

**ORIGINAL**  
IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
Harrisburg Division

RICHARD VIETH, *et al.*,

Plaintiffs,

v.

COMMONWEALTH OF PENNSYLVANIA,  
*et al.*,

Defendants.

Civil Action No. 1:CV-01-2439

Nygaard, Circuit Judge  
Yohn, District Judge  
Rambo, District Judge

**FILED**  
HARRISBURG, PA

APR 22 2002

MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO INTERVENE BY  
THE CASEY FOR GOVERNOR COMMITTEE,  
THE RENDELL FOR GOVERNOR COMMITTEE, AND THE  
PENNSYLVANIA DEMOCRATIC PARTY

MARY E. D'ANDREA, CLERK  
Per                       
Deputy Clerk

Petitioners, the Casey for Governor Committee ( hereinafter "Casey"), the Rendell for Governor Committee ( hereinafter "Rendell"), and the Pennsylvania Democratic Party, through their undersigned counsel, hereby submit this Memorandum of Law in Support of their Motion to Intervene in the above-captioned matter. **In particular, the Petitioners seek to participate in this matter to protect their interest in preserving the May 21<sup>st</sup> primary election date. As this Court considers the recently submitted congressional reapportionment plan, the Petitioners request this Court to refrain from crafting an order that necessitates or causes the postponement of the primary election date.**

## I. INTRODUCTION.

On April 8, 2002, this Court struck down and enjoined implementation of Pennsylvania's Congressional Reapportionment Plan<sup>1</sup> (hereinafter "the Plan") adopted by the Pennsylvania General Assembly, on constitutional grounds. Additionally, this Court directed the General Assembly to develop a revised and constitutionally valid plan to submit to the Court within three weeks. In response to this Court's Order, the Defendant litigants requested this Court to stay its April 8<sup>th</sup> Order pending the outcome of their appeals. In their request for a stay, the Defendants raised for the first time in this matter the possibility of postponing both the state and congressional primary election date of May 21, 2002, should state officials determine they are unable to conduct the congressional primary election under a newly adopted reapportionment plan. See, Memorandum of Law Supporting Motion for Stay of Defendant's Jubelirer and Ryan (April 11, 2002) at 4. Newspaper accounts have consistently reported the possibility that the primary election date may have to be postponed to avoid duplicative costs associated with conducting two separate elections.<sup>2</sup>

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<sup>1</sup> Act of January 7, 2002, P.L. 1.

<sup>2</sup> See, Grabowski, "Republicans ponder: What Next?," *The Intelligencer Record*, April 9, 2002 (Senate Majority Leader Brightbill speculated that one option "is to hold the primary in September."); Fitzgerald and Worden, "Redistricting Ruling Leaves Pennsylvania Guessing," *Philadelphia Inquirer*, April 10, 2002 (Republican legislative leaders are quoted as saying that they "may have to draft legislation postponing the congressional primary, and possibly the primary for governor and the legislature, until September."); Cattabiani and Micek, "Scrapped maps raise questions galore," *The Morning Call*, April 10, 2002 (Eric Arneson, spokesman for Sen. Brightbill stated that moving the primary to September "is a very real possibility."); Bumsted, "House Dems offer modified redistricting plan," *Pittsburgh Tribune-Review*, April 11, 2002 (Stephen Drachler, spokesman for House Majority Leader John Prezel stated that "the May 21 primary would be in jeopardy if the court rejects a stay."); Walter, "Republicans may delay primary if court action fails," *Reading Times*, April 10, 2002 (Senator Brightbill was quoted as saying if the new reapportionment plan is not accepted, legislation will be introduced to "delay the

On April 12, 2002, this Court rejected the Defendant's request for a stay, explicitly noting that the representation was made to the Court that a new reapportionment plan would be enacted by the state legislature and submitted to the Court. On April 17, 2002, the General Assembly adopted a revised redistricting plan and submitted it to this Court the following day. In their submission to this Court, the Defendants renewed their request for a stay, and again raised the possibility that the congressional and state primary elections may have to be postponed beyond the statutorily set May 21<sup>st</sup> election date.

The Pennsylvania Democratic Party is only four weeks from concluding one of the most contentious and fiercely fought races to determine the democratic nominee for Governor of the Commonwealth of Pennsylvania. The extraordinary closeness of the race between Robert Casey and Edward Rendell evidences the effort and resources both campaign Committees have devoted to this election contest. The May 21<sup>st</sup> primary election date represents to each candidate the culmination of years of fund-raising, political campaigning and careful planning, and the expenditure of millions of dollars to persuade their fellow Democrats that he is the best candidate to represent the Party in the race for Governor and, ultimately, to advance their interests as Governor of the Commonwealth. Advertisements by both campaigns, as well as public statements to voters by the candidates have focused upon the May 21<sup>st</sup> primary election date.

Now, when this hotly contested primary race is in the final stretch, the possibility that this divisive election contest may be extended for an undetermined period of time has been raised.

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primary for four months.”).

Unfortunately, the chance that the primary election may be postponed would disproportionately harm the Petitioners and their Democratic supporters. In stark contrast to the Democratic primary election, the lone candidate for the Republican Party nomination for Governor is unopposed, therefore ensuring that any impact or harm that the Republican candidate would suffer as a result of a delay in the election date would be minimal. In addition, unlike his Republican counterpart, the eventual winner of the Democratic primary would be faced with a shortened General Election period within which to recover from a divisive primary that is postponed.

Significantly, since 1937, the date for the Pennsylvania primary election has remained in the Spring (either May or April, depending on the occurrence of a religious holiday). In reliance upon this 64 year old statutory election date, the Casey and Rendell Campaign Committees have structured and conducted their respective campaigns with the understanding that all such activities would culminate on May 21<sup>st</sup> when Democratic voters selected their candidate for Governor. As evidenced by the attached affidavits of Vanessa DeSalvo, Executive Director of the Casey for Governor Committee, David W. Sweet, Campaign Manager of the Rendell for Governor Committee, and Neil Cashman, Executive Director of the Pennsylvania Democratic Party, any postponement of the primary election date at this time would cause irreparable harm to the interests of the Campaign Committees and the Democratic Party. *See*, Attachment "A."

Likewise, in reliance upon the statutory and historical date of the primary election, county Election Boards across the state began to prepare for the May 21<sup>st</sup> primary election months ago.

As asserted in the attached affidavit of Robert Lee, Voter Registration Administrator for the City and County of Philadelphia, Philadelphia has spent approximately \$1.2 million in labor costs alone in preparation for the May 21<sup>st</sup> primary election date. *See*, Attachment "B." In addition, to date, Philadelphia County has expended considerable resources on advertising the primary election, preparing ballots and absentee ballots, reserving polling places, selecting ballot positions, training Election Board workers and retaining contractors to ship machines. Similarly, offices of the District Attorney, the Courts and Police Departments throughout the Commonwealth have assigned personnel to perform Election Day functions on May 21<sup>st</sup>. *Id.*

Petitioners, the Democratic Party State Committee and the Casey and Rendell Campaign Committees have moved this Court for leave to intervene in this matter to protect their interests with respect to the possibility that the May 21<sup>st</sup> primary election date may be postponed. If Petitioners' Motion to Intervene is granted, they will demonstrate to the Court the constitutional deprivations and harm they and their constituent voters will suffer should this Court craft an Order that necessitates or causes the postponement of the primary.

## **II. ARGUMENT.**

### **A. STANDARD FOR THE GRANT OF INTERVENTION.**

Pursuant to Federal Rule of Civil Procedure 24(a)(2) a person may intervene as of right if: (1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter, by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation.

*Klessler v. U.S. Forest Service*, 157 F.3d 964, 969 (3<sup>rd</sup> Cir. 1998); *Harris v. Reeves*, 946 F.2d 214, 219 (3<sup>rd</sup> Cir. 1991), *rehearing denied*, *cert. denied*, *Abraham v. Harris*, 112 S.Ct. 1516, 503 U.S. 952, 117 L.Ed. 2<sup>nd</sup> 652 (1992); *Cloverland-Green Spring Dairies v. Penn. Milk*, 138 F. Supp. 593, 601-02 (M.D. Pa. 2001). Petitioners satisfy each of these criteria.

Petitioners' motion is timely. The first time the possibility that the state primary election date may be postponed was raised on April 11, 2002 as part of the Defendant's first request for a stay of this Court's April 8<sup>th</sup> Order. In their initial request for a Stay, the Defendants raised the possibility that the primary election may have to be postponed if implementation of this Court's April 8<sup>th</sup> Order necessitates the postponement of the primary election date. *See*, Memorandum of Law Supporting Motion for Stay of Defendants Jubelirer and Ryan (April 11, 2002) at 4. The denial of the Defendant's first stay request was explicitly premised on the representation to this Court that a newly enacted congressional redistricting plan would be submitted to this Court within a week. On Thursday, April 17, 2002, a new reapportionment plan was submitted to this Court along with a renewed request for a stay of this Court's April 8<sup>th</sup> Order, suggesting again that if a stay were not granted it would be difficult to implement the plan in time for the May 21<sup>st</sup> primary election date. The Petitioner's intervention request has been submitted in response to this suggested possibility.

The Petitioners have a sufficient and substantial interest in the outcome of this litigation and their interests will be significantly impaired if their motion is denied. The Petitioners are candidates seeking the Democratic nomination for Governor and the Democratic Party State

Committee, all of whom have budgeted and expended millions of dollars, significant time and human resources in anticipation that the Primary Election would conclude on the statutorily prescribed date that is only four weeks away. A postponement of the Primary Election at this late date will impair significantly Petitioners' and the voters' constitutional right to a meaningful, orderly and procedurally regular election, as well as their ability to fund an extended campaign period, to retain personnel, to secure poll watchers and to get out the vote. Consequently, the candidates, the voters and the State Committee will be placed at an unfair disadvantage to that of the Republican voters. *See, Anderson v. Celebrezze*, 460 U.S. 780, 103 S. Ct. 1564, 1568-69 (1983) (rights of candidates as they apply to the electoral process are inextricably intertwined with the rights of voters under the First and Fourteenth Amendments).

For these same reasons, the Petitioners are not adequately represented by any party to this litigation. To the contrary, if not permitted to intervene in this forum to protest the potential unconstitutional change in the primary election date will be foreclosed.

