



The issues currently before the Court are purely legal ones: whether there are any population deviation among the congressional districts created in Act 34, and whether those deviations are constitutionally justified. The facts relevant to those issues have never been contested. With their April 22, 2002 Motion to Impose Remedial Districts, plaintiffs submitted the declaration of Mr. Priest, which identified the population affected by the Armstrong County Court's March 15, 2002 order and the resulting 97 person deviation among the congressional districts in Act 34. Although defendants continue to dispute that Act 34 incorporated the precincts as they existed at the time of its enactment, they have never challenged the basic fact that the Order moved over 40 people from one election precinct to another.

Indeed, both sets of defendants have had three separate opportunities to contest the facts and figures reported in Mr. Priest's declaration – in their responses to plaintiffs' Motion to Impose Remedial Districts and in their First and Second Status Reports. Far from challenging the population shifts that would result from the Armstrong County Court's order, the defendants have *confirmed* that the order shifted people from one precinct to the other, almost exactly as Mr. Priest asserted. Defendants' view of the facts differs from that of Mr. Priest only on whether the number of people affected is 49, as stated in Mr. Priest's declaration, or 46, as defendants state. *See, e.g.*, Presiding Officers' Status Report at 3 n.1 (“[A]fter the Armstrong County Court's March 15, 2002 order, a total of 46 people did find themselves in a different precinct . . .”); Executive Officers' Status Report at 3 (“The order of the Armstrong County Court of Common Pleas

affected 46 persons.”); Executive Officers’ Second Status Report at 4 (“The original order of the Armstrong County Court of Common Pleas affected 46 persons.”). Either way, incorporating into Act 34 the precinct changes made by the Armstrong County Court order results in a population deviation more than four times larger than the unconstitutional 19-person deviation in Act 1.<sup>1</sup>

In their motion, defendants assert a claimed right to test the assumptions underlying Mr. Priest’s factual conclusions. But they never challenge the conclusions themselves and, as noted above, have not done so to date.<sup>2</sup> Surely, with access to the same census and legislative data over a period of many months, and having made three separate Court filings on this issue, defendants have had ample opportunity to question the basic averments in Mr. Priest’s declaration. Indeed, this Court’s Orders of May 2, 2002 and June 19, 2002 directed the defendants to submit status reports precisely on these factual issues. *See* Order, May 2, 2002 (directing defendants to file status report addressing, *inter alia*, “If the [precinct] line has not been restored, did the Armstrong County order result in a movement of population between congressional districts,” and, if so, “how many people have been moved?”); Order, June 19, 2002 (same). Given that plaintiffs do not intend to present live testimony at oral argument on the limited, undisputed factual issues in the case,<sup>3</sup> and given that defendants agree that over 40 people

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<sup>1</sup> Assuming it incorporates the Armstrong County Court’s order, Act 34 has a 97-person deviation if the new precinct boundaries affected 49 people, and a 91-person deviation if 46 people were affected.

<sup>2</sup> At best, defendants can state only that they “may or may not stipulate to portions of Mr. Priest’s affidavit.” Defs’ Mot. to Conduct Discovery at 3.

<sup>3</sup> As noted below, plaintiffs reserve the right to call witnesses if defendants refuse to stipulate to the basic facts in this case or if the Court issues an order permitting defendants to present live testimony.

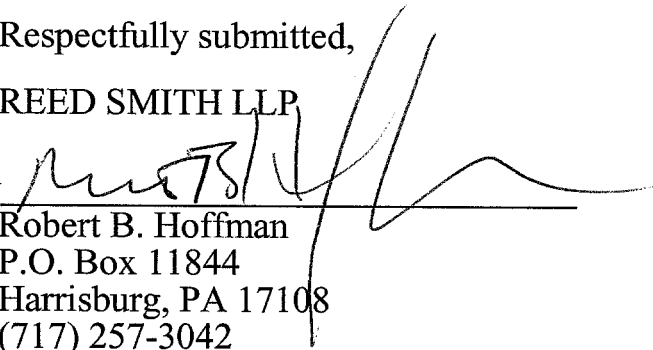
were affected by the Armstrong County Court's order, there is no need to depose Mr. Priest about those basic facts.<sup>4</sup>

Plaintiffs believe that all relevant facts in this case either have been presented to the Court in the parties' previous filings or can be resolved through stipulations. However, if on proper motion pursuant to the Court's September 13, 2002 order, defendants persuade the Court that live witness testimony is necessary at the October 15, 2002 oral argument, plaintiffs agree that witnesses for *all* parties – including Mr. Priest, if necessary – should be made available for deposition prior to October 15, 2002.

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<sup>4</sup> Apart from testing the facts stated in Mr. Priest's declaration, defendants offer little justification for taking his deposition. Of course, it would be unduly burdensome and highly improper to depose Mr. Priest prior to oral argument simply to fish for unspecified deposition testimony that might somehow be "unfavorable" to the plaintiffs. *See* Defs.' Mot. to Conduct Discovery at 4.

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

**RICHARD VIETH et al  
Plaintiffs,**

v.

**THE COMMONWEALTH OF  
PENNSYLVANIA;, MARK S.  
SCHWEIKER, et al  
Defendants**

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**No. 1: CV 01-2439  
(Judge Nygaard, Judge Rambo,  
and Judge Yohn)**

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing document to be served by first class mail, postage prepaid September 20, 2002, as follows:

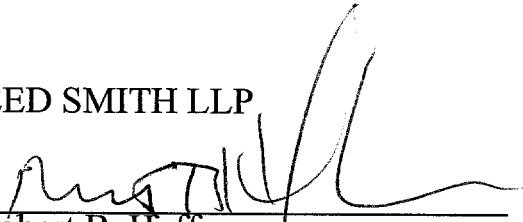
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