

TABLE OF CONTENTS

I. INTRODUCTION 1

A. The South-Central Kansas Intervenor’s Sole Focus Is On The Senate District Map.....2

B. Question Presented.3

C. Governing Standard.3

D. Statement Of Facts.....5

 1. The Proposed Plans Will Affect Whether The South-Central Kansas Intervenor’s Continue Voting With Their Communities Or Become Dissociated From Them. 6

 2. The Proposed Plans Will Determine Whether South-Central Kansas Continues To Enjoy Shared, Collaborative Representation And Joint Economic Benefits..... 7

 3. South-Central Kansas Has Grown And Is Poised For Further Growth..... 9

 4. The Communities Tied Together By Social, Religious, Civic, And Economic Interests May No Longer Be Able To Vote Their Shared Interests..... 10

II. ARGUMENT AND AUTHORITIES 12

A. All Of The Maps Under Serious Consideration Achieve Permissible Levels Of Population Equality For State Senate Districts.12

 1. The Two Primary Maps Have Nearly Identical Deviation Numbers. 13

 2. Of The Two Primary Maps, Only Buffalo 30 Revised Has A Disparate Impact Upon South-Central Kansans. 14

 3. Essex A, The Alternative Plaintiff Suggested, Is The Superior Map If Deviation Is The Sole Or Predominant Factor..... 15

B. Traditional Redistricting Considerations Suggest This Court Should Adopt For The People 13b Or Essex A Because It Better Approximates The Communities Of Interest In South-Central Kansas.15

 1. Most Plans Preserve County And Municipal Boundaries..... 17

a.	For The People 13b – Including Its Predecessors And Progeny – And Essex A Preserve Important County And Municipal Boundaries.	17
b.	Buffalo 30 Revised Eradicates County And Municipal Boundaries.....	18
2.	Most Plans Create Districts That Are Compact And Contiguous.	19
3.	Most Plans Preserve Existing Senate Districts.....	20
a.	For The People 13b – Including Its Predecessors And Progeny – And Essex A Largely Preserve Existing Districts.	20
b.	Buffalo 30 Transfers An Existing District To Johnson County And Re-Configures The Remaining South-Central Kansas Districts.....	20
4.	Most Plans Continue To Group Together Communities That Have Been Historically Tied Together By Their Common Economic, Social, And Cultural Interests.	23
C.	Policy Considerations Suggest This Court Adhere, As Close As Possible, To Historic State Senate District Alignments.....	25
1.	Adherence To Historical Boundaries Promotes Public Confidence In The Judicial Process.	26
2.	The Constitutional Rights Of The South-Central Kansas Intervenors Must Be Based Upon Actual Data, Not Speculation.....	27
3.	The Kansas Legislature’s Failure To Enact A Map Establishes No Policy Upon Which This Court May Rely.....	29
III.	CONCLUSION.....	31

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

ROBYN RENEE ESSEX,)
)
 Plaintiff)
)
 v.)
)
 KRIS W.KOBACH, Secretary of State)
)
)
 Defendant.)
 _____)

Case No. 12-4046

**SENATE DISTRICT ONLY:
“For the People 13b” or “Essex
A.”**

SOUTH-CENTRAL KANSAS INTERVENORS’ TRIAL BRIEF

I. INTRODUCTION

This litigation results from political deadlock and hostility that has left Kansas voters looking to this Court to protect their constitutional rights by fairly apportioning election districts. The collateral damage of certain proposals before this Court, whatever good intentions their political proponents might proclaim, will be inadequate representation of tens of thousands of citizens that live and work in the communities within and around Wichita, Kansas, the state’s largest city. This includes Plaintiff-Intervenors Walter T. Berry and Lynn Nichols (“South-Central Kansas Intervenors”). The South-Central Kansas Intervenors therefore respectfully request this Court to apportion the voting districts in a manner that provides equal representation to all Kansans – regardless of their address or place within the political spectrum – and maintains the traditional economic, social, and cultural values they have always enjoyed.

