

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

FLORENCE WALLACE, *et al.*,

Plaintiffs,

v.

ROBERT J. POWELL, *et al.*,

Defendants.

CIVIL ACTION
NO. 09-cv-286
(Judge Caputo)

WILLIAM CONWAY, *et al.*,

Plaintiffs,

v.

MICHAEL T. CONAHAN, *et al.*,

Defendants.

CIVIL ACTION
NO. 09-cv-291
(Judge Caputo)

H.T., *et al.*,

Plaintiffs,

v.

MARK A. CIAVARELLA, JR.,
et al.,

Defendants.

CIVIL ACTION
NO. 3:09-cv-357
(Judge Caputo)

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motion for a stay of these federal proceedings pending certain actions by the state court.¹

The four civil actions that comprise this litigation (the “Cases”)² are inextricably intertwined with the proceedings in state court that are being

¹ The undersigned defendants understand the Court’s order distinguishing these issues for briefing purposes from challenges defendants might raise under Fed. R. Civ. P. 12(b) as reflecting the Court’s recognition of the fact that many of the plaintiffs in these cases have been adjudicated delinquent in state-court proceedings and that those adjudications, if undisturbed, may serve as a threshold impediment to their claims in these actions. Because the Court did not seek or order motions or briefing regarding other grounds upon which defendants might seek to dismiss these complaints pursuant to Fed R. Civ. P. 12(b), defendants do not raise all such grounds at this time. Defendants reserve their right to assert Rule 12(b) motions at a later date in accordance with the schedule established in the Court’s Orders of May 12, 2009 and June 22, 2009.

² During an initial case management conference held on May 8, 2009, the Court directed that the four captioned cases be coordinated for discovery purposes. Plaintiffs have since filed amended complaints, consisting of a “consolidated” multi-party complaint (apparently intended to be read in conjunction with allegations previously made in the *Humanik* and *Wallace* complaints) and a “consolidated” putative class action complaint. Because as a technical matter consolidation is not normally regarded as causing multiple civil actions to become one, *see, e.g., Cella v. Tagum Constructeur Emsemlier*, 173 F.3d 909, 912 (3d Cir. 1999), all actions remain pending. The apparent effect of the amended pleadings as filed in the four cases is likely that the *Humanik* and *Wallace* individual complaints, as amended, now have substantially overlapping factual allegations and assert the same legal theories against 20 defendants. The *Conway* and the *H.T.* complaints as now amended appear to make identical allegations and assert identical theories against 15 defendants. As a result, the Court may for many purposes regard the four pending actions as though they consisted of one putative class action with over 100 proffered class representatives and one multi-party complaint consisting of over 200 plaintiffs, asserting claims against overlapping but not identical defendants.

conducted by a Special Master, Senior Judge Arthur Grim, as directed by the Supreme Court of Pennsylvania. The state and federal matters, both brought on behalf of juveniles adjudicated by former judge Mark Ciavarella (“Judge Ciavarella”), arise out of an allegation that Judge Ciavarella had an undisclosed financial interest in juvenile detention facilities and, therefore, he had a personal incentive for adjudicated juveniles to be detained. Based on this allegation, plaintiffs allege that Judge Ciavarella either (a) was actually biased against all juveniles who appeared before him, or (b) at a minimum, should not have been hearing juvenile cases because of the appearance of such bias (if all facts had been disclosed).³ But, while both matters are based on the proposition that the rights of juvenile defendants may have been violated in their criminal proceedings, the ongoing state court process and the litigation in this Court have very different objectives.

The state court proceedings will involve consideration of whether adjudications of delinquency before Judge Ciavarella from 2003 to May 2008 should be allowed to stand and, if not, whether juveniles may be re-adjudicated. At this time, the vast majority of plaintiffs have not had their adjudications vacated, but the almost certain result of the state proceedings

³ Plaintiffs also allege that some juveniles were unconstitutionally deprived of their rights to counsel, and the Complaints seek damages in this regard as well.

is that many juveniles will have their records expunged. The plaintiffs' aspiration in the current federal proceedings, however, is to pursue money for juveniles (and certain parents or guardians), based upon the allegations by plaintiffs that they were injured because they were improperly or illegally adjudicated delinquent by Judge Ciavarella or deprived of counsel.

