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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, PA**

SEP 09 2002

MARY E. D'ANDREA, CLERK
Per _____
Deputy Clerk

**PLAINTIFFS' RESPONSE TO DEFENDANTS'
MOTION TO ADD NECESSARY PARTY**

Defendants ask the Court to add the Armstrong County Board of Elections ("ACBE" or the "Board") as a party to this case pursuant to Fed. R. Civ. P. 21, arguing that, regardless of the Court's resolution of this matter, complete relief cannot be afforded without the presence of the Board. This argument is incorrect. Whether or not Act 34 is constitutional will turn on a straightforward legal question – does Act 34, which defines each of the congressional districts by reference to precincts, incorporate the pre-existing precinct boundaries established by the Armstrong County Court? No matter what the answer to that question, ACBE is not a necessary party to this case.

If the Court determines that Act 34 is unconstitutional, *see generally* Plaintiffs' Response to Defendants' Second Status Reports, an entirely new

congressional map – whether court-imposed or legislatively enacted – will govern the 2004 elections. As with all redistricting plans, that map will incorporate all relevant precinct definitions as they exist on the date the map is established. In creating the new map, either the Court or General Assembly can define the precise contours of the new congressional districts in any way it deems appropriate. Then, ACBE, like all county election boards across Pennsylvania, presumptively will follow the plan as written and administer it according to its terms.

Defendants' apparent fear that Armstrong County would seek to alter a congressional plan *after* its lawful creation, *see* Presiding Officers' Mem. in Support of Mot. to Add Necessary Party at 7, is unfounded. There is no reason to believe that such an event would occur.

Under defendants' reasoning, because of the mere possibility that a county could try to change a pre-existing congressional map, every county election board in the state is a necessary party to this litigation and was from the very beginning of the case. That absurd result is, of course, unnecessary, as is ACBE's participation in this case should plaintiffs prevail.

Nor is the Board a necessary party if the Court declares Act 34 to be constitutional. As explained in Plaintiffs' Response to Defendants' Second Status Reports, Act 34 could only be found unconstitutional if this Court determines that, as a matter of law, Act 34 does *not* incorporate the pre-existing precinct lines established by the Armstrong County Court. If the Court so determines, no relief will be required – the Court will simply deny Plaintiffs' motion and allow the elections to proceed in 2004 under Act 34, as defined by the Legislature. There is

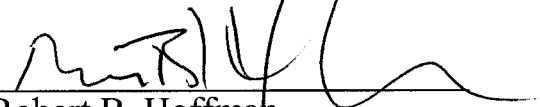
no reason to assume that ACBE will ignore the Court's decision or the dictates of Act 34.¹

That said, plaintiffs do not believe they would suffer any significant prejudice by the addition of ACBE as a party in this case, assuming the Court allows ample briefing time both for ACBE to assert its purported interests and for plaintiffs to respond.

Respectfully submitted,

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Dated: September 9, 2002

¹ This is particularly true in light of the Board's stated desire to honor the precinct boundaries that existed prior to the Armstrong County Court's decision, most recently expressed in the Board's failed petition to vacate the County Court's initial ruling (order attached to defendants' recent filings in this Court).

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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 9, 2002, as follows:

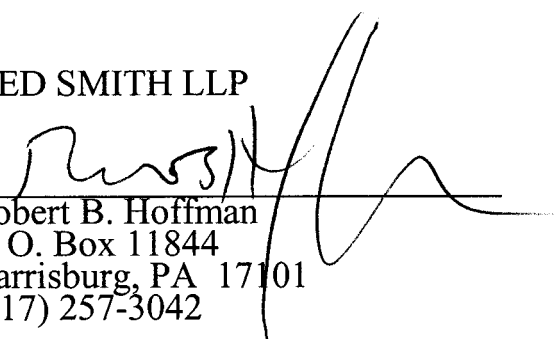
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