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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
HARRISBURG**

APR 24 2002

MARY E. DIANDREA, CLERK
Per DB
DEPUTY CLERK

**PLAINTIFFS' MOTION TO IMPOSE REMEDIAL
DISTRICTS AND, IN THE ALTERNATIVE TO
REJECT ACT 34 AND BEGIN REMEDIAL HEARINGS**

Plaintiffs hereby request that the Court either (1) impose Plaintiffs' Alternative 4 as its remedial plan or (2) proceed to draw a different plan that suitably remedies the constitutional violation found by this Court on April 8. We do so for two reasons. First, although the General Assembly has passed a new congressional districting plan – Act 34 – the Defendants, in defiance of this Court's April 8 order, have expressly refused to submit the new plan to this Court for evaluation as a potential remedy. Second, if the Court nevertheless decides to examine Act 34 as a potential remedy, it will find that the new map *exacerbates* the one-person-one vote violation and is otherwise legally improper.

INTRODUCTION

On April 8, 2002, the Court enjoined implementation of Act 1 and gave the General Assembly three weeks to pass and “submit for review and final approval by this Court” a remedial plan. On April 18, the same day that the Governor signed a new statute purporting to establish a revised congressional districting plan (Act 34), the Presiding Officers filed with this Court a brief supporting their renewed stay motion in which they expressly refused to comply with the Court’s directive regarding submission of remedial plans for judicial review. Mem. in Support of Renewed Motion for Stay, at 3 n. 2 (April 18, 2002) (“The validity of Act 34 is not before the Court, on this motion or otherwise. Act 34 is effective under its own terms. Unless Act 34 is challenged by plaintiffs, there is no case or controversy before the Court as to its validity or effectiveness.”) As Defendants have stated their intention not to present a map for the Court’s review, the Court would be fully justified in choosing to impose its own.

If the Court decides instead to take notice of Act 34 on its own, it will find a plan that does nothing to cure the violation. The General Assembly has preserved approximately 99% of Act 1. Each of the 19 districts in Act 34 contains at least 97.8% of the population of the same districts in the invalidated Act 1 plan. Although Act 34 reduces the number of precinct splits to 2,¹ it still fails to conform to the Court’s directive that “[i]f

¹ In order to connect otherwise discontinuous municipalities to the rest of their districts, Act 34 splits two precincts. The Boggs Township precinct is split between Districts 5 and 9 in an effort to connect a discontinuous piece of Knox Township. Oliver Township is similarly split between Districts 9 and 17 in order to connect a piece of

Defendants truly wanted to avoid splitting precincts, they would have done so by enacting a zero deviation map that did not split *any* precincts.” Slip op. 9 (emphasis in original). Act 34 further increases the number of county splits to 29 and carves up even more municipalities than Act 1 did (81, rather than 65). Priest Decl. (Ex. C) at para. 8. The General Assembly has thus repeated its prior decision to subordinate traditional redistricting principles in order to advance its obvious partisan goals.

It follows that, as with Act 1, there is no possible justification for any population deviation in Act 34. But Act 34 *has a larger population deviation than Act 1*. Defendants’ claim that there is no population deviation in Act 34 ignores the fact that the boundary lines between two voting districts were moved by order of a state court after passage of Act 1 but before passage of Act 34. Because of this change, when these two precincts are included in the legal descriptions of adjoining congressional districts in Act 34, there is a population deviation of 97 persons. Priest Decl. (Ex. C) at para. 6.

Act 34 is further flawed because it creates a discontinuous district, in violation of state-law principles, and because it remains one of the most egregious examples of a partisan gerrymander in American politics. Act 34 makes 16 of the 19 districts *less* compact than they were even under Act 1.

Newport Borough with the rest of its district. See Act 34, § 301(5) (splitting Boggs Township by census blocks); *id.* at § 301(9) (splitting Oliver Township by block and tract); Priest Decl. (Ex. C) at para. 7.

This Court should refuse to accept it and should instead order Plaintiffs' Alternative Four into effect immediately.

ARGUMENT

I. AS DEFENDANTS DO NOT INTEND TO PRESENT A VALID PLAN, THIS COURT SHOULD IMPOSE A PLAN OF ITS OWN

The Court's April 8 Order was unambiguous. Besides enjoining the running of any election under Act 1, the Court – in an act of comity – offered the General Assembly the chance to remedy the violation.

(3) The Pennsylvania General Assembly shall, 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.

Order (emphasis added). Defendants' footnote 2, however, makes clear their intention not to conform with the Court's Order.

Defendants assert no ground for their refusal to comply, perhaps because there is no legal justification for their position. It is axiomatic that parties must comply with orders of a Federal Court regardless of their view of the order's merits. *See Walker v. City of Birmingham*, 388 U.S. 307 (1967).

Even if a party *were* free to disregard an order that is beyond a court's jurisdiction, the present Order was nothing of the sort. Remedial jurisdiction is a routine exercise of a Federal Court's judicial power. This authority is recognized on a wide range of issues, from school desegregation, *see, e.g., Milliken v. Bradley*, 433 U.S. 267, 279 (1977) (noting broad scope of

Federal Court's powers in its remedial jurisdiction); *Freeman v. Pitts*, 503 U.S. 467, 489-90 (1992) (ruling that District Court has discretion to determine length of judicial oversight), to treaty rights, *see Washington v. Washington State Fishing Vessel Ass'n*, 443 U.S. 658, 672 n.19 (1979) (noting that District Court "has retained continuing enforcement jurisdiction over the case" and ruling that District Court could require State to impose regulations conforming to its order).