A. The South-Central Kansas Intervenors' Sole Focus Is On The Senate District Map.

The South-Central Kansas Intervenors' dispute is specific. It concerns only the array of maps that define State Senate voting districts within the greater Wichita, Kansas area. Of the seventeen plans originally contained on the [Kansas Legislative Research Department website](#) plus the one map presented by Plaintiff, ECF No. 1, Ex. A ("Essex A"),¹ all but two of the plans – Buffalo 30 and Buffalo 30 Revised – satisfy the constitutional rights of the South-Central Kansas Intervenors. South-Central Kansas Intervenors Berry and Nichols's constitutional deprivation may be remedied by almost every map before this Court with the exception of the Buffalo 30 maps. Accordingly, they urge this Court to (i) adopt the plan set forth in For the People 13b, including any one of its predecessors or progeny, (ii) adopt the low-deviation plan attached to Plaintiff's Complaint, ECF No. 1, Ex. A ("Essex A"), or (iii) create a map based upon the historical Senate Districts.

The South-Central Kansas Intervenors do not object to the other Districts. The South-Central Kansas Intervenors assert that most any plan that the Kansas Legislature considered plus the ones offered by Plaintiff, see ECF No. 1, Exs. B, C, and D, concerning the Congressional District, State House Districts, and School Board Districts are appropriate because, for the most part, they preserve most municipal and county

¹ KLRD recently performed a statistical analysis of Essex A. A portion of the same is now available on the [KLRD website](#), see Joint Stipulation, ¶ 89, and the complete data is attached hereto as Trial Brief Exhibit 500.

boundaries, are compact and contiguous, preserve the historical district lines, and maintain the economic, social, and cultural interests of the citizens.

B. Question Presented.

The South-Central Kansas Intervenors submit a single question for this Court:

Which Senate District plan follows the lodestar analysis by maintaining as many major communities of common economic, social, and cultural interests as possible within constitutional population deviations?

C. Governing Standard.

Article I, § 2 of the United States Constitution requires that any voting plan must guarantee that “as nearly as is practicable one man’s vote in a congressional election . . . to be worth as much as another’s.” *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *see also Reynolds v. Sims*, 373 U.S. 533, 560-61 (1964). Although this standard only applies in congressional voter district challenges, similar – but less demanding – concepts of fair representation, which have their basis in the Equal Protection Clause of the Fourteenth Amendment, are applied to drawing maps for state legislative voting districts. *See Brown v. Thomson*, 462 U.S. 835, 842-43 (1983) (citing cases establishing that generally an apportionment plan with a maximum population deviation under 10% is considered a “minor deviation” from mathematical equality); *Reynolds*, 373 U.S. at 557; *Marylanders for Fair Representation v. Schaefer*, 849 F. Supp. 1022, 1030-31 (D. Md. 1994) (citing *Gaffney v. Cummings*, 412 U.S. 735, 748 (1973)).

Frequently, courts hear challenges to apportionment maps that have been passed by a state legislature and signed into law by the state’s governor. *See, e.g., Graham v.*

Thornburgh, 207 F. Supp. 2d 1280, 1280 (D. Kan. 2002); *Kirkpatrick v. Priesler*, 394 U.S. 526 (1969). Here, however, the Kansas Legislature effectively concluded their work for the 2012 legislative year without passing a bill reapportioning Kansas’s voting districts. See Joint Stipulation, ¶¶ 40-42. And, although redistricting is typically the state legislature’s task, this Court has the jurisdiction and constitutional duty to complete the task when the legislature fails to do so. See *White v. Weiser*, 412 U.S. 783, 794-95 (1973); *O’Sullivan v. Brier*, 540 F. Supp. 1200, 1202 (D. Kan. 1982). In doing so, the Court need not defer to any proposed redistricting plan, and only gives “thoughtful consideration” to plans considered but not passed by the legislature and signed by the Governor. See *O’Sullivan*, 540 F. Supp. at 1202. Accordingly, so long as the Court respects the requirement that each individual’s vote, “as nearly as practicable,” be worth as much as another’s, this Court may adopt one of the plans passed by either the House or the Senate, it may modify one of those plans, or it may create an entirely new plan. *Id.*; see also *Brown*, 462 U.S. at 842-43.

