

RESPONSE

1. *Amicus curiae* does not dispute that the 2000 census showed that Pennsylvania had a population of 12,281,054 and that there had been significant shifts in population.

2. *Amicus curiae* does not dispute that Pennsylvania's population did not increase as much as other states and that the reallocation of Congressional seats resulted in a loss of two seats for Pennsylvania, from 21 to 19.

3. *Amicus curiae* does not dispute that, on January 7, 2002, Governor Schweiker signed into law Act 1, which contained a new congressional redistricting plan necessitated by the population shifts shown by the 2000 Census.

4. *Amicus curiae* does not dispute that on January 11, 2002, Plaintiffs filed an amended complaint that challenged Act 1 as, *inter alia*, a violation of the one-person, one-vote principle.

5. *Amicus curiae* does not dispute the authenticity of the materials cited by the Presiding Officers in their Statement of Material Facts. *Amicus curiae* does, however, dispute that these materials demonstrate that the General Assembly, when enacting Act 1, was careful to accommodate Congressman John Murtha. Rather, these materials reflect that certain state legislators thought that Congressman Murtha was being treated unfairly. *See, e.g.*, Defendants Ex. 2 (LEGISLATIVE JOURNAL – SENATE (Dec. 10, 2001) at 1194, 1195, 1197 (Sen. Mellow), 1199 (Sen. O’Pake), 1202-1203 (Sen. Wagner)) (Tab D to Appendix to Statement of Material Facts of Presiding Officers).

6. *Amicus curiae* does not dispute that, on April 8, 2002, this Court declared Act 1 unconstitutional, enjoined its use, and gave the Pennsylvania General Assembly until April 19, 2002 to enact a revised plan.

7. *Amicus curiae* does not dispute that, on April 23, 2002, this Court stayed its injunction of the Act 1 plan with respect to its use in the 2002 congressional elections.

8. *Amicus curiae* does not dispute that, on April 17, 2002, Governor Schweiker signed into law Act 34, which contained a revised congressional redistricting plan, designed to correct the one-person, one-vote defect of Act 1. By way of further response, by not disputing this statement, *amicus curiae* does not mean to imply that Act 34 did, in fact, correct the one-person, one-vote defect of Act 1.

9. *Amicus curiae* does not dispute that Act 34 became effective on November 6, 2002, and that the Act 34 plan will be used for any post-November 5, 2002 elections for representatives to Congress.

10. *Amicus curiae* does not dispute that the Act 34 plan used the boundary between two election districts of South Buffalo Township, Armstrong County as part of the boundary between Congressional districts 3 and 12.

11. *Amicus curiae* does not dispute that both the Act 1 and the Act 34 plan were based on the 2000 Census data, as assigned by the Legislative Data Processing Center and certified as usable by the Legislative Reapportionment Commission.

12. *Amicus curiae* does not dispute that the LDP data are used for both legislative and congressional redistricting.

13. *Amicus curiae* does not dispute that the 2001 Legislative Reapportionment Commission was composed of the leaders of the Democratic and Republican Caucuses of the Senate and House of the General Assembly of Pennsylvania and a chair appointed by the Pennsylvania Supreme Court.

14. *Amicus curiae* does not dispute that the LDP data are used by the Democratic and Republican Caucuses of the Senate and House of the General Assembly of Pennsylvania for purposes of congressional redistricting.

15. *Amicus curiae* does not dispute that, when requested by Caucus, the Legislative Data Processing Center provides a legal description and a per-district population to be used for consideration of the plan by the General Assembly.

16. *Amicus curiae* does not dispute that, during the General Assembly's consideration of a revised congressional redistricting plan, the Legislative Data Processing Center, using the same LDP data used for the Act 1 plan, prepared a legal description and a per-district population for plans developed by each Caucus.

17. *Amicus curiae* does not dispute that the legal description prepared for the Senate Majority Leader Brightbill showed that the boundary between South Buffalo Township in Armstrong County constituted a portion of the boundary between the 3rd and 12th Congressional Districts, and that the population per-district showed that 5 districts had a population of 646,372 and 14 districts had a population of 646,371.

