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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)

**FILED**  
HARRISBURG, PA  
JUN 03 2002

MARY E. D'ANDREA  
Deputy Clerk

**PRESIDING OFFICERS' STATUS REPORT**

**BACKGROUND**

On April 8, 2002, this Court declared the congressional redistricting plan in Act No. 2002-1 ("Act 1") unconstitutional under the principle of one-person, one-vote, 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."

To attain the minimum possible total population deviation between districts, the General Assembly, on April 17, 2002, passed a bill (HB 2545, PN 3726) containing a revised congressional redistricting plan for Pennsylvania. On April 18, 2002, Governor Schweiker signed the bill into law as Act No. 2002-34 ("Act

34"). Act 34 repeals Act 1 and puts in place a revised congressional redistricting plan. Defendants Jubelirer and Ryan, 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 8<sup>th</sup> 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 the commencement of remedial hearings ("Remedial Motion"). Plaintiffs' Remedial Motion attacked the validity of the Act 34 plan on the basis that it also violates the one-person, one-vote principle because of a purported change of a voting precinct boundary line in South Buffalo Township approved by the Court of Common Pleas of Armstrong County ("Armstrong County Court") on March 15, 2002. That boundary line also forms part of the boundary between the 3<sup>rd</sup> and 12<sup>th</sup> congressional districts under both the Act 1 and the Act 34 plan.

On April 23, 2002, this Court stayed its April 8<sup>th</sup> injunction, allowing the 2002 congressional elections to be conducted under Act 1, and set a hearing for May 8, 2002 "for the purpose of determining whether Act 34 suitably remedies the constitutional violation found by this court in its order of April 8, 2002." However, on May 2, 2002, this Court, after a conference call with counsel, canceled that hearing. In lieu of the hearing, this Court instructed Defendants to file a status report on the dispute caused by the Armstrong County Court's order of March 15, 2002. Defendants' status report, due by June 3, 2002, is to address:

(A) If the matter has been resolved, has the line separating the South Buffalo Township election district from the Eastern Buffalo Township election district been restored to its original configuration prior to the Armstrong County order?

(B) If the line has not been restored, did the Armstrong County order result in a movement of population between congressional districts?

(C) If the line drawn by the Armstrong County order resulted in a movement of population between congressional districts, how many people have been moved?

(D) If the Armstrong County order issue has not been resolved, are Defendants pursuing the matter through litigation?

May 2, 2002 Order at 1-2. Plaintiffs were given until June 18, 2002 to file any objections to Defendants' submission. *Id.* Presiding Officers submit this Status Report in accordance with the May 2 order.

### STATUS REPORT

#### A. Armstrong County

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 line as it existed prior to the Armstrong County Court's March 15, 2002 order.<sup>1</sup>

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<sup>1</sup> Given the action of the Armstrong County Board of Elections to recognize the congressional boundary line as that established by the precinct boundary prior to the March 15, 2002 order of the Armstrong County Court, the order cannot be said to have effected the congressional boundary line. However, after the Armstrong County Court's March 15, 2002 order, a total of 46 people did find themselves in a different precinct for other purposes.

## **B. Impact of Armstrong County Situation**

The pre-March 15, 2002 boundary line between the two voting precincts of South Buffalo Township was part of the boundary line set by the General Assembly in both Act 1 and Act 34 to separate the 3<sup>rd</sup> and the 12<sup>th</sup> congressional districts. Presiding Officers, at pages 6-9 of their Response in Opposition to Plaintiffs' Remedial Motion, explained that the Armstrong County Court order is irrelevant to the question of whether the congressional redistricting plan embodied in Act 34 complies with the one-person, one-vote principle. The action of the Armstrong County Board of Elections in seeking a boundary change was prohibited by statute. Even if the local election board could change the precinct boundary for other purposes (such as state and local elections not involving a district boundary), such a change could not affect a congressional district boundary line established by a duly-enacted statute.

After being informed of its error, the local board of elections took appropriate steps to assure proper voting, both in the May primary and for the future.