The Supreme Court has specifically recognized this remedial authority in the redistricting context, as well. In *Burns v. Richardson*, 384 U.S. 73 (1966), the Supreme Court explicitly recognized that District Courts can require States to submit remedial plans for review. After the District Court there struck down Hawaii's legislative reapportionment scheme, it required proposed remedies to be submitted for judicial review. Although the Supreme Court there ultimately disagreed on the merits with the District Court's decision to reject the remedial proposals, there is no hint that the Supreme Court found this procedure to be other than strictly routine. *See id.* at 78-82. *See also Scott v. Germano*, 381 U.S. 407, 409 (1965) (remanding to District Court with order to "retain jurisdiction . . . and in the event a *valid* reapportionment plan for the State Senate is not timely adopted it may enter such orders as it deems appropriate"). The Court's equitable power to retain jurisdiction over remedial proceedings, and to evaluate proposed remedies, is simply an unobtrusive way to protect the Federal interest in fast-

approaching Federal elections while allowing States the opportunity to correct their constitutional violations.

Defendants refuse to recognize the deference that this Court has shown to the Commonwealth's interests. With its Order, the Court deferred Plaintiffs' request to devise a new redistricting plan "pending compliance by the Pennsylvania General Assembly with this order." As the Defendants have made clear that the General Assembly will not so comply, Plaintiffs respectfully renew their request. Moreover, as discussed below, Act 34, like Act 1, is itself unconstitutional and cannot serve as the basis for the November elections.

II. ACT 34 VIOLATES ONE-PERSON, ONE-VOTE.

Should the Court decide to evaluate Act 34 as a potential remedy, the Defendants' refusal to present it notwithstanding, it will find that the Act in fact exacerbates the constitutional violations of Act 1. Despite Defendants' statements to the contrary, their Act 34 fails to achieve population equality. Although their plan purports to "zero out" Act 1's deviation, it does so based on census figures drawn from election districts² that were modified by court order several weeks ago. The result is a total population deviation of 97.

Before the General Assembly approved the modified Act 34, the Court of Common Pleas of Armstrong County ordered four census blocks

² Pennsylvania law refers to "election districts" where many other states use the term "precincts." To avoid confusion, this document uses the term "election districts" consistently with Pennsylvania law, and "congressional districts" or "districts" to refer to congressional districts.

moved from one election district to another (Exh. A), a move that put all of the Northpointe Industrial Park into the district of Representative John Murtha, who happened to be one of the few Democratic incumbents who was not threatened by the Republicans' redistricting efforts.³ See Michael Miller, Northpointe Now Murtha's, *Leader Times*, Mar. 18, 2002 (Exh. B). The press account indicates that the change was intended to correct a "mistake" and to ensure that Congressman Murtha retained all of the industrial park in his district. The change was apparently in accordance with the wishes of Congressman Murtha and a Republican Member of Congress, and at least one Republican state senator.

The Court of Common Pleas of Armstrong County's order of March 15, 2002 changed the boundaries between the Western Election District and the Eastern Election District of the South Buffalo Township.⁴ In addition to ensuring that the industrial park would be in Congressman Murtha's district,

³ Defendants have asserted in their Supreme Court stay papers that Act 1 aimed to create a "customized, safe Democrat seat created for the state's senior congressman," Congressman Murtha. Application for Stay of the Order of the Three-Judge Court For the United States District Court for the District of Pennsylvania, at 6 (Apr. 16, 2002).

⁴ The Pennsylvania Courts of Common Pleas have broad authority to adjust the boundaries of districts "so as to suit the convenience of the electors and to promote the public interest." 25 Pa. Stat. § 2702. This is limited only by a requirement that townships not be combined in creating election districts. 25 Pa. Stat. § 2701. Another statute purports to limit certain powers during the period June 1, 2000, through April 30, 2002. 25 P.S. § 2746. That statute only limits the power to "establish, abolish, divide, or consolidate" election districts. As the Court of Common Pleas impliedly recognized, it does not affect state courts' power to "alter the bounds of any election district" as provided in 25 Pa. Stat. § 2702. Here, no election district was established, abolished, divided, or consolidated, as the number of election districts remained unchanged; but the boundaries of two adjoining election districts were altered, pursuant to § 2702.

however, the order had the effect of moving 49 people from the Western Election District, which is in Act 34's District 3, to the Eastern Election District, which is in Act 34's District 12. Priest Decl. (Ex. C) at paras. 3-6. District 3's population under the new plan is 646,323. District 12's population is 646,420. *Id.* Act 34 thus has a total deviation of 97 persons – more than five times the deviation of Act 1. *Id.*

It is noteworthy that the order issued by the Court of Common Pleas affects the population only of congressional districts drawn so as to split South Buffalo Township. In any map where both election districts from that township are placed in the same congressional district, the change has no effect. Plaintiffs' Alternative Four map, as introduced at trial, does not split South Buffalo Township and therefore was unaffected by the change. Accordingly, it remains a one-person deviation map, the minimum deviation possible. Alternative Four continues to establish that a map with smaller deviation was possible and thus that Act 34 is unconstitutional.

This is not a case of the General Assembly having less-than-perfect factual information. Plaintiffs do not claim that the General Assembly should have used updated census data or should have corrected for known undercounts or shifts in population. Rather, Act 34 is invalid for the same reason that the Court struck down Act 1: Under its own legal definition, which lists the election districts placed in each congressional district, it violates the Constitution's one-person, one-vote requirement. As this Court already found with Act 1, there are no legitimate grounds on which to justify

any population deviation greater than one person. Republicans should not be permitted to have their cake and eat it too; that is, they cannot both alter election districts to obtain particular political results (in this case, helping one of the only favored Democrats under Act 1) *and at the same time* ignore the one-person, one-vote violations that those alterations create. The violation cannot be permitted to continue.