When considering among available maps that produce similar levels of population equality, this Court considers five primary factors that are sometimes known as “traditional districting principles.”² See generally *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (referring to compactness, contiguity, and respect for political subdivisions as objectively defensible districting policies); *Carstens v. Lamm*, 543 F. Supp. 68, 82 (D. Colo. 1982) (recognizing no reasonable case can be made for one map over another under

² As in Kansas election disputes past, the legislative committee considered guidelines that largely track these five factors. See Joint Stipulation, ¶ 45 & Ex. 9.

solely the constitutional one man-one vote principal when they achieve virtually identical levels of population equality). First, the inquiry considers whether a proposed plan preserves county and municipal boundaries, as fragmentation of such known and respected political units frustrates the ability of constituencies to organize effectively and increases the likelihood of voter confusion. Second, the Court looks to whether any of the proffered plans dilute the vote of any racial minority.³ Third, consideration is given to whether a plan creates districts that are “compact and contiguous” so as to prevent gerrymandering, reduce electoral costs, and increase the effectiveness of voter representation. Fourth, voting plans that preserve existing district boundaries are preferred. The fifth and final component of the inquiry – perhaps the most important – is whether a plan “groups together communities sharing common economic, social, or cultural interests.” *O’Sullivan*, 540 F. Supp. at 1204.

D. Statement Of Facts.

Berry and Nichols are long-time residents of metropolitan Wichita and south-central Kansas. Each of them has directly relevant knowledge and experience in the major communities of common economic, social, and cultural interests in the geographic area, as well as how these interests affect voting districts for State Senate. Each has been active in promoting the shared economic, social and cultural interests of the area, which, for many years, has included Kansas Senate Districts 15, 16, 31, and 32.

³ This component has not been separately analyzed as no parties have, as yet, argued any of the maps disproportionately affect any racial or ethnic minority group.

Both Berry and Nichols live in suburban or exurban areas in State Senate Districts outside the city limits of Wichita, in current Senate Districts 31 (Berry) and 16 (Nichols). And, the makeup of these Senate Districts – and adjacent Senate Districts within the Wichita metropolitan area – is in danger of being irretrievably altered to their personal and professional detriment.

None of south-central Kansas Senate Districts would be materially disturbed by either the “For the People” series of maps or the Essex A map proposed by Plaintiff. Indeed, as concerns south-central Kansas, these plans are materially consistent with the map in place since 2002. *Compare* Joint Stipulation Ex. 130; *and* Joint Stipulation Exs. 75, 77, 79, and 83; *and* ECF No. 1, Ex. A; *with* Joint Stipulation Exs. 71 and 73. Buffalo 30 and Buffalo 30 Revised, in contrast, would significantly impair the franchise of Berry, Nichols, and other voters in south-central Kansas. They needlessly undermine longstanding political and geographic political boundaries, distort and dismantle existing senate districts, and severs natural economic and social communities of interest.

1. The Proposed Plans Will Affect Whether The South-Central Kansas Intervenors Continue Voting With Their Communities Or Become Dissociated From Them.

The impact of redistricting upon Berry and Nichols is telling. As noted, Berry is currently in Senate District 31 but given population shifts in Wichita’s eastern suburbs where he lives, the plan known as For the People 13b changes his voting district to Senate District 16, which includes all of the eastern Wichita suburbs along the Sedgwick/Butler County line in addition the entirety of Butler County. *See* Walter T.

Berry Declaration, ¶¶ 2-3 (Attached hereto as Trial Brief Exhibit 501).⁴ While For the People 13b aligns Berry with natural suburban and exurban allies, Buffalo 30 Revised includes Berry in Sedgwick County District 30, separating him from the two, newly-created Butler County districts (Senate Districts 15 and 16). *See* Berry Declaration, ¶ 8.

Nichols, a Butler County resident, fares no better under the Buffalo 30 Revised plan. Currently and under the For the People series of maps, Nichols is a voter in the 16th Senate District along with all other Butler County residents. *See* Lynn Nichols Declaration, ¶ 3 (Attached hereto as Trial Brief Exhibit 502).⁵ Under Buffalo 30 Revised, however, Nichols would be moved to a newly-created Senate District 16 that includes a strip of residents from the exurban areas of Cowley County, including Winfield and Arkansas City, Kansas. *See* Nichols Declaration, ¶ 3.

2. The Proposed Plans Will Determine Whether South-Central Kansas Continues To Enjoy Shared, Collaborative Representation And Joint Economic Benefits.