As the Pennsylvania Court system has observed in correspondence to this Court,⁴ these different objectives create an unavoidable tension between the two proceedings. In the context of defendants' effort to preserve records subject to being expunged, for example, the Supreme Court of Pennsylvania has noted that, while some juveniles may want all evidence of their juvenile records destroyed, others may attempt in this federal proceeding to prove through the same type of records that they were injured because of Judge Ciavarella's involvement in their cases. More germane to the present motion is the temporal tension between the proceedings, as what is now being decided in the state forum is a necessary predicate to the ultimate determination of the juveniles' claims in this Court. Unless a state court first concludes that a juvenile was improperly adjudicated, such juvenile cannot

⁴ *See, e.g.*, Letter from Zygmunt Pines, Court Administrator of Pennsylvania, Administrative Office of Pennsylvania Courts, to Hon. A. Richard Caputo, United States District Court Judge for the Middle District of Pennsylvania (June 25, 2009) (Doc. No. 140) ("Pines Letter") (Exhibit A).

show as a matter of law that he or she was harmed by an improper adjudication. If the state court ultimately decides that a juvenile's delinquency determination and disposition were appropriate and lawful, the juvenile will be precluded from recovering monetary damages in the current action.

There are numerous reasons why the cases in this Court should not go forward until the state court proceedings are concluded. If plaintiffs insist on going forward before the state court proceedings are complete, their claims should be dismissed for lack of subject matter jurisdiction.

II. STATEMENT OF THE PROCEEDINGS

The juvenile plaintiffs were charged with committing various state crimes. None of the plaintiffs has alleged (or presumably intends to prove in the Cases) that he or she is actually innocent of those underlying crimes. Rather, each plaintiff contends as a matter of fact that, but for Judge Ciavarella (and Judge Michael Conahan) assertedly having undisclosed economic interests in Pennsylvania Child Care (PACC) and Western Pennsylvania Child Care (WPACC), the juvenile plaintiffs would not have been detained or treated as they were.⁵ Plaintiffs also allege, *inter alia*, a

⁵ The individual facts underlying plaintiffs' claims vary widely, as to, among other things, their theories of causation and damages, because the charges against juveniles range from extremely serious to minor criminal

violation of their federal constitutional right to a judge whose impartiality cannot reasonably be questioned, and they claim a right under various legal theories to monetary compensation for the consequences of their juvenile adjudications.

The foundation for both the state and federal proceedings was laid in April 2008 when the Juvenile Law Center (the “JLC”) filed a petition with the Supreme Court of Pennsylvania, requesting that that Court exercise its King’s Bench authority to review the cases of juveniles adjudicated by Judge Ciavarella. That petition was denied. However, in January 2009, the JLC sought reconsideration after it became known that the U.S. Attorney intended to charge Judges Ciavarella and Conahan with certain federal crimes. On February 11, 2009, the Supreme Court of Pennsylvania granted JLC’s motion and appointed Senior Judge Arthur E. Grim to serve as Special Master to review the juveniles’ cases.

At least with respect to the first level review, Judge Grim has announced that he will not review the merits of the underlying cases, but simply will apply certain non-merits criteria to determine which adjudications will be vacated. *See* First Interim Report and Recommendations of the Special Master, pp. 8-11 (March 12, 2009),

violations. Moreover, many plaintiffs were not sent to PACC or WPACC. Indeed, some of the plaintiffs were not sent to any facility at all.

(Exhibit B). It appears that Judge Grim intends to look at records to determine whether certain low-level offenders were represented by counsel and, if not, he will order their adjudications to be vacated and their records to be expunged. It does not appear that this level of review will involve substantive analysis of individual cases to address the merits or the appropriateness of the underlying adjudications and dispositions in light of the record in each case.

According to the Pennsylvania Supreme Court, the second level of review will address “serious misdemeanors and low level felonies.” *See* Administrative Office of Pennsylvania Courts News Release (May 20, 2009) <http://www.aopc.org/NR/rdonlyres/4D79F14F-915F-464E-BCE6-E2CF63E20C70/0/prrel09520.pdf> (Exhibit C). While reviewing these cases, among the questions that Judge Grim intends to consider are (1) which juvenile adjudications should be overturned and (2) whether juveniles whose adjudications have been overturned may be re-adjudicated.⁶ A hearing was held concerning these issues on July 17, 2009.⁷ Beyond this second level of

⁶ The Luzerne County District Attorney’s Office has taken the position that, if juvenile adjudications are vacated, it should be permitted to re-try those cases.

⁷ The Commonwealth is also reportedly considering legislation for the compensation of juveniles who may have been affected by the purported conduct of the judges. In February, it was reported that State Senate Judiciary Committee Chairman Stewart Greenleaf said he would hold a

review, it is unclear what will be resolved in any further proceedings before Judge Grim.

