

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ROBYN RENEE ESSEX,)	
)	
Plaintiff,)	CIVIL ACTION
and)	
)	CASE NO. 12-4046-KHV-JWL
KANSAS STATE SENATOR MARY)	
PILCHER-COOK and)	
GREGG PHILIP SNELL and)	
CARRI PERSON)	
)	
Intervenor-Plaintiffs)	
)	
v.)	
)	
KRIS W. KOBACH,)	
Kansas Secretary of State,)	
)	
Defendant.)	

COMPLAINT IN INTERVENTION

Plaintiffs in Intervention, Kansas State Senator Mary Pilcher-Cook, Gregg Philip Snell, and Carri Person for their Complaint in Intervention pursuant to the Court’s Order of May 21, 2012, state and allege as follows:

PARTIES

1. Plaintiffs in Intervention are citizens and qualified voters of the United States of America and the State of Kansas residing in various congressional, state legislative, and state board of education districts in the State of Kansas, as follows:
 - a. Kansas State Senator Mary Pilcher-Cook is a member of the Kansas State Senate representing Senate District 10 and serves on the Judiciary Committee. She is the Chair of the Legislative Post-Audit Committee. She resides at 13910 W. 58th Place, Shawnee, Kansas 66216. She is a

resident of Johnson County, Kansas, and is in the 3rd Congressional District, the 10th State Senate District. She has filed for re-election in her current 10th State Senate District for the 2012 elections.

- b. Gregg Philip Snell resides at 5632 Noland Road, Shawnee, Kansas 66216. He is a resident of Johnson County, Kansas, and is in the 3rd Congressional District, the 10th State Senatorial District, and the 15th State Representative District.
- c. Carri Person resides at 5731 Richards Cir, Shawnee, Kansas 66216. She is a resident of Johnson County, Kansas, and is in the 3rd Congressional District, the 10th State Senate District, and the 18th State Representative District.

2. Plaintiffs in Intervention are residents of different state legislative districts than the existing Plaintiff Essex. They intend to vote in the 2012 state primary and general elections and also plan to vote for candidates for the United States House of Representatives, the Kansas Legislature, and the Kansas State Board of Education. Elections are conducted in accordance with the existing congressional, state legislative, and state board of education districts will deprive them of rights protected under federal and state law.

3. Plaintiff, Robyn Renee Essex, has brought this action individually as a citizen and voter of the United States of America who resides in the State of Kansas. She contends that the present legislative apportionment of the State of Kansas as established in 2002 by the Kansas Legislature is unconstitutional under the United States and Kansas Constitutions.

4. Defendant Kris W. Kobach (R) is the duly elected, qualified and acting Secretary of State for the State of Kansas. Under the laws of the State of Kansas, he is charged in his official capacity with the duty of keeping records of state elections, giving notice of state elections, preparing ballots and instructions for voters, receiving the filings of candidates for state elective offices, distributing copies of the election laws of the State of Kansas, receiving election returns, furnishing blank election ballots and forms to the several county auditors, furnishing certificates of election to successful legislative candidates in multi-county districts and to successful candidates for election to the United States Congress, conducting recounts, and various other election duties. He is sued in his official capacity.

5. Defendant Kris W. Kobach is legally, constitutionally, and otherwise responsible for administering elections in the State of Kansas based upon the State's apportionment of its congressional, state legislative, and state board of education districts.

JURISDICTION

6. This action arises under Article 1, Section 2 and the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §§1983 and 1988.

7. This Court has subject matter jurisdiction under 28 U.S.C. §§1331, 1343(a)(3)-(4), and 1367, as well as 28 U.S.C. §§1983 and 1988, to redress the claims of Plaintiffs in Intervention of violations of the United States and Kansas Constitutions. Additionally, this Court has authority to grant declaratory relief under 28 U.S.C. §2201.

8. Venue in this district is appropriate under 28 U.S.C. §1391.

FACTUAL ALLEGATIONS

9. Under federal and state law, the Kansas Legislature is responsible for apportionment and reapportionment of congressional, state legislative, and state board of education districts.

10. Under the Kansas Constitution, Article 10, Section 1, the Kansas Senate and the Kansas House of Representatives are required to act as co-equal participants in reapportioning the state senatorial and representative districts. After the Kansas Legislature enacts a reapportionment plan, the Kansas State Constitution mandates that the Kansas Attorney General petition the Kansas Supreme Court to determine the validity of the plan. Once the Kansas Supreme Court finally determines that the plan is valid, the Kansas Constitution then requires the Kansas Legislature to enact a statute of reapportionment conforming to the Supreme Court's judgment within 15 days.

