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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
JAN 07 2003
No. 1: CV 01-2439
Judge Rambo, Judge
Yohn, Judge Nygaard
Per ~~MARY E. D'ANDREA~~
Deputy Clerk

**PLAINTIFFS' RESPONSE TO STATEMENT OF MATERIAL
FACTS RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, pursuant to Local Rule 56.1, respond as follows to the Statement of Material Facts submitted in support of the Presiding Officers' Motion for Summary Judgment.

GENERAL RESPONSES

1. Defendants' statement of "material facts" is almost exclusively a statement of the procedural history of this case and a case before the Armstrong County Court, as well as other "facts" concerning the legislative process and attempts to disguise legal conclusions as facts. Those are not the proper subject matter for a statement of material facts, nor are they relevant to the legal issues in this case. Plaintiffs therefore object to Defendants' attempt to disguise legal conclusions as "facts."

2. Defendants assert these facts to establish a variety of legal conclusions, including the intent of the legislature in enacting multiple statutes and the validity of a final judgment from the Armstrong County Court. None of the “facts” asserted below are relevant to determining the appropriate remedy following this Court’s decision that Act 1 violated the federal constitution or to assessing the proper meaning of the various state statutes at issue in this case, and none provide a basis for erasing the Armstrong County Court’s final, unappealed judgment, as Defendants ask this Court to do.

SPECIFIC RESPONSES

1. The averments of ¶1 are ADMITTED with the limitation that these averments are irrelevant in the present context of this case, i.e., the determination of an appropriate remedy following a decision that Act 1 violated one person-one vote requirements.

2. The averments of ¶2 are ADMITTED with the limitation that these averments are irrelevant in the present context of this case, i.e., the determination of an appropriate remedy following a decision that Act 1 violated one person-one vote requirements.

3. The averments of ¶3 are ADMITTED with the limitation that these averments are irrelevant in the present context of this case, i.e., the determination of an appropriate remedy following a decision that Act 1 violated one person-one vote requirements.

4. The averments of ¶4 are ADMITTED with the limitation that these averments are irrelevant in the present context of this case, i.e., the

determination of an appropriate remedy following a decision that Act 1 violated one person-one vote requirements.

5. The averments of ¶5 are ADMITTED with the limitation that these averments are irrelevant in the present context of this case, i.e., the determination of an appropriate remedy following a decision that Act 1 violated one person-one vote requirements.

6. The averments of ¶6 are DENIED in that the cited statements are not admissible under Pennsylvania law to determine legislative intent. By way of further answer, this averment is irrelevant in the present context of this case, i.e., the determination of an appropriate remedy following a decision that Act 1 violated one person-one vote requirements.

7. The averments of ¶7 are ADMITTED.

8. The averments of ¶8 are ADMITTED, except to the extent that it purports to characterize the legislature's intent in enacting Act 34.

9. The averments of ¶9 are ADMITTED as a generally accurate summary of Act 34 with the limitation that Act 34 speaks for itself.

10. It is ADMITTED that under Act 34 the "Third [Congressional] District is composed of part of Armstrong County consisting of the Townships of ... South Buffalo District Western ..." and that the "Eleventh [Congressional] District is composed of all of Carbon County; all of Columbia County; part of Lackawanna County consisting of the City of Scranton ... part of Armstrong County, consisting of the Townships of ... South Buffalo District Eastern ..."

11. The averments of ¶11 are DENIED in that the cited statements are not admissible under Pennsylvania law to determine legislative intent.

12. It is ADMITTED solely to the extent that LDP data is available for use for congressional redistricting.

13. Paragraph 13 states a LEGAL CONCLUSION rather than a factual averment.

14. It is ADMITTED solely to the extent that LDP data is available for use for congressional redistricting.

15. Plaintiffs have no basis to dispute the averments of ¶15. By way of further answer, the averments in ¶15 are not pertinent under Pennsylvania law to determining how the Court should construe the references in Act 34 to “South Buffalo District Western” and “South Buffalo District Eastern.”

16. Plaintiffs have no basis to dispute the averments of ¶16. By way of further answer, the averments in ¶16 are not pertinent under Pennsylvania law to determining how the Court should construe the references in Act 34 to “South Buffalo District Western” and “South Buffalo District Eastern.”