III. **ACT 34 IS INVALID UNDER STATE LAW AND MUST BE STRUCK DOWN**.

A second flaw in Act 34 is that one of its congressional districts is not contiguous, thus failing to comply with one of the most basic principles of redistricting. In its initial efforts to modify Act 1, the General Assembly originally enacted a redistricting plan that was not contiguous in four places – it created four “islands” that were unconnected to the districts in which they supposedly were placed. *See* Perzel Amendment A1462 to H.B. 2545, P.N. 3683 (passed Apr. 15, 2002); Brightbill Amendment to S.B. 1234, P.N. 1901 (passed Apr. 15, 2002); Priest Decl. (Ex. C) at 11. The General Assembly managed to cure three of those, but, under Act 34, a portion of Birmingham Township in District 16 is geographically submerged within District 7, at no point connected to the rest of District 16. Priest Decl. (Ex. C) at 11. It is impossible to drive, walk, or swim from one part of District 16 to the other part without leaving the district – or leaving the Commonwealth. This discontinuity could serve no possible legitimate state interest, for as Chester County is among the 29 counties that Act 34 already

splits, the General Assembly could have left District 16 contiguous without even increasing the number of split counties.

The discontinuous district contravenes established state policy, as embodied in the state constitution. *See* Pa. Const. art. II, § 16 (requiring that state legislative districts be contiguous). Although the constitutional provision at issue refers only to state legislative districts, courts have the power to look to state law governing legislative districting when a state is otherwise silent on its policy with respect to congressional districts. *See Shaw v. Hunt*, 517 U.S. 899, 934-35 (1996) (Stevens, J., dissenting) (treating a provision of the North Carolina Constitution requiring contiguity in state legislative redistricting as establishing a state redistricting policy that would also apply to congressional redistricting). This Court has previously looked to Pennsylvania state policy when considering constitutional challenges to congressional districting plans. *See Nerch v. Mitchell*, No. 3:CV-92-0095, slip op. at 32 (M.D. Pa. Aug. 13, 1992) (three-judge court) (applying policies announced by the state court to congressional districts).

Here, where the Court is evaluating a proposed remedy for an already adjudicated constitutional violation and its discretion is correspondingly broader, the discontinuity should not be ignored. There is no point in approving a map that violates Pennsylvania law. Were the time pressures not so great, it might be appropriate for this Court to defer the matter while the state judiciary system resolved any issues of state law. *See R.R. Comm'n v. Pullman Co.*, 312 U.S. 496, 498-501 (1941). Because the federal election

is close at hand, however, and there is little time to engage in another complete round of litigation, this Court should utilize its power under *Grove v. Emison*, 507 U.S. 25 (1993), and take full control of the litigation.

IV. ACT 34 REINSTATES ACT 1'S UNCONSTITUTIONAL POLICIES.

This Court has no reason to endorse the General Assembly's proposed remedy and has every reason to reject it. Act 34 increases population deviation and still fails to further any legitimate goals. Act 34 is no more than a slight revision of Act 1. When one compares the two plans, the districts are between 97.81% and 100% identical to the plan just struck down.⁵

The districts of Act 34 are also less compact than the districts of Act 1, which the Court described as "the plan which contains the least compact districts" of those submitted at trial. Slip op. 9. Of Act 34's 19 districts, only District 3 is made more compact than it was in Act 1, and it improves only by .003 on a scale ranging from zero to 1.000. Two other districts stay

⁵ The new districts show that the Commonwealth made no effort to create a new districting plan. The new districts retain the following percentages of the unconstitutional Act 1's populations: District 1, 99.54%; District 2, 99.83%; District 3, 99.64%; District 4, 99.31%; District 5, 99.31%; District 6, 97.81%; District 7, 99.83%; District 8, 100.00%; District 9, 97.99%; District 10, 99.90%; District 11, 100.00%; District 12, 99.50%; District 13, 99.50%; District 14, 99.77%; District 15, 99.47%; District 16, 98.72%; District 17, 98.67%; District 18, 99.11%; District 19, 99.42%. Priest Decl. (Ex. C) at 10.

the same, and each of the remaining 16 districts is made less compact.⁶ As bad as Act 1 was, Act 34 is worse.

As the Court has previously held, there was no justification for the lines drawn in Act 1 other than partisan politics. The grotesque configurations of Act 1 are wholly carried over into Act 34, as are the egregiously partisan goals animating their design. Thus, the mushroom cloud that emerges from the 400-foot wide "Greenwood Gash," used to submerge a heavily Democratic community of Montgomery County into the heavily Republican District 8, and the dragon-shaped District 6 remain in Act 34. And Act 34 continues the multiple pairings of Democratic incumbents and the 13-to-6 or 14-to-5 advantage that Republicans could likely gain even while winning less than half of the popular vote statewide.

Republican leaders are not shy about discussing this strategy. Speaking on the House floor, Majority Leader John Perzel bragged that Act 34's only political change was packing more Democrats into one of Act 1's few safe Democratic districts -- Congressman Murtha's already-packed District 12 -- thus making the "open" District 18 *more Republican*. See Transcript of Floor Debate on Bill on Concurrence in Senate Amendments

⁶ The following districts are made less compact under Act 34, using the perimeter-to-area measure of compactness (measure 4 on Ex. 2 to Priest Decl. (Ex. C)): District 1 (0.068 to 0.065); District 2 (0.165 to 0.163); District 4 (0.252 to 0.225); District 5 (0.227 to 0.190); District 6 (0.90 to 0.079); District 7 (0.172 to 0.166); District 9 (0.126 to 0.099); District 10 (0.182 to 0.161); District 12 (0.053 to 0.047); District 13 (0.104 to 0.093); District 14 (0.098 to 0.090); District 15 (0.222 to 0.178); District 16 (0.221 to 0.216); District 17 (0.301 to 0.233); District 18 (0.063 to 0.055); District 19 (0.388 to 0.348). District 8 (0.319) and District 11 (0.243) remain the same. Only District 3 (0.142 to 0.145) is made more compact. Ex. 2 to Priest Decl. (Ex. C).