III. ARGUMENT

A. Summary of Argument

The claims in the Cases raise numerous federalism concerns. In pursuing compensation for any purported injuries from their adjudications and dispositions, plaintiffs first must establish the invalidity of their prior criminal proceedings in state court. However, for a variety of reasons, plaintiffs' civil actions in this Court are not a proper vehicle for their attacks on their underlying state adjudications.

A plaintiff may not pursue damages through a civil action in federal court if that action would call into question the validity of a prior state adjudication. This threshold problem is jurisdictional; if a federal action necessarily attacks a prior state adjudication, the Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine.⁸ Similarly, until a prior state adjudication is overturned or invalidated by the appropriate court,

hearing to find ways to help the children and their families. Tracie Mauriello, *State May Compensate Juveniles Sentenced by Judges in Luzerne*, Pittsburgh Post-Gazette, (Feb. 4, 2009) <http://www.post-gazette.com/pg/09035/946743-454.stm> (Exhibit D).

⁸ The *Rooker-Feldman* doctrine takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia v. Feldman*, 460 U.S. 462 (1983).

claims pursuant to 42 U.S.C. § 1983 based on that adjudication are barred as a matter of standing or ripeness by *Heck v. Humphrey*, 512 U.S. 477 (1994) (“*Heck*”), and its progeny. So long as various juveniles’ adjudications and dispositions remain undisturbed, this Court is bound to give effect to those adjudications and, therefore, may not provide the Plaintiffs the relief they seek while the underlying adjudications stand. Finally, even if these firm legal barriers to plaintiffs’ claims did not exist, discretionary principles of abstention counsel strongly in favor of staying the federal actions until the state proceedings are concluded.

Plaintiffs’ federal civil claims should await the resolution of the pending state proceedings. Otherwise, this Court will be required to dismiss the claims of any plaintiffs whose adjudications have not been vacated, because the Court will lack jurisdiction over such claims.

B. So Long As Plaintiffs’ Claims Attack The Validity Of Prior State-Court Adjudications, The *Rooker-Feldman* Doctrine Deprives The Court Of Jurisdiction To Entertain Those Claims.

The United States Supreme Court has authority to review by writ of *certiorari* final decrees of state courts that implicate the Constitution, treaties or laws of the United States. *See* 28 U.S.C. § 1257. A corollary of this specific grant of appellate jurisdiction to the Supreme Court is that lower federal courts may *not* perform the same function, *i.e.*, may not act as courts

of appeals to the state court systems. The Supreme Court’s decisions in *Rooker* and *Feldman*, as explained by the more recent decision in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005) (“*SABIC*”), establish the dimensions of the *Rooker-Feldman* doctrine.

“The *Rooker-Feldman* doctrine deprives a federal district court of jurisdiction to review, directly or indirectly, a state court adjudication.” *DeSantis v. Franklin*, 160 Fed. Appx. 237, 238 (3d Cir. Dec. 23, 2005) (dismissing complaint that sought both (a) compensation for costs relating to state court proceedings and appeals and (b) recusal and removal of a state judge). Under the *Rooker-Feldman* doctrine, federal courts other than the Supreme Court may not address a claim “if the claim was ‘actually litigated’ in state court or if the claim is ‘inextricably intertwined’ with the state adjudication.” *ITT Corp. v. Intelnet Int’l. Corp.*, 366 F.3d 205, 210 (3d Cir. 2004) (citations omitted). “State and federal claims are inextricably intertwined ‘(1) ‘when in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered’ [or] (2) when ‘the federal court must . . . take action that would render [the state court’s] judgment ineffectual.’” *Id.* at 211 (citations and footnotes omitted). “If the relief requested in the federal action requires determining that the state court’s decision is wrong or would

void the state court’s ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit.” *Id.* (citations omitted).

As a judicially-fashioned limit on the statutory jurisdiction of the lower federal courts, the *Rooker-Feldman* doctrine is somewhat unusual. In order to keep the doctrine within its proper bounds, the Supreme Court held in *SABIC* that the *Rooker-Feldman* doctrine should be “confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *SABIC*, 544 U.S. at 284.