11. With respect to state senatorial and representative reapportionment, the Kansas Constitution requires that the Kansas Legislature shall by law apportion districts on the basis of the population of the State as established by the most recent census of population taken and published by the United States Bureau of the Census. Article 10, Section 1, Subsection (a) of the Kansas Constitution requires that the census data be adjusted, in various ways, to account for resident and non-resident military personnel and resident and non-resident students. It then requires that the Legislature reapportion the districts based upon that state-adjusted population figure.

12. The Kansas Constitution requires that legislative reapportionment of state senatorial and representative districts occur at the Kansas Legislature's regular session every tenth year after 1992.

13. Under the Kansas Constitution, the Kansas Legislature must reapportion state districts at its regular session in 2012.

14. The United States and Kansas Constitutions require that congressional and state districts be equal in population, which also requires that they be redrawn following the census. In order to satisfy this requirement, districts must be redrawn to approximate, within a legally and constitutionally allowable margin of error, a district of ideal size.

15. There are four congressional districts in Kansas. Using the 2012 Census data, the ideal congressional district size is 713,280.

16. There are 40 Kansas senatorial districts and 125 Kansas representative districts. Using the state adjusted population figures, as required by the Kansas Constitution, the ideal senatorial district size is 70,986 and the ideal representative district size is 22,716.

17. Based on the 2010 Census, there are now legally and constitutionally significant population disparities in the congressional districts that require these districts to be redrawn.

18. Based on the 2010 Census, as adjusted in accordance with Article 10, Section 1, of the Kansas Constitution, there are now legally and constitutionally significant population disparities in the Kansas legislative districts that require these districts to be redrawn.

19. The Kansas State Legislature failed to satisfy its obligation to reapportion the congressional, state legislative, and state board of education districts.

COUNT I

VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATE CONSTITUTION

20. Plaintiffs in Intervention incorporate by reference each and every allegation set forth above as if more fully set forth herein.

21. The Fourteenth Amendment guarantees to the citizens of the United States in each state the right to vote in federal and state elections. It also guarantees that the vote of each citizen shall be as equally effective as any other vote cast in such elections. It further guarantees that state legislative representation shall be equally apportioned throughout a state in districts of approximately equal population.

22. The 2010 Census and the 2010 adjusted population data demonstrate that the congressional, state legislative, and state board of education districts, as established by the Kansas Legislature and approved by the Kansas Supreme Court in 2002, are now unequally apportioned in violation of law.

23. These malapportioned districts lack sufficient population equality and, therefore, violate the "one person, one vote" rule of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

24. Each of the Plaintiffs' districts have become malapportioned due to the population shift identified by the 2010 Census data, as adjusted where appropriate under the Kansas Constitution, and all Plaintiffs in Intervention reside in a state senatorial district that has become malapportioned due to the shift.

25. Plaintiffs in Intervention intend to and will vote in the state primary and general elections to be held in 2012 and thereafter for candidates for the United States House of Representatives. If those elections are conducted on the basis of the districts set forth in the 2002 reapportionment, Plaintiffs in Intervention will be further deprived of rights guaranteed by the United States and Kansas Constitutions.

26. Plaintiffs in Intervention seek relief against Defendant, in his official capacity, because the State of Kansas failed to act to cure the existing malapportionment. The relief they seek relates to Defendant's authority, jurisdiction, and/or obligation to carry out all matters related to the subsequent elections based upon that apportionment.

27. In the absence of any reapportionment of the congressional, state legislative, and state board of education districts of the State of Kansas in conformity with the United States and Kansas Constitutions, any action of Defendant in conducting an election for members of the United States House of Representatives, the Kansas Legislature, or the Kansas State Board of Education in accordance with the districts established in 2002 will deprive and will continue to deprive Plaintiffs in Intervention of their rights under the Fourteenth Amendment to the United States Constitution.

28. Certain maps proposed by the state legislature failed to keep districts compact and contiguous.

29. Plaintiffs in Intervention are entitled to an equal and timely apportionment among the congressional, state legislative, and state board of education districts pursuant to Article 10, Section 1 of the Kansas Constitution, and consistent with the requirements of the Fourteenth Amendment to the United States Constitution.

30. Because the State of Kansas, acting through its Legislature, failed to cure the malapportioned districts, destroyed the community of interest of the city of Shawnee, Kansas, and failed to keep districts compact and contiguous, this court should take control of the reapportionment process and oversee the redrawing of districts pursuant to federal and state constitutional criteria.

COUNT II

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION**

31. Plaintiffs in Intervention incorporate by reference each and every allegation set forth above as if more fully set forth herein.

32. As reflected by the 2010 Census, and as reflected by the state adjustment to the 2010 Census required by Article 10, Section 1 of the Kansas Constitution, Plaintiffs in Intervention now reside in overpopulated congressional and state legislative districts. The districts established by the Kansas legislature and approved by the Kansas Supreme Court in 2002 no longer satisfy constitutional requirements.