(unofficial) at 5 (Apr. 17, 2002) (statement of Rep. Perzel) (Ex. D). The Republican County Chairman of Berks County, Larry Medaglia, Jr., described their strategy perfectly. Speaking to reporter Don Kaiser, Medaglia said, "We in Berks County, the Republican Party in Berks County couldn't defeat [Democrat] Tim Holden the old fashioned way, so this is the route we are going and that's what it boils down to." He went on to explain the effect that this would have on voters, saying, "When you look at it from a totally partisan perspective I can understand why they are doing what they're doing, but it doesn't make it any easier to explain to your citizens here in Berks County why we're carved up. If it's any consolation, take a look at Montgomery County, which is carved into 6 or 7 pieces." Interview with Berks County Republican Chairman Larry Medaglia, Jr., *WFMZ-TV 10:30 69News: Berks Edition* (WFMZ television broadcast, Apr. 16, 2002) (tape available for the Court's review).

To that end, understanding that this Court's prior ruling may dispose of this claim as well, Plaintiffs respectfully renew their claim that Act 34 be struck down as an unconstitutional partisan gerrymander.

V. THE COURT SHOULD NOT PUT ITS IMPRIMATUR ON THIS PLAN AND SHOULD IMMEDIATELY COMMENCE REMEDIAL PROCEEDINGS TO ADOPT A NEW, FULLY CONSTITUTIONAL PLAN.

Because of the legal flaws in Act 34, it is time for the Court to devise its own constitutional remedy. No authority even suggests that a legislature,

having responded to an opportunity to enact a remedial plan with a map that worsens the constitutional violation, should be given a third chance.

“Once a constitutional violation has been found, a District Court has broad discretion to fashion an appropriate remedy.” *Karcher v. Daggett*, 466 U.S. 910, 910 (1984) (Stevens, J., concurring). The Supreme Court made this clear in *Karcher*, where, following a finding of a one-person, one-vote violation in *Karcher v. Daggett*, 462 U.S. 725 (1983) (*Karcher I*), the District Court granted the State time in which to enact a remedial plan. *See Daggett v. Kimmelman*, 580 F. Supp. 1259, 1260-61 (D.N.J. 1984). Both chambers of the state legislature then adopted a remedial plan within the relevant time frame, but the Governor vetoed it. The District Court then *rejected* the legislature’s plan in favor of a different plan that better conformed to traditional redistricting principles. *See id.* at 1262 (“The most glaring defects in the [original plan], however, are carried forward in [the legislature’s proposed remedial plan]. These are an obvious absence of compactness, and an intentional gerrymander in favor of certain Democratic Representatives.”). Although the legislature’s proposed remedial plan in that case lacked the imprimatur of the Governor’s signature, the District Court’s message was clear: “We owe no deference to an unconstitutional state statute.” *Id.* at 1263. A policy of furthering partisan advantage deserves no deference. *See id.*

The Supreme Court agreed with the District Court, both in rejecting an application for a stay, *Karcher v. Daggett*, 466 U.S. 910 (1984) (*Karcher*

II), and in affirming the District Court's decision and order, *Karcher v. Daggett*, 467 U.S. 1222 (1984) (*Karcher III*). Justice Stevens's concurrence in *Karcher II* explicitly approved of the District Court's consideration of traditional districting principles when evaluating the legislature's plan, as well as of its "efforts to inhibit gerrymandering." *Id.* at 910-11; *see also White v. Weiser*, 412 U.S. 783, 797 (1973) (emphasizing that district court should defer to a State's plan only because the state policy of *preserving* incumbents was consistent with constitutional norms and not vulnerable to legal challenge).

The only alternative at this point is for the Court to impose a new set of congressional districts that conform to the one-person, one-vote rule of *Karcher v. Daggett*, 462 U.S. 725 (1983), and reflect traditional and neutral districting principles. The Plaintiffs' Alternative Four, which was submitted at trial and gives Republicans a likely 10-9 advantage, satisfies these criteria. The Court also has the authority to draw its own districts for the Commonwealth. Either of these solutions would be preferable to the grotesque plan that the General Assembly has offered in response to the Court's order. That plan should be rejected.

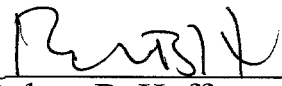
CONCLUSION

For the foregoing reasons, the Court should reject the modified version of Act 1 and impose a remedial plan that fulfills constitutional requirements and reflects traditional and neutral districting criteria.

Respectfully submitted,

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Dated: April 22, 2002

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P. 05/06

LEADER TIMES

Northpointe now Murtha's

By Michael Miller
LEADER TIMES
Monday, March 18, 2002

KITTANNING - Northpointe Industrial Park at Slate Lick now belongs to U.S. Rep. John Murtha, D-12th, again.

Armstrong County President Judge Joseph Nickleach on Friday approved a petition by the county to redraw a voting precinct in South Buffalo Township to include the park in Murtha's district, after it had been cut in half during redistricting.

"Northpointe is now whole," said County Commissioner James Seahill.

During the complex redistricting process this past winter, Northpointe was mistakenly divided - with the western half, where all the current development is, going to Rep. Phil English, R-3rd, and the eastern portion to Murtha.

Murtha provided much of the funding and support for the development of Northpointe.

