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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.** )

FILED  
HARRISBURG, PA  
DEC 19 2002

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

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**PLAINTIFFS' PREHEARING MEMORANDUM**

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Plaintiffs hereby submit this Prehearing Memorandum in anticipation of the Court's January 9, 2003 hearing. At that hearing, the Court will consider whether Act 34 satisfies the requirement of this Court's April 8, 2002 Decision and Order invalidating Act 1 and directing the General Assembly to "enact and submit for review and final approval by this Court" a constitutional redistricting plan. *Vieth v. Pennsylvania*, 195 F. Supp. 2d 672, 679 (M.D. Pa. 2002). The parties have submitted numerous briefs addressing whether the remedial plan establishes an unjustified deviation from the one-person, one-vote principle expressed in *Karcher v. Daggett*, 462 U.S. 725 (1983).

Plaintiffs submit this Prehearing Brief, however, primarily to preserve for appeal their partisan gerrymandering claim previously dismissed by the Court in its February 22, 2002 Order. *See Vieth v. Pennsylvania*, 188 F. Supp. 2d 532, 549

(M.D. Pa. 2002). Plaintiffs appealed that decision to the United States Supreme Court, but, after the enactment of the remedial Act 34, the Supreme Court dismissed the appeal as moot. *See* 123 S. Ct. 68 (2002).

Consequently, should this Court reject plaintiffs' present challenge to the remedial redistricting plan, plaintiffs wish to preserve their argument that Act 34 is an example of unconstitutional partisan gerrymandering, as well as violative of one-person, one-vote requirements, for a possible appeal to the U.S. Supreme Court. Plaintiffs therefore ask this Court to consider their partisan gerrymandering challenge to Act 1 in the context of the resulting remedial plan, Act 34.

As plaintiffs have previously argued, *see, e.g.*, Plaintiffs' Motion to Impose Districts, at 11-13 (filed April 22, 2002), Act 34 is based on Act 1 and is a similarly egregious partisan gerrymander. Plaintiffs therefore incorporate by reference their substantive briefing on the partisan gerrymandering issue. While plaintiffs recognize that the Court has already rejected their partisan gerrymandering theory with respect to Act 1, the Court now has the benefit of a full factual record which confirms the excessive partisan nature of the legislative actions. *See Vieth*, 195 F. Supp. 2d at 678-679.

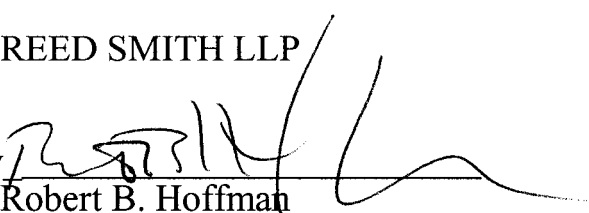
Finally, should the Court invalidate Act 34 under any of the plaintiffs' constitutional theories, plaintiffs request the opportunity to brief the various

remedial issues that would necessarily arise.

Respectfully submitted,

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**(Judge Nygaard, Judge Rambo,**  
**and Judge Yohn)**

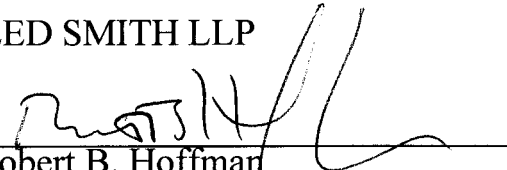
**CERTIFICATE OF SERVICE**

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