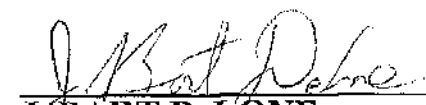
The Court has not as yet received any evidence concerning one person/one vote, much less evidence that would satisfy either part of the *Karcher* test. In applying that test, the Court is presented with two issues: whether the population differences among districts could have been reduced or eliminated by a good faith effort to achieve equal population; and whether population deviations in Act I were necessary to achieve some legitimate state objective. If plaintiffs meet their burden, defendants' burden is met by providing justification for any deviations in Act 1.

CONCLUSION

The Executive Officers join with the Presiding Officers in opposing plaintiffs' motion to divide the hearing. Plaintiffs' motion should be denied.

Respectfully submitted,

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DATED: March 5, 2002

CERTIFICATE OF SERVICE

I, **J. BART DeLONE**, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on March 5, 2002, I caused to be served a copy of the foregoing document entitled **Defendants Governor Schweiker, Secretary Pizzingrilli and Commissioner Filling's Joinder in the Presiding Officers' Opposition to Plaintiffs' Motion to Divide March 11-12 Hearing**, upon the following:

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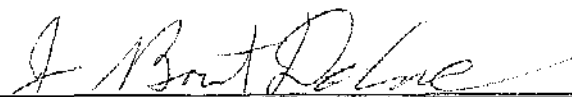
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