

ORIGINAL

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3-18-02
SC

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 Nygaard, Judge Rambo,
Judge Yohn

FILED
HARRISBURG, PA

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PLAINTIFFS' PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

MARY E. D'ANDREA, CLERK
Per 9/18
Deputy Clerk

Plaintiffs submit the following Proposed Findings of Fact and
Conclusions of Law.

I. FINDINGS OF FACT

A. Introduction

1. Act 1, the congressional redistricting plan passed by the
Pennsylvania General Assembly in January 2002 and signed into law by the
Governor, creates congressional districts with a 19-person population deviation.
Pl. Exh. 2; Pl. Exh. 12, at 7.

2. At trial, Defendants presented no "legitimate,"
"nondiscriminatory," "consistently applied" state objective that might justify the
population deviations in their plan.

3. The animating principle underlying Act 1 is the map-drawers' desire to maximize Republican advantage wherever possible. In pursuit of their predominant goal of producing a map likely to give Republicans a 14-5 or 13-6 advantage in the Pennsylvania congressional delegation – even if Republicans receive less than half the votes cast – the designers of this map sacrificed every conceivable legitimate redistricting criterion, including compactness, respect for political subdivisions, preserving the stability of existing districts, and protecting incumbents. In short, except in those parts of the state where Republican-leaning districts are surrounded by other Republican-leaning districts, the lines in Act 1 are nothing short of bizarre. The result is a map that allows Republicans to win as many seats as physically possible, given the voting patterns of Pennsylvanians.

4. Plaintiff Richard Vieth resides at 632 Laurel Lane, Lancaster, Pennsylvania 17601, is a registered Democrat, and resides in District 16 under Act 1. Plaintiff Norma Jean Vieth resides at 632 Laurel Lane, Lancaster, Pennsylvania 17601, is a registered Democrat, and resides in District 16 under Act 1. Plaintiff Susan Furey resides at 507 Bryn Mawr Avenue, Bala Cynwyd, Pennsylvania 19004, is a registered Democrat, and resides in District 6 under Act 1. Defendants have admitted all pertinent jurisdictional facts. *See* Answer and Defenses of Defendants Lieutenant Governor Jubelirer and Speaker Ryan ¶¶ 2-4; Answer with Affirmative Defenses of Defendants Governor Schweiker, Secretary Weaver and Commissioner Filling ¶¶ 2-4.

B. Act 1 Contains Avoidable Deviations from Equal Population

5. The ideal population for Pennsylvania's 19 Congressional districts is either 646,372 or 646,371. Pl. Exh. 13, at 18.

6. Act 1 does not create districts of equal population. Under Act 1, the populations of the smallest and the largest districts differ by 19 people. Pl. Exh. 12, at 7; Pl. Exh. 13, at 18; Tr. at 21:7-11 (Priest). These population variances could have been eliminated by a good-faith effort.

7. Plaintiffs presented an alternative map ("Alternative Plan 4" or "Zero Deviation Plan") which has a deviation of one, the lowest possible population deviation. Pl. Exh. 4; Pl. Exh. 21.

8. The Zero Deviation Plan not only eliminates the population deviation inherent in Act 1, it also adheres to every traditional redistricting criterion more closely than Act 1. *See* Discussion of Alternative Plan 4, Section I.E, *infra*.

9. Defendants' map-drawer, Dr. John Memmi, confirmed that from a technical standpoint there was nothing that prevented Act 1 from having been drawn with a maximum of a one-person deviation from the ideal population. Tr. at 321:5-322:7, 326:19-327:2, 328:10-18 (Memmi).

C. Defendants Failed to Provide a Legitimate, Nonpartisan Justification for Act 1's Deviations

10. Defendants offered no evidence of the underlying considerations that drove the basic geography of the Act 1 map. No person testified who either participated in making those basic decisions or who knew of them.

