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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, in his official capacity as
Governor of Pennsylvania; KIM
PIZZINGRILLI, in her official capacity
as Secretary of the Commonwealth of
Pennsylvania; RICHARD FILLING, in
his official capacity as Commissioner of
the Bureau of Commissions, Elections,
and Legislation of the Pennsylvania
Department of State; ROBERT C.
JUBELIRER, in his official capacity as
Lieutenant Governor of Pennsylvania
and President of the Pennsylvania Senate;
MATTHEW J. RYAN, in his official
capacity as Speaker of the Pennsylvania
House of Representatives,**

Defendants.

**NO. 3:CV-01-2439
JUDGE RAMBO**

**FILED
SCRANTON**

JAN 11 2002

**PER
DEPUTY CLERK**

**AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1. The plaintiffs have brought this action to enforce voting rights guaranteed to them by the United States Constitution. As registered Democrats and voters in the Commonwealth of Pennsylvania, the plaintiffs

have exercised, and wish to continue exercising, their right to vote for their preferred candidates for United States Representative, both in general elections and in Democratic Party primary elections. The congressional districting plan that the Pennsylvania General Assembly imposed on the Commonwealth on January 3, 2002, however, violates plaintiffs' rights under the United States Constitution.

PARTIES

2. Plaintiff Richard Vieth is a registered Democrat and under the new districting plans resides in District 16. He resides at 632 Laurel Lane, Lancaster, Pennsylvania 17601.

3. Plaintiff Norma Jean Vieth is a registered Democrat and under the new districting plans resides in District 16. She resides at 632 Laurel Lane, Lancaster, Pennsylvania 17601.

4. Plaintiff Susan Furey is a registered Democrat and a resident of Montgomery County. She resides at 507 Bryn Mawr Avenue, Bala Cynwyd, Pennsylvania, 19004. Under the districting plan established in 1992, Furey resided in District 13. Under the new districting plan, Furey resides in District 6, which is overpopulated and non-compact.

5. Defendants are the Commonwealth of Pennsylvania and officials thereof who have duties and responsibilities under the laws of the Commonwealth to redraw congressional districts in Pennsylvania following the release of population data from each federal decennial census and then to conduct elections in those districts. Defendant Mark S. Schweiker is the Governor of Pennsylvania. Defendant Kim Pizzingrilli is the Secretary of the Commonwealth and oversees Pennsylvania's electoral process. Defendant Richard Filling is the Commissioner of the Bureau of Commissions, Elections, and Legislation of the Pennsylvania Department of State, which is charged with administering functions related to Pennsylvania's electoral process. Defendant Robert C. Jubelirer is the Lieutenant Governor of Pennsylvania and President of the Pennsylvania Senate. Defendant Matthew J. Ryan is the Speaker of the Pennsylvania House of Representatives.

JURISDICTION AND VENUE

6. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), 1357, 2201, 2202, and 2284. Venue is proper in this district under 28 U.S.C. § 1391(b).

RELEVANT STATE AND FEDERAL CONSTITUTIONAL PROVISIONS

7. Section 2 of Article I of the United States Constitution, as amended by Section 2 of the Fourteenth Amendment, provides, in part, that “[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States” and that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State”

8. Section 4 of Article I of the United States Constitution grants limited authority to the Legislature of each State to determine “[t]he Times, Places and Manner of holding elections for . . . Representatives.” As the Supreme Court of the United States has recognized, State Legislatures are more limited in their authority to draw congressional districts than they are under their inherent power to draw their own state legislative districts.

9. In the First Amendment to the Bill of Rights, the United States Constitution protects the rights of freedom of speech and association.

10. The Equal Protection Clause of Section 1 of the Fourteenth Amendment prohibits any State from “deny[ing] to any person within its jurisdiction the equal protection of the laws.”

11. The Privileges and Immunities Clause of Section 1 of the Fourteenth Amendment prohibits any State from “abridg[ing] the privileges or immunities of citizens of the United States.”

12. Together these constitutional provisions embody fundamental guarantees that every citizen, regardless of race or political party, will have a fair and equal opportunity to cast a meaningful ballot for members of Congress and a fair and meaningful opportunity to be represented by a person of their choice in the United States Congress. These guarantees include, among other things, the one-person, one-vote principle – requiring each of a State’s congressional districts to contain the same number of persons, absent a legitimate justification – and the prohibition against invidious partisan gerrymanders, which operate to consistently degrade the votes of a particular disfavored group.