33. Because the State of Kansas has failed to act in a timely fashion to reapportion its congressional, state legislative, and state board of education districts, Plaintiffs in Intervention reside in districts that are malapportioned. Moreover, certain proposed plans fail to preserve existing Senate districts, and fail to keep communities united, as required by law.

34. The State of Kansas has failed to act to timely adjust the congressional, state legislative, and school board districts, and the votes and voting power of the Plaintiffs in Intervention will be diluted. Further, the Kansas Legislature failed to approve a plan that keeps communities united and districts compact and contiguous.

35. The diminishing of the votes and voting power of Plaintiffs in Intervention, along with the legislature's failure to preserve communities in interest, constitutes an unlawful deprivation of their rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

36. To remedy these Due Process violations, in the event that the State of Kansas fails to cure them, this court should take control of the reapportionment process and oversee the redrawing of districts pursuant to federal and state constitutional criteria.

COUNT III

VIOLATION OF ARTICLE 1, SECTION 2
OF THE UNITED STATES CONSTITUTION

37. Plaintiffs in Intervention incorporate by reference each and every allegation set forth above as if more fully set forth herein.

38. Article 1, Section 2 of the United States Constitution requires that congressional districts within a state have equal numbers of people. According to the 2010 Census, the existing congressional districts are no longer equal in population.

39. The rights of Plaintiffs in Intervention to representation in and to vote for a member of the United States House of Representatives is at a risk due to the State of Kansas' failure to develop a timely and lawful reapportionment plan.

40. The votes of Plaintiffs in Intervention are weighed unequally under the existing congressional districts in violation of the "one person, one vote" principle of the United States Constitution.

41. The State of Kansas failed to remedy these violations in a timely manner. The Court should take control of the reapportionment process and oversee the re-drawing of congressional districts, applying a fair and legal criteria.

COUNT V

DECLARATORY JUDGMENT

42. Plaintiffs in Intervention incorporate by reference each and every allegation set forth above as if more fully set forth herein.

43. The State of Kansas, by its continued inaction on reapportionment, has deprived and continues to deprive Plaintiffs in Intervention of their constitutional rights by denying the equal protection and due process of law in violation of the Fourteenth Amendment of the United States Constitution, as well as provisions of the Kansas Constitution.

44. Because the State of Kansas failed to timely and equally reapportion the State of Kansas' congressional, state legislative, and state board of education districts, before the end of the 2012 session, Plaintiffs in Intervention are entitled to a declaratory judgment by this Court in determining that their constitutional rights have been violated so that they may obtain such further relief as may be necessary to vindicate their rights.

WHEREFORE, Intervenor-Plaintiffs respectfully pray that:

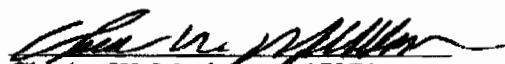
1. Pursuant to the provisions of 28 U.S.C. § 2284(a), the Court convene a three-judge panel to adjudicate this matter.
2. Pursuant to 28 U.S.C. § 2201 to declare the present legislative apportionment and congressional districting of the State of Kansas as established in 2002 by the Kansas Legislature has deprived, and continues to deprive, Intervenor-Plaintiffs of rights under Article 1, Section 2, and the Fourteenth Amendment to the Constitution of the United States.
3. The Court issue a permanent injunction and judgment decreeing that the plan of the legislative apportionment and congressional apportionment established in 2002 by the Kansas Legislature in Chapter 4 of the Kansas Statutes may not hereafter be used as a valid plan of legislative apportionment and permanently restrain Defendant from

receiving nominations and petitions for legislative office, from issuing certificates of nominations and elections, and from all further acts necessary to the holding of elections for members of the Kansas Legislature in the districts established in 2002.

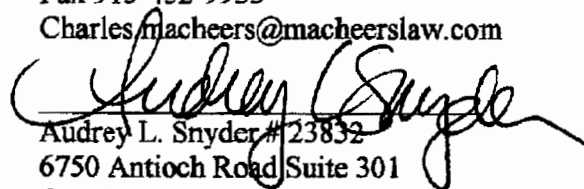
4. This Court will notify the Governor and Legislature of the State of Kansas that it will retain jurisdiction of this action and the Court will determine the congressional and legislative district boundaries to be used until such time as the Kansas Legislature passes and the Governor approves legislation reapportioning the districts in accordance with the constitutional mandate.

5. The Court order Defendant to pay to Intervenor-Plaintiffs, pursuant to 42 U.S.C. § 1988, their reasonable attorney's fees and expenses, expert fees, costs, and other expenses incurred in prosecuting this action and such other and future relief as is just in the circumstances.

Respectfully Submitted:
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CERTIFICATE OF SERVICE

The undersigned certifies that on the ^{22nd} ~~23rd~~ day of May, 2012, a copy of the above and foregoing document was fax filed pursuant to Local Rule 77.1 (c) and served via e-mail to all counsel of record.



Attorney for Intervenors