Although the *Rooker-Feldman* doctrine carves only a limited category of claims from the jurisdiction of the lower federal courts, the circumstances of this case fit squarely within it, so long as the juvenile plaintiffs’ existing state-court adjudications remain undisturbed. The juvenile plaintiffs in these cases seek damages arising from their state-court adjudications. Their guardians likewise seek damages arising out of those adjudications. Plaintiffs’ alleged damages necessarily depend on proof that but for the asserted deprivation of their constitutional rights, plaintiffs would have been

adjudicated differently. Consequently, before any plaintiff recovers damages, this Court must first determine that the juvenile should not have been adjudicated delinquent, and/or should not have received the disposition ordered by the state court.

However, under the *Rooker-Feldman* doctrine, this Court lacks subject matter jurisdiction to make such a determination. As a result, in order to avoid undermining state-court adjudications and avoid placing this Court in the position of acting as a court of appeals over state court decisions, these actions should be dismissed for lack of jurisdiction. Unless and until individual juveniles' state adjudications are vacated, this Court cannot entertain their claims.

C. Under *Heck v. Humphrey*, Plaintiffs' Section 1983 Claims Will Not Be Ripe For Adjudication Unless And Until Their State Adjudications Are Vacated.

Similar to the jurisdictional limits created by the *Rooker-Feldman* doctrine, the Supreme Court's decision in *Heck v. Humphrey* bars a plaintiff from pursuing a § 1983 cause of action in particular, based on state criminal adjudications, until termination of that action in the plaintiff's favor.⁹ In *Heck*, the Supreme Court held that:

⁹ Like the *Rooker-Feldman* doctrine, *Heck* has been characterized as a jurisdictional barrier that applies when federal proceedings would undermine a prior state-court adjudication. *See., e.g., Erdman v. Michigan,*

in order to recover for damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.... A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983. Thus, [] **the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.**

Heck, 512 U.S. at 486-87 (bolded emphasis added).

Heck and its progeny are parallel to the *Rooker-Feldman* doctrine in that they direct the federal courts not to act as appellate courts in a way that would call state criminal adjudications into question prior to a state's own determination that the adjudications should be overturned. As a result, such claims must be dismissed until the prior adjudication itself is undermined through the proper state judicial proceedings.

No. 98-2366, 2000 U.S. App. LEXIS 4894 (6th Cir. March 17, 2000) (holding that district court had properly dismissed a complaint, as construed as a civil rights action under § 1983, for lack of subject matter jurisdiction because it was barred by *Heck*).

Where, as here, a plaintiff files a § 1983 claim that seeks damages flowing from a state criminal adjudication, he or she must first “demonstrate that the conviction or sentence has already been invalidated.” *See, e.g., Nicholas v. Barker*, No. 06-1541, 2006 U.S. Dist. LEXIS 72143 (M.D. Pa. Oct. 3, 2006) (dismissing complaint alleging improprieties in plaintiff’s preliminary hearing, trial, conviction, sentencing and incarceration because nothing in the record supported a conclusion that they had been successfully challenged); *Odom v. Borough of Taylor*, No. 05-0341, 2006 U.S. Dist LEXIS 77203 (M.D. Pa. Oct. 24, 2006) (dismissing unlawful arrest claim under *Heck* because allegation would necessarily call into question underlying state conviction); *Kokinda v. Breiner*, 557 F. Supp. 2d 581 (M.D. Pa. 2008) (dismissing malicious prosecution, false arrest and false imprisonment claims where plaintiff failed to allege favorable termination, but allowing plaintiff to proceed on other claims that did not challenge underlying conviction). Put another way, if a claim would call into question an underlying adjudication, the cause of action does not accrue until the adjudication is overturned. *See, e.g., Kalomiris v. Monroe County Syndicate*, No. 08-0539, 2009 U.S. Dist. LEXIS 1264 (M.D. Pa. Jan. 8,

2009) (declining to dismiss claim when it was filed within two years of the date that the criminal charges were dismissed).¹⁰

Because the plaintiffs' damage claims depend, *inter alia*, on proof that their underlying adjudications were invalid, an award of damages to any plaintiff in these actions would necessarily require this Court to pass judgment upon the validity of the underlying state adjudication of delinquency. *Heck* and its progeny specifically prohibit federal courts from awarding monetary damages in connection with § 1983 claims unless the underlying adjudication has already been invalidated. Therefore, under *Heck*, the § 1983 claims pending before this Court should be dismissed because they are not yet ripe for adjudication and, as a result, federal jurisprudence requires that this court not entertain such an action until and unless the underlying adjudications have been overturned or vacated through the state court process. Only those individuals who have first had their state-court adjudications overturned may return to this Court to seek damages through a federal action.