Berry and Nichols, long-standing business and civic leaders in south-central Kansas, enjoy a collaborative legislative delegation that know, understand, and effectively represent their communities' interest in the Legislature. The south-central Kansas delegation has worked cooperatively to foster economic development in and around the metropolitan area. *See* Jason Watkins Declaration, ¶¶ 8-11 (Attached hereto

⁴ Mr. Berry's Declaration was also filed with this Court. ECF No. 208.

⁵ Mr. Nichols' Declaration was also filed with this Court. ECF No. 207.

as Trial Brief Exhibit 503).⁶ Diluting the area's representation on the State Senate by (a) moving Senate District 32 to Johnson County, (b) separating Cowley and Sumner counties into three Senate Districts, and (c) shifting the representation of Cowley and Sumner counties to much larger and more rural districts would be damaging to the economic interests of the area and may cause the region to lose the momentum it has with respect to population and economic growth. *See* Berry Declaration, ¶ 9; Nichols Declaration, ¶ 16.

Losing allies in the Kansas Senate may reverse growth trends and thwart future growth in one of the areas of Kansas currently experiencing the most significant growth. *See* Nichols Declaration, ¶ 16. Pursuing regional economic interests supports both Wichita and the communities in the surrounding areas. *See* Watkins Declaration, ¶ 10. For example, Senators from Districts 16 and 32 have worked together to advocate for funding regional initiatives such as the National Institute for Aviation Research, the National Center for Aviation Training, and the Kansas Affordable Airfares Program. *See* Watkins Declaration, ¶ 11; *see also* Nichols Declaration, ¶ 13-14. These initiatives lead to the influx of OEM jobs, the suppliers that serve them, the logistics infrastructure to connect them, and well-educated, highly-skilled employees to work for them all. *See* Watkins Declaration, ¶ 12-15.

Another recent example of cooperative government efforts leading to economic development is the recently opened Kansas Star Casino. The Kansas Star Casino, which

⁶ Mr. Watkins' Declaration was also filed with this Court's system. ECF No. 209.

opened in December 2011, is located near Mulvane, Kansas, *see* Watkins Declaration, ¶ 18, which lies in both Sedgwick and Sumner counties, *see O'Sullivan*, 540 F. Supp. at 1205. The casino was developed due to a collaborative profit-sharing plan by which Sumner County, Sedgwick County, and Mulvane will split 1% of the profits from the casino. *See* Watkins Declaration, ¶ 18. And the economic impact is expected to be significant. Although it employs almost 600 employees now, the casino announced earlier this month that it will add 300 more employees in the upcoming months. *See* Watkins Declaration, ¶¶ 18-19.

3. South-Central Kansas Has Grown And Is Poised For Further Growth.

From the U.S. Census in 2000 to 2010, south-central Kansas experienced a 7.7% population increase. *See* Watkins Declaration, ¶ 17. During that time, Sedgwick County experienced 10.0 percent growth, Butler County experienced 10.8 percent growth, Harvey County experienced 5.5 percent growth, and Cowley County's population stayed essentially static from ten years ago, growing by 0.1 percent. *See id.* Sumner County experienced a decrease in population of 7 percent amounting, losing 1,814 people, but that does not take into account the newly-opened casino and economic development it may spur. *See id.* The region as a whole increased in size by 51,636 people. *See id.* The Wichita Chamber predicts continued growth of the Wichita metropolitan area, specifically including Cowley and Sumner Counties. *See id.* at ¶ 18.

4. The Communities Tied Together By Social, Religious, Civic, And Economic Interests May No Longer Be Able To Vote Their Shared Interests.

Butler, Cowley, and Sumner counties share many common bonds. South-central Kansas is the manufacturing economic engine of the state. A significant number of manufacturing companies – and with them, manufacturing jobs – exist in south-central Kansas. *See* Watkins Declaration, ¶ 13. This area of the state is referred to as the “Manufacturing Cluster.” *See id.* Aviation, of course, is the primary industry, but many others exist and fuel economic development. *See id.* at ¶ 12. It is critical for the continued success and growth of the Manufacturing Cluster for it to be represented in the legislature by legislators who live in and are most aware of and familiar with the Manufacturing Cluster. *See id.* at ¶ 13.