Even if this Court were to conclude that the Petitioners do not meet the criteria for intervention under Rule 24(a), they should be permitted to intervene nonetheless as their claim and the main action have a question of law in common - whether the primary election should be postponed as requested in the proposed revised Reapportionment Plan. Moreover, Petitioners' intervention will not delay or prejudice the finalization of the proposed Plan. Rather, because the issue is a question of law, Petitioners' participation in this litigation will assist the Court in its



determination as to the lawfulness and appropriateness of any remedy that may be crafted which may necessitate or cause the postponement of the primary election.

**B. POSTPONEMENT OF THE PRIMARY ELECTION IS UNPRECEDENTED AND WOULD DISPROPORTIONATELY PLACE A BURDEN UPON DEMOCRATIC CANDIDATES AND DEMOCRATIC VOTERS IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE 14<sup>TH</sup> AMENDMENT.**

The Petitioners' assert that they should be permitted to intervene in this litigation in order to protect against an unconstitutional deprivation of rights they will suffer as a direct consequence of a postponement of the primary election. The Petitioners' rights to a timely and fair primary election are grounded in and protected by the Equal Protection Clause of the Fourteenth Amendment. It is well settled that the right of individuals to participate in the electoral process and to exercise their franchise rights is a "fundamental political right under the constitution," *Harper v. Virginia Board of Elections*, 383 U.S. 663, 665, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966); *Consumer Party v. Davis*, 633 F.Supp. 877, 885 (E.D. Pa. 1986). It is also well settled that the rights of candidates as they relate to the electoral process deserve special attention because they are inextricably intertwined with the rights of voters under the First and Fourteenth Amendments of the United States Constitution. *Anderson v. Celebrezze*, 103 S.Ct. 1568-69; *Berg v. Egan*, 979 F.Supp. 330, 335 (E.D. Pa. 1997).<sup>3</sup> Accordingly, it has been held that the

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<sup>3</sup> Candidates for public office have standing to raise the constitutional rights of voters and that political parties have the right to represent the interests of their members. *In re General Election*, 109 Pa. Cmwlth. 604, 607, 531 A.2d 836, 838 (1987) (candidate had standing to challenge the emergency postponement of voting in certain precincts); *see, also, Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972); *Mancuso v. Taft*, 476 F.2d 187 (1<sup>st</sup> Cir. 1973); *Walgren v. Board of Selectman*, 519 F.2d 1364 (1<sup>st</sup> Cir. 1975); *Werme v. Merrill*, 84



Equal Protection Clause of the Fourteenth Amendment ensures that each and every person will not be denied their fundamental rights – including the right to vote – in an arbitrary or discriminatory manner. *Charfauros v. Board of Elections*, 249 F.3d 941, 951 (9<sup>th</sup> Cir. 2001). These constitutional protections extend to the actions of state governments and apply to the case *sub judice*. *Id.*

As related to voting procedures, courts have held that once the legislature prescribes a particular voting procedure, the right to vote in that precise manner is a fundamental right. *Charfauros*, 249 F.3d at 953, *quoting*, *Bush v. Gore*, 531 U.S. 98, 104, 121 S.Ct. 525, 529-530, 148 L.Ed.2d 388 (2000); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 665, 86 S.Ct. 1029, 16 L.Ed.2d 169 (1966). It also has been held that changing of an election date, because of the potential disenfranchisement of certain citizens, may be adjudicated under the Equal Protection clause of the Fourteenth Amendment. *See, Walgren v. Howes*, 482 F.2d 95, 99 (1<sup>st</sup> Cir. 1973) *on remand* 519 F.2d 1364, 1367-68 (1975) (plaintiffs challenge that an election date change by the local legislative body which disproportionately burdened a class of voters, and was a justiciable claim under the Equal Protection clause).

In the present case, the Pennsylvania legislature has established that the general primary election date is to be in the Spring of each even-numbered year. Thus, like clockwork, candidates and voters from each political party anticipate and prepare to select the candidate who will represent their party in the Fall general election campaign during the Spring. 25 P.S. § 2753; Act

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F.3d 479 (1<sup>st</sup> Cir. 1996).

of June 3, 1937, P.L. 1333, art. VI, § 603, *as amended*.<sup>4</sup> Indeed, a Spring primary election has been a standard and customary part of the Pennsylvania political calendar since 1937 – over 64 years.

Significantly, there is no precedent in Pennsylvania for a change of the primary election date during the middle of a primary election campaign.<sup>5</sup> The obvious reason that such a dramatic and radical change to the Election Code has not occurred is the strong public interest in avoiding significant disruption to the electoral process that results from such a change. *Republican Party of Virginia v. Wilder*, 774 F.Supp. 400, 407 (W.D. Va. 1991) (there is a strong public interest against postponing a scheduled election and the public interest favors an electorate familiar with its candidates and an election conducted in an orderly way.); *Smith v. Board of Election*, 586 F.Supp. 309, 312 (N.D. Ill. 1984) (alternation of names to appear on ballot close to primary election date would be disruptive and “deserve the public interest.”). The postponement of the primary election will create havoc upon the Democratic Party gubernatorial candidates, their

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<sup>4</sup> The Election Code provides, *inter alia*;

“There shall be a General primary preceding each General election which shall be held on the third Tuesday of May in all even-numbered years, except in the year of the nomination of a President of the United States, in which year the General primary shall be held on the fourth Tuesday of April.”

<sup>5</sup> The Pennsylvania Election Code has been amended several times to move the spring general primary election date in order to accommodate a religious holiday. However, the changed date has never occurred in the middle of the primary election. Furthermore, since 1937, the spring general primary election date has never occurred in any month other than May or April. Municipal primary election dates have been scheduled during the fall and summer months before and after World War II however, since 1952, even the municipal primary election date has been scheduled to coincide with the Spring general primary election date. *See*, 25 P.S. § 2754; Act of June 3, 1937, P.L. 1333, art. VI, § 604, *as amended*.

campaign committees and the democratic voters by jeopardizing their ability to conduct a meaningful, fair and complete primary election campaign.

**1. Only the Democratic Party has a contested statewide primary for public office.**

The Pennsylvania Democratic Party is currently in the middle of a close and contentious contest to select their candidate for the office of Governor. Newspaper reports have consistently reflected the extraordinary closeness of the race between the two Democratic candidates – Edward Rendell and Robert Casey. *See, e.g.,* Davies, “So far, governor’s race fit to be tied,” *Philadelphia Daily News*, April 18, 2002 (“the latest Daily News / Fox Philadelphia Keystone poll shows Bob Casey leading Ed Rendell by a single percentage point among registered voters in the Democratic primary”); Warner, “Guv hopefuls have lots in war chests,” *The Philadelphia Inquirer*, April 10, 2002 (“still neck-and-neck in their polls”); Russakoff, “In Pa. Governor’s Race, A Democratic Divide,” *The Washington Post*, April 3, 2002 (“with seven weeks until the May 21 primary, polls show [Rendell] running even with state Auditor General Robert Casey, Jr.”). As set forth in greater detail in the attached affidavits of Vanessa DeSalvo, Executive Director of the Casey for Governor Committee, David W. Sweet, Campaign Manager for the Rendell for Governor Committee, and Neil Cashman, Executive Director of the Pennsylvania Democratic Party, each candidate has expended millions of dollars in television, radio and print

advertisements throughout the state to publicize their respective candidacies and to encourage democratic voter participate in the May 21<sup>st</sup> primary election.<sup>6</sup> See, Attachment "A."

In stark contrast to the close race for the Democratic Party's nomination for Governor, the Republican primary is uncontested. Attorney General Michael Fisher is the lone, unopposed, candidate in the Republican primary. As a result, there has been no necessity for the Republican candidate to expend money for statewide television advertisements, conduct voter turnout activities, commission opinion tracking polls, print primary election materials or engage in direct mailings to encourage voter participation, with the same intensity as the democratic candidates have done in anticipation of the May 21<sup>st</sup> primary date. Because the outcome of the Republican primary is predetermined, neither the Republican candidate, nor the Republican Party would suffer any meaningful disruption or negative consequence from a last minute postponement of the Spring primary date.

By comparison, any postponement of the May 21<sup>st</sup> primary would significantly impact the democratic campaigns. Regardless of who eventually prevails in the Democratic primary, any extension of the primary season would dramatically increase the necessity for both campaigns to raise and spend money in order to continue to run advertisements, pay staff and office rent, hire consultants and maintain campaign operations until the new primary election date. In addition,

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<sup>6</sup> In addition to the campaign for the democratic nomination for Governor, democratic voters also have a choice of nine separate candidates for the office of Lieutenant Governor. Like the two gubernatorial candidates, each Lt. Governor candidate has formed their own campaign committee, raised money and made expenditures intended to gain voter support. Also like the gubernatorial race, the Republican Lt. Governor primary is uncontested.

the eventual winner of the Democratic primary would be faced with a shortened General Election period within which to recover from the primary, replenish financial resources, and devote attention to promoting his candidacy as compared to the Republican candidate.

Equally important is the impact of a last-minute postponement of the Spring primary date on Democratic Party voters. Their participation and active involvement in the Rendell and Casey campaigns has been encouraged and developed upon the understanding that the primary election date is May 21. A last-minute change in the election date would unnecessarily confuse and disrupt the primary election process – voters who have applied for and received absentee ballots may no longer qualify, other voters may have to re-register to vote or may no longer qualify to vote, some voters may have to reapply in order to vote by absentee ballot, and some voters may not be notified of the late change in the election date and decide not to vote all together.

