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

RICHARD VIETH, *et al.*, Plaintiffs, v. COMMONWEALTH OF PENNSYLVANIA , *et al.*, Defendants. ROBERT J. MELLOW, Senator, 22nd District, Proposed Intervenor.	Civil No. 1:CV-01-2439

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Per _____ Deputy Clerk

SENATOR ROBERT J. MELLOW'S RESPONSE
TO DEFENDANTS' SECOND STATUS REPORTS

Senator Robert J. Mellow files the following response to the second status reports filed by the Defendants.[1]

[1] On May 6, 2002, Senator Mellow moved, on behalf of the Democrats in the Pennsylvania Senate, for leave to intervene in the remedial phase of this matter or, in the alternative, to participate as *amicus curiae*. In support of his motion, Senator Mellow demonstrated that he has satisfied all four of the criteria for mandatory
(Continued …)

I. BACKGROUND

After this Court held that Act 1, the congressional redistricting plan enacted by the General Assembly, violated the constitutional principle of "one person, one vote," the General Assembly, on April 17, 2002, passed a new redistricting plan, Act 34. By virtue of a March 15, 2002 order of the Armstrong County Court of Common Pleas that changed election district boundaries in South Buffalo Township, Act 34 has a population deviation of 97 people, a larger deviation than the one this Court held unconstitutional in Act 1.

On April 22, 2002, Plaintiffs filed a Motion to Impose Remedial Districts based upon the unconstitutional population deviation in Act 34. Defendants opposed this Motion.

On May 8, 2002, this Court ordered the parties to file status reports addressing the effect of the Armstrong County Court's order on Act 34. In particular, this Court ordered the parties to answer the following questions:

a) If the matter has been resolved, has the line separating the South Buffalo Township election district from the Eastern Buffalo Township election district been restored to its original configuration prior to the Armstrong County order?

b) If the line has not been restored, did the Armstrong County order result in a movement of population between congressional districts?

(... Continued)
intervention under Fed. R. Civ. P. 24(a), as well as the criteria for permissive intervention under Fed. R. Civ. P. 24(b) and for participation as *amicus curiae*. Senator Mellow's motion is still pending. Senator Mellow submits this brief as a proposed intervenor or, in the alternative, as *amicus curiae*.

c) If the line drawn by the order resulted in a movement of population between congressional districts, how many people have been moved?

d) If the Armstrong County order issue has not been resolved, are Defendants pursuing the matter through litigation?

On June 3, Defendants (the Presiding Officers and the Executive Officers) filed their status reports, to which Plaintiffs and Senator Mellow responded on June 18. In their status reports, Defendants stated that the Armstrong County Board of Elections had petitioned the Armstrong County Court of Common Pleas to vacate its March 15 order and to restore the boundary line between the two election districts in South Buffalo Township to its prior location. Defendants further reported that the Armstrong County court had scheduled a hearing on this new petition for July 15, 2002.

By order dated June 19, 2002, this Court instructed Defendants to file a second status report by August 19, 2002, "indicating whether the dispute over the order issued by the Court of Common Pleas for Armstrong County Pennsylvania on March 15, 2002 ('the Armstrong County order') has been resolved." June 19, 2002 Order, at 1. The Court directed Plaintiffs to respond to Defendants' status reports by September 3 (subsequently extended until September 9), and further directed all parties to address the same four questions that had been addressed in the prior status reports.

On August 19, Defendants filed their status reports. These reports disclosed that the Armstrong County court on July 29 had issued an order denying the

petition to vacate the March 15 order. This decision and its impact on the present case are discussed below.

II. RESPONSES TO THIS COURT'S QUESTIONS

A. THE ELECTION DISTRICT BOUNDARY HAS NOT BEEN RESTORED TO ITS ORIGINAL CONFIGURATION

The result of the Armstrong County court's July 29 order is that the election district boundary in South Buffalo Township has *not* been restored to its original configuration. Rather, the boundary remains where the court placed it on March 15, which in turn means that Act 34 has a deviation of 97 people.