18. *Amicus curiae* disputes that, when Majority Leader Brightbill offered the Senate Republican Caucus plan as an amendment to HB 2545, he described it as containing a “zero” deviation plan. The legislative history cited by the Presiding Officers in fact shows that Senator Brightbill stated that the “plan has a minimum deviation of basically zero.” (LEGISLATIVE JOURNAL – SENATE (April 17, 2002) at 1653 (Tab I to Appendix to Statement of Material Facts of Presiding Officers)).

19. *Amicus curiae* does not dispute that no member of the General Assembly challenged the Act 34 plan as failing to remedy the population deviation found by this court to violate the one-person, one-vote principle.

20. *Amicus curiae* does not dispute that the Legislative Data Processing Center has not been notified of any changes to election district boundaries since before the data were used to draw the Act 1 plan.

21. *Amicus curiae* does not dispute that, on April 22, 2002, Plaintiffs asked this Court to take remedial action on the grounds that the Act 34 plan violated the one-person, one-vote principle.

22. *Amicus curiae* does not dispute that Plaintiffs’ challenge to the Act 34 plan is based on a change to the location of the boundary between the two election districts of South Buffalo Township that was approved by the Armstrong County Court of Common Pleas on March 15, 2002. *Amicus curiae* does, however, dispute that any such change was merely a purported change. See March 15, 2002 Order of Armstrong County Court (Tab L(5) to Appendix to Statement of Material

Facts of Presiding Officers) and July 29, 2002 Order of Armstrong County Court (Tab L(7) to Appendix to Statement of Material Facts of Presiding Officers).

23. *Amicus curiae* does not dispute that, on February 19, 2002, the Armstrong County Board of Elections composed of the Armstrong County Commissioners, petitioned the Armstrong County Court for approval of a changed to the boundary between the two election districts of South Buffalo Township.

24. *Amicus curiae* does not dispute that none of the defendants in this matter were parties to the petition of February 19, 2002, or that no respondents were named on that petition.

25. *Amicus curiae* disputes that the Armstrong County Board of Elections had no authority to seek a change to any election district boundary and that it had no authority to seek a change to a Congressional District boundary. *See* 25 P.S. § 2702; July 29, 2002 Order of Armstrong County Court (Tab L(7) to Appendix to Statement of Material Facts of Presiding Officers).

26. *Amicus curiae* does not dispute that the Commissioner of the Bureau of Commissions, Elections and Legislation, on February 11, 2002, notified all county boards of election that Act No. 1999-51: “includes new restrictions for altering election districts. The Act provides that election districts may not be altered during the period from June 1, 200 through April 30, 2002, although during the period from June 1, 2000, through December 31, 2000, election districts can be altered under certain circumstances.

27. *Amicus curiae* does not dispute that the Armstrong County Board of Elections sought to change the boundary between the two election districts of

South Buffalo Township in order that the Northpointe Industrial Park would be located entirely within the 12th Congressional District.

28. *Amicus curiae* does not dispute that Northpointe Industrial Park was officially opened on October 18, 2001, or that it is expected to provide 3,500 new jobs.

29. *Amicus curiae* does not dispute that Congressman Murtha is the senior member of Pennsylvania's Congressional delegation and the representative from the 12th Congressional District, or that Congressman Murtha was instrumental in obtaining federal grants for the development of Northpointe.

30. *Amicus curiae* does not dispute that, by order of March 15, 2002, the Armstrong County Court approved the boundary change, which was unopposed.

31. *Amicus curiae* disputes that the March 15, 2002 order was null and void because the Armstrong County Court, at the time it did so, lacked authority to change an election district boundary. Presiding Officers assert that the "fact" in ¶ 31 of their Statement of Material Facts rests on an "[i]nference from fact Nos. 23, 25, & 26." As the party moving for summary judgment, however, the Presiding Officers are not entitled to the benefit of such inferences. *See also*, July 29, 2002 Order of Armstrong County Court (Tab L(7) to Appendix to Statement of Material Facts of Presiding Officers) (holding that the Armstrong County Court did have such authority).

32. *Amicus curiae* does not dispute that the March 15, 2002 order does not address the impact of the change to the election district boundary on the boundary between the 3rd and 12th Congressional Districts. *Amicus curiae* does,

however, dispute any implication in this statement that the boundary between the 3rd and 12th Congressional Districts was not affected by the March 15, 2002 order. *See* March 15, 2002 Order of Armstrong County Court (Tab L(5) to Appendix to Statement of Material Facts of Presiding Officers) (altering the boundary between the Eastern and Western Election Districts in South Buffalo Township); HB 2545, PN 3726, Act No. 2002-34 (Tab H to Appendix to Statement of Material Facts of Presiding Officers) (assigning one of these election districts to Congressional District 3 and the other to Congressional District 12).