**2. The Democratic Gubernatorial Campaign Committees Have Made Strategic and Financial Decisions in Reliance upon A Primary Election Date of May 21.**

Political campaigns are planned and conducted in accordance with the simple objective of reaching their maximum effectiveness on a date certain – election day. The single and paramount objective of all political campaign committees is to get their respective candidates elected to office by receiving the most votes at the ballot box. To do so, most successful political campaigns begin with the election date and work backwards; that is, they plan campaign expenditures and activities to culminate on election day – in this case May 21. Decisions such as when to begin television

advertisements in particular media markets; the distribution of direct mailers to voters; the time and scheduling of media events and press conferences; the selection and location of candidate appearances and rallies; the number and planning of fund-raising functions; and, the hiring and coordination of staff and volunteers are all made in reliance on the statutorily set primary election date. As evidenced by the attached affidavits, this is the exact process employed by the Casey and Rendell Campaign Committees and the Democratic Party State Committee. *See*, Attachment "A." As persuasively asserted by Neil Cashman, the Executive Director of the Pennsylvania Democratic Party, postponement of the primary at this late date is not unlike "buying enough gasoline for your car to complete a 100 mile trip, then suddenly learning that you have another 50 miles to go before you are permitted to stop the car! Under these circumstances, your road trip will be disrupted and the campaign will be left on the side of the road." *See*, Attachment "A."<sup>7</sup>

This process demonstrates that any postponement of the Spring primary election date at this late stage during the primary season would impose irreparable harm upon both Democratic gubernatorial campaigns and the State Democratic Party. Such an injury is a compelling equitable concern that should be considered by this Court.

In *Valenti v. Mitchell*, 790 F.Supp. 555, *aff'd*, 962 F.2d 288 (3<sup>rd</sup> Cir. 1992), the United States District Court for the Eastern District of Pennsylvania, like this Court, considered whether

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<sup>7</sup> *See, also*, Fitzgerald & Infield, "Prolonged primary would cost Rendell, Casey millions more," *The Philadelphia Inquirer*, April 19, 2002 ("a prolonged Democratic primary - a real possibility since a federal court rejected the state's map of new congressional districts - could force the gubernatorial campaigns of ed Rendell and Bob Casey, Jr. to raise and spend up to \$5 million more apiece, strategists say.").

it was appropriate to postpone a primary election within four weeks from its scheduled date. The postponement issue arose when prospective congressional and presidential delegates sought injunctive relief asserting that they were unconstitutionally deprived of the opportunity to circulate and file nominating petitions to place them as candidates on the primary ballot as a result of the Pennsylvania Supreme Court's setting a primary election date as a consequence of its decision invalidating the 1992 Reapportionment Plan. Under the specific circumstances of that case, Judge Gawthrop concluded that notwithstanding that the injury posed to the candidates was sufficiently important to weigh in favor of postponement, the fact that there were numerous other candidates who had filed timely and commenced their campaigns at great financial expense, warranted the conclusion that a postponement would cause greater harm to the candidates, the political parties and the voters. Judge Gawthrop reasoned that:

The equitable maxim, *ubi jus, iti remedium*, "equity will not suffer a wrong to be without a remedy," would tend to tip the balance in favor of vindicating constitutional rights, despite the costs, but not at all costs. But equity also demands fairness to the candidates who filed on time. While the constitutional infirmities could be cured by resetting the election, this remedy could not make all the parties to this lawsuit whole. Were the primary reset, candidates who have already begun their campaign, like defendant [ ], would sustain financial injuries and a variety of intangible harms. Their campaign strategies were geared to an April 28<sup>th</sup> primary. Their fund-raising and expenditures, their staff hiring and publication of their positions were all set in reliance on this date. The county election boards similarly set the election machinery in motion for this election in reliance on this statutorily designated date. Ballots have been printed, polling places arranged and reserved, requests for absentee ballot received, absentee ballots printed and sent, voting machines prepared, positions on the ballot assigned, campaign voting cards distributed, all in reliance on the April 28<sup>th</sup> date.

The issue is not that this could not all be redone. The issue is that even if it were, the already registered candidates would be harmed,



the voters confused, the election boards and local governments faced with wasted effort and additional expenditures, as well as a host of burdensome, though not insurmountable, logistical problems.

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Despite the shortcomings of this election, the people of Pennsylvania, through their elected officials, legislative and judicial, have chosen to occupy the April 28<sup>th</sup> niche in the presidential primary sequence. The measure of deference to this legislative determination, iterated by the Third Circuit in *Trinsey v. Commonwealth of Pennsylvania*, 941 F.2d 224, 235 (3d Cir. 1991), thus, tips the balance slightly, but sufficiently, against granting a preliminary injunction for these additional plaintiffs.

790 F.Supp at 557. The same harms and inequities that were recognized by Judge Gawthrop and caused him to conclude that a postponement of the primary election would be inequitable govern here as well.

**C. POSTPONEMENT OF THE PRIMARY ELECTION WOULD UNCONSTITUTIONALLY BURDEN THE DEMOCRATIC CANDIDATES AND DEMOCRATIC VOTERS IN THE EXERCISE OF THEIR RIGHTS OF FREEDOM OF ASSOCIATION AND SPEECH.**

It is well-established that while the Constitution grants to states broad authority to regulate the times, places and manner of election, that authority alone does not justify the abridgement of citizens' fundamental rights to vote and to freedom of association and expression through political party activities. *See, e.g., California Democratic Party v. Jones*, 530 U.S. 567, 572-573, 120 S.Ct. 2402, 2406-2407, 147 L.Ed.2d 502, 508-509 (2000); *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 222, 109 S.Ct. 1013, 1019, 103 L.Ed.2d.

271 (1989); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 217, 107 S.Ct. 544, 550, 93 L.Ed.2d 514 (1986).

In order to assess the constitutionality of a state's regulation of the electoral process, the reviewing court must first examine the character and magnitude of the asserted injury to rights protected by the First and Fourteenth Amendments; and, second, identify and evaluate the precise interests advanced by the state as justification for the burden imposed upon its citizens' constitutional freedoms. "In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiffs' rights." *Anderson*, 103 S.Ct. at 1570. Under this balancing test, the rigor with which a court must review the propriety of the state election law depends upon the extent to which the law burdens First and Fourteenth Amendment Rights. "[W]hen those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 2063, 119 L.Ed.2d 245, 253-254 (1992), citing *Nelson v. Reed*, 502 U.S. 279, 289, 112 S.Ct. 698, 705, 116 L.Ed.2d 711 (1992).

In this case, the possibility that the Primary Election may be postponed would not advance a state interest of compelling importance to justify burdening the constitutional rights of the Petitioners. The compelling interest at stake here is the consequent severe restriction upon the right to freedom of expression and association of the State Democratic Party, the two gubernatorial candidates and their campaign committees, and by extension, their constituent

voters should the primary election be postponed. Therefore, it is appropriate that Petitioners' motion be granted so that they may protect against the unconstitutional infringement upon their First and Fourteenth Amendment rights.

**1. Postponement of the Primary Election Will Severely Burden the Freedom of Expression and Associational Rights of Petitioners and their Constituent Voters.**

The role of the First Amendment in the election process was explained recently by the Supreme Court in *California Democratic Party* :

Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views. The formation of national political parties was almost concurrent with the formation of the Republic itself. . . .Consistent with this tradition, the Court has recognized that the First Amendment protects “the freedom to join together in furtherance of common political beliefs” . . . .

120 S.Ct. at 2408. The Supreme Court further explained that the process by which a party’s nominee is selected “often determines the party’s positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party’s ambassador to the general electorate in winning it over to the party’s views.” *Id.*, at 2408. In light of these facts, “[u]nsurprisingly, [the Supreme Court’s] cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a party ‘selects a standard bearer who best represents the party’s ideologies and preferences.’” *Id.*

The First Amendment protections recognized and affirmed by the Supreme Court are the essence of Petitioners’ Motion to Intervene. The unnecessary last-minute postponement of the gubernatorial primary will seriously hamper Petitioners’ ability to participate in the primary and general elections, for several reasons. First, the Pennsylvania Democratic Party will be prevented from selecting its party officials, as well as its nominee, for several additional months. *See*,

Affidavit of Robert Lee, attached hereto at Attachment "B". Consequently, the party will have fewer months to organize for the General Election and to advocate its views with the general electorate, through its designated "ambassador" or "standard bearer."

Furthermore, the proposed postponement of the gubernatorial primary election is far more than a mere regulation of the time, place or manner of an election. To the contrary, it will necessarily impact upon the very campaign message expressed by the candidates in the coming months. Perhaps, if the postponement had been announced a year ago, before the candidates had invested significant resources in their campaigns, its impact upon them would be small enough to withstand less rigorous scrutiny. However, it is the last-minute nature of the postponement that burdens their First Amendment rights.

As previously asserted, the Casey and Rendell Campaign Committees have expended considerable resources in connection with the primary campaign for expressive activities such as television advertising, and other campaign efforts, and timed those expenditures to culminate on May 21<sup>st</sup>. Like a runner who paces himself for a race, the Campaign Committees have paced their expenditures and activities in anticipation of a May 21<sup>st</sup> finish line. Now, when the race for the Democratic nomination is nearly complete, and the candidates have entered their final sprint, vastly depleting their resources, the possibility of lengthening the election race has been raised.

The burdens imposed upon Petitioners by the Defendants' suggested postponement of the primary election go straight to the heart of the primary election process – a process which the

Supreme Court described as the “crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.” *Id.*, 530 U.S. at 575, 120 S.Ct. at 2408, 147 L.Ed.2d at 510; *Tashjian*, 479 U.S. at 217, 107 S.Ct. at 549. As such, the postponement cannot withstand constitutional scrutiny unless it is narrowly tailored to serve a compelling state interest. *California Democratic Party*, 530 U.S. at 582, 120 S.Ct. at 2412, 147 L.Ed.2d at 515.

**D. AS A MATTER OF EQUITY, POSTPONEMENT OF THE PRIMARY ELECTION AT THIS TIME IS CONTRARY TO THE PUBLIC INTEREST.**

There exists a strong public interest in the conduct of an orderly and smooth election process. *Valenti v. Mitchell*, 962 F.2d 288, 301 (3<sup>rd</sup> Cir. 1992) (“strong public interest in an orderly primary less than three weeks away.”); *Trinsey v. Mitchell*, 851 F. Supp. 167, 171 (E.D. Pa. 1994) (“interest in a timely and orderly election is strong”). Under existing circumstances – close proximity to the election date, the Commonwealth’s election machinery in progress, candidate campaign committees actively working and public awareness of the impending election date heightened – strong equitable considerations exist against postponement of a forthcoming election date. *Page v. Bartels*, 248 F.3d 175, 195 (3<sup>rd</sup> Cir. 2001) (despite alleged unconstitutional nature of the New Jersey reapportionment plan, impending state election would not be postponed due to disruptive impact on state election). In fact, even upon finding of a constitutional transgression against prospective candidates and voters, the level of injury to candidates and the election process has been found to justify not postponing, even for thirty days, a scheduled primary election. *Valenti v. Mitchell*, 790 F.Supp. 55 (E.D. Pa. 1992), *aff’d*, 962 F.2d 288.