The south-central Kansas educational system is also closely intertwined with the economic, cultural, and political life and organization of the region. Cowley College, a community college, has its main campus in Arkansas City (Cowley County) Kansas, and also has locations in Mulvane (Sumner County) and Wichita (Sedgwick County) due to the important connections between the areas. Similarly, Southwestern College is a four-year college located in Winfield, (Cowley County) Kansas. *See* Watkins Declaration, ¶ 14. It also has two locations in Wichita, as well as three other regional locations. *See id.* Butler County Community College has locations in El Dorado and near Wichita in Andover. *See id.* at ¶ 15. These colleges recruit students from the Wichita area and, upon graduation, provide the Wichita metropolitan area with an educated and prepared workforce. *See id.* at ¶ 14.

The south-central Kansas residents also share in many civic, cultural, and social activities within each other's communities. Residents of south-central Kansas often visit Wichita's entertainment venues, restaurants, retail stores, and use Wichita's airport for their travel needs. *See* Watkins Declaration, ¶ 16. Additionally, residents of Butler, Cowley, Sedgwick, and Sumner counties also frequently attend each other's festivals, including the Wichita River Festival, Wheat Festival in Wellington, and the Walnut Valley Bluegrass Festival in Winfield. *See id.*

In contrast, Butler, Cowley, and Sumner counties share little in common with voters in more rural areas. For example, the communities within Pawnee, Edwards, Kiowa, Comanche, Greenwood, Stafford, Barber, and Pratt counties are largely rural and have neither ready interstate access nor any large metropolitan areas within them. *See* Watkins Declaration, ¶ 20; Nichols Declaration, 15. As such, they typically do not participate in Wichita-area regional economic activities. *See* Watkins, ¶ 20. Nor do they typically participate in civic, social, economic, or other activities like those in the exurban area currently within the 16th and 32nd Senate Districts. *See* Watkins Declaration, ¶ 16.

II. ARGUMENT AND AUTHORITIES

South-Central Kansas Intervenors advocate no plan in particular. Instead, there are a variety of appropriate options from which this Court can choose with regard to the entire state. For example, fifteen of the seventeen plans the Legislature considered preserved the concept of equal representation for south-central Kansans. Two of them did not, due to their community-scattering changes that moved Senate District 32 to Johnson County and diluted the effectiveness of the previously-aligned metropolitan voters by placing them in largely rural Senate Districts. And, although the main two competing Senate maps have more population deviation than the South-Central Kansas Intervenors would prefer, there is another option (Essex A) that both preserves the constitutional rights of the South-Central Kansas Intervenors and has the lowest state-wide population deviation of any of the proposed maps. Accordingly, the South-Central Kansas Intervenors respectfully request this Court adopt a map – any map – that preserves their constitutional rights, whether it was voted on by the Legislature, offered by one or more of the parties, or is constructed anew by the Court.

A. All Of The Maps Under Serious Consideration Achieve Permissible Levels Of Population Equality For State Senate Districts.

Three primary maps are being advanced by the parties. None of their deviation numbers violate the constitutional equal-representation rule. In fact, the For the People 13b and Buffalo 30 Revised maps are nearly identical in terms of deviation numbers. The latter, however, has a disparate impact upon south-central Kansas. A third map,

Essex A, has a substantially lower deviation and, for that reason, may be preferable to the Court.

1. The Two Primary Maps Have Nearly Identical Deviation Numbers.

Although this Court owes no deference to the two competing maps advanced in this litigation, they both serve as a useful starting point for discussion. And, both For the People 13b and Buffalo 30 Revised offer similar population deviation numbers. According to KLRD data, the following chart represents the deviations for the two plans:

Buffalo 30 Revised				Maximum Population Deviation	0.061364213
	Residents	% Deviation	Voters from Ideal		
Overall Range		6.14	4356		
Largest District (14)	73187	3.1	2201		
Smallest District (1)	68831	-3.04	2155		

For The People 13b				Maximum Population Deviation	0.074056856
	Residents	% Deviation	Voters from Ideal		
Overall Range		7.41	5257		
Largest District (17)	73134	3.03	2148		
Smallest District (13)	67877	-4.38	3109		

The South-Central Kansas Intervenors acknowledge that these numbers are higher than one would prefer, but are easily within the constitutional range of acceptance when considering state legislative districts. *See, e.g., NAACP v. Snyder*, Case No. 11-15385, 2012 WL 1150980, at *3 (E.D. Mich. Apr. 6, 2012) (“The Supreme Court has tolerated greater population deviations in state legislative plans, however, at least when the deviations are justified by legitimate considerations.”). Moreover, from a population deviation standpoint, they are, for all practical purposes, indistinguishable from one another. *Carstens v. Lamm*, 543 F. Supp. 68, 82 (D. Colo. 1982).