The new eastern precinct of South Buffalo now includes those areas east of Old Route 28 and north of Vandyke Road.

"It corrects an honest mistake by our (state) senator and other legislators in Harrisburg," Seahill said.

Sen. Don White, who took responsibility for the mistake when redistricting occurred, was pleased with the decision, according to spokesman Joe Pittman.

"The senator is very pleased with the court's decision and fully supports it," Pittman said. "We're just glad it was able to come to a good conclusion."

"The best interest of the county was served," Seahill added.

Commissioner Homer Crytzer, who also attended the petition hearing, said no one had filed any objections to the proposed change.

The change also had the full endorsement of English, who will lose that portion of the park drawn out of his map with the change.

"He had no problem with that," Seahill said.

"I appreciate the efforts of the Armstrong officials who worked on this change," Murtha said in a statement yesterday.

"They understand the impact that we've had in bringing new jobs and development, and they want to make sure that nothing happens that might in any way undermine Armstrong County's opportunities down the road," Murtha added.

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Murtha and another Democratic incumbent, Frank Mascara of Charleroi, will be vying for the nomination in the 12th District.

Michael Miller can be reached at mmiller@tribweb.com or (724) 543-1303 ext 219.

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P. 003

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Mar. 28 2002 05:25PM P1

IN RE: REALIGNMENT OF THE : IN THE COURT OF COMMON
 DIVISION EASTERN AND WESTERN : PLEAS OF ARMSTRONG COUNTY,
 PRECINCTS OF THE SOUTH BUFFALO : PENNSYLVANIA CIVIL ACTION-LAW,
 TOWNSHIP ELECTION DISTRICT : MISCELLANEOUS NO. 2002- 0081 -MIX.

ORDER OF COURT

AND NOW, the 15th day of March, 2002, it appearing to the Court that a Petition was duly filed at the above captioned matter by the County Election Board of the County of Armstrong for the line alteration involving the South Buffalo Township Election Districts and also appearing to the Court that the County Election Board, pursuant to this Court's Order dated February 20, 2002, has given at least seven (7) days notice, by posting, a public notice, in at least seven (7) public and conspicuous places in the district affected thereby as shown by the Affidavit filed in this matter, and that Notice has been given by publication, once in the Armstrong County Legal Journal and once in the Valley News Dispatch pursuant to the Affidavit of Advertisement filed by the Armstrong County Solicitor; and, it further appearing to the Court that no objections have been filed by any persons nor have any persons appeared at hearing to object to the proposed realignment,

NOW THEREFORE upon Motion of James J. Panchik, Esquire, Solicitor for the County Election Board of the County of Armstrong, it is Ordered and Decreed that the existing South Buffalo Township Election Districts known as the Western Election District and the Eastern Election District shall be realigned so as to transfer a portion of the Western District to the Eastern District, said line dividing the districts shall be as follows:

BEGINNING at a point, said point constituting the intersection of SR 0028 and the Northeastern boundary line of South Buffalo Township; thence South along SR 0028 to its intersection with Old Freeport Road, known as Township Route 3017; thence continuing along TR 3017 South to Vandyke Road; thence along the said Vandyke Road East to its intersection with Township Route 404; thence along Township Route 404 South to Township Road 414; thence, along Township Road 414 to L.R. 3023, thence along L.R. 3023 Westward to P.A. Route 228; Continuing

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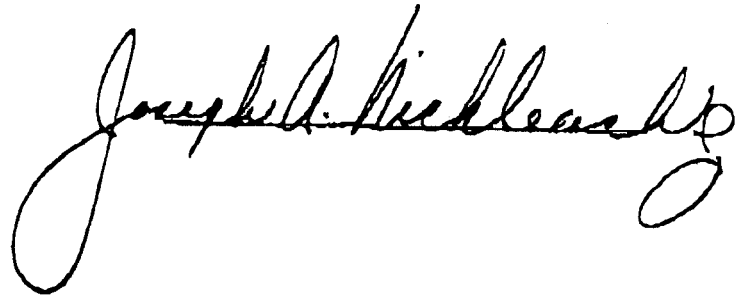
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South on PA. Route 228 to I.R. 03102 Westward to Township Road 352; thence South to Township Road 389; thence, East on said Township Road returning to PA. Route 228; thence continuing along Route 228 South to PA. Route 128, thence along Route 128 to Township Road 856; thence, following said Township Road to a point where it rejoins PA. Route 128 at the Freeport Borough Line.

All that area lying West of said line to become known as South Buffalo Township Western Election District and all that area East of said line to become known as the South Buffalo Township Eastern Election District. The realignment herein set forth is designated by the first three road and directional references.

A true and correct copy of the realignment is attached hereto incorporated by reference and made a part hereof.