17. Plaintiffs have no basis to dispute the averments of ¶17. By way of further answer, the averments in ¶17 are not pertinent under Pennsylvania law to determining how the Court should construe the references in Act 34 to “South Buffalo District Western” and “South Buffalo District Eastern.”

18. The averment of ¶18 is ADMITTED with the limitation that this averment is not pertinent under Pennsylvania law to determining how the

Court should construe the references in Act 34 to “South Buffalo District Western” and “South Buffalo District Eastern.”

19. The averment of ¶19 is ADMITTED with the limitation that this averment is not pertinent under Pennsylvania law to determining how the Court should construe the references in Act 34 to “South Buffalo District Western” and “South Buffalo District Eastern.”

20. Plaintiffs have no basis to dispute the averments of ¶20. By way of further answer, the averments in ¶20 are not pertinent under Pennsylvania law to determining how the Court should construe the references in Act 34 to “South Buffalo District Western” and “South Buffalo District Eastern.”

21. The averment of ¶21 is ADMITTED as a generally accurate statement of Plaintiffs’ position vis-a-vis Act 34.

22. The averments of ¶22 are DENIED in that, *inter alia*, Plaintiffs’ position vis a vis Act 34 is based on the fact that Act 34 does create Congressional districts with a deviation of 97 persons between the 3rd and 12th Congressional Districts, each of which contain a portion of South Buffalo Township.

23. The averments of ¶23 are ADMITTED.

24. The averments of ¶24 are ADMITTED. By way of further answer, the averments in ¶24 do not and cannot affect the validity of the March 15, 2002 Order issued by the Armstrong County Court of Common Pleas.

25. Paragraph 25 states a LEGAL CONCLUSION rather than a factual averment and is thus improperly included in a Statement of Undisputed

Facts under Local Rule 56.1. Plaintiffs further dispute the characterization of the Armstrong County Court's action and the legal conclusion stated by Defendants.

26. The averments of ¶26 are ADMITTED with the limitations that these averments and any action of the Secretary of the Commonwealth do not and cannot affect the validity of the March 15, 2002 Order issued by the Armstrong County Court of Common Pleas.

27. It is ADMITTED that the March 15, 2002 Order issued by the Armstrong County Court of Common Pleas adjusted the boundary between two precincts in South Buffalo Township. By way of further answer, the materials cited by Defendants as supporting these averments do not do so. The Petition (Tab L) does not state the purpose as asserted in ¶27, and the averments of a state court pleading drafted by Defendants' counsel in this matter (Tab N) do not properly support any facts as required by Rule 56(e).

28. The materials cited by Defendants as supporting the averments in ¶28 do not do so. Neither Congressman Murtha's Biography (Tab O) nor averments of a state court pleading drafted by Defendants' counsel in this matter (Tab N) properly support any facts as required by Rule 56(e).

29. The materials cited by Defendants as supporting the averments in ¶29 do not do so. Congressman Murtha's Biography (Tab O) does not properly support any facts as required by Rule 56(e).

30. The averments of ¶30 are ADMITTED.

31. Paragraph 31 states a LEGAL CONCLUSION rather than a factual averment and is thus improperly included in a Statement of Undisputed

Facts under Local Rule 56.1. By way of further answer, the Armstrong County Court of Common Pleas has in a final unappealed order rejected the legal proposition asserted in ¶31 and Defendants are not entitled under Rule 56 and applicable case law to inferences from facts.

32. It is ADMITTED that the March 15, 2002 Order of the Armstrong County Court of Common Pleas does not itself address the impact of the change there ordered.

33. Plaintiffs have no basis to dispute the averments of ¶33. By way of further answer, the averments in ¶33 are not pertinent under Pennsylvania law to determining how the Court should construe the references in Act 34 to “South Buffalo District Western” and “South Buffalo District Eastern.” The averments of a state court pleading drafted by Defendants’ counsel in this matter (Tab N) do not properly support any facts as required by Rule 56(e). By way of further answer, it is clear that, after approval of the boundary change, the election districts in South Buffalo Township were a matter of public record and had been the subject of a public comment in the press. *See* Exhibit A hereto, March 18, 2002 article from the Kittanning Leader Times.