**1. There exists significant costs associated with a last-minute change in the primary election date.**

There is no doubt that there would exist duplicative costs in conducting separate elections for state and congressional races. However, this equitable concern exists with any postponement of the election date. As just one example, not only have all county boards of election set and printed the primary ballots, but pursuant to the Pennsylvania Election Code, April 1<sup>st</sup> was the last day for county boards of election to commence delivery of absentee ballot applications and also the first day for county election boards to begin receiving absentee ballots. Any postponement of the primary election at this time would compel the reoccurrence of these administrative costs. In the City of Philadelphia alone, approximately \$1.2 million has been expended in preparation of the May 21<sup>st</sup> primary election. *See*, Affidavit of Robert Lee, Voter Registration Administrator for the City and County of Philadelphia, Attachment "B." In addition, there is no assurance that personnel, vendors and polling places utilized for the May 21<sup>st</sup> primary would be available for another date. *Id.*

Another important equitable concern for this Court to weigh is the problems that would be created by shortening the time between the certification of the Spring primary election results and the conclusion of the Fall general election. This shortened time frame would impose other administrative burdens on county election boards. Under the current election calendar there are approximately 24 weeks between the May 21<sup>st</sup> primary and the November general election. During this time, county election boards must complete primary election work and prepare for the Fall general election, including the locking and storage of machines pursuant to the Election



Code, the clearing of the machines and rehang of ballots, proofreading and reprinting the ballots following the certification of primary election results. A postponement of the Spring primary election would significantly shorten the time period within which to accomplish these tasks and as a result, impose a corresponding administrative cost on local election boards. *See*, Pennsylvania Joint State Government Commission, "Report of the Task Force and Advisory Committee on Primary Election Dates – Primary Election Dates in Pennsylvania: An Analysis of Proposals for Change," (November 2000) at 20.

**2. A last-minute change in the primary election date would disrupt the electoral process and cause voter confusion.**

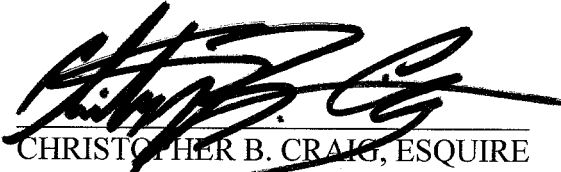
With less than four weeks remaining before the May 21<sup>st</sup> primary election date, any postponement of the election date would cause significant disruption to the electoral process and create voter confusion. Pennsylvania voters have participated in a Spring primary election for the past 64 years, a mid-election change in the primary election calendar would disrupt this customary practice and inevitably cause confusion or even discourage voter participation. For example, newspaper reports have already cited various election officials who have expressed concerns about voter participation and confusion if the primary elections were postponed to mid-July. *See, e.g.*, Worden, "Primary delay foreseen to further hurt turnout," *The Philadelphia Inquirer*, April 18, 2002 ("My gut feeling is that a summer primary is a disaster because it changes what people have become accustomed to," quoting Berwood Yost, director of the Center for Opinion Research at Millersville University).

In addition, those voters who have applied for and received absentee ballot applications in contemplation of a May 21<sup>st</sup> primary election date may no longer be eligible to vote by absentee ballot if the date were moved. Furthermore, these absentee ballot voters who have already completed their ballot may never turn out to vote if they mistakenly believe their absentee ballots were already counted. Consequently, they would be disenfranchised in this primary election. Each of these equitable concerns weigh against any decision by this Court which may necessitate or cause the postponement of the primary election.

### **III CONCLUSION**

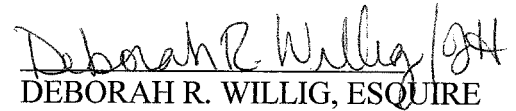
Petitioners' Motion to Intervene as Party Plaintiffs should be granted as their motion is timely; they have a sufficient interest in the outcome of this litigation; their interest will be affected, and indeed impaired, if the disposition of this action results in the postponement of the May 21<sup>st</sup> primary election date; and their interests are not adequately represented by the existing parties. Further, if permitted to intervene, Petitioners will demonstrate to the Court that a postponement of the primary election severely burdens their First Amendment rights to freedom of political association and expression, creates an undue burden upon the financial and personnel resources of the counties throughout the Commonwealth, and therefore, is not narrowly tailored to serve a compelling state interest. For all of these equitable concerns, the Petitioners respectfully request that their Motion to Intervene be granted.

Respectfully submitted,



CHRISTOPHER B. CRAIG, ESQUIRE  
Pa. Attorney No. 65203  
510 North 3<sup>rd</sup> Street  
Harrisburg, Pennsylvania 17101  
717.238.9381

**WILLIG, WILLIAMS &  
DAVIDSON**



DEBORAH R. WILLIG, ESQUIRE  
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**HANGLEY, ARONCHICK, SEGAL  
& PUDLIN**



MARK A. ARONCHICK, ESQUIRE  
Pa. Attorney No. 20261  
HENRY E. HOCKEIMER, JR., ESQUIRE  
Pa. Attorney No. 86768  
1 Logan Square, 27<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19103  
215.496.7035

Dated: April 22, 2002

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

RICHARD VIETH, *et al.*,

Plaintiffs,

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Defendants.

Civil Action No. 1:CV-01-2439

Nygaard, Circuit Judge  
Yohn, District Judge  
Rambo, District Judge

**Affidavit of Vanessa DeSalvo**

**Commonwealth of Pennsylvania** }

}

**County of Dauphin** }

Vanessa DeSalvo being duly sworn according to law deposes and says as follows:

1. I am the Executive Director of the Casey for Governor Committee, an authorized candidate political action committee, duly registered with the Pennsylvania Department of State, Bureau of Elections, with a principal place of business at 300 North Second Street, 2<sup>nd</sup> Floor, Harrisburg, Pennsylvania. The Casey for Governor Committee is the principal campaign committee supporting the candidacy of Robert P. Casey, Jr. for Governor of the Commonwealth of Pennsylvania.

2. In pursuit of the Democratic nomination for the Office of Governor of this Commonwealth, on behalf of the Committee, I have hired a campaign staff, solicited and raised

campaign donations consistent with the campaign finance laws of the Commonwealth of Pennsylvania, and expended money on radio and television advertisements, newspapers, and other campaign paraphernalia for the purpose of advertising the candidacy and positions of Robert P. Casey on issues important to the election of a new Chief Executive Officer for this Commonwealth. The Committee has raised in excess of \$11.4 million for the primary election. By way of illustration, the most recent campaign finance reports filed with the Bureau of Elections indicated that during the period of January 2001 to April 2002, over \$10 million has been raised from supporters, and \$4.4 million has been spent in primary election related activities just during the months of January to April of 2002. *See, Attached Campaign Finance Report Cover Sheet.*

3. All campaign activities, including fund raising, media, campaign support and organizational structure have been made with the understanding that the Primary Election will be held on May 21, 2002, as provided for under the Pennsylvania Election Code.

4. The campaign budget and campaign activities have been prepared in reliance upon the fact that the Primary Election would be conducted on May 21, 2002.

5. Furthermore, the campaign is supported by thousands of Pennsylvanians, who have already indicated their support in the form of signing nominating petitions, contributing to the campaign, and/or volunteering to work on the Committee's behalf and/or vote for the candidacy Robert Casey in the May 21, 2002 Primary Election.

6. If the May 21, 2002 Democratic Primary Election for the Office of Governor of the Commonwealth of Pennsylvania were postponed at this late date, and does not occur as scheduled, the ability of the Committee to continue to conduct its election activities and support the candidacy of Robert Casey would be substantially impaired.

7. Furthermore, the strategic decisions underlying the expenditures made by the Committee to date will be eliminated and effectively wasted, since the Committee will be in the position of having to start a campaign all over again with a new primary date in mind.

8. As a Campaign Committee, there is no assurance that there will be the same level of support, commitment, activity, and fund raising which has been generated for the May 21, 2002 Primary Election contest if the election date is moved back by several months.

9. I believe that the right to run for office, to conduct election related activities without burdensome interference, and the rights of Committee supporters, contributors and voters to participate in the electoral process and vote will also be chilled and/or adversely affected by the last-minute postponement of the Democratic Primary Election from May 21, 2002.

10. The postponement of the Democratic Primary Election to a September date will also unfairly and disproportionately disadvantage the Democratic nominee for the Office of Governor of the Commonwealth of Pennsylvania. There is no contested nomination for the Office of Governor in the Republican Primary Election – that result is predetermined. The Democratic


candidates for nomination, on the other hand, will be required to continue to organize, campaign, raise funds and expend monies for a primary campaign of a completely unprecedented length if the primary election date is postponed. As a result, the successful Democratic nominee in the Primary Election would have less time to raise money to refill empty campaign accounts, logistically and politically recover from a hotly contested primary race, and redirect efforts to campaign against the Republican nominee, and therefore be at a substantial disadvantage solely because of the postponement of the Primary. The unopposed Republican opponent would face no meaningful consequence as a result of a primary postponement. This is grossly unfair to the Committee, its supporters, and the voters of the Democratic party.

11. Additionally, for all of the foregoing reasons, any “decoupling” of the primary election dates, to wit, holding the congressional primary at a date different from the state primary would substantially prejudice the Committee. Hundreds, if not thousands, of our supporters and campaign workers are jointly allied with candidates in both the congressional and the state primary, and have made plans accordingly to work on behalf of those candidates on behalf of a May 21<sup>st</sup> election date. Splitting the primary would, in effect force hundreds of joint workers, who would have to take time from their jobs and families to assist in the Democratic primary, to choose between primary elections.

12. There is no reason why the Democratic Primary Election for all offices cannot and should not proceed as scheduled on May 21, 2002.

