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

RICHARD VIETH, NORMA JEAN
VIETH, and SUSAN FUREY,

Plaintiffs,

v.

THE COMMONWEALTH OF
PENNSYLVANIA; MARK S.
SCHWEIKER, et al

Defendants.

No. 1: CV 01-2439
Judge Rambo, Judge
Yohn, Judge Nygaard

FILED
FEB 20 2002
PER [Signature]
HARRISBURG, PA DEPUTY CLERK

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION TO EXPEDITE**

Plaintiffs respectfully submit this Memorandum of Law in
Support of Plaintiffs' Motion to Expedite.

BACKGROUND

On January 11, 2002, Plaintiffs filed an Amended Complaint
for Declaratory and Injunctive Relief challenging the validity of the new
congressional districting plan that the Commonwealth of Pennsylvania
imposed in Act 1, that the General Assembly had passed on January 3. On
January 24, this Court granted Plaintiffs' motion to convene a three-judge
panel and ordered that an evidentiary hearing be conducted on Monday,

February 11, and Tuesday, February 12. On January 29, in a state case styled *Erfer v. Commonwealth*, No. 14 M.M. 2002, which challenged Act 1 as violating state and federal rights, the Pennsylvania Supreme Court ordered the Commonwealth Court to hear the *Erfer* petitioners' state claims and file findings of fact and conclusions of law with the Supreme Court by February 8, 2002. The next day, on January 30, apparently to allow time for the state court's review, this Court rescheduled its evidentiary hearing for March 11, 2002.

The Commonwealth Court conducted a hearing in the *Erfer* matter on February 1 and issued its proposed findings and conclusions on February 8. On February 7, the Pennsylvania Supreme Court denied the *Erfer* petitioners' motion to expand that court's expedited review to encompass federal constitutional claims. On February 15, the Pennsylvania Supreme Court issued a one-paragraph ruling in which it denied the petitioners' state claims. The order indicated that a majority opinion and dissenting opinion would be issued later. The state court did not hear federal law challenges to Act 1 and has stayed all proceedings in the case.

ARGUMENT

As this Court has already recognized in its original scheduling of a February 11-12 hearing, this case raises vital issues relating to Pennsylvania citizens' constitutional rights that must be adjudicated swiftly if those rights are to be protected at all. Although initially rescheduling the hearing for March 11 demonstrated appropriate deference to the state proceedings, the state courts have completed their work on the state law claims and have explicitly refused to hear any federal claims. Thus the time for deference or delay has passed.

The 2002 congressional election process has already begun, as candidates began circulating and filing nominating petitions on February 19, 2002. Once the March 12 deadline for candidates to file those petitions has passed, any remedy that this Court offers will, at a minimum, be highly disruptive to the electoral process. As there is no longer any reason for delay, and every reason for an expedited review, this Court should reschedule the hearing closer to its original date of February 11. Given the circumstances, plaintiffs propose a hearing on February 28 and March 1 (or, alternatively, March 4-5). A hearing on those dates would allow the court to rule in sufficient time to ensure only a modest disruption of the electoral

schedule (with no change in the primary date), in the event the plaintiffs are successful.

Maintaining the March 11 hearing date will cause severe harm to Pennsylvania voters. As Plaintiffs allege, although Pennsylvanians vote roughly equally for Democrats and Republicans, the Pennsylvania General Assembly devised a districting plan that will give Republicans almost three-quarters of the congressional seats. In its recommended findings of fact, the Commonwealth Court found that Act would likely give Republicans 13 or 14 of the 19 districts and that it was drawn in order to ensure that Republicans would get elected. The Commonwealth Court also found that Act 1 splits municipalities and counties throughout the state with bizarrely shaped districts. It thus can only be described as one of the worst partisan gerrymanders in history, and a test of whether the holding of *Davis v. Bandemer*, 478 U.S. 109 (1986), that partisan gerrymandering is justiciable is to have any effect at all.

Holding the hearing on March 11 makes it increasingly likely that the federal election will proceed under districts that violate federal law. *See, e.g., U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783 (1995) (expressing a national interest in having each state maintain uniform qualification requirements for congressional representatives); *Karcher v.*

Daggett, 462 U.S. 725, 732-33 (1983) (describing the strong federal interest in congressional districts). Under present circumstances and given the realities of incumbency, to wait until March 11 is to risk denying Plaintiffs their rights not only for 2002 and for the foreseeable future or, at a minimum, require a remedy that disrupts the electoral process.. As the Commonwealth Court found, the impact of Act 1 will go beyond 2002 because it will likely ensure Republican victories throughout the decade.

Moving the hearing will in no way prejudice the Defendants. Defendants have received all data that they have requested, have no outstanding discovery requests, and have deposed all expert witnesses whom Plaintiffs will call at trial. The hearing dates that we propose should cause no practical obstacle, especially considering that counsel for Defendants have by now had the opportunity to prepare a similar factual case for the state court *Erfer* proceedings.

Because the state court review on which this Court was waiting is now complete, but the constitutional challenges have not yet been adjudicated, the time is ripe for this Court to act.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Expedite should be granted.

Respectfully submitted,

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By



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Dated: February 20, 2002

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	:	
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	:	Judge Nygaard, Judge Rambo
THE COMMONWEALTH OF PENNSYLVANIA, et al	:	Judge Yohn
Defendants.	:	

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2002, I caused a true and correct copy of the foregoing document to be served upon the following counsel of record by fax transmission and first class mail, postage prepaid:

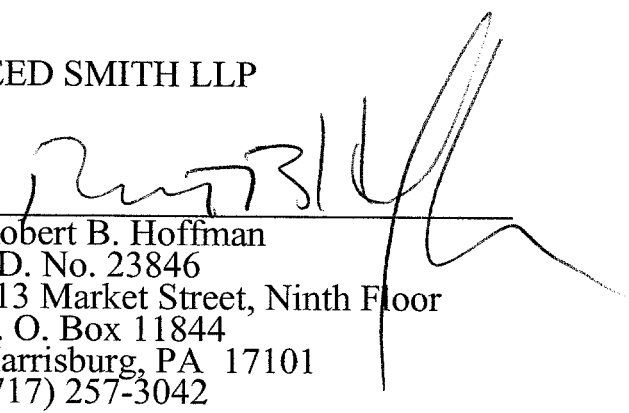
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