2. Of The Two Primary Maps, Only Buffalo 30 Revised Has A Disparate Impact Upon South-Central Kansans.

Although the overall population deviation among the two primary maps is indistinguishable, only Buffalo 30 Revised has a disparate impact upon south-central Kansas. Buffalo 30 Revised transplanted Senate District 32, which includes Shawnee Mission Park, has almost 400 too few residents. *See* Buffalo 30 Revised Deviations (Attached hereto as Trial Brief Exhibit 504). In stark contrast, the number of residents within the Buffalo 30 Revised Senate Districts 15, 16, and 33 (much like the number of deer within Shawnee Mission Park) exceed the ideal population. *See id.* (demonstrating District 15 has 1,900 too many, District 16 has over 2,100 too many, and District 33 has over 1,000 too many residents). In other words, Buffalo 30 Revised gives Johnson County residents *greater* representation than they are entitled to and gives the south-central Kansas residents *less* representation. This deviation, which seems like more than a statistical quirk or pure coincidence, treats south-central Kansans differently than those in Johnson County. *But see Reynolds v. Sims*, 377 U.S. 533, 566 (1964) (recognizing that courts should not treat voters differently based upon place of residence any more than they should be based upon race or economic status).

3. Essex A, The Alternative Plaintiff Suggested, Is The Superior Map If Deviation Is The Sole Or Predominant Factor.

The map originally proffered by Plaintiff, ECF No. 1, Ex. A, known as “[Essex A](#),” appears to have the lowest deviation among any of the maps that have been offered. *See* Essex A Population Summary (Attached hereto as Trial Brief Exhibit 505). According to KLRD data, the following chart represents its critical population deviation numbers:

Essex A		Maximum Population Deviation	
			0.019764461
	Residents	% Deviation	Voters from Ideal
Overall Range		1.98	1403
Largest District (17)	71695	1	709
Smallest District (13)	70292	-0.98	694

Therefore, if this Court intends to utilize a map focused solely or even primarily upon the lowest deviation of residents, Essex A appears to be the best map and reflects most of the same Senate Districts as in the current plan.

B. Traditional Redistricting Considerations Suggest This Court Should Adopt For The People 13b Or Essex A Because It Better Approximates The Communities Of Interest In South-Central Kansas.

Obtaining a zero-sum deviation is not the alpha and omega of drawing State Senate maps. If it were, modern computer technology (i.e., “Maptitude,”) would permit this Court to create 40 Senate Districts with a population of 70,986 without taking any input from the parties, starting in the southwest corner of the state and encircling areas with this ideal population until reaching the confluence of the Kansas and Missouri rivers. *See generally Prosser v. Elections Board*, 793 F. Supp. 859, 863 (W.D. Wis. 1992) (“With the right computer program, a complete reapportionment map for the state can be created in days and modified in hours . . .”). The Constitution does not require

such sterile precision, *see O'Sullivan v. Brier*, 540 F. Supp. 1200, 1206 (D. Kan. 1982), especially when drawing State Senate lines, *see Reynolds v. Sims*, 377 U.S. 533, 569 (1964) (recognizing state districts need not have “mathematical nicety”).

None of the parties’ maps offer zero deviation. Nor should any party be heard to favor it at the expense of other legitimate consideration. *See Baldus v. Members of Wis. Gov’t Accountability Bd.*, ___ F. Supp. 2d ___, 2012 WL 983685, at *7 (E.D. Wis. Mar. 22, 2012). Practical considerations such as historical allegiances, whether economic, social, civic, or cultural, give a district its identity and connection to the person chosen to speak on the district’s behalf. Likewise, arbitrary lines drawn with numerical proportion as the sole goal would likely result in a multitude of districts arbitrarily dividing cities and counties, which are the principal political unit responsible for operating elections in Kansas. This would, of course, impose unnecessary costs and difficulties upon local election officials, confuse the voters, and lead to less effective representation. *O’Sullivan*, 540 F. Supp. at 1206. This Court should therefore utilize a map that continues to represent these permissible communities of interest while aiming for the lowest population deviation. *See Baldus*, ___ F. Supp. 2d ___, 2012 WL 983685, at *7 (discussing court-drawn maps). Based upon the traditional districting factors this Court has previously applied, the South-Central Kansas Intervenors believe either For the People 13b or Essex A accomplish this goal.