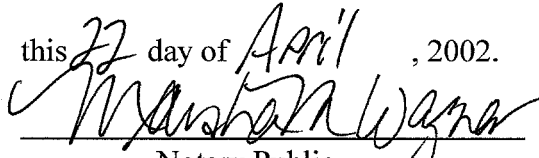


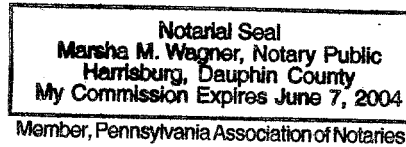
13. The information set forth in this Affidavit is true and correct to the best of my knowledge, information and belief.

  
VANESSA DESALVO, Executive Director  
Casey for Governor Committee

Sworn to and subscribed before me

this 22 day of April, 2002.

  
Notary Public



Commonwealth of Pennsylvania

## PAIGN FINANCE REPORT

PAGE 1 OF

(COVER PAGE)

(NOTE: This report must be clear and legible. It may be typed or printed in blue or black ink.)

Filer Identification Number: 2000277		Report Filed By: CPC		CANDIDATE 1.		COMMITTEE 2. X		LOBBYIST 3.	
CASEY, ROBERT JR FOR GOVERNOR C/D TREAS: THOMAS J OSTROWSKI 434 LACKAWANNA AVE STE 300 SCRANTON, PA 18503-0000				State:		Zip Code:			
TYPE OF REPORT  (place X to the right of report type)	6TH TUESDAY PRE-PRIMARY	1. X	2ND FRIDAY PRE-PRIMARY	2.	30 DAY POST PRIMARY	3.	AMENDMENT REPORT?	YES	NO X
	6TH TUESDAY PRE-ELECTION	4.	2ND FRIDAY PRE-ELECTION	5.	30 DAY POST ELECTION	6.	TERMINATION REPORT?	YES	NO X
	ANNUAL REPORT	7.	YEAR		FILING METHOD ( ) CHECK ONE		PAPER	X	DISKETTE

Name of Office Sought by Candidate:

Governor

## DATE OF ELECTION

MO.	DAY	YEAR
05	21	2002

District Number

00

Office Code

GOV

Party Code

DEM

County Code

35

(SEE INSTRUCTIONS FOR CODES)

## Summary of Receipts and Expenditures from:

MO.	DAY	YEAR
01	01	2002

To

MO.	DAY	YEAR
04	01	2002

## FOR OFFICE USE ONLY

A. Amount Brought Forward From Last Report	\$ 8,210,471.64
B. Total Monetary Contributions and Receipts (From Schedule I)	\$ 1,832,458.48
C. Total Funds Available (Sum of Lines A and B)	\$ 10,042,930.12
D. Total Expenditures (From Schedule III)	\$ 4,490,176.49
E. Ending Cash Balance (Subtract Line D from Line C)	\$ 5,552,753.63
F. Value of In-Kind Contributions Received (From Schedule II)	\$ 125,753.69
G. Unpaid Debts and Obligations (From Schedule IV)	\$ 150,000.00

## AFFIDAVIT SECTION

PART I - If this is a Committee report, treasurer sign here. If this is a Candidate report, candidate sign here.

I swear (or affirm) that this report, including the attached schedules, on paper or computer diskette, are to the best of my knowledge and belief true, correct and complete.

Sworn to and subscribed before me this

8th day of April 20 02

Signature

NOTARIAL SEAL

SCOTT R. THORPE, Notary Public

My commission expires

MO.

Scranton, Lackawanna County

My Commission Expires MAR. 20, 2004

Signature of Person Submitting Report

Thomas J. Ostrowski, CPA

Printed Name

(570)

346-8425

Area Code

Daytime Telephone Number

PART II - If this is a report of a Candidate's Authorized Committee, candidate shall sign here.

I swear (or affirm) that to the best of my knowledge and belief this political committee has not violated any provisions of the Act of June 3, 1937 (P.L. 1333, No. 320) as amended.

Sworn to and subscribed before me this

8th day of April 20 02

Signature

NOTARIAL SEAL

SCOTT R. THORPE, Notary Public

My commission expires

MO.

Scranton, Lackawanna County

My Commission Expires MAR. 20, 2004

Signature of Candidate

Robert P. Casey, Jr.

Printed Name

(717)

233-3211

Area Code

Daytime Telephone Number

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

RICHARD VIETH, *et al.*,

Plaintiffs,

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Defendants.

Civil Action No. 1:CV-01-2439

Nygaard, Circuit Judge  
Yohn, District Judge  
Rambo, District Judge

**Affidavit of David W. Sweet**

Commonwealth of Pennsylvania     }  
   }  
County of                                     }

David W. Sweet being duly sworn according to law deposes and says as follows:

1. I am the Campaign Manager of the Rendell for Governor Campaign ("Rendell Campaign"), where Edward G. Rendell is a candidate for nomination for the Office of Governor in the May 21, 2002 Democratic Primary Election ("Primary Election"). On March 11, 2002, Mr. Rendell filed his Nomination Petition and was later placed on the ballot for the Primary Election.

2. In pursuit of the Democratic nomination for the Office of Governor of this Commonwealth, the Rendell Campaign has hired campaign staff, solicited and raised campaign donations consistent with the campaign finance laws of the Commonwealth of Pennsylvania, and expended money on radio and television advertisements, newspapers, and other campaign paraphernalia for the purpose of

educating voters about Rendell's candidacy and his position on issues important to the election of a new Chief Executive Officer for this Commonwealth. (Attached as Exhibit A is the most recent Campaign Finance Report summarizing, *inter alia*, expenditures to support advertising, salary, media and other campaign related expenses and monies which have been raised to date.)

3. All of the Rendell Campaign activities, including fund raising, media, campaign support and organizational structure have been made with the understanding that the Primary Election will be held on May 21, 2002, as provided for under the Pennsylvania Election Code. Indeed, much of the Rendell Campaign printed literature references the May 21, 2002 Democratic Primary Election date, and many of Mr. Rendell's public statements specifically mention the May 21, 2002 primary date.

4. The Rendell Campaign budget and campaign activities have been prepared in reliance upon the fact that the Primary Election would be conducted on May 21, 2002.

5. Furthermore, the Rendell Campaign is supported by thousands of Pennsylvanians, who have already indicated their support in the form of signing nominating petitions, contributing to the Rendell Campaign, and/or volunteering to work on behalf and/or vote for Mr. Rendell in the May 21, 2002 Primary Election.

6. The postponement of the Democratic Primary Election from May 21, 2002 will not only chill the rights of Mr. Rendell to run for office, but will also greatly chill the rights of supporters, contributors and voters who wish to exercise their rights to not only vote, but to be involved in the political process.

7. The postponement of the Democratic Primary Election to a date

beyond May 21, 2002, will also unfairly disadvantage the ultimate Democratic nominee for the Office of Governor of the Commonwealth of Pennsylvania. There is no contested nomination for the Office of Governor in the Republican Primary Election. The Democratic candidates for nomination, on the other hand, will be required to continue to organize, campaign, raise funds and expend monies for a primary campaign of a completely unprecedented length. The successful Democratic nominee in the Primary Election could therefore be at a substantial disadvantage solely because of the postponement of the Primary, when compared to his Republican opponent. This is unfair to the candidates, their supporters, and voters of the Democratic party.

8. Finally, there is no reason why the Democratic Primary Election for the Office of Governor in the Commonwealth of Pennsylvania cannot and should not proceed as scheduled on May 21, 2002 since that office is unaffected by any Court Order arising from the Congressional redistricting controversy.

9. I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
DAVID W. SWEET

Executed on 4/22/02.

04/22/2002 11:54 FAX 215 568 0300

HASP

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Next Section

Return to Menu for This Report New Search

### Commonwealth of Pennsylvania Campaign Finance Report

Filer Identification Number: 2001164		Report Filed by: COMMITTEE		
Name/Address of Filing Committee, Candidate or Lobbyist: RENDELL, EDWARD FOR GOVERNOR C/O TREAS: JENNIFER L PATERNOS TRO 1735 MARKET ST 51ST FL PHILADELPHIA, PA 19103-7599				
Type of Report Cycle 1 - 6th Tuesday Pre Primary Election	Year 2002			
Name of Office Sought by Candidate  Governor	District No. N/A	Office Governor	Party Democratic	County Philadelphia (51)
<b>Summary of Receipts and Expenditures through: 04/01/2002</b>				
A. Amount Brought Forward From Last Report			\$ 9,534,930.92	
B. Total Monetary Contributions and Receipts (From Schedule I)			\$ 2,598,993.48	
C. Total Funds Available (Sum of Lines A and B)			\$ 12,133,924.40	
D. Total Expenditures (From Schedule III)			\$ 6,035,411.75	
E. Ending Cash Balance (Subtract Line D from Line C)			\$ 6,098,512.65	
F. Value of In-Kind Contributions Received (From Schedule II)			\$ 175,131.13	
G. Unpaid Debts and Obligations (From Schedule IV)			\$ .00	

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

RICHARD VIETH, *et al.*,

Plaintiffs,

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Defendants.

Civil Action No. 1:CV-01-2439

Nygaard, Circuit Judge  
Yohn, District Judge  
Rambo, District Judge

**Affidavit of Neil Cashman**

**Commonwealth of Pennsylvania** }

}

**County of Dauphin** }

}

Neil Cashman being duly sworn according to law deposes and says as follows:

1. I am the Executive Director of The Pennsylvania Democratic Party, the authorized political committee for the Pennsylvania Democratic Party and duly registered with the Pennsylvania Department of State, Bureau of Elections, with a principal place of business at 510 North Third Street, Harrisburg, Pennsylvania. The Pennsylvania Democratic Party is the principal non-candidate / party committee supporting democratic candidates seeking state office and facilitating the active participation of democratic voters in the primary election process. In addition, the Pennsylvania Democratic Party will be one of the central committees promoting the eventual winner of Democratic nominee to run in the Fall general election.



2. In preparation of the Democratic primary for the Office of Governor of this Commonwealth, I have hired staff, solicited and raised campaign donations consistent with the campaign finance laws of the Commonwealth of Pennsylvania, and expended money on advertisements and other campaign paraphernalia for the purpose of advertising candidacy of endorsed Democratic candidates and the positions of the Party on issues important to the election of a new Chief Executive Officer for this Commonwealth. By way of illustration, the most recent campaign finance reports filed with the Bureau of Elections indicates that during the four (4) period of January 2002 to April 2002, approximately \$229,000 has been raised in non-federal contributions from supporters, and approximately \$194,000 has been spent in primary election related activities during this same period. *See*, Attached Campaign Finance Report Cover Sheets.