In an opinion accompanying the July 29 order, the Armstrong County court began by noting that, as of March 15, § 536 of the Election Code, 25 P.S. § 2746, prohibited only the establishment, abolition, division, or consolidation of election districts. *In re: Realignment of the Division Eastern and Western Precincts of the South Buffalo Township Election District,* No. 2002-0081-MISC., at 2 (Arm. Co. Ct. Comm. Pleas July 29, 2002) (copy attached). The court further noted that the General Assembly had subsequently amended § 536 to ban the "'*alter[ation] in any manner*'" of an election district and had expressly stated that the amendment "'shall apply retroactively.'" *Id.* at 3 (quoting the amended statute) (emphasis by the court).

The court viewed the amendment as an effort by the General Assembly to overrule the March 15 order.

> [I]t appears that in reaction to this Court's Order of March 15, 2002, and in an attempt to overrule its decision, the legislature hastily passed an amendment to § 536, outlawing *alteration* of election districts during the freeze period in addition to

> prohibiting the establishment, abolition, division, or consolidation of election districts.

Id.

The court concluded, however, that even though the General Assembly intended for the prohibition on the alteration of election districts to apply retroactively, "our decision [of March 15] cannot be overruled by the legislature." *Id.* at 4. The court explained that, by the time the General Assembly passed the amendment on May 16, 2002, "the matter involving South Buffalo's voting district was already completed . . . . No appeal had been taken from the Order of March 15, 2002. Nothing remained pending, and the case was over." *Id.*

Although the court acknowledged that the General Assembly could apply the amendment (a) prospectively and (b) retroactively to cases pending as of the date of the enactment of the amendment, the court made clear that "[t]he legislature may not, by act of assembly, overrule a judicial decision." *Id.* at 4-5.

> "Though the legislature possesses the power to promulgate the substantive law, [footnote omitted] judicial judgments and decrees entered pursuant to these laws may not be affected by subsequent legislative changes after those judgments and decrees have become final."

Id. at 5 (quoting *Commonwealth v. Sutley,* 474 Pa. 256, 378 A.2d 780, 784 (1977)).

Having determined that the amendment to § 536 could not be applied retroactively, the court went on to hold that, as worded prior to the amendment, the statute did not prohibit the alteration of the boundary between the two election districts in South Buffalo Township. The court reasoned that, prior to the amendment, the statute "prohibited establishment, abolition, division, or consolidation of election districts during a freeze period from June 1, 2000

through April 30, 2002. The section said nothing about alteration of election districts. The prohibitions of § 536 are not ambiguous. They clearly do not include the term 'alteration.'" *Id.* at 5. The court went on to state that "the legislature's amendatory language of May 16, 2002 clearly evinces the notion that alteration of existing boundaries was not included in the terms 'establish, abolish, divide, or consolidate' as used in the previous version of § 536 of the Election Code." *Id.* at 6. The court thus concluded that its action in altering the boundaries of the election districts in South Buffalo Township complied with then-existing law. *Id.* at 6-7.

No party appealed from the Armstrong County court's July 29 order. Rather, as the Presiding Officers concede, "The time for appeal has run and none was taken." Presiding Officers' Second Status Report at 3 (filed Aug. 19, 2002).

In short, the action of the Armstrong County court fully and finally resolves the Armstrong County matter. Consequently, the boundary between the two election districts in South Buffalo Township has *not* been restored to its original configuration.

B. THE ARMSTRONG COUNTY COURT'S ORDER RESULTED IN A MOVEMENT OF POPULATION BETWEEN CONGRESSIONAL DISTRICTS

Under Act 34, as under Act 1, the boundary between the election districts in South Buffalo Township forms a part of the border between Congressional District 3 and Congressional District 12. After the Armstrong County court altered the boundary between the two election districts on March 15, people who had resided in one of the election districts were moved to the other election district. In passing

Act 34 in April 2002, the General Assembly decided to place one of these election districts in Congressional District 3 and the other one in Congressional District 12. Thus, the ultimate result of the Armstrong County court's order and the General Assembly's decision was a movement of population between congressional districts.

C. THE ORDER, COMBINED WITH THE GENERAL ASSEMBLY'S REDISTRICTING DECISION IN ACT 34, ULTIMATELY RESULTED IN THE MOVEMENT OF 49 PEOPLE BETWEEN CONGRESSIONAL DISTRICTS

Forty-nine people were ultimately moved as a result of the March 15 order. Consequently, Act 34 has an unconstitutional population deviation of 97 people. *Id.* at 7.

