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

RICHARD VIETH, et al,
Plaintiffs, :
v. :
THE COMMONWEALTH OF :
PENNSYLVANIA, et al., :
Defendants. :

No. 1:CV-01-2439
(Judge Rambo)

**MEMORANDUM IN SUPPORT OF PRESIDING OFFICERS' MOTION
TO OFFER EVIDENCE AT HEARING**

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Defendants Lieutenant Governor Jubelirer and Speaker Ryan ("Presiding Officers") submit this memorandum in support of their motion for leave to offer evidence at the October 15, 2002 hearing. Presiding Officers detail their legal positions and explain how the evidence sought to be presented bolsters the position that the Act 34 plan complies with the one-person, one-vote principle.

BACKGROUND

On April 8, 2002, this Court, under the one-person, one-vote principle, declared unconstitutional the congressional redistricting plan for Pennsylvania contained in Act No. 2002-1 ("Act 1"), enjoined its implementation, and directed the Pennsylvania General Assembly to "within three weeks of the date of this order, prepare, enact and submit for review and final approval by this Court, a congressional redistricting plan in conformity with this opinion."

On April 17, 2002, the General Assembly passed a bill (HB 2545) with a revised congressional redistricting plan, which, on April 18, 2002, was signed into law by Governor Schweiker as Act No. 2002-34 ("Act 34"). Presiding Officers, joined by Executive Officers, immediately notified this Court of the enactment of Act 34 in connection with the renewal of their motion for a stay of the April 8th injunction against the use of the Act 1 plan for the 2002 congressional elections.

On April 22, 2002, Plaintiffs opposed the renewed motion for stay and moved for a remedial hearing ("Remedial Motion"). Plaintiffs attack the validity of the Act 34 plan on the ground that it violates the one-person, one-vote principle. Plaintiffs allege that due to a change of a voting precinct boundary in Armstrong County's South Buffalo Township affecting 49 residents, there is a 97-person population deviation in Act 34. The voting precinct boundary in South Buffalo Township forms part of the boundary between the 3rd and 12th congressional districts in the Act 34 plan, as it did in the Act 1 plan. The change resulted from

the Armstrong County Court of Common Pleas' approval on March 15, 2002 ("March 15th order") of a petition filed by the Armstrong County Board of Elections on February 19, 2002. On May 2, 2002, after a conference with counsel, this Court instructed Defendants to file a Status Report on the dispute resulting from the Armstrong County Court's March 15th order.

On June 3, 2002, Presiding Officers filed their Status Report, which, on page 3, informed this Court that:

After the situation in Armstrong County came to the attention of the Defendants, the Department of State advised the Armstrong County Board of Elections that it needed to take appropriate measures to cure the violation of law that had occurred. The Armstrong County Board of Elections has petitioned the Armstrong County Court of Common Pleas to vacate its March 15, 2002 order. The Armstrong County Court has set a hearing on the Board of Election's request for July 15, 2002.

The Armstrong County Board of Elections also took administrative measures to make sure that voters in the two affected precincts would be able to vote in the primary election for congress in accordance with the boundaries set by the General Assembly. The Board conducted the congressional primary in accordance with the boundary.

Presiding Officers also argued that the March 15th order was irrelevant to the constitutionality of Act 34. *See id.* at 4-6 and Presiding Officers' Response in Opposition to Plaintiffs' Remedial Motion at 6-8. In response to the Status Reports filed by Presiding Officers and Executive Officers, this Court, on June 19, 2002, ordered defendants to file a second Status Report on August 19, 2002.

In their Second Status Report, Presiding Officers noted that the Armstrong County Court had refused to vacate its March 15, 2002 order. They again argued that the order was irrelevant and that Plaintiffs could not support their burden under *Karcher v. Daggett*, 462 U.S. 725 (1983), to show lack of a good faith effort by the General Assembly to pass a plan with zero deviation. Presiding Officers

also moved to join the Board of Elections of Armstrong County as a necessary party.

On September 13, 2002, this Court denied the motion to add the Board of Elections as a necessary party and scheduled a hearing "regarding the constitutionality of Act 34" for October 15, 2002. In a footnote, the Court instructed the parties, should they desire to present evidence at the hearing, to file an appropriate motion containing a detailed description of the evidence and the reason for its presentation by October 5, 2002. On September 17, 2002, Presiding Officers sought leave to conduct limited discovery in order to depose Robert L. Priest, who provided an affidavit in support of Plaintiffs' Remedial Motion, and previously testified for the Plaintiffs at the hearing on Act 1. On September 23, 2002, after a conference with counsel, this Court denied that request, noting: "It is the unanimous view of the panel that the hearing on October 15, 2002 will involve a purely legal issue. Specifically, whether Act 34 remedies the constitutional violation that the court found in its order of April 8, 2002."