THE 1992 CONGRESSIONAL PLAN AND THE 2000 CENSUS

13. In March 1992, the Supreme Court of Pennsylvania ordered into effect a congressional districting plan establishing Pennsylvania's 21 current congressional districts. Although that plan did not achieve perfect population equality among the districts, the Supreme Court ruled that slight deviations in population can be justified when the deviations are necessary to protect other important districting interests such as the preservation of local municipal boundaries. The plan that the Supreme Court ordered into effect split 27 localities (including 19 counties and 8 cities, towns, and boroughs) and 3 election precincts; the Supreme Court rejected a competing plan that had a smaller population deviation on the grounds that it split 48 localities (including 21 counties and 27 cities, towns, and boroughs) and 22 election precincts. *See Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992). The Pennsylvania Supreme Court also found that the plan they adopted was fair to both major political parties.

14. After the Supreme Court ordered the 1992 plan into effect, a three-judge federal court reviewed its validity. The three-judge court ruled that the Pennsylvania Supreme Court's plan was valid, and in interpreting *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), recognized that, "the

Pennsylvania Supreme Court identified in its opinion the avoidance of municipal splits as an important public policy of the Commonwealth.” The Court wrote, “This conclusion is a matter of Pennsylvania state law and we are bound by it.” *Nerch v. Mitchell*, No. 92-0095, slip op. at 32 - 33 (M.D. Pa. Aug. 13, 1992) (per curiam).

15. Under the 1992 Plan, which was used for the most recent congressional elections in November 2000, citizens of the Commonwealth of Pennsylvania cast almost an identical number of votes for Democratic candidates as for Republican candidates, and elected 11 Republicans and 10 Democrats to Congress.

16. The 2000 election was the last under the 1992 plan drawn by the Pennsylvania Supreme Court. On December 28, 2000, the Secretary of Commerce reported to the President of the United States the tabulation of population for each of the fifty States, including the defendant Commonwealth of Pennsylvania, as determined in the 2000 decennial census. Those population figures showed that Pennsylvania is now entitled to only 19 Representatives in Congress -- a decrease of two Representatives since the 1990 census. The census data also show that Pennsylvania's

resident population as of April 1, 2000, was 12,281,054 persons -- 646,371 or 646,372 persons for each of the 19 congressional districts.

17. During its regular session in 2001, the General Assembly was unable to reach agreement on a congressional redistricting plan. The State House of Representatives passed one plan and the State Senate passed a different plan. The General Assembly adjourned on December 13, 2001, at an impasse.

18. Before and after the deadlock, national Republican leaders sought to use the Pennsylvania congressional redistricting process, which was wholly controlled by the Republican General Assembly and Republican governor, to achieve national political ends, rather than to reach a result in the interests of the people in Pennsylvania. National Republican leaders pressured Pennsylvania legislators to push for maximum partisan advantage, regardless of the cost. Karl Rove, a political advisor to President George W. Bush -- who lost in Pennsylvania -- asked state Republicans to favor the plan passed by the state Senate rather than the more moderate House plan. Rep. Thomas M. Davis III, a Republican of Virginia and the chairperson of the National Republican Congressional Committee, stated publicly that Pennsylvania would serve as a payback for whatever redistricting successes

Democrats might have had elsewhere. "Democrats rewrote the book when they did Georgia, and we would be stupid not to reciprocate," he said.

Pennsylvania "will make Georgia look like a picnic." Press accounts report that Pennsylvania House Majority Leader John Perzel also received phone calls from Republican Sen. Rick Santorum and House Speaker Dennis Hastert regarding the importance of maximizing the number of seats that would elect Republicans and thus rigging the districts against the Democratic party and the interests of Democratic voters.

THE NEW CONGRESSIONAL PLAN

19. Following the end of the General Assembly's regular session, Republicans from the House and Senate worked to reach agreement on a plan that would satisfy the interests of their Republican colleagues and the national Republican party. At all points, Democratic state legislators, including those on the Conference Committee, were shut out of this process. Democratic leaders in the House and Senate were presented, for the first time, with a final version of a proposed congressional redistricting plan on the morning of the conference committee on January 2, 2002. The Democratic members of the Conference Committee had no input whatsoever

on the final plan. The Conference Committee voted this plan out on straight party lines.