33. *Amicus curiae* does not dispute that the Board, before filing the February 19 petition, did not obtain approval from the Secretary and that the Board, after the Armstrong County Court's approval, did not notify the Bureau of Elections Commissions, Elections or the Legislative Data Processing Center of the change to the boundary between the two election districts of South Buffalo Township.

34. *Amicus curiae* disputes the assertion that the Presiding Officers were unaware of the change to the boundary between the two election districts of South Buffalo Township when Act 34 was enacted. Presiding Officers assert that the "fact" in ¶ 34 of their Statement of Material Facts rests on an "[i]nference from LEGISLATIVE JOURNAL – HOUSE (April 15, 2002) at 639-62 [sic]; LEGISLATIVE JOURNAL – HOUSE (April 17, 2002) at 706-11; LEGISLATIVE JOURNAL – SENATE (April 17, 2002) at 1647-54." As the party moving for summary judgment, however, the Presiding Officers are not entitled to the benefit of such inferences.

35. *Amicus curiae* does not dispute that the Secretary, upon learning of the boundary change, informed the Armstrong County Board of Elections that it lacked authority to seek the boundary change and that it could not, in any event, effect a change to the boundary between congressional districts established in the Act 1 and Act 34 plans using the LDP data. *Amicus curiae*, however, disputes any implication that the Armstrong County Board of Elections actually lacked authority to seek the boundary change. See July 29, 2002 Order of Armstrong County Court (Tab L(7) to Appendix to Statement of Material Facts of Presiding Officers).

36. *Amicus curiae* does not dispute that, upon learning of the boundary change, the General Assembly passed SB 1240, PN 1972, which became Act No. 2002-44 when signed by Governor Schweiker on May 16, 2002.

37. *Amicus curiae* disputes the assertion that Act 44, by amending the Pennsylvania Election Code, extended the prohibition on changes to election district boundaries from April 30, 2002 until “June 30, 2002, or until resolution of all judicial appeals to the 2002 Congressional Reapportionment Plan, whichever occurs later.” See 25 P.S. § 2746; July 29, 2002 Order of Armstrong County Court (Tab L(7) to Appendix to Statement of Material Facts of Presiding Officers). *Amicus curiae* further states that, prior to this amendment, 25 P.S. § 2746 did not prevent changes in the boundaries of election districts, but only prevented the establishment, abolishment, division or consolidation of election districts during the prescribed period. See July 29, 2002 Order of Armstrong County Court (Tab L(7) to Appendix to Statement of Material Facts of Presiding Officers). *Amicus*

curiae further states that Act 44 added the words “or alter in any manner” to the list of prohibited activities, but that this legislation violates Pennsylvania’s separation-of-powers doctrine. *See* July 29, 2002 Order of Armstrong County Court (Tab L(7) to Appendix to Statement of Material Facts of Presiding Officers).

38. *Amicus curiae* does not dispute that the Armstrong County Board of Elections, admitting that it lacked authority to seek the boundary change, on May 8, 2002 petitioned the Armstrong County Court to vacate the March 15, 2002 order. *Amicus curiae* does, however, dispute any implication that the Armstrong County Board actually lacked authority to seek the boundary change. *See* July 29, 2002 Order of Armstrong County Court (Tab L(7) to Appendix to Statement of Material Facts of Presiding Officers).

39. *Amicus curiae* does not dispute that the Armstrong County Board of Elections held the May 21, 2002 primary election and November 5, 2002 general election for Congress in accordance with the pre-March 15, 2002 boundary between the two election districts of South Buffalo Township.

40. *Amicus curiae* does not dispute that none of the defendants in this matter were parties to the May 8, 2002 petition to vacate, and that no respondents were named on the petition.

41. *Amicus curiae* does not dispute that the Armstrong County Court, on July 29, 2002 denied the unopposed petition of the Armstrong County Board of Elections.