D. DEFENDANTS ARE NOT PURSUING THE ARMSTRONG COUNTY MATTER THROUGH LITIGATION

Defendants have not pursued the Armstrong County matter through litigation. Although the Armstrong County Board of Elections did ask the Armstrong County court to reverse its March 15 order, as set forth above, the court refused to do so, and no appeal was taken. Thus, the Armstrong County matter has now concluded.

III. RESPONSES TO THE DEFENDANTS' STATUS REPORTS

Defendants argue that this Court should not follow the decision of the Armstrong County court, with the Executive Officers arguing that the decision is wrong on the merits and the Presiding Officers arguing that it is irrelevant here. Executive Officers' Second Status Report at 3 (filed Aug. 19, 2002); Presiding Officers' Second Status Report at 3. As we now demonstrate, however,

Defendants' arguments are without merit. The Armstrong County court's decision makes clear that Act 34 has a deviation of 97 people and, therefore, violates the "one person, one vote" principle.

A. THE ARMSTRONG COUNTY COURT PROPERLY CONSTRUED THE RELEVANT STATE STATUTES

The Executive Officers contend that the Armstrong County court's decision " misapplied or ignored basic principles of statutory construction." Executive Officers' Second Status Report at 3. This contention is simply incorrect.

In Pennsylvania, as in the federal system, it is a fundamental principle of statutory construction that, where the language of the statute is unambiguous, the court ought to apply the language as written. *See* 1 Pa. C.S. § 1921(b) ("When the words of the statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."). Here, the Armstrong County court's decision represents a straightforward application of the plain language of 25 P.S. §§ 2702 and 2746. Under § 2702, the court may, among other things, either "[1] create new election districts" that must be "wholly contained within" existing Federal, State, or local districts; "*or* [2] alter the bounds of any election district"; or [3] combine election districts or parts of election districts "so as to suit the convenience of the electors and to promote the public interests." 25 P.S. § 2702 (emphasis added). The Armstrong County court's March 15, 2002 order exercised the second of these three options by "alter[ing] the bounds" of the two election districts in South Buffalo Township. To be sure, at the time the court acted, the language of § 2746 prohibited the court from "establish[ing],

abolish[ing], divid[ing], or consolidat[ing]" election districts. 25 P.S. § 2746. The court, however, did not take any of the prohibited actions. Rather, it simply altered the boundaries of existing election districts, without ever "establish[ing]" (*i.e.,* creating), "abolish[ing] (*i.e.,* destroying), "divid[ing] (*i.e.,* splitting), or "consolidat[ing]" (*i.e.,* combining) them.

Indeed, the very fact that the General Assembly subsequently amended § 2746 to prohibit the alteration of the boundaries of election districts demonstrates that, prior to the amendment, § 2746 did not prohibit such alterations. This is so for three reasons:

> First, "[i]t is a well established canon of interpretation that the mention of one thing in a statute [here, the mention of the establishment, abolition, division, or consolidation of election districts in § 2746 prior to the amendment] implies the exclusion of others not expressed [*i.e.,* the alteration of district boundaries]." *Petition for Division into Wards of Scott Township*, 388 Pa. 539, 130 A.2d 695, 698 (1957).[2]
>
> Second, "[w]here words of a later statute differ from those of a previous one on the same subject they presumably are intended to have a different construction." *Panik v. Didra*, 370 Pa. 488, 88 A.2d 730, 733 (1952) (unlike pre-existing statutory language

[2] The Executive Officers argue that the principle of *expressio unius exclusio alterius* relied upon in *Scott Township* "applies only to the specific language of a particular statute" and "has no application to a subsequent amendment of a particular statute." They state that the subsequent amendment of § 2746 was meant only to "clarify the General Assembly's original intent." Executive Officers' Second Status Report at 3 n.3. The logic of this principle, however, applies with the same force to an amendment as it would in any other case: if the legislature banned the establishment, abolition, division, or consolidation of a precinct in a statute, but not the alteration of precinct lines, that would demonstrate that the legislative intent was to permit such alteration. Similarly, if the legislature banned the establishment, abolition, division or consolidation of precincts, but later amended the statute to prohibit alterations as well, that would demonstrate that, until the passage of the amendment, alterations were permitted.