¹⁰ The jurisdictional bar imposed by *Heck* is applicable even when a plaintiff is seeking damages through a § 1983 claim which, if awarded, would call into question the validity of a juvenile adjudication, as opposed to an adult conviction. *See, e.g., Morris v. Detroit*, 211 Fed. Appx. 409, 2006 U.S. App. LEXIS 30948 (6th Cir. Dec. 14, 2006) (finding that *Heck* bars § 1983 actions if a finding necessary to establish damages in the §1983 action would demonstrate the invalidity of the underlying state juvenile adjudication and affirming dismissal of § 1983 claim on this basis).

D. If this Court Does Not Dismiss the Cases for Lack of Subject Matter Jurisdiction, It Should Abstain from Exercising Its Jurisdiction Pending Resolution of the State Court Process.

Some juveniles almost certainly will have their criminal adjudications vacated through the ongoing state court proceedings. It may therefore be argued that considerations of judicial economy counsel against dismissing all claims on jurisdictional grounds at this time, but rather favor staying all proceedings in this litigation. Even if plaintiffs contend that the Court has subject matter jurisdiction or soon may acquire subject matter jurisdiction over the claims of some of the named plaintiffs, as discussed below, judicial economy and the proper application of the Federal Rules of Civil Procedure counsel against allowing even limited discovery. Rather, abstention is proper because these cases present federal constitutional issues that might be mooted or presented in a different posture by the state court determination of pertinent state law¹¹ and because they present difficult questions of state law bearing on significant policy problems, the importance of which transcend the result in the Cases. Abstention is also appropriate here given considerations of wise judicial administration, and due regard to

¹¹ In previously declining to enter a document preservation order requested by defendants, the Court indicated its reluctance to allow this action to interfere with the ongoing state proceedings. The course most consistent with that reluctance, if the Court declines to dismiss these cases until a jurisdictional foundation is laid, is to stay these Cases in their entirety.

conservation of judicial resources and comprehensive disposition of litigation.

As explained by the Third Circuit Court of Appeals, the Supreme Court in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 808 (1976) (“*Colorado River*”) recognized three situations in which abstention had been found proper:

(1) cases that present federal constitutional issues that “might be mooted or presented in a different posture by a state court determination of pertinent state law,” . . . (2) cases that present “difficult questions of state law bearing on policy problems of substantial import whose importance transcends the result in the case then at bar,” . . . and (3) cases in which federal jurisdiction has been involved for the purpose of restraining valid, good faith state criminal proceedings.

IFC Interconsult, AG v. Safeguard Int’l. Partners, LLC, 438 F.3d 298, 305 (3d Cir. 2006) (quoting *Colorado River*) (internal citations omitted). In addition, *Colorado River* itself articulated a fourth circumstance where it is permissible for a federal court to stay its hand – where a stay is justified by “considerations of ‘[wise] judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation’.” *Colorado River*, 424 U.S. at 817, quoting *Kerotest Mfg. Co. v. C-O-Two Five Equip. Co.*, 342 U.S. 180, 183 (1952). Therefore, there are at least three bases for abstention here under the *Colorado River* doctrine.

First, the Cases brought by plaintiffs here raise federal constitutional questions that might be mooted or assume a “different posture” for individual plaintiffs after the state proceedings conclude. As explained at greater length above, plaintiffs’ damage claims in the Court depend upon proof that their underlying adjudications were invalid. Accordingly, their claims will necessarily be presented in different postures in this Court depending on whether their adjudications are or are not invalidated in the state proceedings.

Second, the state process involves the complicated and sensitive policy problems of how to handle the potential vacatur and expungement of juvenile criminal records, and how to vindicate the public trust in the state judicial system. That these policy problems are of “substantial import” to the Pennsylvania judicial system is evident from, for example, the Pines Letter. Indeed, the Pennsylvania General Assembly reportedly is considering legislation for the compensation of juveniles who may have been affected by the purported conduct of the judges, and the State Senate Judiciary Committee may hold a hearing on these issues as well. Tracie Mauriello, *State May Compensate Juveniles Sentenced by Judges in Luzerne*, Pittsburgh Post-Gazette, (Feb. 4, 2009) (Exhibit D). These policy considerations transcend the importance of monetary damages. *See Pines*

Letter, at p. 2 (noting that the Supreme Court of Pennsylvania’s “paramount concern” was to “remedy the immediate harm to the juveniles and to restore confidence in the integrity of the county’s juvenile justice system”) (Exhibit A).

