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

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,)

Plaintiffs,)

v.)

NO. 3:CV-01-2439
JUDGE RAMBO

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

JAN 11 2002

PER  _____
DEPUTY CLERK .

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DECLARE DEADLINE**

Plaintiffs respectfully submit this memorandum of law in support of their Motion to Declare Deadline. In that motion, plaintiffs ask that this Court set a deadline of February 18, 2002, for the Commonwealth of Pennsylvania to have

completed action on its congressional districting plans.

ARGUMENT

Plaintiffs have filed a lawsuit in this Court challenging the legality of the congressional districting plan that the Pennsylvania General Assembly passed on January 3, 2002, and the Governor signed on January 8, 2002. Litigation has been filed in the state Commonwealth Court challenging that plan on both state and federal constitutional grounds. *See Erfer v. The Commonwealth of Pennsylvania* (filed in Commonwealth Court, January 10, 2002). The federal constitutional grounds alleged in that petition are similar to the challenge presented by the Amended Complaint in this case.

Pursuant to the principles established in *Grove v. Emison*, 507 U.S. 25 (1993), it is appropriate for this Court to permit the state court to proceed and litigate the challenge to the new redistricting plan. *See id.* at 34 (ordering federal courts to “defer consideration of disputes involving redistricting where the State, through its legislative or judicial branch, has begun to address that highly political task itself”). To ensure that the process of electing Representatives to the United States Congress proceeds in a timely manner, however, *Grove* also instructs federal courts to set a deadline by which a state is to complete its redistricting process so that there is opportunity for consideration of any federal law claims that may remain against the plan passed by the General Assembly or against a remedial

plan framed by the Commonwealth Court. *See id.* at 36 – 37 (permitting federal court to enjoin state legislature and courts from proceeding further on redistricting in order to adjudicate federal law claims).

For this reason, plaintiffs ask this Court to impose a deadline of February 18, 2002, for the legislature and courts of the Commonwealth of Pennsylvania to complete action on the Commonwealth's congressional redistricting plan. A February 18 deadline balances the competing interest of the Commonwealth of Pennsylvania in taking primary responsibility for its congressional districts and the interest of plaintiffs and others in having a plan that fully complies with federal law in sufficient time to avoid undue delays in the election process.

A deadline of February 18 will allow the Court to determine whether there are federal law issues to be litigated that would justify delaying commencement of the Commonwealth's election process, which begins with the first day for circulation of nominating petitions on February 19, 2002. If, as of February 18, there remain federal law claims to be adjudicated, this Court will be able to enter an appropriate order to permit litigation of those claims on an

expedited basis and delay commencement of the circulation period.¹ Because the last day for circulating nominating petitions is March 12, 2002, it may be possible to resolve the remaining federal law issues without delaying the process in any significant way.

We believe trial in this case could be done quickly because discovery and expert testimony should have been developed in the state court-case relevant to the federal claims in this case. If no federal claims remain to be litigated (because, for example, the state court enters a remedial plan that plaintiffs in this case do not challenge), the Court can dismiss this action and allow the election process to proceed on schedule. In addition, a February 18 deadline will allow the state court sufficient time to proceed with litigation currently pending on these

¹ Although plaintiffs do not believe a delay in the election process is desirable, the paramount concern is full and fair litigation of challenges to the Commonwealth's redistricting plan. Ten years ago, the election deadlines were substantially delayed by litigation. It is our hope that such a delay will not be necessary.

matters, but will still ensure that the federal court has time enough to act with minimal disruption to the Commonwealth's election schedule.

Respectfully submitted,



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Dated: January 11, 2002

CERTIFICATE OF SERVICE

I, DONNA A. WALSH, ESQUIRE hereby certify that a true and correct copy of the foregoing Memorandum of Law in Support of Motion to Declare Deadline was served upon all counsel of record by first class mail, postage prepaid on this 11th day of January, 2002 to the following:

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