20. On January 3, 2002, the General Assembly passed the new congressional redistricting plan, Senate Bill 1200 (SB1200). That plan, delineating 19 congressional districts to comport with reapportionment following the 2000 Census, not only fails to equalize the population of each congressional district, but also ignores all traditional redistricting criteria, including the preservation of local government boundaries, solely for the sake of partisan advantage.

21. Under SB 1200, the Commonwealth's most populated district, District 7, would have a population of 646,380. The Commonwealth's least populated districts, Districts 1, 2, and 17, would each have populations of 646,361. This creates a total population deviation of 19, which is lower than the total population deviation in the 1992 plan, but in contrast to the 1992 plan, the new plan's deviation serves no recognizable legitimate interest: rather than protecting municipal boundaries, the plan splits units of local governments throughout the state among multiple districts. SB 1200 splits 84 local governments, including 25 counties and 59 cities, boroughs, or townships, as well as 41 wards. (To avoid double counting, Philadelphia for

these purposes has been treated as a county, not as both a county and a city.)

Montgomery County alone is split into six different congressional districts.

This is in sharp contrast with the plan drawn by the Pennsylvania Supreme

Court in 1992, which recognized the importance of preserving local

government boundaries and split only 19 counties and 8 cities, townships,

and boroughs.

22. SB 1200 also ignores all other traditional redistricting criteria, thus demonstrating that partisanship – and nothing else – was the rationale behind the plan. Rather than protecting communities of interest, it fractures them, substituting meandering and irregular lines through the state. District 6, for example, looms like a dragon descending on Philadelphia from the west, splitting up towns and communities throughout Montgomery and Berks Counties. District 7 is barely contiguous. District 8 includes an ungainly gash that at one point narrows to 300 yards and extends five and a half miles into Montgomery County, nearly splitting neighboring District 13 in two. District 12 snakes through several counties, leaving no fewer than 25 split cities, towns, and boroughs. Not surprisingly, the districts in SB 1200 are far less compact than those in the 1992 plan.

23. In constructing SB1200, the General Assembly did not attempt to preserve the cores of existing districts (which minimizes voter confusion by displacing fewer voters from their current districts), protect incumbents, establish partisan balance, or advance any of the legitimate redistricting criteria recognized by the United States Supreme Court or by scholars in the field of redistricting. Rather, the General Assembly's purpose and intent in enacting SB 1200 was to maximize the representation of Republican interests and minimize the representation of Democrats, no matter what the cost. Indeed, rather than preserving the seniority and power of the Pennsylvania congressional delegation, thereby enhancing Pennsylvania's clout in Washington, the General Assembly sought to replace Democratic members who have seniority with first-term Republicans. As Republicans in the General Assembly have explained, rigging the electoral system in favor of Republicans will advance the policy agenda of current President Bush, which they believe should be in the interests of all residents of the Commonwealth – regardless of the fact that a majority of citizens voted against President Bush.

PARTISAN IMPACT OF SB 1200

24. The partisan effects of SB 1200 are massive. As Democratic state legislators have explained, SB 1200 is a “massacre.” SB 1200 ensures that the voting preferences of the residents of Pennsylvania will *not* be reflected in congressional elections and consistently degrades the votes of Democratic voters in the Commonwealth.

25. In terms of voter preferences, the two major political parties hold nearly equal support among Pennsylvania residents, with a slight preference for Democrats. Registered Democrats outnumber registered Republicans 3,733,739 to 3,233,171, a division between the two major parties of 53.6% to 46.4%.

26. Further, on neutral playing fields free from partisan gerrymandering, Democrats consistently perform competitively in Pennsylvania elections. In twenty-one congressional races during the 2000 elections, the aggregate vote for Democrats was 2,279,227, or 50.6%, while the aggregate vote for Republicans was 2,229,057, or 49.4% of the major parties’ vote totals.