> requiring filing of accident reports with state authorities, which provided that such reports were privileged, amendment to Vehicle Code permitting the filing of accident reports with local authorities did not contain language stating such reports were privileged; therefore, local accident report could be utilized at trial); *Commonwealth v. Moon*, 383 Pa. 18, 117 A.2d 96, 102 (1955) (citing *Panik v. Didra*) (new act providing for the commitment to mental institutions of persons detained in prison substituted the words "mentally ill" for the term "insane" in the old commitment act, therefore broadening the standard for commitment).
>
> Third, if § 2746 had already prohibited alteration of districts as of March 15, the amendment would be meaningless. Under principles of statutory interpretation, a legislature will not be presumed to have intended an amendment adding language to a statute as mere surplusage. *Commonwealth v. Pierce*, 397 Pa. Super. 126, 579 A.2d 963, 965 (1990) (prisoner not permitted to file for relief under the Post Conviction Relief Act after his sentence had been served, because unlike predecessor act, new act added language requiring that the petitioner shall be "currently serving a sentence of imprisonment").

In short, far from disregarding basic principles of statutory construction, the Armstrong County court correctly applied such principles in reaching its decision.

B. THE ARMSTRONG COUNTY COURT PROPERLY HELD THAT ITS MARCH 15 ORDER WAS A FINAL JUDGMENT

The Executive Officers further contend that the Armstrong County court "incorrectly held that its prior order was a final judgment," and consequently "also incorrectly held that it was not affected by the General Assembly's subsequent amendment of 27 P.S. § 2746." Executive Officers' Second Status Report at 3 & n.3. Again, however, the Executive Officers are incorrect. The March 15 order disposed of all claims for all parties, and was thus a final order. *See* Pa. R.A.P. 341(b) ("A final order is any order that: (1) disposes of all claims and of all parties. . . ."). No appeal was taken from the March 15 order, and it therefore

became a final judgment on April 15, 2002. *See* Pa. R.A.P. 903(a) (A notice of appeal "shall be filed within 30 days after the entry of the order from which the appeal is taken.").

Because the Armstrong County court's decision was a final judgment, the General Assembly could not overturn it by amending § 2746. The law in Pennsylvania is clear that a legislative act cannot "destroy or impair final judgments obtained before the passage of the act . . . ." *Commonwealth v. Sutley,* 474 Pa. 780, 378 A.2d 780, 783-84 (Pa. 1977). If applied retroactively, the amendment to § 2746 would have the unconstitutional result of overturning an otherwise valid final judgment of the Armstrong County court. Therefore, the amendment may not be applied retroactively to invalidate the March 15 order.

C. THE ARMSTRONG COUNTY COURT'S DECISION DID NOT USURP THE GENERAL ASSEMBLY'S REDISTRICTING AUTHORITY AND WILL NOT THREATEN THE STABILITY OF THE REDISTRICTING PROCESS

Defendants would have this Court believe that the Armstrong County court's decision will allow state trial courts to usurp the General Assembly's redistricting authority by changing the boundaries of election districts after the General Assembly has drawn a congressional redistricting plan. Executive Officers' Second Status Report at 3; Presiding Officers' Second Status Report at 9. To allow state trial courts to do so, Defendants argue, would violate both Pennsylvania law and U.S. CONST. art. I, § 4, which Presiding Officers assert "vests the authority to draw congressional district boundaries in the state legislature." Presiding Officers' Second Status Report at 4.

Defendants' argument ignores (a) the way redistricting plans are drawn and (b) the sequence of events in this case. Redistricting plans are constructed from components – counties, municipalities, and election districts – whose boundaries are defined by state law. Indeed, the General Assembly chose in Act 34 to describe each congressional district in Act 34 in terms of the counties, municipalities, and election district that make up the congressional district. When the General Assembly passed Act 34 in April 2002, the boundary between the two election districts in South Buffalo Township was where the Armstrong County court had placed it on March 15. By placing one of these election districts in Congressional District 3 and the other in Congressional District 12, the General Assembly created a redistricting plan with a deviation of 97 people. This deviation, however, did *not* result from the Armstrong County court changing the border between the two election districts *after* the General Assembly had drawn the congressional districts. Rather, the border had been changed *before* the General Assembly decided to place the two election districts in different congressional districts. Thus, Defendants' suggestions that the Armstrong County court usurped the General Assembly's redistricting authority by changing the boundary between Congressional District 3 and Congressional District 12 after the General Assembly had drawn them or that other courts may alter congressional district boundaries after the General Assembly has drawn congressional districts are simply incorrect.