11. Instead, Defendants sought to justify the deviations on the basis that further reductions in the population deviations would result in splitting more precincts between two congressional districts (referred to as "precinct splits"). All parties agree that precinct splits are in general undesirable because of confusion, added cost, inefficiency, and the possibility of introducing errors into the election process. Tr. at 272:8-275:5 (Mascara); Tr. at 345:1-353:25 (Marion).

12. Any redistricting map can be "zeroed out" – i.e., drawn with the minimum possible population deviation – without splitting any precincts, as long as the map-drawer has sufficient flexibility to alter the draft map by moving precincts back and forth across each of the district lines. Tr. at 31:3-8 (Priest).

13. There are many thousands of mathematical possibilities for equalizing population among districts that are generated if the map drawer has that flexibility. That is the process that Robert Priest, the drawer of Alternative Plan 4, followed to produce a zero-deviation map with no split precincts. Tr. at 30:2-25 (Priest).

14. Far from justifying the population deviations in Act 1, Memmi's testimony confirmed that the Act 1 plan could have been zeroed out without splitting any precincts had he been permitted to move precincts back and forth across district lines. Instead, Memmi was instructed by his bosses in the Republican Caucuses to maintain the existing contours of the map, and, even when the population deviation remained at 1,134 people, to make changes at the census-block level only. Tr. at 297:2-15, 321:5-25 (Memmi).

15. During the last two weeks of December 2001, Memmi and approximately four to eight other technical persons working for the House and Senate Republican Caucuses sought to reduce the population deviations which were then in a map that was provided to them. Tr. at 294:9-295:16 (Memmi).

16. Their supervisors in the Republican Caucuses instructed them to maintain the contours of the map that the Caucuses had provided them. To do that, they were instructed to minimize the movement of whole precincts from one congressional district to another. Tr. at 321:10-15 (Memmi).

17. The Republican Caucus supervisors of Memmi and the other Republican technicians were intimately involved to insure that the basic structure of the map was retained, and reviewed and supervised all changes in the map. Tr. at 320:5-16 (Memmi).

18. Memmi and the other Republican technicians began to reduce population deviations by moving intact precincts from one congressional district to another. They stopped doing so when only 3 of the 19 districts (Districts 5, 8, and 11) were at ideal population and the population deviation between the largest and smallest districts was 1,134. Tr. at 321:5-322:25 (Memmi).

19. At that stage, with the deviation at 1,134, supervisors from the Republican Caucuses directed Memmi and the other Republican technicians not to move any more precincts among districts and to make all further population equalization efforts by shifting census blocks. Tr. at 321:10-25 (Memmi).

20. Census blocks are the smallest geographic area for which the Census Bureau collects census data. All territory in the United States has been

assigned block numbers. See U.S. Census Bureau, Census 2000 Geographic Terms and Concepts (2000), *available at* <http://www.census.gov/geo/www/tiger/glossry2.pdf>.

21. Because precincts consist of multiple census blocks, use of census blocks to equalize populations can only be done by splitting precincts.

22. Because there was no technical reason why Memmi and the other Republican technicians could not have continued to reduce the population deviations by moving precincts from one congressional district to another, Tr. at 322:1-7 (Memmi), it can only be inferred that they were directed to begin splitting precincts to preserve the contours of the draft map as precisely as possible in order to disadvantage Democratic incumbents effectively.

23. Once they had reduced the population deviation to 19 in the map that ultimately became Act 1, the supervisors from the Republican Caucuses told Dr. Memmi and the other Republican technicians to stop working to reduce the population deviation without explanation. Tr. at 320:2-17 (Memmi). No other witness at trial explained why the Republican Caucuses did not zero out the map that became Act 1. Therefore, the record has no evidence to justify the remaining 19-person deviation.