3. All primary activities of the Party, including fund raising, media, campaign support and organizational structure have been made with the understanding that the Primary Election will be held on May 21, 2002, as provided for under the Pennsylvania Election Code.

4. The Party's budget and primary campaign activities have been prepared in reliance upon the fact that the Primary Election would be conducted on May 21, 2002 – not some later date. In fact, it is typical for political campaigns, including the campaigns conducted by the Democratic Party, to make a determination as to the earliest time it is able to begin statewide media advertisements and maintain the airing of such advertisements until election day. Once that determination is made, then all subsequent fund-raising, voter drives and all other campaign activities are premised on supporting that media strategy. However, a last-minute extension of

the primary election period would effectively eviscerates these efforts. It is similar to buying enough gasoline for your car to complete a 100 mile trip, then suddenly learning that you have another 50 miles to go before you are permitted to stop the car! Under these circumstances, your road trip will be disrupted and the campaign will be left on the side of the road.

5. Furthermore, the Party is supported by thousands of Pennsylvanians, who have already indicated their support in the form of contributing to the Party and/or volunteering to work on the Party's behalf and/or vote for endorsed democratic candidates in the May 21, 2002 Primary Election.

6. If the May 21, 2002 Democratic Primary Election for the Office of Governor of the Commonwealth of Pennsylvania were postponed at this late date, and does not occur as scheduled, the ability of the Party to continue to conduct its election activities and support the candidacy of democrats would be substantially impaired.

7. Furthermore, the strategic decisions underlying the expenditures made by the Party to date, will be eliminated and effectively wasted, since the Party will be in the position of having to start its primary campaign activities, such as printing new election day materials and re-mailing absentee ballot applications, all over again with a new election date in mind.

8. As a Party, there is no assurance that there will be the same level of support, commitment, activity, and fund raising which has been generated for the May 21, 2002 Primary Election contest if the election date is moved back by several months.


9. I believe that the right to campaign for office, to conduct election related activities without burdensome interference, and the rights of Party supporters, contributors and voters to participate in the electoral process and vote will also be chilled and/or adversely affected by the last-minute postponement of the Democratic Primary Election from May 21, 2002.

10. The postponement of the Democratic Primary Election to a September date will also unfairly and disproportionately disadvantage the eventual Democratic nominee for the Office of Governor of the Commonwealth of Pennsylvania. There is no contested nomination for the Office of Governor in the Republican Primary Election – that result is predetermined. The Democratic candidates for nomination, on the other hand, will be required to continue to organize, campaign, raise funds and expend monies for a primary campaign of a completely unprecedented length if the primary election date is postponed. As a result, the successful Democratic nominee in the Primary Election would have less time to raise money in order to refill empty campaign accounts, logistically and politically recover from a hotly contested primary race, and redirect efforts to campaign against the Republican nominee. Therefore, the eventual Democratic nominee would be at a substantial disadvantage solely because of the postponement of the Primary. In contrast, the unopposed Republican opponent would face no meaningful

consequence as a result of a primary postponement. This is grossly unfair to the Party, its supporters, and the voters of the Democratic Party.

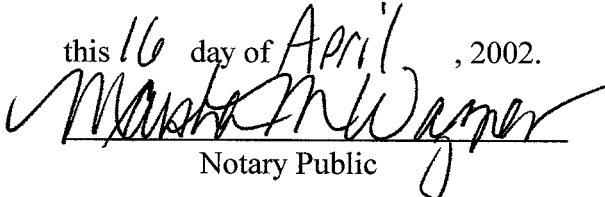
11. There is no reason why the Democratic Primary Election for the Office of Governor in the Commonwealth of Pennsylvania cannot and should not proceed as scheduled on May 21, 2002 since that office, or any state election, is unaffected by any Court Order arising from the Congressional redistricting controversy.

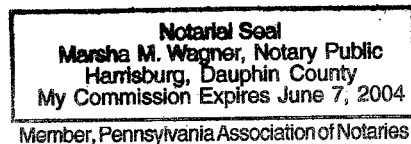
12. The information set forth in this Affidavit is true and correct to the best of my knowledge, information and belief.

  
NEIL CASHMAN, Executive Director  
The Pennsylvania Democratic Party

Sworn to and subscribed before me

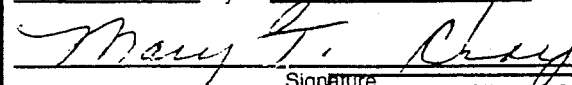
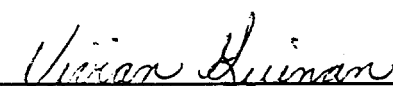
this 16 day of April, 2002.

  
Notary Public



Commonwealth of Pennsylvania  
**CAMPAIGN FINANCE REPORT**PAGE 1 OF 2  
(COVER PAGE)

(NOTE: This report must be legible. It may be typed or printed in blue or black ink.)

<b>Filer Identification</b> Number: 7900434			<b>Report Filed By:</b>		<b>CANDIDATE</b> <sup>1.</sup>		<b>COMMITTEE</b> <sup>2.</sup> <input checked="" type="checkbox"/>		<b>LOBBYIST</b> <sup>3.</sup>		
Name of Filing Committee, Candidate or Lobbyist: <b>Pennsylvania Democratic Party</b>											
Street Address: <b>510 North Third Street</b>											
City: <b>Harrisburg</b>					State: <b>PA</b>		Zip Code: <b>17101</b>				
<b>TYPE OF REPORT</b>  (place X to the right of report type)	6TH TUESDAY PRE-PRIMARY <sup>1.</sup>		2ND FRIDAY PRE-PRIMARY <sup>2.</sup>		30 DAY POST PRIMARY <sup>3.</sup>		AMENDMENT REPORT?		YES	NO <input checked="" type="checkbox"/>	
	6TH TUESDAY PRE-ELECTION <sup>4.</sup>		2ND FRIDAY PRE-ELECTION <sup>5.</sup> <input checked="" type="checkbox"/>		30 DAY POST ELECTION <sup>6.</sup>		TERMINATION REPORT?		YES	NO	
	<b>ANNUAL</b> <sup>7.</sup>		YEAR		FILING METHOD ( ) CHECK ONE		PAPER <input checked="" type="checkbox"/>		DISKETTE		
Name of Office Sought by Candidate:					DATE OF ELECTION MO. DAY YEAR <b>2 12 02</b>		District Number		Office Code	Party Code	County Code
Summary of Receipts and Expenditures from:					MO. DAY YEAR <b>01 01 2002</b>		MO. DAY YEAR <b>01 28 2002</b>		FOR OFFICE USE ONLY		
A. Amount Brought Forward From Last Report					\$		29,472.16		RECEIVED 02 JAN 31 PM 2:40 Department of State Bureau of C.E.L.		
B. Total Monetary Contributions and Receipts (From Schedule I)					\$		43,285.68				
C. Total Funds Available (Sum of Lines A and B)					\$		72,757.84				
D. Total Expenditures (From Schedule III)					\$		68,110.70				
E. Ending Cash Balance (Subtract Line D from Line C)					\$		4,647.14				
F. Value of In-Kind Contributions Received (From Schedule II)					\$		0.00				
G. Unpaid Debts and Obligations (From Schedule IV)					\$		7,084.30				
<b>AFFIDAVIT SECTION</b>											
<b>PART I - If this is a Committee report, treasurer sign here. If this is a Candidate report, candidate sign here.</b>											
I swear (or affirm) that this report, including the attached schedules, on paper or computer diskette, are to the best of my knowledge and belief true, correct and complete.											
Sworn to and subscribed before me this <u>31st</u> day of <u>January</u> 20 <u>02</u>											
Signature  My Commission Expires _____					Signature of Person Submitting Report  Vivian Guinan Printed Name 717-238-9381 Area Code _____ Daytime Telephone Number _____						
NOTARIAL SEAL MARY T. GRAY, Notary Public Lower Paxton Twp., Dauphin County My Commission Expires June 10, 2002											
<b>PART II - If this is a report of a Candidate's Authorized Committee, candidate shall sign here.</b>											
I swear (or affirm) that to the best of my knowledge and belief this political committee has not violated any provisions of the Act of June 3, 1937 (P.L. 1333, No. 320) as amended.											
Sworn to and subscribed before me this _____ day of _____ 20 _____											
Signature					Signature of Candidate						
My Commission Expires _____					Printed Name						
MO. DAY YR.					Area Code Daytime Telephone Number						

Commonwealth of Pennsylvania  
**CAMPAIGN FINANCE REPORT**PAGE 1 OF 2  
(COVER PAGE)

(NOTE: This report must be legible. It may be typed or printed in blue or black ink.)

<b>Filer Identification</b> Number: 7900434		<b>Report Filed By:</b>		CANDIDATE 1.		COMMITTEE 2. <input checked="" type="checkbox"/>		LOBBYIST 3.	
Name of Filing Committee, Candidate or Lobbyist: Pennsylvania Democratic Party									
Street Address: 510 North Third Street									
City: Harrisburg					State: PA		Zip Code: 17101		
TYPE OF REPORT  (place X to the right of report type)	6TH TUESDAY PRE-PRIMARY	1.	2ND FRIDAY PRE-PRIMARY	2.	30 DAY POST PRIMARY	3.	AMENDMENT REPORT?	YES	NO <input checked="" type="checkbox"/>
	6TH TUESDAY PRE-ELECTION	4.	2ND FRIDAY PRE-ELECTION	5.	30 DAY POST ELECTION	6. <input checked="" type="checkbox"/>	TERMINATION REPORT?	YES	NO
	ANNUAL	7.	YEAR	FILING METHOD ( ) CHECK ONE		PAPER <input checked="" type="checkbox"/>		DISKETTE	

Name of Office Sought by Candidate:

DATE OF ELECTION

MO. DAY YEAR

2 12 02

District Number

Office Code

Party Code

County Code

(SEE INSTRUCTIONS FOR CODES)

Summary of Receipts and Expenditures from:

MO. DAY YEAR  
01 29 2002

TO

MO. DAY YEAR  
02 22 2002

FOR OFFICE USE ONLY

A. Amount Brought Forward From Last Report	\$	4,647.14
B. Total Monetary Contributions and Receipts (From Schedule I)	\$	76,401.99
C. Total Funds Available (Sum of Lines A and B)	\$	81,049.13
D. Total Expenditures (From Schedule III)	\$	63,059.17
E. Ending Cash Balance (Subtract Line D from Line C)	\$	17,989.96
F. Value of In-Kind Contributions Received (From Schedule II)	\$	0.00
G. Unpaid Debts and Obligations (From Schedule IV)	\$	7,084.30

**AFFIDAVIT SECTION****PART I - If this is a Committee report, treasurer sign here. If this is a Candidate report, candidate sign here.**

I swear (or affirm) that this report, including the attached schedules, on paper or computer diskette, are to the best of my knowledge and belief true, correct and complete.