By the Court,



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P.005

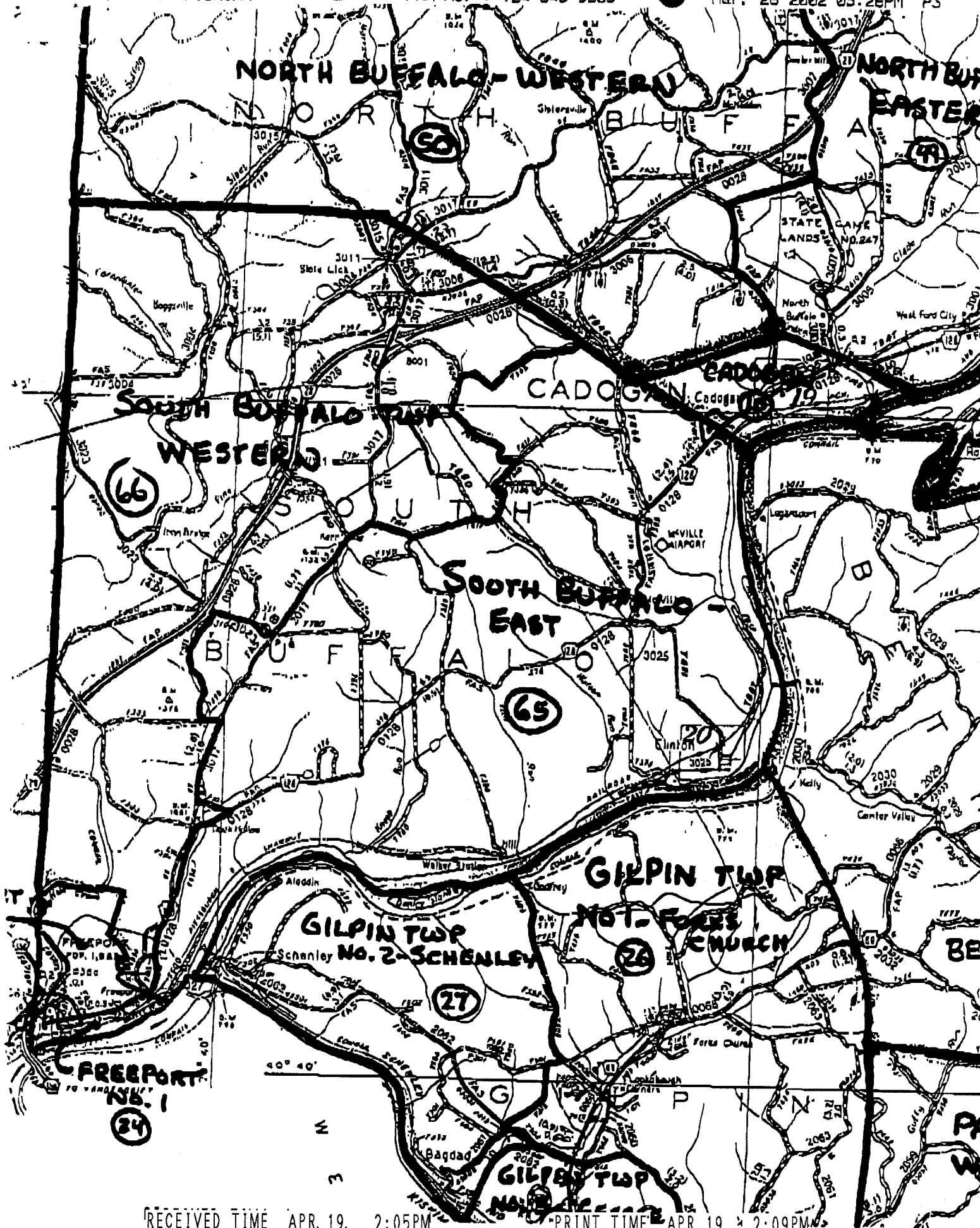
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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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

DECLARATION OF ROBERT L. PRIEST

I, Robert L. Priest, declare and state as follows:

1. I am the Technical Director of the Office of Demographic Analysis for the Democratic Caucus of the Pennsylvania House of Representatives. I testified at the trial in this case.

2. I have analyzed Act 34, which was signed by the Governor on April 18, 2002, using the same techniques as those I testified to at trial.

3. South Buffalo Township has two election precincts – the Western Election District and the Eastern Election District. South Buffalo Township is one of many split municipalities in Act 34. Under the legal definition of

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Act 34, the Western Election District is in congressional district 3 and the Eastern Election District is in congressional district 12.

4. After the passage of Act 1, but before the passage of Act 34, the boundaries of the election districts in South Buffalo Township were modified. Press accounts indicate that this change was made with the support of two members of Congress, as well as at least one state legislator.

5. By order of the Court of Common Pleas of Armstrong County, the boundaries of the Western Election District and the Eastern Election District of South Buffalo Township were altered on March 15, 2002, by moving 4 census blocks from the Western Election District to the Eastern Election District. Those four census blocks contain 49 people.

6. Thus, District 3 in Act 34 has a population of 646,323. District 12 under Act 34 has a population of 646,420. The population deviation of Act 34 is therefore 97.

7. Act 34 splits 2 precincts, one in Boggs Township and one in Oliver Township. In each case, the precinct splits serve to connect otherwise discontinuous districts. The Boggs Township precinct is split between Districts 5 and 9 in an effort to connect a discontinuous piece of Knox Township. The Oliver Township precinct is split between Districts 9 and 17 in order to connect a piece of Newport Borough with the rest of its district. I

created an exhibit that sets forth the county, municipal, and precinct splits in Act 34 which is attached hereto as Exhibit 1.

8. Act 34 splits more counties and municipalities than Act 1. Act 34 splits 29 counties (up from 25 in Act 1) and splits 81 municipalities (up from 65 in Act 1. See Ex. 1 hereto.


9. Act 34 is also less compact on average than Act 1. I used the Autobound software package to analyze the compactness of the congressional districts created by Act 34, the same software package which I used to analyze the compactness of Act 1's districts and which I testified about at trial. The nine compactness scores for Act 34 are attached hereto as Exhibit 2.

10. One can compare Act 34 and Act 1 by calculating the percentage of population in each of Act 1's districts that are carried over into Act 34. The following are the percentage of each of Act 34's districts (by population) that derive from the corresponding districts in Act 1: District 1, 99.54%; District 2, 99.83%; District 3, 99.64%; District 4, 99.31%; District 5, 99.31%; District 6, 97.81%; District 7, 99.83%; District 8, 100.00%; District 9, 97.99%; District 10, 99.90%; District 11, 100.00%; District 12, 99.50%; District 13, 99.50%; District 14, 99.77%; District 15, 99.47%; District 16, 98.72%; District 17, 98.67%; District 18, 99.11%; District 19,

99.42%. I created an exhibit that summarizes this analysis, which is attached hereto as Exhibit 3.