24. The Act 1 map contains 6 precinct splits. Pl. Exh. 12, at 7; Tr. at 304:25-305:1, 322:14-16 (Memmi). At the direction of Defendants' counsel, Dr. Memmi created a new version of the Act 1 map, "Act 1 2002 Congressional Plan, Modification 1", which reduced the deviations in the map to 1 but created 26 precinct splits. Def. Exh. 90.

25. To the extent the Republicans seek to defend the Act 1 deviations on the basis that further reducing the deviations could only be accomplished by increasing the number of precinct splits, which they wanted to avoid, that explanation fails: the need for precinct splits to reduce population deviation resulted from a politically driven constraint that the basic contours of the map could not be altered and that intact precincts could not be moved. Absent that constraint, Defendants' witness, Dr. Memmi, conceded that the population deviations could have been minimized without precinct splits. Tr. at 321:5-322:6, 326:19-327:2, 328:10-18 (Memmi).

26. Plaintiffs' Alternative Plan 4 demonstrates that a map can be drawn with the least possible population deviation without splitting any precincts. Pl. Exh. 4; Pl. Exh. 21.

D. The Only Principle Followed by Defendants in Drawing District Lines Was Achieving Partisan Advantage

27. Defendants failed to call any witness to testify as to (1) what legitimate factors led them to draw Act 1 the way they did, and (2) why it would unduly sacrifice some legitimate state interest to zero out Act 1 using precinct swaps. The reason they failed to do so is that the only principle followed by Defendants in drawing the lines was achieving partisan advantage.

28. As Dr. Allan Lichtman testified, Defendants accomplished their objective by packing Democratic voters into certain districts, thereby ensuring that a substantial percentage of Democratic votes would be wasted in those districts,

and fracturing other geographic concentrations of Democratic voters in order to minimize their voting strength. Tr. at 91:2-92:4 (Lichtman).

29. Although 50 percent of Pennsylvanians, on average, vote for Democratic candidates, Act 1 would produce 14 congressional districts that favor Republican candidates and only 5 congressional districts that favor Democratic candidates. Pl. Exh. 12, at 2; Tr. at 96:1-10 (Lichtman).

30. The result is that with slightly less than 50% of the vote, Act 1 gives Republicans a majority in 74% of Pennsylvania's congressional districts, creating an extreme partisan bias of 24%. Pl. Exh. 12, at 1; Tr. at 96:11-17 (Lichtman).

31. The votes in prior statewide elections, if reaggregated to the new Act 1 districts, result in the election of a much larger number of Republican congressional candidates in these elections than Democrats with comparable vote percentages. For example, in 6 recent statewide elections in which the Republican candidate won with approximately 51 percent of the vote statewide (Treasurer 2000 Hafer-Knoll; Attorney General 1996 Fisher-Kohn; Treasurer 1996 Hafer-Knoll; US Senate 1994 Santorum-Wofford; US Senate 1992 Specter-Yeakel; Attorney General, 1996 Preate-Kohn), the Republicans would have won 13 or 14 of the 19 seats. In contrast, in 4 statewide elections in which the Democratic candidate won with between 52 and 56 percent of the vote statewide (President 2000 Bush-Gore; President 1996 Dole-Clinton; President 1992 Bush-Clinton; US Senate 1991 Thornburgh-Wofford), the Democrats would have won 10 or 11 of the 19 seats). Pl. Exh. 22; Tr. at 188:1-189:1 (Lichtman).

32. Defendants' expert witness, Dr. Thomas Brunell, did not contradict Dr. Lichtman's findings that Act 1 packed and fractured Democrats and undermined Democratic incumbents while protecting Republicans. Tr. at 37-38, 46 (Brunell). Dr. Brunell only questioned Dr. Lichtman's finding of a 24% partisan bias, without, however, noting any flaws in Dr. Lichtman's data or presenting data or estimates of his own. He admitted that the results of statewide elections showed the Republicans carrying 14 of 19 districts with 50% of the vote, Tr. at 39-41 (Brunell), and that he had done a similar analysis of partisan bias in the Texas congressional case last year, Tr. at 41-46 (Brunell). He attempted, unsuccessfully, to pick at the edges of Dr. Lichtman's testimony, but studiously avoided doing any analysis of his own that would either show his criticisms made any difference or produce a different estimate of political bias in the redistricting plan.