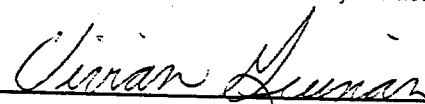
Sworn to and subscribed before me this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signature

My Commission Expires

MO. DAY YR.



Signature of Person Submitting Report

Vivian Guinan

Printed Name

717-238-9381

Area Code

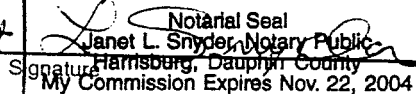
Daytime Telephone Number

**PART II - If this is a report of a Candidate's Authorized Committee, candidate shall sign here.**

I swear (or affirm) that to the best of my knowledge and belief this political committee has not violated any provisions of the Act of June 3, 1937 (P.L. 1333, No. 320) as amended.

Sworn to and subscribed before me this

14 day of MARCH 20 02



My Commission Expires

MO. DAY YR.

Signature of Candidate

Printed Name

Area Code

Daytime Telephone Number



Commonwealth of Pennsylvania

PAGE 1 OF 2

**CAMPAIGN FINANCE REPORT**

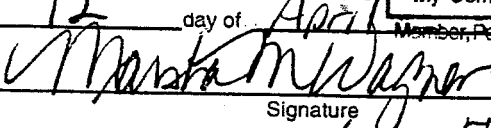
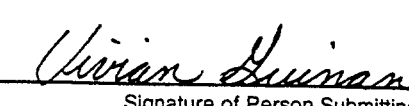
(COVER PAGE)

(NOTE: This report must be legible. It may be typed or printed in blue or black ink.)

<b>Filer Identification</b> Number: 7900434				<b>Report Filed By:</b>		<b>CANDIDATE</b> <sup>1.</sup>		<b>COMMITTEE</b> <sup>2.</sup> <input checked="" type="checkbox"/>		<b>LOBBYIST</b> <sup>3.</sup>				
Name of Filing Committee, Candidate or Lobbyist: Pennsylvania Democratic Party														
Street Address: 510 North Third Street														
City: Harrisburg						State: PA		Zip Code: 17101						
<b>TYPE OF REPORT</b>  (place X to the right of report type)	6TH TUESDAY PRE-PRIMARY		<input checked="" type="checkbox"/>	2ND FRIDAY PRE-PRIMARY		<input type="checkbox"/>	30 DAY POST PRIMARY		<input type="checkbox"/>	AMENDMENT REPORT?		YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	
	6TH TUESDAY PRE-ELECTION		<input type="checkbox"/>	2ND FRIDAY PRE-ELECTION		<input type="checkbox"/>	30 DAY POST ELECTION		<input type="checkbox"/>	TERMINATION REPORT?		YES <input type="checkbox"/>	NO <input type="checkbox"/>	
	<b>ANNUAL</b>		<input type="checkbox"/>	YEAR		<input type="checkbox"/>	<b>FILING METHOD</b> ( ) CHECK ONE		<input type="checkbox"/>	<b>PAPER</b>		<input checked="" type="checkbox"/>	<b>DISKETTE</b>	
Name of Office Sought by Candidate:						<b>DATE OF ELECTION</b>		District Number		Office Code		Party Code		
						MO. DAY YEAR								
												(SEE INSTRUCTIONS FOR CODES)		
<b>Summary of Receipts and Expenditures from:</b>						MO. DAY YEAR			MO. DAY YEAR			<b>FOR OFFICE USE ONLY</b>		
						02 23 2002			04 01 2002					
A. Amount Brought Forward From Last Report						\$			17,989.96					
B. Total Monetary Contributions and Receipts (From Schedule I)						\$			83,992.00					
C. Total Funds Available (Sum of Lines A and B)						\$			101,981.96					
D. Total Expenditures (From Schedule III)						\$			46,822.50					
E. Ending Cash Balance (Subtract Line D from Line C)						\$			55,159.46					
F. Value of In-Kind Contributions Received (From Schedule II)						\$			0.00					
G. Unpaid Debts and Obligations (From Schedule IV)						\$			7,084.30					
<b>AFFIDAVIT SECTION</b>														
<b>PART I - If this is a Committee report, treasurer sign here. If this is a Candidate report, candidate sign here.</b>														
I swear (or affirm) that this report, including the attached schedules, on paper or computer diskette, are to the best of my knowledge and belief true, correct and complete.														
Sworn to and subscribed before me this														
9th day of April 20 02														
Signature						Signature of Person Submitting Report								
Gail J. McDermott						Vivian Guinan								
Notary Seal						Printed Name								
Gail J. McDermott, Notary Public						717-238-9381								
My Commission Expires 10/31/05						Area Code Daytime Telephone Number								
<b>PART II - If this is a report of a Candidate's Authorized Committee, candidate shall sign here.</b>														
I swear (or affirm) that to the best of my knowledge and belief this political committee has not violated any provisions of the Act of June 3, 1937 (P.L. 1333, No. 320) as amended.														
Sworn to and subscribed before me this														
day of 20														
Signature						Signature of Candidate								
My Commission Expires						Printed Name								
MO. DAY YR.						Area Code Daytime Telephone Number								

Commonwealth of Pennsylvania  
**CAMPAIGN FINANCE REPORT**PAGE 1 OF 2  
(COVER PAGE)

(NOTE: This report must be legible. It may be typed or printed in blue or black ink.)

<b>Filer Identification</b> Number: 7900434				<b>Report Filed By:</b>		CANDIDATE <sup>1.</sup>		COMMITTEE <sup>2.</sup> <input checked="" type="checkbox"/>		LOBBYIST <sup>3.</sup>		
Name of Filing Committee, Candidate or Lobbyist: Pennsylvania Democratic Party												
Street Address: 510 North Third Street												
City: Harrisburg						State: PA		Zip Code: 17101				
TYPE OF REPORT  (place X to the right of report type)	6TH TUESDAY PRE-PRIMARY		1.		2ND FRIDAY PRE-PRIMARY		2.		30 DAY POST PRIMARY		3.	
	6TH TUESDAY PRE-ELECTION		4.		2ND FRIDAY PRE-ELECTION		5. <input checked="" type="checkbox"/>		30 DAY POST ELECTION		6.	
	ANNUAL		7.		YEAR				FILING METHOD ( ) CHECK ONE			
								AMENDMENT REPORT?		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
								TERMINATION REPORT?		YES <input type="checkbox"/> NO <input type="checkbox"/>		
								PAPER <input checked="" type="checkbox"/>		DISKETTE <input type="checkbox"/>		
Name of Office Sought by Candidate:								DATE OF ELECTION		District Number		
								MO. DAY YEAR		Office Code		
										Party Code		
										County Code		
(SEE INSTRUCTIONS FOR CODES)												
Summary of Receipts and Expenditures from:				MO. DAY YEAR			MO. DAY YEAR			FOR OFFICE USE ONLY		
				04 02 2002			04 08 2002					
				TO								
A. Amount Brought Forward From Last Report				\$			55,159.46					
B. Total Monetary Contributions and Receipts (From Schedule I)				\$			25,090.00					
C. Total Funds Available (Sum of Lines A and B)				\$			80,249.46					
D. Total Expenditures (From Schedule III)				\$			15,713.08					
E. Ending Cash Balance (Subtract Line D from Line C)				\$			64,536.38					
F. Value of In-Kind Contributions Received (From Schedule II)				\$			0.00					
G. Unpaid Debts and Obligations (From Schedule IV)				\$			7,084.30					
<b>AFFIDAVIT SECTION</b>												
<b>PART I - If this is a Committee report, treasurer sign here. If this is a Candidate report, candidate sign here.</b>												
I swear (or affirm) that this report, including the attached schedules, on paper or computer diskette, are to the best of my knowledge and belief true, correct and complete.												
<div style="display: inline-block; border: 1px solid black; padding: 5px;"> <b>Martha M. Wagner</b>          Notary Public          Harrisburg, Dauphin County          My Commission Expires June 7, 2004          Member, Pennsylvania Association of Notaries       </div>												
Sworn to and subscribed before me this <u>12</u> day of <u>April</u> , 20 <u>02</u>												
 Signature						 Signature of Person Submitting Report						
My Commission Expires <u>6</u> <u>7</u> <u>04</u> MO. DAY YR.						Printed Name <b>Vivian Guinan</b> Area Code <u>717</u> - <u>238-9381</u> Daytime Telephone Number						
<b>PART II - If this is a report of a Candidate's Authorized Committee, candidate shall sign here.</b>												
I swear (or affirm) that to the best of my knowledge and belief this political committee has not violated any provisions of the Act of June 3, 1937 (P.L. 1333, No. 320) as amended.												
Sworn to and subscribed before me this _____ day of _____, 20____												
Signature						Signature of Candidate						
Printed Name						Printed Name						
My Commission Expires _____ MO. DAY YR.						Area Code _____ Daytime Telephone Number _____						



B

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

RICHARD VIETH, *et al.*,

Plaintiffs,

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Defendants.