34. The averments in ¶34 are DENIED in that the materials cited by Defendants as supporting the averments in ¶34 do not do so. Accordingly, Defendants have not properly supported these averments as required by Rule 56(e). By way of further answer, the Defendants are not entitled under Rule 56 and applicable case law to inferences from facts. By way of further answer, it appears that State Senator Don White, a Republican who represents the Armstrong County

area, was fully aware of the change as of March 18, 2002, as was Congressman Phil English, the Republican Congressman whose district included part of the area. See Exhibit A hereto, March 18, 2002 article from the Kittanning Leader Times.

35. The averments in ¶35 are DENIED in that the materials cited by Defendants as supporting the averments in ¶35 do not do so. The averments of a state court pleading drafted by Defendants' counsel in this matter (Tab N) do not properly support any facts as required by Rule 56(e). Accordingly, Defendants have not properly supported these averments as required by Rule 56(e). By way of further answer, no action of the Secretary of the Commonwealth can affect the validity of the March 15, 2002 Order issued by the Armstrong County Court of Common Pleas.

36. It is ADMITTED that the General Assembly passed and that Governor Schweiker signed Act 44. The remaining averments are DENIED in that the materials cited by Defendants as supporting the averments in ¶36 do not do so. Accordingly, Defendants have not properly supported those averments as required by Rule 56(e).

37. The averments of ¶37 require no response because Act 44 speaks for itself. To the extent that ¶37 purports to make a legal conclusion, it is improperly included in a Statement of Undisputed Facts under Local Rule 56.1.

38. Paragraph 38 states a LEGAL CONCLUSION rather than a factual averment and is thus improperly included in a Statement of Undisputed Facts under Local Rule 56.1. By way of further answer, the Armstrong County

Court of Common Pleas has in a final unappealed order rejected the legal proposition asserted in ¶38.

39. The averments in ¶39 are DENIED in that the materials cited by Defendants as supporting the averments in ¶39 do not do so. The averments of a state court pleading drafted by Defendants' counsel in this matter (Tab N) do not properly support any facts as required by Rule 56(e).

40. The averments of ¶40 are ADMITTED. By way of further answer, the averments in ¶40 do not and cannot affect the validity of the July 29, 2002 Order issued by the Armstrong County Court of Common Pleas.

41. The averments of ¶41 are ADMITTED.

42. Paragraph 42 states a LEGAL CONCLUSION rather than a factual averment and is thus improperly included in a Statement of Undisputed Facts under Local Rule 56.1. By way of further answer, the Armstrong County Court of Common Pleas has in a final unappealed order rejected the legal proposition asserted in ¶42 and Defendants are not entitled under Rule 56 and applicable case law to inferences from facts.

43. Paragraph 43 states a LEGAL CONCLUSION rather than a factual averment and is thus improperly included in a Statement of Undisputed Facts under Local Rule 56.1. By way of further answer, the Armstrong County Court of Common Pleas has in a final unappealed order rejected the legal proposition asserted in ¶43 and Defendants are not entitled under Rule 56 and applicable case law to inferences from facts.

44. Paragraph 44 states a LEGAL CONCLUSION rather than a factual averment and is thus improperly included in a Statement of Undisputed Facts under Local Rule 56.1.

45. Paragraph 45 states a LEGAL CONCLUSION rather than a factual averment and is thus improperly included in a Statement of Undisputed Facts under Local Rule 56.1. By way of further answer, Defendants are not entitled under Rule 56 and applicable case law to inferences from facts.

46. The averments of ¶46 are ADMITTED as a generally accurate summary of Act 150 with the limitation that Act 150 speaks for itself.

47. The averments of ¶47 are ADMITTED as a generally accurate summary of Act 150 with the limitation that Act 150 speaks for itself.

48. The averments of ¶47 are ADMITTED as an accurate recitation of §506 of Act 150.

49. Paragraph 49 states a LEGAL CONCLUSION rather than a factual averment and is thus improperly included in a Statement of Undisputed Facts under Local Rule 56.1. Moreover Act 150 speaks for itself.