33. In addition to packing and fracturing Democrats, Defendants took other steps designed to harm as many Democratic incumbents as possible, while protecting Republican incumbents. Although Pennsylvania's loss of two congressional seats following the 2000 census requires that only two pairs of incumbents be required to run against each other in the 2002 election, Defendants pitted *three* pairs of incumbents against one another: two pairs of Democrats, and one Republican and one Democrat in a district that heavily favors Republican candidates. Pl. Exh. 12, at 1; Tr. at 112:25-114:9 (Lichtman).

34. In order to eliminate an additional Democrat, Rep. Mascara, Defendants drew a district that eliminated his voting base, replacing it with the

entirety of the state Senate district currently represented by Republican Tim Murphy, who has announced that he will run for Congress in the new district. Pl. Exh. 2D; Pl. Exh. 12, at 1; Tr. at 44:5-1 (Priest); Tr. at 203:23-205:20 (Ceisler). As Representative Mascara testified, it is so unlikely that he would win reelection in his new district that he has decided to run in a different district entirely, voluntarily pitting himself against a 15-term incumbent Democrat. Tr. at 260:11-24, 261:14-25 (Mascara).

35. Finally, having created an unnecessary pairing of incumbent Representatives, Defendants were able to create an open seat in a district that was drawn to favor Republican candidates, and which contains the bulk of the state Senate district currently represented by Republican Jim Gerlach, who has announced that he will run for Congress in the new district. Pl. Exh. 2C; Pl. Exh. 12, at 1; Tr. at 31:25-32:16 (Priest); Tr. at 214:18-215:25 (Ceisler).

36. In contrast to its treatment of Democratic incumbents, Act 1 places all Republican incumbents into Republican-leaning districts that they are likely to win. Pl. Exh. 12, at 1; Tr. at 112:25-114:9 (Lichtman); Tr. at 248:19-249:10 (Ceisler).

37. Act 1 is also politically biased in terms of constituent retention. Act 1 features wide disparities in the proportion of constituents Democratic and Republican incumbents retain from their old districts. In so doing, it prejudices the chances of Democratic incumbents as compared to Republican incumbents. Under Act 1, the average Republican incumbent retains about 76% of his or her constituents, while, on average, Democratic incumbents keep approximately 51%

of their previous constituents. Pl. Exh. 12, at 8, 12; Tr. at 118:13-119:24 (Lichtman).

E. Act 1 Accomplishes No Legitimate Redistricting Objective

38. Defendants cannot justify Act 1 based on any other traditional redistricting criteria, such as preserving incumbents, creating compact districts, keeping communities of interest together, avoiding municipal splits, or maintaining partisan fairness. Pl. Exh. 12, at 5, 7; Tr. At 112:25-114:9, 124:3-16, 125:15-126:1 (Lichtman); Tr. at 202:6-12, 215:11-25, 218:4-16 (Ceisler); Tr. at 252:21-253:5, 254:11-16, 271:16-25 (Mascara).

1. Act 1 Pairs Democratic Incumbents

39. Because incumbent protection enhances the national political power of a state through the increased seniority of its delegation, congressional redistricting plans commonly protect incumbent legislators and give them a fair opportunity to be reelected. Act 1, in contrast, enhances the national political power of *Republicans*, while decreasing the political power of *Pennsylvania*, by threatening Democratic incumbents. Pl. Exh. 12 at 1; Tr. at 112:25-114:9 (Lichtman); Tr. at 201:10-202:5, 248:19-249:10 (Ceisler).