Civil Action No. 1:CV-01-2439

Nygaard, Circuit Judge  
Yohn, District Judge  
Rambo, District Judge

Affidavit of Robert Lee

Commonwealth of Pennsylvania     }  
   }  
County of Philadelphia                }

Robert Lee being duly sworn according to law deposes and says as follows:

1. I am the Voter Registration Administrator for the City and County of Philadelphia. My responsibilities include overseeing the election process including voter registration, preparation of voting machines, and the counting of election returns.
2. I have been apprised of the proposal to postpone the May 21, 2002 Republican and Democratic Primary Election for all elective and party offices, including Governor, US House of Representatives, Senator in the Pennsylvania General Assembly, Representative in the General Assembly, Member of

Republican State Committee, Member of Democrat State Committee, Member of Republican Ward Executive Committee, and Member of Democrat Ward Executive Committee, to mid-July or September 2002 because of the Congressional redistricting litigation. In Philadelphia County alone there are 84 candidates seeking nomination in Republican and Democrat parties for 33 elective offices, and thousands of candidates seeking election to thousands of political party positions, which reorganize in June, based upon the outcome of the May 21, 2002 Primary. In my opinion, such a proposal, if implemented, would cause a substantial disruption in the electoral process, would substantially impair and/or impede the rights of voters, could adversely effect the ability of election officials to accurately determine the outcome of any Primary where challenges or contests to the election are filed, adversely effect the ability of the state's election officials to prepare for the November 5, 2002 General Election, and completely disrupt the scheduled reorganization of political party state and ward committee organizations.

3. I am also aware that Pennsylvania has a highly contested race for the Democratic nomination for Governor. It is very possible that this contest could be relatively close, raising the possibility for requests for recounts, or litigation concerning filings for a recanvass of returns, or contests to the election. Disputed elections and litigation often results in lengthy court proceedings to accurately determine the will of the electorate or the fairness of the election

process. In the 1997 May Primary Election in Philadelphia, disputed results for the Democratic nomination for Traffic Court Judge resulted in litigation that was not concluded until mid September. In 1999, a dispute of the results for the Democratic nomination led to lengthy litigation in the State and Federal courts. The current law requiring May Primary elections and November General elections barely affords sufficient time to resolve disputed elections. An unnecessary postponement of the May 21, 2002 Primary for elective offices and political party positions not affected by the reapportionment litigation to July, with a two month reduction in the time between the Primary and General elections, will adversely impact the ability of the County Board of Elections, and the Courts if necessary, to accurately determine the will of the electorate in contested elections. An unnecessary postponement to a September Primary, would make it logistically and legally impossible to conduct the Primary, certify the nominees, resolve any litigation, and prepare for the November 5, 2002 General election in Philadelphia County.

4. The postponement of the Republican and Democratic Primary for the Office of Governor, and other offices not affected by the reapportionment litigation to July would have an adverse impact upon voter participation in the electoral process and could adversely effect the outcome of elections for numerous office in comparison to a May 21, 2002 Primary date. In my experience, voter participation and interest in the electoral process is

substantially reduced in the summer months. There will also be an increased reliance on the use of absentee ballots, which will only further complicate the canvass of votes and which could effect the outcome in a closely contested Democratic Primary Election for Governor. In addition, there will be a reduction in the availability of polling places and Election Board workers who are needed to staff polling places as well as campaign volunteers to serve as Watchers.

5. The City and County of Philadelphia has already expended considerable resources in reliance upon a May 21, 2002 primary, including advertisement of the Primary Election, preparation of ballots, preparation of absentee ballots, reservation of polling places, selection of ballot positions, training of Election Board workers, retaining contractors to ship machines. In addition, the Office of the District Attorney, the Police Department, the Public Property Department and the Courts of Common Pleas have all assigned personnel to perform Election Day functions.

6. To date, the City and County of Philadelphia, has expended approximately \$ 1.2 million dollars in labor alone in preparation for the May 21, 2002 Primary. . Many of these expenditures may have to be duplicated if the May 21 primary were canceled and rescheduled to a later date. Consequently, postponement of the entire Primary Election will not result in justified cost savings to the taxpayers, but merely a duplication of expenditures that have

already been made and potential expenditures related to litigation. Moreover, there is no assurance that all of the personnel and vendors utilized for the May 21, 2002 Primary Election would be available to prepare for a rescheduled Primary date. We are prepared to conduct the May 21, 2002 Primary election for all elective and party offices, with the exception of the Congressional contests affected by the reapportionment litigation.

7. Postponing the Republican and Democratic Primary Election for the Office of Governor, and other offices not affected by the reapportionment litigation, will require alteration of the post-Primary Election schedule to avoid overlapping with and interfering with, the process leading up to the General Election. The last day for independent candidates to file nomination papers for the Office of Governor could be adversely affected or altered. The last day for withdrawal of candidates nominated in the Primary Election will also have to be altered. Deadlines for citizens of the Commonwealth to register to vote in the General Election, to submit applications for civilian absentee ballots and to return the completed absentee ballot will also be adversely affected.

8. The impact of a rescheduled Primary Election to a fall date was the subject of a report by a Task Force and Advisory Committee on Primary Election Dates of the Joint State Government Commission of the General Assembly. In

its report, issued in November 2000, the Task Force concluded that it would be unwise to adopt a fall primary for a host of reasons:

**Election Costs.** Following a spring primary, the ascertainment of results and the preparation for the general election take place over a period of at least 25 weeks. With a September primary, the same tasks must be performed in a compressed time frame of nine or ten weeks. That means a larger workforce, more staff overtime, and higher equipment costs are necessary. The report concluded that these factors alone would cost Philadelphia over a million dollars. Costs in the state's other 66 counties would run into tens of millions of dollars. In addition, the report concluded that with the imposition of substantial additional burdens on election officials, the probability of errors in ballot preparation would be greatly increased.

**Election Procedures.** The Pennsylvania Election Code requires a detailed series of procedures between each primary and general election. The most important include the canvassing and computation of primary returns; determination of recounts and contests; receipt of nomination papers from independent political parties; preparation of general election ballots; delivery of absentee ballots; and delivery of voting apparatus and materials to polling places. In addition, the Code requires that in districts that use mechanical or electronic voting machines, the machines must be locked for 20 to 25 days pending certification of the results of the primary. In districts that use electronic voting machines, as Philadelphia will for the first time this year, it takes an estimated eight weeks to clear the system and prepare for the next election. Furthermore, there are a series of discrete chronological steps that must be taken at this stage; each step must be completed before the next can begin, so it's not possible to speed up the process by throwing more money or manpower at the job.

**Absentee Ballots.** Pennsylvania requires that absentee ballots be mailed to remote overseas voters 70 days and to other federal absentee voters 45 days in advance of the general election. If the primary were held in September, this requirement could not be met – ballots would have to be mailed before the nominees were known, even if there were no challenges. In some jurisdictions where absentee ballots are sent out before the party candidates are decided, a blank absentee ballot is sent with a list of

candidates. A revised list is then sent after the primary, but it does not reach all absentee voters in time. This means that some absentee ballots are returned with votes for candidates who have not been nominated, effectively disenfranchising some voters.

**Recounts and Contests.** Recounts and contests are the two procedures available for candidates to challenge the nominal results of an election. A recount seeks review of the announced result of an election on the grounds that the ballots have not been accurately counted. A contest seeks to overturn the election on other grounds, usually defects in the ballot, mechanical failure or polling place errors. Challenges may be filed in Common Pleas Court after any election, and can take two to four months to resolve. They may then be appealed to Commonwealth Court, and from there to the Supreme Court. During the pendency of any challenge, the ballot for any affected precinct cannot be certified. This means that if a primary is held in September, a challenge could still be pending well past the date of the November general election, making it impossible for an election for the office in question to be held. One suggested solution is to hold the rest of the election at the usual time, then hold a special election for the affected office after the challenge is decided.

9. The impact of such changes adversely affecting election outcome is greatest in the Democratic Primary Election for Governor than any other office. The possibility of a close statewide race, and potential requirements for re-canvassing or contests in numerous counties require that the maximum time possible be permitted between the Primary and General elections. In contrast, there are relatively few contested Primary Elections for Congressional seats.
10. In my opinion, proposals for moving the Primary for unaffected office to July or September, if implemented, would cause a substantial disruption in the

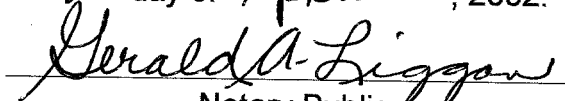
electoral process, would substantially impair and/or impede the rights of voters, could adversely effect the ability of election officials to accurately determine the outcome of any Primary where challenges or contests to the election are filed, adversely effect the ability of the state's election officials to prepare for the November 5, 2002 General Election, and completely disrupt the scheduled reorganization of political party state and ward committee organizations.

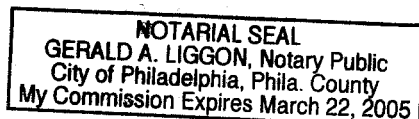
11. In my opinion, the interest of voters and the public interest is best served by holding the Republican and Democrat Primary Election for Governor, and all offices not affected by the reapportionment litigation as scheduled on May 21, 2002.
12. The information set forth in this Affidavit is true and correct to the best of my knowledge, information and belief.

  
ROBERT LEE

Sworn to and subscribed before me

this 16<sup>th</sup> day of April, 2002.

  
Notary Public





**CERTIFICATE OF SERVICE**

I, Christopher Craig, Esquire hereby certify that I have this day caused a true and correct copy of the foregoing document to be served upon the following individuals, in the manner indicated below:

**VIA HAND DELIVERY**

J. Bart DeLone, Senior Deputy Attorney General  
John G. Knorr, III, Chief Deputy Attorney General  
Office of the Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

**VIA HAND DELIVERY**

Robert B. Hoffman, Esquire  
Reed Smith, LLP  
213 Market Street, 9<sup>th</sup> Floor  
P.O. Box 11844  
Harrisburg, PA 17108

**VIA HAND DELIVERY**

John P. Krill, Jr., Esquire  
Linda J. Shorey, Esquire  
Julia M. Glencer, Esquire  
Jason E. Oyler, Esquire  
Kirkpatrick & Lockhart, LLP  
240 North Third Street  
Harrisburg, PA 17101

**VIA FACSIMILE AND MAIL**

Paul M. Smith, Esquire  
Thomas J. Perrelli, Esquire  
Daniel Mach, Esquire  
Brian P. Hauck, Esquire  
Jenner & Block, LLC  
601 Thirteenth Street, NW  
Washington, DC 20005  
(202) 639-6066 (Fax)



CHRISTOPHER CRAIG, ESQUIRE

Dated: April 22, 2002