



**I. INTRODUCTION**

On December 20, 2002 Defendants Presiding Officers filed their Motion for Summary Judgment in this matter. Also on December 20, 2002, Defendants Governor Schweiker, Secretary of the Commonwealth Weaver, and Commissioner Filling (the “Executive Officers”) joined in the Presiding Officers’ Motion for Summary Judgment. *Amicus curiae* Senator Mellow submits this Response to the Executive Officers’ motion to respond to arguments raised primarily by the Executive Officers.

**II. ARGUMENT**

**A. 25 P.S. § 2746 DID NOT PROHIBIT THE ARMSTRONG COUNTY COURT FROM ALTERING THE BOUNDARY BETWEEN THE TWO PRECINCTS**

The Executive Officers argue that 25 P.S. § 2746 prohibited the Armstrong County Court from issuing its March 15, 2002 order (the “March 15 Order”) altering the boundary line between election districts in South Buffalo Township. *See* Defendants Governor Schweiker, Secretary Weaver and Commissioner Filling’s Joinder in the Presiding Officers’ Memorandum in Support of Motion for Summary Judgment at 2 n.1. When the Armstrong County Court issued the March 15 Order, the statute provided, in relevant part, as follows: “(a) Except as provided in subsection (b), there shall be no power to *establish, abolish, divide or consolidate* an election district during the period June 1, 2000, through April 30, 2002” (emphasis added). Thus, the language of § 2746 only prevented the court from “establish[ing],

abolish[ing], divid[ing], or consolidat[ing]” an election district during the prescribed period. *See id.*

The Armstrong County Court, however, did not “establish, abolish, divide, or consolidate” election districts. Rather, the March 15 Order altered the boundaries of existing election districts. The order neither created (“establish[ed]”) any new election districts, nor destroyed (“abolish[ed]”), split (“divide[d]”), or combined (“consolidate[d]”) any existing election districts. South Buffalo Township had the same number of election districts after the Armstrong County Court’s March 15 Order as it did before that order. Because the March 15 Order did not establish or destroy any election districts, but rather altered the boundaries between two of them, it did not violate § 2746.

Moreover, the language in § 2746(c), which directs the county boards of elections to provide maps of “any new or altered district or districts” does not add additional terms to the meaning of Section 2746. Section 2746(c) simply refers to the types of alterations enumerated in §§ 2746(a) and 2746(b), *i.e.*, only to those that establish, abolish, divide, or consolidate election districts. Thus, § 2746(c) is irrelevant here.

**B. THE ARMSTRONG COUNTY COURT DID NOT USURP THE GENERAL ASSEMBLY’S AUTHORITY TO ESTABLISH THE BOUNDARIES OF CONGRESSIONAL DISTRICTS**

The Executive Officers further argue that, even if the Armstrong County Court was not prohibited from entering the March 15 Order by 25 P.S. § 2746, the March 15 Order is a constitutionally impermissible exercise

of legislative authority. *See* Defendants Governor Schweiker, Secretary Weaver and Commissioner Filling's Joinder in the Presiding Officers' Memorandum in Support of Motion for Summary Judgment ("Executive Officers' Joinder") at 4; *see also* Presiding Officers' Memorandum in Support of Motion for Summary Judgment at 8. The Executive Officers argue that allowing "local county courts to alter congressional districts would take congressional redistricting out of the hands of the Pennsylvania General Assembly where it is constitutionally vested." Executive Officers' Joinder at 4.

This argument ignores (a) the way redistricting plans are drawn and (b) the sequence of events in this case. Redistricting plans are constructed from components – counties, municipalities, and election districts – whose boundaries are defined by state law. Indeed, it was the General Assembly that chose in Act 34 to describe each congressional district in Act 34 in terms of the counties, municipalities, and election districts that comprise it. When the General Assembly passed Act 34 in April 2002, the boundary between the two election districts in South Buffalo Township was where the Armstrong County court had placed it on March 15. By placing one of these election districts in Congressional District 3 and the other in Congressional District 12, the General Assembly created a redistricting plan with a deviation of 97 people. This deviation, however, did *not* result from the Armstrong County court changing the border between the two election districts *after* the General Assembly had drawn the congressional districts.

Rather, the border had been changed *before* the General Assembly decided to place the two election districts in different congressional districts. Thus, the Executive Officers' contention that the Armstrong County Court unconstitutionally exercised the legislative power of the General Assembly by changing the boundary between Congressional District 3 and Congressional District 12 after the General Assembly had drawn them is simply incorrect.