40. Defendants attempted to suggest that the motivation for the geography of the Act 1 map was protecting non-paired incumbents. Tr. at 82 (Hallowell). Given that the map in fact pairs two sets of Democrats and no sets of Republicans, and unnecessarily creates an open seat which favors a non-incumbent Republican, this justification would be patently insufficient, even if it were

supported by evidence. But the Defendants presented no evidence from anyone involved in the redistricting process that this was in fact a motivation for the basic contours of the map. Therefore, the witness' speculation that this was the Defendants' motivation does not provide a basis for the Court even to consider this as a potential justification for the map's basic contours, and, by extension, as a basis for their having avoided exchanging whole precincts in order to lower the population deviation.

41. Act 1 treats Democratic and Republican incumbents very differently. Republican incumbents are all made safe; half of the Democratic incumbents are threatened. Pl. Exh. 12, at 1; Tr. at 112:25-114:9 (Lichtman); Tr. at 248:19-249:10 (Ceisler).

42. Act 1 pairs two incumbent Democratic Congressmen in District 13, Congressmen Hoeffel and Borski. Pl. Exh. 12, at 1; Tr. at 114:4-7 (Lichtman). Because of how it is drawn, District 13 was intended to result in the election of a *Republican*, rather than either of the Democratic incumbents. Pl. Exh. 12, at 1; Tr. at 121:19-122:8 (Lichtman).

43. Under Act 1, it is highly probable that Congressman Borski would defeat Congressman Hoeffel in the Democratic primary, but would lose the general election to a moderate Republican from the Montgomery County portion of District 13. Indeed, Melissa Brown, a Republican from Montgomery County, has already announced her intention to run. Tr. at 211:3-8 (Ceisler). Brown, who is pro-choice, would likely defeat the pro-life Congressman Borski or another Northeast Philadelphia pro-life Democrat. Tr. at 211:23-25 (Ceisler).

44. In seeking to defeat Congressman Borski, Act 1 endangers the seniority of Pennsylvania's Congressional delegation. Tr. at 201:10-202:5 (Ceisler).

45. Act 1 also spells likely defeat for Congressman Holden, a Democrat who is paired in the 17th district with Congressman Gekas, a Republican, in a seat that strongly favors the Republican. Pl. Exh. 12, at 1, 12; Tr. at 120:19-121:9 (Lichtman); Tr. at 213:17-214:17 (Ceisler).

46. Act 1 also pairs Democratic Congressman Doyle and Coyne. Pl. Exh. 12, at 1. Coyne has indicated he will retire. Tr. at 208:3-5 (Ceisler).

47. Congressman Mascara is not paired with an incumbent, but faces a similar predicament. Act 1 places his home in a radically reconfigured district that heavily favors a specific Republican challenger – State Senator Tim Murphy. Tr. at 260:11-24, 261:14-25 (Mascara); Tr. at 203:23-205:20 (Ceisler). Presented by Act 1 with a Hobson's Choice – run against another incumbent Democrat, Congressman Murtha, in a more Democratic District 12, or run in the new Republican-leaning District 18 against Sen. Murphy, whose political base is in the new congressional district – Congressman Mascara is running against Congressman Murtha in the 12th. Tr. at 260:11-24, 261:14-25 (Mascara); Tr. at 202:23-203:20 (Ceisler).

2. Compactness

48. Act 1's districts are significantly less compact than under prior plans in Pennsylvania. Dr. Lichtman analyzed compactness using two separate measures – the "Perimeter Measure" and the "Dispersion Measure" – that are

generally accepted in Dr. Lichtman's field and widely used in redistricting cases. Pl. Exh. 12, at 6; Tr. at 123:1-25 (Lichtman). Using Dr. Lichtman's "Perimeter Measure Analysis," four of Act 1's districts – Districts 1, 6, 12, and 18 – are less compact than the least compact district under the 1992 plan. Pl. Exh. 12, at 6. On average, Act 1's districts are less compact than the districts in the 1992 plan. Pl. Exh. 12, at 6.