LEGAL POSITION AND OFFER OF PROOF

I. NO POPULATION DEVIATION EXISTS

A. Relevant Census Data

In drawing the Act 34 plan, the General Assembly, as it did with the Act 1 plan, used the 2000 federal census population data for Pennsylvania as assigned by the Legislative Data Processing Center ("LDP"), a bipartisan, bicameral legislative service agency. The assigned data show the population by election district (frequently referred to as "precinct" or "voting tabulation district"). It is necessary to assign the population to precincts because the federal census population data is presented in terms of population per block and tract that do not, in many instances, precisely coincide with the boundaries of Pennsylvania's 9000-plus precincts.

The census data, as assigned by LDP, provide the basic building blocks for legislative and congressional redistricting in Pennsylvania. It has been used by the Pennsylvania Legislative Reapportionment Committee in legislative redistricting¹ and by the General Assembly and the Pennsylvania courts in congressional redistricting since at least 1980. *See e.g., Mellow v. Mitchell*, 530 Pa. 44, 72-73, 607 A.2d 204, 218-19 (1992) ("the Legislative Data Center, since 1980, has divided the census block population between the two precincts" where the block boundary does not match a precinct boundary). Each of the four caucuses of the General Assembly used these data for drawing redistricting plans, as, during the hearing on Act 1, Plaintiffs' cartographer, Robert L. Priest, acknowledged. *See* Hearing Trans. Vol. 1 (March 11, 2002) at 12-13 (testimony of Mr. Priest that the precinct population data used for drawing congressional redistricting plans were those assigned by LDP and adopted by the Legislative Reapportionment Commission).² Mr. Priest is the Technical Director for the Pennsylvania House of

¹ The time for legislative reapportionment turns on the date "the population data for the Commonwealth as determined by the Federal decennial census are available." PA. CONST. art. III, §17(c). The Pa. Supreme Court, in a March 26, 1981 order, interpreted "available" as when the Commission received the census data in "usable" form, i.e. when the population of Pennsylvania determined by the federal census data was broken down by precinct and ward. *See* K. Gormley, THE PENNSYLVANIA LEGISLATIVE REAPPORTIONMENT OF 1991 (1994) at 23.

² Additional testimony by Mr. Priest confirms that the LDP-assigned population data is the data used for congressional redistricting in Pennsylvania and demonstrates LDP's unique role in congressional redistricting.

On cross examination, the following exchanges occurred:

Q Now you talked about AutoBound as a software package that is used by the Caucuses. Is it fair to say that AutoBound melds the geography data base for the Commonwealth with the precinct by precinct population data base that the Legislative Data Center produces?

A That is a fair characterization."

....

Q And if this [plaintiff's zero deviation plan] had been introduced as a bill, you are saying it would have been looked at by the Legislative Data Processing Center to those kinds of errors?

Representative's Democrat Caucus Office of Demographic Analysis, which is "the redistricting office for the House Democratic Caucus."³ *Id.* at 10-11.

Based on the LDP-assigned data, which Plaintiffs do not dispute was the data used to draw the plan, the Act 34 plan contains no population deviation. When HB 2545 (which became Act 34) was considered by the Senate and the House, it was described as a zero deviation plan and no member challenged that representation. *See* LEGISLATIVE JOURNAL – HOUSE (April 15 & 17, 2002) at 639-62 & 706-11, respectively; LEGISLATIVE JOURNAL – SENATE (April 17, 2002) at

A To get it into bill form, the data base that is Exhibit 21 would have been given to the Legislative Data Processing Center, who would have run the legal description, which would have been sent to the Legislative Reference Bureau for drafting and would have been handled by those two bodies, which is the process for the legislative introduction of Congressional plans.

Q But the Legislative Data Processing Center and the Legislative Reference Bureau perform ministerial functions; don't they? They do as they are told. If you submit a legal description, they put it into bill form for you?