11. After this Court's ruling striking down Act 1, the Pennsylvania House and Senate each passed a modified version of Act 1 with congressional districts that were discontinuous in 4 places. Three of those discontinuous districts were corrected, but one remains in Act 34. Under Act 34, a portion of Birmingham Township in District 16 is wholly encompassed by District 7 and the State line, at no point connected to the rest of District 16. I have now reviewed Act 1 again and it suffered from the same problem.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Robert L. Priest

April 21, 2002

HB 2545 Amendment A1462 **U. S. Congressional**

Split Counties (29)	County Splits (42)	Piece 1	Piece 2	Piece 3	Piece 4	Piece 5	Piece 6
	Allegheny	4	12	14	18		
	Armstrong	3	12				
	Beaver	4	18				
	Berks	6	15	16	17		
	Butler	3	4				
	Cambria	9	12				
	Chester	6	7	16			
	Clearfield	5	9				
	Crawford	3	5				
	Cumberland	9	19				
	Delaware	1	7				
	Fayette	9	12				
	Indiana	9	12				
	Juniata	5	9				
	Lackawanna	10	11				
	Lehigh	6	15				
	Luzerne	10	11				
	Lycoming	5	10				
	Mercer	3	4				
	Mifflin	5	9				
	Montgomery	2	6	7	8	13	15
	Perry	9	17				
	Philadelphia	1	2	8	13		
	Somerset	9	12				
	Tioga	5	10				
	Venango	3	5				
	Warren	3	5				
	Washington	12	18				
	Westmoreland	4	9	12	18		

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HB 2545 Amendment A1462

U. S. Congressional

Split Municipalities (81) Municipal Splits (84)

County	Municipality	Piece 1	Piece 2	Piece 3	Piece 4
Allegheny	Avalon Borough	4	14		
Allegheny	East Deer Twp	4	12		
Allegheny	Etna Borough	4	14		
Allegheny	Forward Twp	12	18		
Allegheny	Neville Twp	4	14		
Allegheny	O'Hara Twp	4	14		
Allegheny	Baldwin Borough	14	18		
Allegheny	Crafton Borough	14	18		
Allegheny	Elizabeth Twp	14	18		
Allegheny	Monroeville Borough	14	18		
Allegheny	North Versailles Twp	14	18		
Allegheny	Penn Hills Twp	14	18		
Allegheny	Pitcairn Borough	14	18		
Allegheny	Robinson Twp	14	18		
Allegheny	White Oak Borough	14	18		
Allegheny	Wilkins Twp	14	18		
Armstrong	North Buffalo Twp	3	12		
Armstrong	South Buffalo Twp	3	12		
Beaver	Hanover Twp	4	18		
Berks	Bern Twp	16	17		
Berks	Earl Twp	6	17		
Berks	Hereford Twp	6	15		
Berks	Muhlenberg Twp	6	16		
Berks	Reading City	6	16		
Berks	South Heidelberg Twp	6	16		
Berks	Spring Twp	6	16		
Cambria	Susquehanna Twp	9	12		
Chester	East Bradford Twp	6	16		
Chester	Phoenixville Borough	6	7		
Clearfield	Beccaria Twp	5	9		
Clearfield	Boggs Twp	5	9		
Cumberland	Dickinson	9	19		
Cumberland	Middlesex Twp	9	19		
Cumberland	Southampton Twp	9	19		
Cumberland	West Pennsboro Twp	9	19		
Delaware	Darby Twp	1	7		
Delaware	Ridley Twp	1	7		
Delaware	Tinicum Twp	1	7		
Fayette	Connellsville City	9	12		
Fayette	Dunbar Twp	9	12		
Fayette	Georges Twp	9	12		
Fayette	Nicholson Twp	9	12		
Fayette	North Union Twp	9	12		
Fayette	South Union Twp	9	12		
Fayette	Springhill Twp	9	12		

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U. S. Congressional

Indiana	Indiana Borough	9	12		
Indiana	White Twp	9	12		
Lackawanna	Dickson City Borough	10	11		
Lackawanna	Jessup Borough	10	11		
Lackawanna	Olyphant Borough	10	11		
Lehigh	Upper Macungie	6	15		
Luzerne	Swoyersville Borough	10	11		
Mercer	Hermitage City	3	4		
Montgomery	Abington Twp	8	13		
Montgomery	Conshohocken Borough	6	7		
Montgomery	Plymouth Twp	6	13		
Montgomery	Upper Dublin Twp	8	13		
Montgomery	Upper Hanover Twp	13	15		
Montgomery	Upper Moreland Twp	8	13		
Montgomery	Whitemarsh Twp	6	13		
Montgomery	Whitpain Twp	6	13		
Perry	Newport Borough	9	17		
Perry	Oliver Twp	9	17		
Philadelphia	Philadelphia City	1	2	8	13
Washington	Canonsburg Borough	12	18		
Washington	Carroll Twp	12	18		
Washington	Charleroi Borough	12	18		
Washington	Chartiers Twp	12	18		
Washington	East Washington Borough	12	18		
Washington	Fallowfield Twp	12	18		
Washington	North Strabane Twp	12	18		
Washington	South Strabane Twp	12	18		
Westmoreland	Derry Twp	9	12		
Westmoreland	East Huntingdon Twp	12	18		
Westmoreland	Hempfield Twp	12	18		
Westmoreland	Mount Pleasant Twp	12	18		
Westmoreland	Salem Twp	12	18		
Westmoreland	Sewickley Twp	12	18		
Westmoreland	South Huntingdon Twp	12	18		
Westmoreland	Unity Twp	12	18		
Westmoreland	Washington Twp	12	18		