49. Statistical measures of compactness tell only part of the story, as Act 1's districts are bizarre on their face. District 18 in southwestern Pennsylvania is dispersed in the extreme and makes radical changes to the existing districts in the region. The border between District 18 and District 12 was clearly drawn for partisan purposes. It removes incumbent Democratic Congressman Mascara from District 12, where incumbent Democratic Congressman Murtha resides, and places him – literally across the street – in District 18, that heavily favors a specific Republican challenger. Tr. at 254:17-22 (Mascara).

3. Communities of Interest

50. Act 1 also cannot be justified as a measure that preserves communities of interest in the Commonwealth of Pennsylvania. This can be seen by the bizarre districts that cut through towns and local governments throughout the state. One of the most egregious examples is Montgomery County, which Act 1 divides into six different congressional districts, thereby departing from the county's historically cohesive representation in Congress. Pl. Exhs. 2, 2A. The so-called "Greenwood Gash," which tears a piece out of the center of Montgomery

County, further demonstrates that preservation of communities of interest played no role in the creation of Act 1. Pl. Exhs. 2, 2A; Tr. at 212:1-213:7 (Ceisler).

51. There are many other examples of districts that ignore communities of interest. Act 1's District 6 is an irregular, dragon-shaped district that covers three counties in southeast Pennsylvania and includes several wholly distinct, unconnected communities of interest. Pl. Exhs. 2, 2A; Tr. at 215:8-23 (Ceisler).

52. Act 1 divides up communities of interest in western Pennsylvania, as can best be seen by the jagged and irregular line between Districts 12 and 18. For example, most of the district currently represented by Congressman Mascara (District 20 in the 1992-2001 plan) shares an interest in agriculture and farming, and contains a large elderly population. Tr. at 252:19-253:7(Mascara); Tr. at 205:23-206:7 (Ceisler). Under Act 1, the interests of these communities are ignored. The mostly rural residents of Washington, Greene and Fayette Counties will cease to have representation focused on their interests, because their rural area will be dominated by suburban areas of Allegheny County in the newly constituted District 18. Tr. at 271:16-25 (Mascara).

4. Local Government Boundaries

53. Act 1 divides 65 municipalities,¹ more than either the 1992 map or either of the alternative maps presented by Plaintiffs. Pl. Exh. 12, at 7.

¹ "Municipality" is defined in 1 Pa.C.S.A. §1991 to include "a county, city, borough, incorporated town or township." For purposes of these pleadings, however, "county" is treated as a separate category, and "municipality," as used here, includes only a city, borough, incorporated town or township.

F. Alternative Plan 4 Satisfies Traditional Redistricting Principles In Addition to Complying With the One-Person, One-Vote Rule

54. Alternative Plan 4, presented by Plaintiffs, satisfies traditional redistricting values to a much greater extent than Act 1 in addition to complying with the one-person, one-vote rule. It creates more compact districts than Act 1, contains no split precincts, preserves the cores of prior districts, and avoids unnecessary contests between incumbent Representatives. Pl. Exhs. 4, 12, at 5, 7; Pl. Exh. 21; Tr. at 116:21-117:8, 124:3-16, 125:15-126:5 (Lichtman); Tr. at 13:13-16, 30:1-2 (Priest).

II. CONCLUSIONS OF LAW

A. One-Person, One-Vote Claim

1. Act 1 violates Article I, section 2 of the Constitution by deviating from equal population among congressional districts with no justification.

2. Article I, section 2 commands “that as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.” *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *see also Karcher v. Daggett*, 462 U.S. 725, 732-33 (1983).