A On Congressional note [sic], that is not the case. You submit your data base allocation which they put into verbal form. They do not accept verbal - my understanding of the process is they did not accept verbal descriptions directly. They accept instead the allocations which are run through the Data Processing Center to determine the population for the legal descriptions that are done by the Reference Bureau."

Hearing Trans. Vol. 1 (March 11, 2002) at 36; 60-61.

On redirect examination, the following exchange occurred:

Q Just so we are clear, what was the source of data that you used to estimate - to count the population totals for the districts in the various plans that you studied?

A The population totals in each of the plans was from the data given by the Legislative Data Processing Center as the precinct populations for each of the precincts in the state. And it was adopted by the Reapportionment Commission as the official data for use in the State House - State Senate redistricting effort.

Hearing Trans. Vol. 1 (March 11, 2002) at 78.

³ Had Mr. Priest deposition been allowed, he would have been asked how and when he gained knowledge of the Armstrong County Court order and to whom and when, if ever, he relayed this information.

1647-54.⁴ Just as with population migrations that may have occurred between the 2000 census and the enactment of Pennsylvania's congressional redistricting plan in 2002, the March 15 alteration made by Armstrong County is irrelevant. *See Karcher*, 462 U.S. at 738 ("the census data provide the only reliable –albeit less than perfect – indication of the district's 'real' relative population levels;" "because the census count represents the 'best population data available,' it is the only basis for good-faith attempts to achieve population equality") (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 528 (1969)). *See also; Cromartie v. Hunt*, 133 F.Supp.2d 407, 413 n.3 (E.D. N.C. 2000) (examining 1997 plan based on 1990 census data).

B. Unconstitutional Alteration of Congressional District Boundaries

If the precinct boundary change approved by the Armstrong County Court is found to create a population deviation in the Act 34 plan, then the approval would be a violation of U.S. CONST. art. I, §4. No court has the power to change a congressional district's boundaries outside of a constitutional challenge and, even then, a court's power is extremely circumscribed.

The United States Constitution gives authority to state legislatures to establish the time, place and manner for electing members of Congress. U.S. CONST. art. I, §4, cl.1 ("[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof"). This power includes the power and the duty of a state legislature to re-divide a state into congressional districts in accordance with the most recent

⁴ To bolster Mr. Priest's testimony concerning the population dataset used in Pennsylvania for redistricting purposes and LDP's role in congressional redistricting, Presiding Officers, if their motion is granted, will present testimony or an affidavit from Kathleen A. Sullivan, Executive Director of LDP that will include the following points: (1) the Act 34 plan is based on the same population data as the Act 1 plan (the LDP-assigned data); (2) the maximum population deviation of the Act 34 plan was 1; (3) the Act 34 plan has 5 districts with a population of 646,372 and 14 districts with a population of 646,371; (4) LDP has received no notice of a precinct boundary change since it issued the final version of the LDP-assigned data for 2000; and (5) the LDP-assigned data.

federal decennial census and the number of congressional seats apportioned to it. As the Supreme Court has stressed, the division of a state into congressional districts is inherently a political process to be done by the state legislature. *See White v. Weiser*, 412 U.S. 783, 794, 795-96 (1973) ("From the beginning, we have recognized that 'reapportionment is primarily a matter for legislative consideration and determination;' ... Districting inevitably has sharp political impact and inevitably political decisions must be made by those charged with the task") (quoting *Reynolds v. Sims*, 377 U.S. 533, 586 (1964)).

Moreover, to permit a court of common pleas (which only has jurisdiction to affect precinct boundaries within the county or counties where it sits) to adjust the boundary between congressional districts would be contrary to the one-person, one-vote principle. If Plaintiffs are correct, the precinct boundary change ordered by the Armstrong County Court resulted in 49 individuals moving from the 3rd District to the 12th District at a time when the Act 1 plan was in effect and presumed constitutional, thereby increasing the population deviation between the highest and lowest districts to 103 (under Act 1, the 3rd district had 646,364 and the 12th had 646,369 people) and diluting the vote of electors in the 12th District. Such an action by a court of limited jurisdiction is unconstitutional. The Armstrong County Court's order changing boundary between South Buffalo Township's two precincts cannot be construed to alter the boundary between the 3rd and 12th Congressional Districts because to do so would imbue that court with power it cannot constitutionally be given.