27. Democrats also received more total votes than Republicans in the five statewide races in 2000, as Democrats received 11,495,041 votes to Republicans' 11,428,698, a margin of 50.1% to 49.9%. (The vote totals in those elections include the race for President, with Democrat Al Gore receiving 2,485,967 votes (50.6% of all votes cast) to Republican George Bush's 2,281,127 votes (46.4%); the race for Attorney General, in which incumbent Republican Mike Fisher received 2,495,253 votes (55.6% of votes for major party candidates) and Democrat Jim Eisenhower received 1,991,144 votes (44.4%); the race for Auditor General, in which incumbent Democrat Bob Casey, Jr. received 2,651,551 votes (58.7% of votes for major party candidates) and Republican Katie True received 1,862,934 votes (41.3%); the race for State Treasurer, in which the incumbent Republican Barbara Hafer received 2,307,422 votes (51.1% of votes for major party candidates) to Democrat Catherine Knoll Baker's 2,211,471 votes (48.9%); and the race for United States Senator, in which incumbent Republican Rick Santorum received 2,481,962 votes (53.5% of votes for major party candidates) to Democrat Ron Klink's 2,154,908 votes (46.5%).)

28. The new plan will have serious consequences on the Pennsylvania congressional delegation's ability to represent the preferences of Pennsylvania voters. Despite the Commonwealth's 50/50 split between

Democrats and Republicans – or, more accurately, its slight preference for Democrats – the new plan will likely result in a congressional delegation consisting of 13 Republicans and 6 Democrats. Some Republicans have boasted that their majority will be even greater, producing a 14-to-5 edge. Thus, even if they continue, as they have, to receive more than 50% of the vote in congressional elections, Democratic candidates will win less than 1/3 of the seats in Congress; Republicans, receiving less than half of the total votes cast, will receive twice (and almost three times) as many congressional seats.

HARM CAUSED BY SB 1200

29. SB 1200 harms the people of Pennsylvania, particularly Democratic voters, such as plaintiffs, and the Democratic Party, in several distinct ways. First, SB 1200 dilutes the votes of people living in districts that are overpopulated, i.e., contain more than 646,371 people. Those districts include Districts 4, 6, 7, 9, 10, 11, 13, 14, 15, and 19. It does so without any legitimate justification.

30. SB 1200 is also an egregious partisan gerrymander. A partisan gerrymander refers to a district-based election system that rigs a political system in favor of one party. Indeed, Congress has outlawed the use of

multi-member districts in drawing congressional districts, 2 U.S.C. § 2(c), precisely because such districts allow a majority party in the state legislature to rig the congressional elections in their favor. A partisan gerrymander does precisely the same thing.

31. By “packing” voters of one party in some districts and “cracking” or fragmenting them in others, a partisan gerrymander ensures that one party wins more representation than its voting strength would otherwise allow. It thus dilutes the voting strength of voters of the other party. The effect of a partisan gerrymander is often referred to as bias – the lines are drawn in such a way as to favor (to be biased toward) one party, which is able to win more representation with fewer votes.

32. SB 1200 is a massive political gerrymander. It packs and fragments Democratic voters to ensure that their votes are worth less than Republican votes. Thus, although Pennsylvania is a 50/50 state, SB 1200 was designed to ensure that Republicans would win at least 13 of the 19 congressional seats. In terms of bias, SB 1200 gives Republicans a bias of over 18% – for less than 50% of the votes, they receive at least 68% of the seats in Congress. The plan does not merely fail to apportion seats proportionally; it maximizes the Republicans’ partisan advantage to the

exclusion of all other criteria. In terms of magnitude, SB 1200 is one of the most egregious partisan gerrymanders in recent history. It is significantly worse than that challenged in *Davis v. Bandemer*, 478 U.S. 109 (1986), in which the Supreme Court recognized the justiciability of partisan gerrymandering. It gives one party a two- or three-to-one advantage based on nothing other than the packing and cracking of voters.

33. This bias will not apply in simply one political election, but will affect every future election under SB 1200, regardless of the political conditions. It cements Republican power and effectively reduces Democrats to being a small minority of the Commonwealth's congressional delegation for the coming election and likely the coming decade.

34. By diluting the voting strength of Democratic voters, SB 1200 operates to minimize or cancel out the votes of Democrats, solely because the dominant party in the State Legislature does not like their political point of view and how they vote. SB 1200 consistently and systematically degrades the influence of Democratic voters on the political process as a whole, denies them fair representation, and penalizes Democratic voters for their views. Given that Democratic voters make up a small majority of the

voters in Pennsylvania, SB 1200 will frustrate the will of the majority to influence the political process.