3. Accordingly, population in congressional districts must achieve “precise mathematical equality.” *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969). As the Supreme Court emphasized in *Karcher v. Daggett*, 462 U.S. at 732, 734, “As between two standards – equality or something less than equality – only the former reflects the aspirations of Art. I, § 2,” and “there are no *de minimis*

variations which could practically be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification,”

4. Under *Karcher*, Plaintiffs must show that “the population differences among districts [in the challenged reapportionment plan] could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population.” *Karcher v. Daggett*, 462 U.S. at 730-31.

5. Plaintiffs have shown that Act 1 creates a 19-person deviation between congressional districts, and that these population differences among districts could have been eliminated altogether by a map that also adheres to traditional redistricting principles. Plaintiffs have therefore satisfied their initial burden under *Karcher* as described above. See *Nerch v. Mitchell*, No. 3:CV-92-0095, at 27, 31 (M.D. Pa. Aug. 13, 1992); *Stone v. Hechler*, 782 F. Supp. 1116, 1125 (N.D. W. Va. 1992); *Anne Arundel County Republican Cent. Comm. v. State Admin. Bd. of Election Laws*, 781 F. Supp. 394, 395 (D. Md. 1991).

6. Once Plaintiffs have shown that it was possible to create a map with lower population deviations, the burden shifts to the Defendants to prove that the population deviations in its plan were “necessary to achieve some legitimate state objective.” *Karcher*, 462 U.S. at 740; accord *Nerch v. Mitchell*, No. 3:CV-92-0095, at 27 (M.D. Pa. 1992). Such legitimate state objectives, if “consistently applied” and “nondiscriminatory,” include “making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives.” *Karcher*, 462 U.S. at 740.

7. Defendants failed to offer any legitimate justification for the population deviations in their plan. Defendants have thus failed to satisfy their burden under Karcher.

8. To the extent the Defendants seek to defend the Act 1 deviations on the basis that further reducing the deviations could only be accomplished by increasing the number of precinct splits, that explanation fails. As the record shows, it was entirely possible to draw a zero-deviation map without splitting precincts. The evidence shows that Defendants split precincts, rather than swapping intact precincts among congressional districts, only in order to preserve the very specific lines drawn on their map. Avoidance of additional precinct splits would constitute a legitimate justification if and only if Defendants had offered a legitimate explanation for why the district lines had to be preserved in precisely the form in which they were originally drawn.

9. Defendants offered no such legitimate explanation. As the record shows, the central motivating principle behind the basic contours of the Act 1 plan was the goal of achieving maximum advantage for the Republican Party. The pursuit of partisan advantage cannot justify violations of the constitutional one-person, one-vote mandate. *See Daggett v. Kimmelman*, 580 F. Supp. 1259, 1263 (D.N.J.), *aff'd*, 467 U.S. 1222 (1984).

10. Act 1 achieves none of the legitimate state objectives identified in Karcher, 462 U.S. at 740. It creates noncompact districts, splits 84 local governments, alters the character of existing districts by dividing communities with

common interests, and pits two more incumbents than necessary against each other.

11. To the extent the Defendants attempt to justify the Act 1 deviations as furthering the goal of protecting incumbents, that explanation also fails. Act 1 pits six incumbents – two more than necessary – against each other, in a manner that consistently advantages the Republican Party. While Act 1 may protect Republican incumbents, its failure to protect Democratic incumbents on an equal basis demonstrates that incumbency protection is not a “nondiscriminatory,” “consistently applied” legislative objective that might constitute a justification for population deviation under Karcher.

12. Finally, to the extent that Defendants seek to justify their refusal to alter the basic contours of their map on the grounds that only a map that achieved partisan advantage for the Republicans would likely to pass the General Assembly, that explanation is also insufficient. The Supreme Court has made clear that “[p]roblems created by partisan politics cannot justify an apportionment which does not otherwise pass constitutional muster.” *Kirkpatrick*, 394 U.S. at 530.

