

See attached

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

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

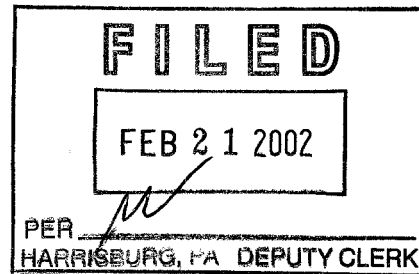
CIVIL NO. 1:CV-01-2439

Plaintiffs

v.

**COMMONWEALTH OF
PENNSYLVANIA, et al.,**

Defendants



ORDER

IT IS HEREBY ORDERED THAT Defendants Matthew Ryan and Robert Jubelirer's motion for abstention is **DENIED**.

Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: February 21, 2002.

CONCURRING OPINION¹

I join in the decision to deny the motion to abstain. I write separately only to note that ordinarily I would have voted to grant the motion to the extent of deferring action pending a decision of the Pennsylvania Supreme Court. In the unanimous decision of the United States Supreme Court in *Grove v. Emison*, 507 U.S. 25 (1993), the Court stated at various points the following:

In the reapportionment context, the Court has required federal judges to defer consideration

¹The Honorable William H. Yohn, Jr., United States District Judge for the Eastern District of Pennsylvania, authored the concurring opinion.

of disputes involving redistricting where the State through its legislative *or* judicial branch, has begun to address that highly political task itself.

. . . .
[T]he Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts

Germano requires deferral, not abstention
. The District Court erred in not deferring to the state court's timely consideration of congressional reapportionment.

507 U.S. at 33, 34, 37.

Other plaintiffs have filed an action in state court raising precisely the same federal constitutional claims as are raised in this action. *See Erfer v. Commonwealth of Pennsylvania*, 10 M.D. 2002 (Pa. Commw. Ct.). On January 29, 2002, the Pennsylvania Supreme Court granted petitioners' request that it exercise plenary jurisdiction over the *Erfer* matter under 42 Pa. Cons. Stat. Ann. § 726. The court then remanded the matter to the Commonwealth Court in accordance with petitioners' request for expedited consideration of the state constitutional claims only and directed this court to file findings of fact and conclusions of law with reference to only those claims by February 8, 2002. The Pennsylvania Supreme Court did not take any action with reference to the federal constitutional claims other than to assume plenary jurisdiction. After receipt of the findings of fact and conclusions of law by the Commonwealth Court, the Pennsylvania Supreme Court on February 15, 2002 denied the petitioners' state constitutional law claims raised in their petition. Again it made no reference to the federal constitutional claims before it. Although the Pennsylvania Supreme Court has not specifically so stated, I can

only infer that it does not intend to proceed on the federal constitutional claims and that they will remain in limbo if we do not act. Therefore, I conclude that deferral is no longer appropriate and join the order denying the motion to abstain.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

February 21, 2002

Re: 1:01-cv-02439 Vieth v. Commonwealth of PA

True and correct copies of the attached were mailed by the clerk
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cc:

Judge	(<input checked="" type="checkbox"/>)			
Magistrate Judge	()	Judge Wyaard	()	Pro Se Law Clerk
U.S. Marshal	()	Judge Yahn	()	INS
Probation	()		()	Jury Clerk
U.S. Attorney	()			
Atty. for Deft.	()			
Defendant	()			
Warden	()			
Bureau of Prisons	()			
Ct Reporter	()			
Ctroom Deputy	()			
Orig-Security	()			
Federal Public Defender	()			
Summons Issued	()	with N/C attached to complt. and served by:		
		U.S. Marshal ()	Pltf's Attorney ()	
Standard Order 93-5	()			
Order to Show Cause	()	with Petition attached & mailed certified mail		
		to: US Atty Gen ()	PA Atty Gen ()	
		DA of County ()	Respondents ()	
Bankruptcy Court	()			
Other _____	()			

MARY E. D'ANDREA, Clerk

DATE: February 21, 2002

BY:
Deputy Clerk