IV. CONCLUSION

As explained above, the Armstrong County matter has been resolved, and the election district boundaries set by the order of March 15, 2002 are still in place. Consequently, Act 34 has a deviation of 97 people. Between the time the Armstrong County court issued that order and the present, however, a number of matters have occurred that suggest that this Court should await further developments before addressing the constitutionality of this deviation. Defendants have appealed this Court's ruling that Act 1 violates the "one person, one vote" rule to the United States Supreme Court. Plaintiffs likewise have appealed this Court's dismissal of their partisan gerrymandering claims. If the Supreme Court reverses either the "one person, one vote" ruling regarding Act 1 or the partisan gerrymandering ruling, the parties' current debate over the constitutionality of Act 34 may become moot. The interests of judicial economy thus suggest that this Court await the rulings of the Supreme Court before taking any further action in this case. Once the Supreme Court has ruled, this Court can then solicit the

parties' views as to what issues remain, set a schedule for the filing of briefs, and hold whatever hearings are appropriate.

Respectfully submitted,

Dated: September 9, 2002

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IN THE COURT OF COMMON PLEAS OF
ARMSTRONG COUNTY, PENNSYLVANIA

IN RE: REALIGNMENT OF THE DIVISION EASTERN AND WESTERN PRECINCTS OF THE SOUTH BUFFALO TOWNSHIP ELECTION DISTRICT	))))	2002 - 0061 - MISC.

OPINION

NICKLEACH, P.J.

Currently before the Court for disposition is a Petition to Vacate the Order of this Court entered on March 15, 2002.

FACTS AND PROCEDURAL POSTURE

On February 19, 2002, the County Election Board of the County of Armstrong, Pennsylvania (Election Board) petitioned this Court to alter the boundary line between two (2) existing election districts of South Buffalo Township "[f]or the convenience of the electors in the areas affected and in the best public interest of South Buffalo Township and Armstrong County." This Petition was unopposed, and after hearing with due notice the Petition was granted on March 15, 2002.

In changing the boundary line, no new election district was established from parts of adjoining election districts; no election districts were abolished; no single election district was divided into two or more election districts; and no two or more election districts were consolidated into one district.

On May 8, 2002, the County Election Board petitioned this

court to vacate its earlier Order, stating that the earlier Order "technically violates the provisions of the Election Code," citing § 536 of the Election Code, 1937, June 3, P.L. 1333 No. 320, Art. V, § 536 added 1999, Nov. 24, P.L. 543, No. 51 § 1, 25 P.S. § 2746.

The Court set a hearing for July 15, 2002, and directed appropriate notice. All interested parties were afforded an opportunity to be heard. At the hearing, counsel for the Election Board again cited § 536 of the Election Code, stating that the Court's earlier Order violated the Election Code.

ISSUE

Whether the Order of March 15, 2002 violated applicable law and must now be vacated.

DISCUSSION

At the time of the March 15, 2002 hearing and the Order altering the boundary lines of the two election districts, § 536 of the Election Code provided as follows:

> (a) Except as provided in subsection (b), there shall be no power to *establish, abolish, divide, or consolidate* an election district during the period June 1, 2000, through April 30, 2002. . . .
> 25 P.S. § 2746 (emphasis supplied).

On May 16, 2002, the legislature amended § 536 of the Election Code by passing Act 2002-44 2002, May 16, P.L. 310, No.

44. Section 536 now reads as follows:

> (a) Except as provided in subsection (b), there shall be no power to establish, abolish, divide, consolidate or alter *in any manner* an election district during the period June 1, 2000, through June 30, 2002, *or through resolution of all judicial appeals to the 2002 Congressional Reapportionment Plan, whichever occurs later.* . . .
> 25 P.S. § 2746 (as amended) (emphasis supplied).

Moreover, § 5 of Act 2002-44 provides that "the amendment of section 536 of the act shall apply retroactively to November 24, 1999."