Finally, the conservation of this Court’s resources counsels strongly in favor of awaiting the resolution of the state court proceedings to determine which juveniles potentially may have claims, rather than engaging in a piecemeal process. If the federal actions go forward at the present time, certain juveniles’ claims must be dismissed because their state adjudications remain intact; however, those same juveniles may later institute new, separate proceedings in a return to federal court if their adjudications are subsequently overturned. This will undermine the comprehensive resolution of the federal actions brought by the plaintiffs.

On the basis of all of the above-noted lines of abstention analysis, in the interests of sound judicial administration and to avoid potentially contradictory rulings in the federal and state proceedings, it would be proper for this Court to stay these proceedings in all respects pending resolution of the proceedings before Judge Grim, if it does not dismiss the Cases now on jurisdictional grounds.

Even if the Court could exercise some sort of “interim” or “contingent” subject matter jurisdiction over the Cases currently subject to dismissal on *Rooker-Feldman* or *Heck* grounds, the Court’s exercise of its administrative authority over the just and efficient management of cases counsels against any further action until the state proceedings have been resolved. Pursuant to Fed. R. Civ. P. 26 (b)(2)(C), a Court is required to limit discovery allowed by the Federal or local rules if it determines that, *inter alia*, “the burden or expense of the proposed discovery outweighs its likely benefit considering the needs of the case, the parties’ resources, the amount in controversy, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.” Rule 26 calls upon the Court to balance such factors to ensure efficient and just adjudication of matters. Prior to the resolution of the state proceedings, however, the Court will not be able to properly attend to this mandatory balancing.

Until the state proceedings have been concluded, the Court will not know how many plaintiffs have causes of action over which this Court has jurisdiction. Whether there are two plaintiffs, two hundred plaintiffs, or two thousand plaintiffs will have a significant impact on the extent of appropriate discovery and on how the parties perceive the value of the Cases. First and

foremost, the number of plaintiffs will have a direct relationship to the actual value of the Cases. Furthermore, if the potential plaintiffs with the most significant alleged damages also do not have their adjudications overturned or are subject to re-adjudication by the Commonwealth, this too will impact the value of the Cases. The “needs of the case” and the “amount in controversy” are factors that the Court is to take into account in evaluating discovery. Yet, at this time, the Court simply lacks the information necessary to exercise its role in the administration of the judicial process as contemplated by Rule 26. Thus, if the Court does not dismiss plaintiffs’ claims, it should stay all proceedings in the Cases, including discovery.

IV. CONCLUSION

The claims asserted in the Cases cannot be resolved until the state court proceedings are concluded. Because the Court at this time lacks jurisdiction over the vast majority of these claims, the Cases should be dismissed. To the extent that the claims call into question underlying state-court adjudications, the Court lacks the power to award the relief requested by Plaintiffs.

In the alternative, abstention principles counsel against taking any further action in these Cases until the state court proceedings are resolved so that the state court may attend to matters of significant state concern, and to

allow the Court time to determine which Plaintiffs have standing to pursue their claims in the Cases here. Furthermore, at this time, the Court and the parties cannot know what is at stake here. Rather than allow these cases to go forward through expensive pretrial proceedings conducted in the absence of information as to which plaintiffs might actually be able to assert claims as a matter of law, moving defendants urge the Court to stay these cases until the Pennsylvania Supreme Court has finished its work.

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

FLORENCE WALLACE, *et al.*,

Plaintiffs,

v.

ROBERT J. POWELL, *et al.*

Defendants.

CIVIL ACTION
NO. 09-cv-286
(Judge Caputo)

WILLIAM CONWAY, *et al.*,

Plaintiffs,

v.

MICHAEL T. CONAHAN, *et al.*

Defendants.

CIVIL ACTION
NO. 09-cv-291
(Judge Caputo)

H.T., *et al.*

Plaintiffs,

v.

MARK A. CIAVARELLA, JR.
et al.,

Defendants.

CIVIL ACTION
NO. 3:09-cv-357
(Judge Caputo)

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(Judge Caputo)

CERTIFICATE OF SERVICE

I, Matthew J.D. Hogan, hereby certify that, on this 27th day of July 2009, the foregoing Defendants' Motion in Accordance with the Court's Orders of May 12, 2009 and June 22, 2009 in Support of Their Suggestion of Lack of Subject Matter Jurisdiction Under Fed. R. Civ. P. 12(H)(3) or, in the Alternative, Motion to Stay All Proceedings Pending State Court Action, brief in support thereof, and supporting documents were filed and made available via ECF to, or was otherwise served upon, the following:

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