B. Remedies

13. Because Act 1 violates Article I, section 2 of the Constitution, elections may not proceed under the Act 1 plan. *See Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (“[O]nce a State’s legislative apportionment has been found to be unconstitutional, it would be the unusual case in which a Court would be justified in not taking appropriate action to insure that no further elections are conducted

under the invalid plan.”). This Court therefore enjoins all Defendants from conducting any election under the Act 1 plan.

14. The interest in ensuring that federal elections proceed on schedule requires that, when time before an election is short, a court must impose a plan itself. A court has broad discretion to select an appropriate remedy. *See, e.g., Connor v. Finch*, 431 U.S. 407, 422-25 (1977) (noting that since “elections are on the horizon” and no plan is in place, the district court would have to draw one).

15. Given this late date in the 2002 election process, there is virtually no likelihood that the General Assembly would be able to create a new, constitutional plan in time to allow the normal electoral processes leading up to the May 21 primary. This Court must therefore set forth a plan under which the 2002 election process can proceed on a timely basis.

16. This Court’s remedial districting plan must conform to traditional nonpartisan districting principles, such as those described in *Karcher*, 462 U.S. at 740: compactness, respect for the boundaries of local governments, preservation of the cores of prior districts, and avoidance of contests between incumbent Representatives. *Daggett v. Kimmelman*, 580 F. Supp. 1259, 1261-62 (D.N.J. 1984), *aff’d*, 467 U.S. 1222 (1984).

17. This Court need select the plan that most resembles Act 1, if that plan also violates traditional redistricting principles and reflects an intent to discriminate against one political party. *See id.* at 1262. The policy of securing partisan advantage deserves no deference in a court’s selection of an appropriate remedial map. *See id.* at 1263.

18. Alternative Plan 4, presented by Plaintiffs, satisfies traditional redistricting values in addition to complying with the one-person, one-vote rule. It creates more compact districts, contains no split precincts, preserves the cores of prior districts, and avoids unnecessary contests between incumbent Representatives.

19. This Court therefore holds that Plaintiffs' Alternative Plan 4 shall be used to conduct the 2002 election, for which the process is already underway. That map will continue to be in force for subsequent elections until the Pennsylvania General Assembly enacts a new, lawful plan. This Court will retain jurisdiction to evaluate the constitutionality of any such plan passed by the General Assembly.

20. Finally, federal courts also have the authority to move filing deadlines when necessary. *See Upham v. Seamon*, 456 U.S. 37, 44 (1982); *see also Vera v. Bush*, 933 F. Supp. 1341, 1342 (S.D. Tex. 1996). The filing deadline for nomination petitions was March 12, 2002, which was also the last day of trial in this case. Because candidates and potential candidates were not afforded an opportunity to circulate petitions and gather signatures from electors in the districts set forth in this Court's order, this Court will extend the filing period to allow such persons to file nomination petitions in accordance with Pennsylvania law.

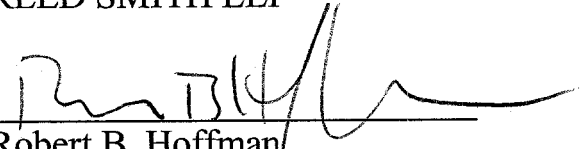
CONCLUSION

The proposed Findings of Fact fairly summarize the pertinent aspects of the trial testimony. The proposed Conclusions of Law state and apply to these facts established legal principles. Plaintiffs respectfully urge the Court to accept Proposed Findings of Fact and Conclusions of Law in their entirety.

Respectfully submitted,

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Dated: March 15, 2002

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THE COMMONWEALTH OF
PENNSYLVANIA, et al
Defendants.

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

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 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:

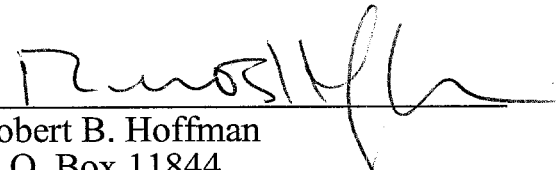
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