35. The harms caused by SB 1200 go well beyond the statewide dilution of Democratic voting strength. SB 1200 dramatically affects the Democratic Party's prospects for success in congressional elections in Pennsylvania in other ways and will operate to reduce the choices that voters, and particularly Democratic voters, will have in Pennsylvania elections. Political success depends on a variety of factors, including party organizing, recruitment of viable candidates, fund-raising, and voter turnout efforts. These factors, in turn, depend in large part on the party's potential for success. Because of the bias created by SB 1200, the Democratic Party will have greater difficulty in fielding competitive candidates. Further, those candidates who do run will find it more difficult to raise the money necessary to compete effectively, because potential donors will be hesitant to support losing candidates.

36. By locking down control of the congressional delegation, Republicans have leveraged their control over other aspects of the Pennsylvania political structure to essentially shut Democrats and Democratic voters out of the political process. Republicans already control

the General Assembly and the Governor's office; SB 1200 itself is evidence that they will use that political power to minimize the voice of Democratic voters so that they might advance the Republican agenda in Pennsylvania and in national politics. SB 1200 installs the Republican Party as the dominant party in Pennsylvania – based solely on bias and unfairness, not on votes.

37. Democratic voters, such as plaintiffs, will also suffer harm due to the impact of SB 1200 on representation of Pennsylvania voters. The fact that 13 or 14 districts are now designated as "Republican districts" means that Pennsylvania Democrats – who compose a majority of the state – will now be increasingly represented by members of Congress who do not represent their views. As with race, when a district – indeed an entire state's redistricting plan is obviously created solely to effectuate the interests of one political group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than the constituency as a whole. Indeed, the presumption that a winning candidate represents all of the district's constituents is not as strong here as it is in the case of a racial gerrymander, where there is no necessary connection between a voter's or candidate's race and his or her political views. In a partisan case, the presumption no longer holds, because the connection

between one's partisan affiliation and his or her political views is much closer than the connection between a voter's race and his or her political views. Even those voters whose political views do not perfectly correlate with their representatives' views are better represented by a representative of their own political party than one of another party. Although representatives may still be responsive to the interests of independent voters whose vote they may aim to capture, they are non-responsive to – and can entirely ignore – voters who support the opposing party.

38. SB 1200 also harms plaintiffs and other Democratic voters in Pennsylvania because it clearly and improperly draws distinctions and doles out benefits on the basis of political party. Unlike a redistricting plan that seeks to balance partisan success between the two parties or one which takes politics into account, SB 1200 creates favored and disfavored groups, and sends a clear message to the people of Pennsylvania – electing Republicans is more important than the will of the majority and Democrats are to be penalized because their views are not favored by the majority in the General Assembly. By relying exclusively on a principle of maximum partisan advantage, the General Assembly's plan thus classifies and discriminates against voters solely because of their party affiliations. Plaintiffs' ability to associate with other Democratic voters to support their candidate of choice

has been uniquely harmed, not by any accident of geography, but by an intentional effort to degrade a class of voters' ability to influence the political process.

39. SB 1200 also harms Democratic voters in the Commonwealth because it is, on its face and intentionally, legislation that exalts Republican advantage over any legitimate criterion for governmental decisionmaking. Classifications based on political affiliation, like those based on race, are ordinarily impermissible, but the Supreme Court has indicated that such classifications may be permitted when drawing districts. In the line of cases that started with *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court recognized that even a factor that might otherwise be permissible can render a plan unconstitutional when used to the exclusion of all other criteria. The problem is not that the General Assembly considered politics, but that it subordinated – indeed ignored – all traditional redistricting principles and all legitimate bases for governmental decisionmaking, in order to favor those with one political viewpoint over another, thus implicating fundamental rights protected by the U.S. and Pennsylvania Constitutions. SB 1200 is so irregular on its face that it rationally can be viewed only as an effort to segregate voters to advance the interests of one political party, without

regard for traditional redistricting principles and without any legitimate or compelling justification.

40. The very fact that the General Assembly has subordinated all legitimate criteria to political preference is itself a violation of the Equal Protection Clause. While politics will always play an important role in redistricting, this was not politics as usual. The General Assembly's plan has exceeded ordinary politics, and thus requires judicial intervention. It will impose serious handicaps on Pennsylvania Democrats' efforts to participate in the political process and leaves Pennsylvania Democrats shut out of the congressional electoral process.