Precinct Splits (2)

County	Precinct	Piece 1	Piece 2
Clearfield	Boggs Twp	5	9
Perry	Oliver Twp	9	17

Wards (47)

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DISTRICT	1	2	3	4	5	6	7	8	9	AREA	PERIMETER	EQUALAREAC
01	0.140	0.427	0.140	0.065	0.255	0.375	0.017	0.131	0.121	0.018	1.888	0.255
02	0.432	0.657	0.440	0.163	0.403	0.657	0.082	0.286	0.190	0.016	1.128	0.402
03	0.412	0.599	0.412	0.145	0.381	0.641	0.143	0.379	0.349	1.336	10.753	0.381
04	0.296	0.692	0.296	0.225	0.474	0.544	0.105	0.325	0.357	0.364	4.516	0.474
05	0.377	0.836	0.377	0.190	0.436	0.614	0.155	0.394	0.411	3.097	14.316	0.436
06	0.328	0.546	0.328	0.079	0.281	0.572	0.081	0.285	0.249	0.224	5.978	0.281
07	0.507	0.686	0.554	0.166	0.407	0.712	0.189	0.434	0.372	0.080	2.467	0.407
08	0.340	0.785	0.340	0.319	0.565	0.583	0.129	0.359	0.380	0.174	2.619	0.565
09	0.265	0.693	0.265	0.099	0.314	0.515	0.104	0.322	0.391	1.973	15.876	0.314
10	0.314	0.687	0.314	0.161	0.401	0.560	0.069	0.262	0.219	1.860	12.059	0.401
11	0.283	0.712	0.283	0.243	0.493	0.532	0.068	0.260	0.239	0.624	5.681	0.493
12	0.217	0.537	0.217	0.047	0.216	0.466	0.023	0.153	0.108	0.762	14.343	0.216
13	0.192	0.594	0.192	0.093	0.306	0.438	0.033	0.182	0.173	0.071	3.083	0.305
14	0.303	0.689	0.303	0.090	0.300	0.550	0.079	0.280	0.260	0.047	2.549	0.300
15	0.309	0.584	0.313	0.178	0.422	0.556	0.114	0.338	0.370	0.235	4.066	0.422
16	0.332	0.722	0.332	0.216	0.465	0.576	0.153	0.391	0.460	0.362	4.599	0.464
17	0.289	0.723	0.289	0.233	0.482	0.538	0.091	0.302	0.316	0.655	5.950	0.482
18	0.230	0.568	0.236	0.055	0.235	0.479	0.033	0.181	0.143	0.394	9.474	0.235
19	0.323	0.838	0.323	0.348	0.590	0.568	0.154	0.393	0.478	0.455	4.052	0.590

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HB2545 Act 1	TOTPOP		HB2545 Act 1	TOTPOP	
1 1 Total	643,426	99.54%	10 5 Total	622	
1 2 Total	1,087		10 10 Total	645,749	99.90%
1 13 Total	1,858		10 Total	646,371	
1 Total	646,371				
2 1 Total	1,097		11 11 Total	646,372	100.00%
2 2 Total	645,274	99.83%	11 Total	646,372	
2 Total	646,371				
3 3 Total	644,539	99.72%	12 9 Total	1,483	
3 12 Total	1,833		12 12 Total	640,822	99.14%
3 Total	646,372		12 18 Total	4,066	
			12 Total	646,371	
4 3 Total	1,825		13 1 Total	1,838	
4 4 Total	644,032	99.64%	13 13 Total	643,158	99.50%
4 14 Total	514		13 15 Total	1,376	
4 Total	646,371		13 Total	646,372	
5 5 Total	641,897	99.31%	14 14 Total	644,887	99.77%
5 9 Total	3,849		14 18 Total	1,484	
5 10 Total	625		14 Total	646,371	
5 Total	646,371				
6 6 Total	632,208	97.81%	15 6 Total	1,771	
6 7 Total	1,121		15 15 Total	642,938	99.47%
6 13 Total	1,240		15 17 Total	1,662	
6 15 Total	2,181		15 Total	646,371	
6 16 Total	8,207				
6 17 Total	1,414		16 6 Total	5,888	
Total	646,371		16 16 Total	638,114	98.72%
			16 17 Total	2,369	
7 6 Total	1,113		16 Total	646,371	
7 7 Total	645,259	99.83%			
7 Total	646,372		17 6 Total	5,442	
			17 9 Total	3,143	
8 8 Total	646,371	100.00%	17 17 Total	637,786	98.67%
8 Total	646,371		17 Total	646,371	
9 5 Total	3,852		18 4 Total	2,390	
9 9 Total	633,408	97.99%	18 12 Total	2,358	
12 Total	1,576		18 14 Total	977	
17 Total	3,130		18 18 Total	640,646	99.11%
19 Total	4,406		18 Total	646,371	
Total	646,372				
			19 9 Total	3,730	
			19 19 Total	642,641	99.42%
			19 Total	646,371	

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

RICHARD VIETH, NORMA JEAN
VIETH et al

Plaintiffs,

v.

THE COMMONWEALTH OF
PENNSYLVANIA, et al
Defendants.

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

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 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:

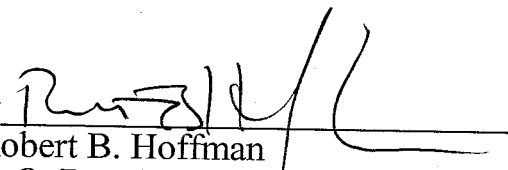
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