C. Meaning of Act 34

Should this Court be in doubt or disagreement that the LDP-assigned data govern congressional redistricting in Pennsylvania and find no violation of U.S. CONST. art. I, §4, then the congressional boundaries, as set forth in the legal description accompanying Act 34, are ambiguous. Where such a latent ambiguity

exists,⁵ a statute must be interpreted in accordance with the intent of the legislature. *See Kritz Estate*, 387 Pa. 223, 227, 127 A.2d 720, 723 (1956) (rules of statutory construction apply where there exists either patent or latent ambiguity in a statute); *O'Rourke v. Commonwealth*, 566 Pa. 161, 173, 778 A.2d 1194, 1201 (2001) (same); *Pennsylvania Financial Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 430, 664 A.2d 84, 87 (1995) (in interpreting statute, court must at all times seek to ascertain and effectuate intent of legislature); *see also* 1 Pa.C.S. §1921(a) ("object of all interpretation and construction of statutes is to ascertain and effectuate the intent of the General Assembly").

The General Assembly enacted Act 34 in response to this Court's declaration of the Act 1 plan unconstitutional under the one-person, one-vote principle. The General Assembly's purpose, i.e. its intent, was to enact a congressional redistricting plan with a zero deviation, or as close as possible to zero, given that Pennsylvania's total population had to be divided among 19 congressional districts. *See* LEGISLATIVE JOURNAL –HOUSE (April 15, 2002) at 648.⁶

To construe Act 34 to have a population deviation on the basis of the Armstrong County Court modification of precinct boundaries would, based on

⁵ "Latent ambiguity" is defined in BLACK'S LAW DICTIONARY (6th ed. 1990) as "[a] defect which does not appear on the face of the language used or an instrument being considered. It arises when language is clear and intelligible and suggests but a single meaning, but some extrinsic fact or some extraneous evidence creates a necessity for interpretation or a choice between two or more possible meanings."

⁶ Majority Leader Perzel, when asked to explain to the members the revised plan being proposed, stated:

[I]t was brought to our attention that the deviation in the map that ... we passed back in Act 1 of 2002 had a deviation that was much larger than the courts wanted us to have, so we went to work This amendment before us, all the districts in the Commonwealth of Pennsylvania, there are 14 districts with 646,371 people, a deviation of zero, and there are 5 districts with a population of 646,372, or a deviation of 1 person.

Plaintiffs' allegations and Mr. Priest's affidavit, result in a population deviation greater than that in the Act 1 plan, in stark contrast to what the General Assembly thought it had done. As the United States Supreme Court has recognized: "If literal interpretation of any part of [a statute] would operate unjustly, or lead to absurd results, or be contrary to the evident meaning of the act taken as a whole, it should be rejected. *Heyenfeldt v. Daney Gold and Silver Mining Co.*, 93 U.S. 634, 639-40 (1876) (Court construed statute granting land to Nevada in a manner "seemingly contrary to the letter of the statute," in part, because "no other construction is consistent with the statute as a whole, and answers the evident intention of its makers ..."); *see also Wainwright v McCullough*, 63 Pa. 66, 73 (1869) ("In order to arrive at the legal effect of the [low and high water] lines established by the commissioners under [the Act of April 16, 1858, P.L. 326], we must ascertain [the act's] true purpose."); *Dougherty v. Town Council of South Kingstown*, 61 R.I. 248, 254, 261, 200 A. 964, 967, 920 (1938) (in determining location of zoning district boundary denoted as "bounded ... on the East by Potter's Ponds," court looked to town's purpose for creating the zone).

II. THE *KARCHER* TEST

Should this Court, however, agree with Plaintiffs that, due to the Armstrong County Court order, the Act 34 plan has a 97-person population deviation, then the Court must apply the two-prong test discussed and applied in *Karcher* to assess whether the deviation violates the principle of one-person, one-vote:

'The 'nearly as practicable' standard [for achieving population equality in congressional districts] requires that the State make a good-faith effort to achieve precise mathematical equality. Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small.'

462 U.S. at 730 (quoting *Kirkpatrick*, 394 U.S. at 530-31. Plaintiffs bear the burden of showing that the General Assembly did not make a good faith effort,

and, if they are successful, the burden then shifts to Defendants to show a legitimate justification for the deviation. *Karcher*, 462 U.S. at 730-31.

