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

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

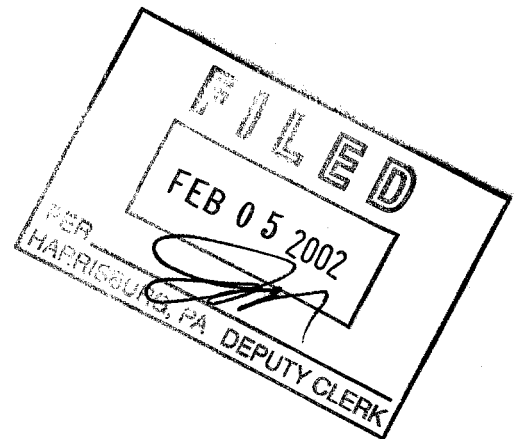
Plaintiffs,)

v.)

THE COMMONWEALTH OF PENNSYLVANIA; MARK S. SCHWEIKER, in his official capacity as Governor of Pennsylvania; KIM PIZZINGRILLI, in her official capacity as Secretary of the Commonwealth of Pennsylvania; RICHARD FILLING, in his official capacity as Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State; ROBERT C. JUBELIRER, in his official capacity as Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate; MATTHEW J. RYAN, in his official capacity as Speaker of the Pennsylvania House of Representatives,)

Defendants.)

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



**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANTS' MOTION TO ABSTAIN**

Plaintiffs respectfully submit this Memorandum of Law in Opposition to Defendants' Motion to Abstain.

BACKGROUND

Plaintiffs filed a complaint in this lawsuit on December 21, 2001, challenging Pennsylvania's congressional redistricting under the United States Constitution. Following the state legislature's enactment of the plan ("Act 1") on January 3, 2002, Plaintiffs filed an Amended Complaint for Declaratory and Injunctive Relief challenging the validity of the new districting plan on January 11, 2002. By separate orders on January 24, 2002, 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, 2002. Defendants Lieutenant Governor Jubelirer and Speaker Ryan filed a Motion to Abstain in this Court on January 24, 2002. On January 28, 2002, Defendants Lieutenant Governor Jubelirer and Speaker Ryan filed a motion for reconsideration and *vacatur* of this Court's January 24 Order scheduling an evidentiary hearing. In its Order of January 30, 2002, this Court granted that motion, rescheduling the evidentiary hearing for March 11, 2002.

ARGUMENT

The core of defendants' abstention argument was that before this Court acted on the pending Amended Complaint, it should wait for the state court to act. During the Conference call with the parties, the Court was

advised that the state courts were moving expeditiously on the matter before it and, indeed, a hearing was held February 1.

Plaintiffs understand the Court to have responded to that argument by postponing the dates of the previously-scheduled evidentiary hearing by one month, during which time the Pennsylvania Supreme Court will almost inevitably rule on the challenges to Act 1 raised by the plaintiffs in *Erfer v. Commonwealth*. "The motion to abstain is therefore largely if not entirely moot.

Plaintiffs nevertheless file this response to request that this Court should proceed as expeditiously as possible to adjudicate their federal claims after the state courts have acted. Because of the extraordinary time sensitivity of this case, Plaintiffs respectfully request that this Court proceed on an expedited basis once the Pennsylvania Supreme Court's review of Act 1 is completed. If the Pennsylvania Supreme Court upholds Act 1, there is no reason for this Court to delay its review of Plaintiffs' claims in this case. Indeed, any delay beyond what is necessary to allow the Pennsylvania Supreme Court to rule in *Erfer v. Commonwealth* may very well render ineffective any remedy this Court may later seek to provide. The 2002 election process will begin on February 19, 2002, the opening date for circulating and filing nomination petitions; the closing date is March 12,

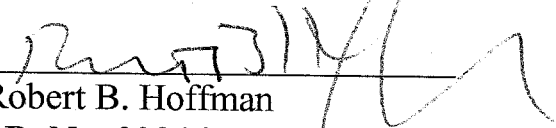
2002. Once the process begins, it may be too late to fully cure the injury that would result from proceeding under an unconstitutional districting plan.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Abstain should be denied.

Respectfully submitted,

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