C. THERE IS NO LATENT AMBIGUITY IN ACT 34

The Executive Officers also argue that Act 34, while clear on its face, contains a "latent ambiguity." Executive Officers Joinder at 1-2; *see also*, Presiding Officers Memorandum in Support of Motion for Summary Judgment at 10-11. This is simply incorrect. On its face Act 34 assigns certain counties, townships, and election districts to Congressional District 3, and certain counties, townships, and election districts to Congressional District 12. Each of these political subdivisions has a legal description (*i.e.*, a description of its borders) contained in state law.<sup>1</sup> There is no doubt as to which political subdivision is assigned to which congressional district, and there is likewise no doubt as to the borders of these political subdivisions. At the request of the Armstrong County Board of Elections, the Armstrong County Court adjusted the border between two of these political

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<sup>1</sup> Moreover, because these boundaries are defined by state law, Defendants' reliance on the data provided by the Legislative Data Processing Center (the "LDP") is misplaced. The LDP does not define precinct boundaries; state law does.

subdivisions on March 15, 2002, *before* the General Assembly decided which political subdivisions to assign to which congressional districts in Act 34. The Armstrong County Court's proceedings were no secret. They were conducted in public, and the court gave notice to the public and an opportunity to object to the change. No one objected, and the court altered the border. Therefore, this Court should reject the effort of the Executive Officers, who are charged with enforcing and administering the laws, to plead, in essence, that Act 34 contains a "latent" ambiguity because the Executive Officers did not know of the Armstrong County Court's action.

D. THE MARCH 15 ORDER OF THE ARMSTRONG COUNTY COURT WAS A FINAL ORDER

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Finally, the Executive Officers argue that the March 15 Order was not a final order, and that the General Assembly therefore can overturn it by passing retroactive legislation. This argument misses the mark. The March 15 Order disposed of all claims for all parties, and was thus a final order. *See* Pa. R.A.P. 341(b) ("A final order is any order that: (1) disposes of all claims and of all parties. . . ."). No appeal was taken from the March 15 Order, and it therefore became a final judgment on April 15, 2002. *See* 42 Pa. C.S. § 5505 (court "may modify or rescind any order within 30 days after its entry . . . if no appeal from such order has been taken or allowed"); Pa. R.A.P. 903(a) (notice of appeal "shall be filed within 30 days after the entry of the order from which the appeal is taken.").


The Executive Officers nonetheless argue that the Armstrong County Court's judgment, "was not entered in an adverse or contested proceeding," and, "like a judgment entered by confession or default, was not a final order." Executive Officers' Joinder at 2 n.1. However, nothing in Rule 341, or Rule 903, or 42 Pa. C.S. § 5505 requires that a judgment must result from a contested proceeding in order to be final. Even if there were such a requirement, it is satisfied here. Unlike a judgment by confession or default in an *in personam* proceeding, the Armstrong County Court's order was entered in an *in rem* proceeding (*In re: Realignment of the Division Eastern and Western Precincts of the South Buffalo Township Election District*), in which the Board sought an adjudication as to a *res*, namely the boundary line between the two precincts in question. In such a case, the *res* itself is considered the adverse party. *See United States v. Bajakajian*, 524 U.S. 321, 330-332 (1998); *Calero-Toldeo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 682-686 (1974); *United States v. The Antoinetta*, 153 F.2d 138, 143 (3d Cir. 1945) ("The forfeiture suit is a proceeding *in rem* against the vessel and adjudicates rights against the world"). Consequently, the Armstrong County Court's order arose from an adversarial proceeding. Once the court had made an adjudication as to the *res*, and 30 days had passed without the taking of an appeal, the court's order became final. *See In Re Deed of Trust of McCargo*, 483 Pa. Super. 570, 585, 652 A.2d 1330, 1337 (1995) (court did not have jurisdiction to amend a declaratory

judgment in an *in rem* proceeding regarding a deed of trust because 30 days had passed from the issuance of the order and no appeal had been filed).

### **III. CONCLUSION**

For all the reasons stated above, this Court should reject the Executive Officers' arguments in support of Presiding Officers' Motion for Summary Judgment and should deny that motion.

Dated: January 7, 2003

  
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**CERTIFICATE OF SERVICE**

I, MARK A. PACKMAN, co-counsel for Senator Robert J. Mellow, hereby certify that on January 7, 2003, I caused to be served copies of the Memorandum of *Amicus Curiae* Senator Robert J. Mellow in Opposition to Presiding Officers' Motion For Summary Judgment, Response of *Amicus Curiae* Senator Robert J. Mellow to Presiding Officers' Statement of Material Facts in Support of Motion For Summary Judgment, and Memorandum of *Amicus Curiae* Senator Robert J. Mellow in Response to Defendants Governor Schweiker, Secretary Weaver and Commissioner Filling's Joinder in the Presiding Officers' Memorandum in Support of Motion For Summary Judgment, by fax upon the following:

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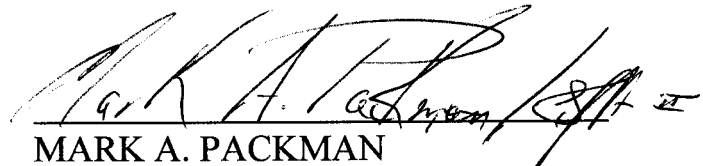
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A handwritten signature in black ink, appearing to read 'Mark A. Packman', is written over a horizontal line. The signature is stylized and includes a small mark at the end that resembles a checkmark or the number '11'.

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