A. Good Faith Effort

Plaintiffs cannot show the alleged 97-person deviation occurred because of a lack of a good-faith effort by the General Assembly to draw congressional districts of equal population. As discussed above, the legislative journals of the Pennsylvania Senate and House show that, after this Court invalidated the Act 1 plan, the General Assembly considered and passed a new plan, with what it thought was a zero population deviation, for the purpose of remedying one-person, one-vote violation found by this Court.

Presiding Officers anticipate Plaintiffs will argue that the General Assembly should have known of the Armstrong County Court order at the time Act 34 was enacted. Imputing such "constructive knowledge" of that order to the General Assembly in this instance would be improper and unfair. It would also be inconsistent with *Karcher* by effectively nullifying the safe harbor that exists where a legislature has, in good-faith, created what it believed were districts of equal population.

Constructive knowledge is a legal inference or a legal presumption of notice which is imputed to a party by law if the circumstances suggest that the party had knowledge of certain facts which should have imparted to him or lead him to knowledge of the ultimate fact. *See generally* 66 C.J.S. (Notice) §§7, 12-15. Whether a person is in possession of facts that should excite further inquiry is a situation-specific question. *Id.* §14. Before constructive knowledge may be imputed, there must arise a *duty* to inquire. *Id.* ("inquiry [must] become[] a duty, and the failure to make it a negligent omission"). "In order to charge a person with notice of a fact which could have been ascertained by inquiry, the circumstances known to him must have been such as ought reasonably to have suggested inquiry

and led him to inquire[.]" *Id.* Constructive knowledge is a harsh doctrine which should be resorted to reluctantly and construed strictly. *See e.g., Amoco Production Co. v. United States*, 619 F.2d 1383, 1388 (11th Cir. 1980).

Under the circumstances here, it would improper to impute constructive knowledge of the Armstrong County Court order to the General Assembly. There were no facts known at the time Act 34 was passed that would have caused inquiry on the part of the legislators and map drawers responsible for proposing plans. Rather, facts which were known operate to defeat constructive knowledge.

Most importantly, there was a statutory prohibition on boundary alterations in place at the time Act 34 was being considered and passed. *See* 25 P.S. §2746. Moreover, even if permitted, the Board of Elections of Armstrong County did not report the alteration as required by state law to either the Secretary or LDP, as it is required by statute to do.⁷ *See* 25 P.S. §2747(b). The Armstrong County proceeding was purely a local matter – an unopposed petition by the Armstrong County Board of Elections to change the precinct boundary within a township. The General Assembly was not involved; the Secretary was not involved. The petition did not inform the Armstrong County Court that the precinct boundary formed part of the boundary between congressional districts 3 and 12.⁸

B. Justification

Should the Court conclude that Act 34 was not the product of a good-faith effort by the General Assembly to achieve population equality, the burden shifts to Defendants "to prove that the population deviations in [the] plan were necessary to achieve some legitimate state objective." *Karcher*, 462 U.S. at 740.

⁷ One purpose of the statutory notice requirement was to alleviate any duty on the part of the General Assembly to inquire about alterations in every county.

⁸ Presiding Officers, if permitted to offer evidence at the hearing, will present a copy of the Armstrong County docket and copies of the documents associated with the docket entries.

If this Court imputes constructive knowledge of the March 15th order to the General Assembly (that it should have known of the precinct boundary change made by the March 15, 2002 order), then it must also impute to the General Assembly knowledge of why the Armstrong County Board wanted the change. *See GAF Corporation v. Amchem Products, Inc.*, 399 F.Supp. 647, 656 (E.D. Pa. 1975), *rev'd on other grounds*, 570 F.2d 457 (3d Cir. 1978) (once a party is found to be "on inquiry notice, it is chargeable with knowledge of all facts which it could have learned by reasonable diligence"); *Malamed v. Sedelsky*, 367 Pa. 353, 357, 80 A.2d 853, 855 (1951) (where constructive notice is properly imputed to a party, that party is also imputed with constructive notice of such facts a reasonable investigation would have revealed).

Plaintiffs allege that such change was made to place the entirety of an industrial park under development in one congressional district—that of Congressman John Murtha, who is Pennsylvania's most senior representative and a senior member of the appropriations committee of the U.S. House of Representatives. *See* Plaintiffs' Remedial Motion at 7. The industrial park in question, Northpointe, is an important economic development activity for Pennsylvania. Congressman Murtha, in his biography on his official website, describes Northpointe as "a premier industrial park developed with \$4.4 million for water and infrastructure in Armstrong County" and an economic development activity to which he has been "key." *See* www.house.gov/murtha.⁹

⁹ If permitted to offer evidence, Presiding Officers will present an affidavit from the Chairman of the Armstrong County Board of Commissioners (the Commissioners also serve as the Board of Elections for Armstrong County), confirming that the Board of Elections sought the precinct-boundary change between the two precincts in Armstrong County's South Buffalo Township so that the Northpointe industrial park (an important economic development project) would be wholly in the district represented by Congressman Murtha, who was instrumental in the park's creation and is expected to be instrumental in its continued growth.