Even if it had not been promptly corrected, the Armstrong County situation would not affect the validity of the redistricting statute. The erroneous administration of a statute by public officials is not a basis for declaring the statute unconstitutional. For example, in *Ex Parte Bransford*, 310 U.S. 354 (1940), it was argued that, because appraisals of property were discriminatory and resulted in confiscatory taxation, the taxation statute was unconstitutional. The Supreme Court disagreed, explaining:

The validity of the statute itself is not involved. Variations by assessors in valuations of like property, taxable under the same statute, sufficiently marked to be discriminatory under the Constitution or valuations so large as to be confiscatory cannot properly be said to be the basis for attack on the ground of the unconstitutionality of the statute. *Such assessments, if made and if*

*invalid, are so because of a wrong done by officers under the statute rather than because of the requirement of the statute itself.*

*Id.*, 310 U.S. at 359 (emphasis added). See also *Zucht v. King*, 260 U.S. 174, 177 (1922) (allegations "that in administering the ordinance the officials have discriminated against the plaintiff in such a way as to deny to her equal protection of the laws ... do[] not go the validity of the ordinance").

Plaintiffs here are similarly arguing for the invalidity of a statute, not because the statute is itself unconstitutional, but because of an error in administration by local officials. The remedy is not to throw out the statute but to correct the manner of its local administration. This is an appropriate function for the executive branch of state government.<sup>2</sup>

Instead, Plaintiffs treated the erroneous administration of the redistricting plan as though it were a flaw in the plan itself.<sup>3</sup> The illogic of their argument is illustrated by their proposed remedy. Plaintiffs' proposed remedy, a court-drawn, statewide redistricting plan, would itself be as vulnerable to local errors in administration as any statutory plan. At any time, any one of 67 local boards of election in Pennsylvania could unbalance a court-drawn plan by doing what Armstrong County did. If this Court had drawn a redistricting plan, as plaintiffs proposed, would the Court's plan become unconstitutional if and when a similar local problem arose? Neither a court-ordered plan nor a statutory plan becomes invalid because of errors in administration. Furthermore, Plaintiffs' proposed remedy is grossly out of proportion to the alleged error: they want the court to

<sup>2</sup> Moreover, if the Commonwealth's executive branch had not acted, Plaintiffs themselves could have taken action against the local officials, either by an amended complaint in this case or in a separate suit, to effect a remedy for the alleged violation of their rights.

<sup>3</sup> Plaintiffs' Remedial Motion, in so far as it constitutes an attack on the validity of Act 34, obviously does not meet their burden under *Karcher v. Daggett* 462 U.S. 725 (1983). The motion itself shows a good faith effort by the General Assembly to enact a redistricting plan in accordance with the 2000 Census. The fact that local officials were out of step does not affect the intent of the General Assembly.

undertake a statewide overhaul of congressional districts because of a locally-initiated boundary shift in a single small township.<sup>4</sup>

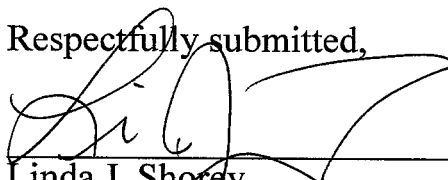
Errors in administering any plan, when they occur, should be corrected, through local administrative action, executive enforcement action or, if needed as a last resort, precisely targeted judicial relief, so that the plan is implemented in accord with the intent of its makers.

### CONCLUSION

The Court should deny Plaintiffs' Remedial Motion and direct the clerk to mark the docket for this case closed.

June 3, 2002

Respectfully submitted,



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<sup>4</sup> Even if a court-ordered plan were the appropriate remedy, this Court would be constrained to adhere as closely as possible to the statutory plan. *See White v. Weiser*, 412 U.S. 783 (1973). Accordingly, any court-drawn plan would at most merely reinstate the original precinct boundary in Armstrong County for use in congressional elections. In other words, this Court would merely do what the executive branch has already gotten the local officials to do for the May primary and for the future.

**CERTIFICATE OF SERVICE**

I certify that on June 3, 2002, I caused a copy of the foregoing Status Report to be served on the following in the manner indicated:

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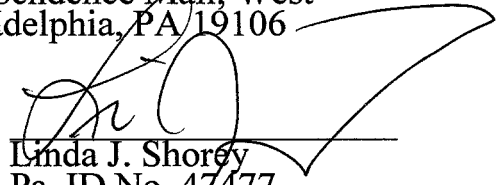
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