Thus it appears that in reaction to this Court's Order of March 15, 2002, and in an attempt to overrule its decision, the legislature hastily passed an amendment to § 536, outlawing *alteration* of election districts during the freeze period in addition to prohibiting the establishment, abolition, division, or consolidation of election districts. The legislature also extended the freeze period in the event the judicial appeals to the 2002 Congressional Reapportionment Plan were not resolved by June 30, 2002.

In our opinion, Act 2002-44, passed on May 16, 2002, does not invalidate our Order of March 15, 2002. That Act is neither applicable in this case nor does it serve to overrule our decision. We recognize that although statutes normally are applied prospectively, there is no doubt that the legislature, in certain cases, may apply a law retroactively, *Smith v. Fenner*, 399 Pa. 633, 161 A.2d 150 (1960). Indeed, the statutory

Construction Act recognizes the principle of retroactive application in 1 Pa.C.S. § 1926, which provides that "[n]o statute shall be construed to be retroactive unless clearly and manifestly so intended by the General Assembly."

Explicit use of the word "retroactive" in the language of a statute obviously indicates a clear and manifest intent of the legislature that an act be applied retroactively. See, e.g., Com. v. Baysore, 349 Pa.Super. 345, 503 A.2d 33 (1986)(overruled on other grounds). The language of the amended statute explicitly uses the word "retroactive." Thus, it is clear that on May 16, 2002, the legislature intended the prohibition on alteration of election districts to be retroactive to November 24, 1999. However, our decision cannot be overruled by the legislature.

If the petition to alter South Buffalo's voting districts, filed on February 19, 2002, was still pending on May 16, 2002, the date of the amendment to § 536 of the Election Code, we would have had no choice but to deny the Petition. At that time, there were no vested rights involved and the retroactive nature of the amendment to § 536 would require its application to the case at hand. But the matter involving South Buffalo's voting district was already completed by the time the prohibition on alteration was made law on May 16. No appeal had been taken from the Order of March 15, 2002. Nothing remained pending, and the case was over. The legislature may not, by act of assembly, overrule a

judicial decision. *Com. v. Shaffer*, 557 Pa. 453, 734 A.2d 840 (1999), citing *Com. v. Sutley*, 474 Pa. 256, 378 A.2d 780 (1977), *Greenough v. Greenough*, 11 Pa. 489 (1849).

> Though the legislature possesses the power to promulgate the substantive law, [footnote omitted] judicial judgments and decrees entered pursuant to these laws may not be affected by subsequent legislative changes after those judgments and decrees have become final.
> 378 A.2d at 784.

Having determined that the legislation of May 16, 2002 cannot serve to invalidate our Order of March 15, 2002, we now consider the language of the statute as it existed on the date of our Order. As quoted above, § 536 at that time prohibited establishment, abolition, division, or consolidation of election districts during a freeze period from June 1, 2000 through April 30, 2002. The section said nothing about alteration of election districts. The prohibitions of § 536 are not ambiguous. They clearly do not include the term "alteration." The legislature was well aware of this terminology, as throughout the Election Code, it includes the additional term "alteration" when the terms dividing, establishing, abolishing, or consolidating are mentioned.

For example, § 502, 25 P.S. § 2702, provides that "the court of common pleas . . . may *form or create* new election districts by *dividing or redividing* any . . . election district into two or more election districts . . . , or *alter the bounds* of any

election district, or form an election district . . . , or consolidate adjoining election districts . . . ." Section 503, 25 P.S. § 2703, provides for petitions seeking "*division or redivision* of . . . [an] election district into two or more election districts, or for the *alteration of the bounds* of any election district, or for the *formation* of one or more election districts out of two or more existing election districts, or parts thereof, or for the *consolidation* of adjoining election districts . . . ." Section 504, 25 P.S. § 2704, calls for petition by the board of elections for "*division or redivision* of any election district into two or more election districts, or for the *alteration of the bounds* of any election district, or for the *formation* of one or more election districts out of two or more existing election districts, or parts thereof, or for the *consolidation* of adjoining election districts . . . ." (emphasis supplied).