While the alleged total deviation of 97 is greater than the 19 of the Act 1 plan, it is still miniscule –0.015%. As this Court pointed out in *Vieth v. Pennsylvania*, 195 F.Supp.2d 672, 677 (M.D. Pa. 2002), "the burden borne by the State varies inversely with the magnitude of the population deviation." See *Anne Arundel County Republican Central Committee v. State Advisory Bd. of Election Law*, 781 F. Supp. 394, 397 (D. Md. 1991), *aff'd*, 504 U.S. 938 (1992) ("the amount and degree of justification which the State must establish is roughly equatable to the deviation itself"). The *Anne Arundel* court concluded the deviation in the challenged plan was justified, explaining:

Both in the evidence presented and in oral argument, the State has set forth several convincing, consistent, and legitimate justifications for the numerical deviations within H.B. 10. These include: (1) keeping intact the three major regions that surround the center of the state ..., (2) creating a minority voting district, and (3) recognizing incumbent representation with its attendant seniority, in the House of Representatives. ... We conclude that these justifications, which the State alleges are properly within the ambit of a state legislature's redistricting latitude and designed to achieve legitimate state goals, are sufficient to warrant the very small numerical variance among the congressional districts seen here. The analysis mandated by the Supreme Court cases applying Art. I, §2 is, therefore, satisfied.

781 F. Supp. 397.

Here, the alleged deviation is easily justified by the placement of the entirety of the Northpointe industrial park in the 12th District, represented by Congressman Murtha. It is consistent with the recognition of incumbent representation with its attendant seniority that the court in *Anne Arundel* found to be a legitimate state purpose. The General Assembly when enacting the substantially similar Act 1 plan, was concerned with and careful to protect and accommodate Congressman Murtha. See e.g. LEGISLATIVE JOURNAL – SENATE (Dec. 10, 2001) at 1194, 1195, 1197 (Sen. Mellow), 1199, 1204 (Sen. Brightbill), 1199 (Sen. O'Pake), 1202-03 (Sen. Wagner), 1206 (Sen. Kasunic); LEGISLATIVE JOURNAL – HOUSE (Dec. 12, 2001) at 5, 14 (Rep. DeWeese), 10 (Rep. Rooney). In his testimony concerning the

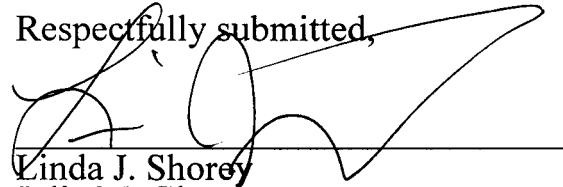
Act 1 plan, Congressman Mascara testified that the General Assembly had been responsive to Congressman Murtha's requests concerning his district. *See* Tr. Vol. III: 267 (Mascara). Representative Perzel informed the members of the House that compromise reached by the Conference Committee satisfied Congressman Murtha. LEGISLATIVE JOURNAL – HOUSE (Jan. 3, 2002) at 15 (Perzel) (Dft. Ex. 4). Accommodating Congressman Murtha provides a reasonable justification for the deviations in Districts 3 and 12.

CONCLUSION

For the reasons set forth above, the Court should conclude that the Act 34 plan remedies the constitutional violation this Court found in the Act 1 plan. The Act 34 plan is, to the extent possible, a zero population deviation plan.

October 4, 2002

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on October 4, 2002, I caused a copy of the foregoing Memorandum in Support of Motion for Leave to Present Evidence to be served on the following in the manner indicated:

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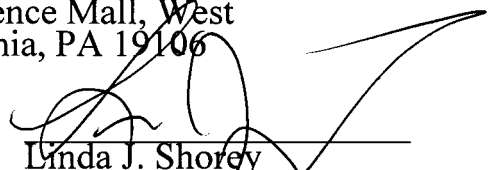
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