42. *Amicus curiae* disputes that the March 15, 2002 order was null and void because the Armstrong County Court, at the time it did so, lacked authority to

seek a change to an election district boundary. Presiding Officers assert that the “fact” in ¶ 42 of their Statement of Material Facts rests on an “[i]nference from fact Nos. 23, 25, 26, 38.” As the party moving for summary judgment, however, the Presiding Officers are not entitled to the benefit of such inferences.

43. *Amicus curiae* disputes that the March 15, 2002 [order] was not an adjudication. Presiding Officers assert that the “fact” in ¶ 43 of their Statement of Material Facts rests on an “[i]nference from fact Nos. 23, 25, 26, 30, 38.” As the party moving for summary judgment, however, the Presiding Officers are not entitled to the benefit of such inferences.

44. *Amicus curiae* does not dispute that the March 15, 2002 order does not address the impact of the change to the election district boundary on the boundary between the 3rd and 12th Congressional Districts. *Amicus curiae* does, however, dispute any implication in this statement that the boundary between the 3rd and 12th Congressional Districts was not affected by the March 15, 2002 order. *See* March 15, 2002 Order of Armstrong County Court (Tab L(5) to Appendix to Statement of Material Facts of Presiding Officers) (altering the boundary between the Eastern and Western Election Districts in South Buffalo Township); HB 2545, PN 3726, Act No. 2002-34 (Tab H to Appendix to Statement of Material Facts of Presiding Officers) (assigning one of these election districts to Congressional District 3 and the other to Congressional District 12).

45. *Amicus curiae* disputes that the March 15, 2002 order approving the change to the boundary between the two election districts in South Buffalo Township did not change the boundary between the 3rd and 12th Congressional

Districts established by the Act 1 and Act 34 plan based on the LDP data.

Presiding Officers assert that the “fact” in ¶ 45 of their Statement of Material Facts rests on an “[i]nference from above facts.” As the party moving for summary judgment, however, the Presiding Officers are not entitled to the benefit of such inferences. Moreover, as a matter of law, the combined effect of the March 15, 2002 order approving the boundary change and the passage of Act 34 was to change the boundary between the 3rd and 12th Congressional Districts from what it had been under Act 1.

46. *Amicus curiae* does not dispute that on December 9, 2002, Governor Schweiker signed SB 824, 2435 into law as Act No. 2002-150 (“Act 150”) and that Act 150 made numerous amendments to the Pennsylvania Election Code.

47. *Amicus curiae* does not dispute that that Section 6.2 of Act 150 added a new section 506 to the Pennsylvania Election Code, which will be published at 25 P.S. § 2706.

48. *Amicus curiae* does not dispute that new section 506, titled “District Boundaries,” provides:

In administering elections for the nomination and election of candidates for the United States House of Representatives and the General Assembly, county boards of election shall adhere to the following rule: Where an election district is used in or pursuant to a congressional redistricting statute or the final plan of the Legislative Reapportionment Commission to define the boundary of a congressional district or state legislative district, the boundary of such election district shall be the boundary existing and recognized by the Legislative Reapportionment Commission for the adoption of its final plan. The boundaries of the Congressional districts, as established by statute, and state legislative districts as set forth in the final plan of the Legislative Reapportionment Commission shall remain in full

force and effect for use thereafter until the next reapportionment or redistricting as required by law and shall not be deemed to be affected by any action taken pursuant to this article.

49. *Amicus curiae* does not dispute that according to section 21 of Act 150, section 506 became effective on the date it was signed into law.

50. *Amicus curiae* does not dispute that Section 506 purports to require that for any election conducted under the Act 34 plan, the boundary between the 3rd and 12th Congressional Districts in South Buffalo Township will be the pre-March 15, 2002 election district boundary. However, *amicus curiae* asserts that, as a matter of law, Act 150 violates Pennsylvania's separation-of-powers doctrine. See Memorandum of *Amicus Curiae* Senator Robert J. Mellow in Opposition to Presiding Officers' Motion for Summary Judgment.

51. *Amicus curiae* disputes that the Act 34 plan, as it is required to be administered, has a "zero" deviation, with 5 districts with a population of 646,371 and 14 districts with a population of 646,372. Presiding Officers assert that the "fact" in ¶ 51 of their Statement of Material Facts rests on an "[i]nference from above facts." As the party moving for summary judgment, however, the Presiding Officers are not entitled to the benefit of such inferences.

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