Furthermore, the legislature's amendatory language of May 16, 2002 clearly evinces the notion that alteration of existing boundaries was not included in the terms "establish, abolish, divide, or consolidate" as used in the previous version of § 536 of the Election Code. Therefore, the Court's action in altering the boundaries of the election districts in South Buffalo

Township was not in violation of then-existing law.[1]

Having determined that the Order of March 15, 2002 was not violative of any existing law, we consider, finally, whether vacating our Order is permissible under our general judicial power. The Petition to Vacate was filed on May 8, 2002, more than thirty (30) days from the date of the Order. No appeal was taken.

The Judicial Code provides in § 5505, Modification of orders, as follows:

> Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed.
> 42 Pa.C.S. § 5505

It has been held that a court may open or vacate its order after the thirty day period has expired where fraud or some other circumstance "so grave or compelling as to constitute

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[1] We are aware that the preamble to Act 1999-51 and the heading to § 536 speak of alteration of election districts. However, under the Statutory Construction Act, 1 Pa.C.S. § 1924, while titles, preambles, headings, and other divisions of a statute may be considered in its construction, they may not control and may be considered only where the plain words are ambiguous. *Licensed Beverage Ass'n of Philadelphia v. Board of Educ. Of Sch. Dist. of Philadelphia*, 669 A.2d 447 (Pa.Commw. 1995), *Boring v. Erie Ins. Group*, 434 Pa.Super. 40, 641 A.2d 1189 (1994), citing *Com. v. Magwood*, 503 Pa.169, 469 A.2d 115 (1983). Since the words of the statute are clearly not ambiguous, we find no need to refer to the heading. "Where the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." *Boring*, 641 A.2d at 1192, 1 Pa.C.S. § 1921(b).

extraordinary cause justifying court intervention is shown." *Justice v. Justice*, 417 Pa.Super. 581, 612 A.2d 1354, 1357 (1992), quoting *Simpson v. Allstate Ins. Co.*, 350 Pa.Super. 239, 504 A.2d 335, 337 (1986). The inherent power of the court to correct patent and obvious mistakes is not eliminated by the expiration of the thirty day period. *Com. v. Cole*, 437 Pa. 288, 263 A.2d 339 (1970).

We are convinced that there was no fraud underlying the original Petition which resulted in the March 15, 2002 Order. Moreover, as discussed above, the order was not violative of existing law, and we see no obvious and patent mistake in our decision. Finally, we have carefully considered the matter and find no grave, compelling circumstances constituting extraordinary cause which would justify our intervention beyond the thirty day period. Consequently, the Petition to Vacate will be denied and our Order of March 15, 2002 will stand.

An appropriate Order will be entered.

IN THE COURT OF COMMON PLEAS OF
ARMSTRONG COUNTY, PENNSYLVANIA

IN RE: REALIGNMENT OF THE DIVISION EASTERN AND WESTERN PRECINCTS OF THE SOUTH BUFFALO TOWNSHIP ELECTION DISTRICT	))))	2002 - 0081 - MISC.

ORDER

AND NOW, to-wit, this 19th day of July, 2002, the County of Armstrong, County Election Board having filed a Petition to Vacate this Court's Order of March 15, 2002, and after hearing and upon consideration of the argument of Counsel and for the reasons set forth in the attached Opinion, IT IS ORDERED, ADJUDGED, AND DECREED that the Petition to Vacate said Order be and hereby is denied.

By the Court

Joseph A. Nicklearch, P.J.
Joseph A. Nicklearch

CERTIFICATE OF SERVICE

I, MARK A. PACKMAN, co-counsel for Senator Robert J. Mellow, hereby certify that on September 9, 2002, I caused copies of Senator Robert J. Mellow's Response to Defendants' Second Status Reports and Senator Robert J. Mellow's Joinder in Plaintiffs' Response to Defendants' Motion to Add Necessary Party to be served by fax and first-class mail upon the following:

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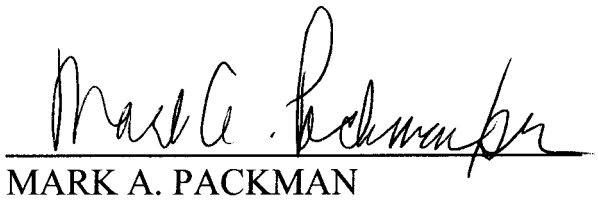

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