50. Paragraph 50 states a LEGAL CONCLUSION rather than a factual averment and is thus improperly included in a Statement of Undisputed Facts under Local Rule 56.1. Moreover Act 150 speaks for itself.

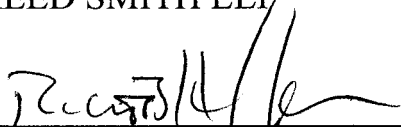
51. Paragraph 51 is based on a LEGAL CONCLUSION regarding Act 34 and is thus improperly included in a Statement of Undisputed Facts under

Local Rule 56.1. By way of further answer, Defendants are not entitled to inferences from the facts.

Respectfully submitted,

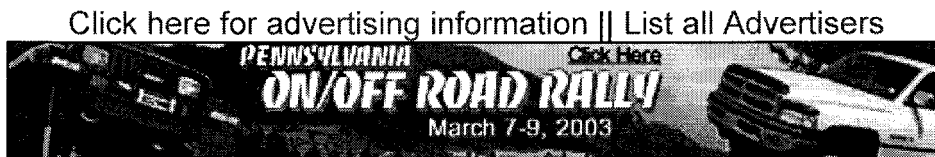
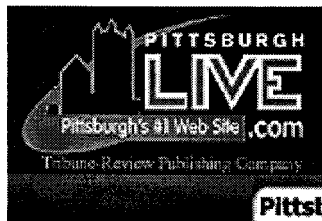
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Northpointe now Murtha's

By Michael Miller
LEADER TIMES
Monday, March 18, 2002

KITTANNING - Northpointe Industrial Park at Slate Lick now belongs to U.S. Rep. John Murtha, D-12th, again.

Armstrong County President Judge Joseph Nickleach on Friday approved a petition by the county to redraw a voting precinct in South Buffalo Township to include the park in Murtha's district, after it had been cut in half during redistricting.

"Northpointe is now whole," said County Commissioner James Scahill.

During the complex redistricting process this past winter, Northpointe was mistakenly divided - with the western half, where all the current development is, going to Rep. Phil English, R-3rd, and the eastern portion to Murtha.

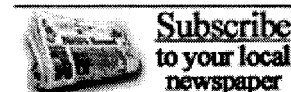
Murtha provided much of the funding and support for the development of Northpointe.

The new eastern precinct of South Buffalo now includes those areas east of Old Route 28 and north of Vandyke Road.

"It corrects an honest mistake by our (state) senator and other legislators in Harrisburg," Scahill said.

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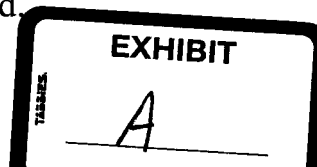


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Sen. Don White, who took responsibility for the mistake when redistricting occurred, was pleased with the decision, according to spokesman Joe Pittman.

"The senator is very pleased with the court's decision and fully supports it," Pittman said. "We're just glad it was able to come to a good conclusion."

"The best interest of the county was served," Scahill added.

Commissioner Homer Crytzer, who also attended the petition hearing, said no one had filed any objections to the proposed change.

The change also had the full endorsement of English, who will lose that portion of the park drawn out of his map with the change.

"He had no problem with that," Scahill said.

"I appreciate the efforts of the Armstrong officials who worked on this change," Murtha said in a statement yesterday.

"They understand the impact that we've had in bringing new jobs and development, and they want to make sure that nothing happens that might in any way undermine Armstrong County's opportunities down the road," Murtha added.

Murtha and another Democratic incumbent, Frank Mascara of Charleroi, will be vying for the nomination in the 12th District.

Michael Miller can be reached at mmiller@tribweb.com or (724) 543-1303 ext 219.

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

RICHARD VIETH, NORMA JEAN
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Plaintiffs,

v.

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 January 7, 2003, 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:

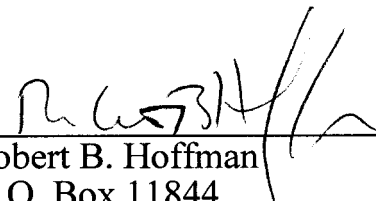
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