CLAIM I

41. Plaintiffs incorporate by reference Paragraphs 1 through 40.

42. The facts herein alleged constitute a denial or abridgement of the plaintiffs' right to vote for their Representative to the United States Congress, in violation of Section 2 of Article I of the United States Constitution, as amended by Section 2 of the Fourteenth Amendment, and Section 4, Article I of the United States Constitution.

CLAIM II

43. Plaintiffs incorporate by reference Paragraphs 1 through 42.

44. The facts herein alleged constitute a denial to the plaintiffs of the equal protection of the laws as guaranteed to them by the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the United States Constitution.

CLAIM III

45. Plaintiffs incorporate by reference Paragraphs 1 through 44.

46. The facts herein alleged constitute an abridgement of the privileges and immunities of citizenship guaranteed to the plaintiffs by the Privileges or Immunities Clause of Section 1 of the Fourteenth Amendment to the United States Constitution.

CLAIM IV

47. Plaintiffs incorporate by reference Paragraphs 1 through 46.

48. The facts herein alleged constitute a denial or abridgement of the plaintiffs' right to free association as guaranteed to them by the First Amendment to the United States Constitution.

CLAIM V

49. Plaintiffs incorporate by reference Paragraphs 1 through 48.

50. The facts herein alleged constitute a violation of Section 1983 of Title 42 of the United States Code.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

- A. Assume jurisdiction of this matter and convene as a three-judge District Court pursuant to Section 2284 of Title 28 of the United States Code;
- B. Enter a declaratory judgment that the congressional districting plan that the General Assembly passed on January 3, 2002 violates plaintiffs' rights under the aforesaid provisions of the United States Constitution and federal law;

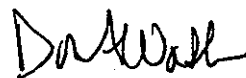
C. Enjoin permanently the defendants, their officers, agents, employees, attorneys, successors in office, from conducting primary or general elections, by themselves or in concert with other persons, using the January 3, 2002 General Assembly congressional districting plan or any other congressional districting plan that violates the United States Constitution or federal law;

D. Impose by Court order a new congressional redistricting plan that meets the requirements of the United States Constitution and federal law that will be in effect for the 2002 elections and enjoin the defendants from enacting or implementing a new redistricting plan until the 2004 elections;

E. Grant plaintiffs their reasonable attorneys' fees, litigation expenses, and court costs; and

F. Grant plaintiffs any other relief that the Court finds appropriate and equitable.

Respectfully submitted,



Daniel T. Brier, Esquire
Donna A. Walsh, Esquire

MYERS, BRIER & KELLY, L.L.P.
Suite 200, 425 Spruce Street
Scranton, PA 18503
(570) 342-6100

Paul M. Smith
Thomas J. Perrelli
Daniel Mach
Brian P. Hauck
JENNER & BLOCK, LLC
601 Thirteenth Street, NW
Washington, D.C. 20005
(202) 639-6000

Attorneys for Plaintiffs Richard Vieth,
Norma Jean Vieth, and Susan Furey

Dated: January 11, 2002

CERTIFICATE OF SERVICE

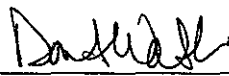
I, DONNA A. WALSH, ESQUIRE hereby certify that a true and correct copy of the foregoing Amended Complaint was served upon all counsel of record by first class mail, postage prepaid on this 11th day of January, 2002 to the following:

Linda J. Shorey, Esquire
Kirkpatrick & Lockhart, LLP
Payne Shoemaker Building
240 North Third Street
Harrisburg, PA 17101-1507

Commonwealth of Pennsylvania
c/o Attorney General D. Michael Fisher
Office of Attorney General
Strawberry Square
Harrisburg, PA 17120

Governor Mark S. Schweiker
c/o General Counsel James M. Sheehan
Office of General Counsel
17th Floor, 333 Market Street
Harrisburg, PA 17101

Secretary Kim Pizzingrilli
Commissioner Richard Filling
c/o Chief Counsel John T. Henderson, Jr.
Pennsylvania Department of State
North Office Building
Harrisburg, PA 17120-0029



Donna A. Walsh, Esquire