1. Most Plans Preserve County And Municipal Boundaries.

a. For The People 13b – Including Its Predecessors And Progeny – And Essex A Preserve Important County And Municipal Boundaries.

Almost all of the plans seriously considered by the Kansas Legislature, including For the People 13b, preserve important county and municipal boundaries. The Kansas Legislature has historically accorded county and municipal boundaries great weight when drawing district maps, and this year was no different. *See* Joint Stipulation Ex 9, ¶ 4.c. As this Court has recognized, county lines are meaningful in Kansas[and] . . . a redistricting plan should split counties only if absolutely necessary to maintain a constitutional population variance.” *O’Sullivan*, 540 F. Supp. at 1203. The reason is clear: “Kansas counties have historically been significant political units,” many officials “are elected on a county-wide basis, and political parties have been organized in county units.” *Id.* Additionally, most counties are “economic, social, and cultural units or part of a larger socio-economic unit.” *Id.*

For the People 13b and Essex A, as applied to south-central Kansas, largely honor this command. In particular, both keep the whole counties of Sumner and Cowley counties together. They also make Butler County its own Senate District, as it has historically been. *See* Joint Stipulation, Ex. 130. The single deviation from respecting county boundaries in south-central Kansas is a “carve out” for the City of Mulvane (which straddles two counties) and a portion of extreme southwest Sedgwick County. Of course, keeping the City of Mulvane together not only respects its municipal concerns but also makes common, practical sense. *See generally O’Sullivan*, 540 F. Supp. at 1205. It

also is not offensive to Sedgwick County, as it is necessary to maintain constitutional population variance.

b. Buffalo 30 Revised Eradicates County And Municipal Boundaries.

Buffalo 30 Revised, on the other hand, does not honor either county or municipal boundaries in south-central Kansas. In particular, Buffalo 30 Revised splits two counties important to the greater Wichita area, Butler and Cowley County. As noted by Mr. Nichols, it proposes carving out a portion of extreme southwest Butler County from the rest of Butler County, including the cities of El Dorado and Augusta. It also splits Cowley County into two Senate Districts, with the western one-third of it joining Andover, Butler County, Kansas to create Senate District 16 and the eastern two-thirds of it joining the expansive new Senate District 15.

Buffalo 30 Revised also splits the City of Mulvane. The entirety of Sumner County, including the southern portion of Mulvane, is joined with the largely rural Senate District 33. This results in the northern Mulvane residents being a part of Senate District 26, a largely urban or suburban area, and the southern Mulvane residents being represented by the same State Senator as represents Larned, Pawnee County, Kansas and [Buttermilk, Comanche, Kansas](#). *But see O'Sullivan*, 540 F. Supp. at 1205 (“Straddling the Sedgwick and Sumner county line is Mulvane, the Kansas city most severely split by a county line, which argues for keeping those two counties together.”). Separating Mulvane makes even less sense today, given the casino that recently opened outside Mulvane and along the county line.

2. Most Plans Create Districts That Are Compact And Contiguous.

Although compactness and contiguousness is a function of traditional districting principles, these inquiries are largely irrelevant in this matter. First, compactness is a hazy, often-confusing measure with which courts frequently struggle. *See generally Karcher v. Daggett*, 462 U.S. 725, 756 (1983) (observing that compactness requirements have been of limited use due to vague definitions and imprecise application); Bernard Grofman, *Criteria for Districting: A Social Science Perspective*, 33 U.C.L.A. L. Rev. 77, 85 (1985) (“There are many different ways of applying a compactness requirement, but none is generally accepted as definitive.”). Generically, however, compactness is a ratio comparing the area of a district to the area that completely encircles it. *See Carstens v. Lamm*, 543 F. Supp. 68, 87 (D. Colo. 1982).

The second reason compactness carries little weight in this dispute is because the compactness of the pertinent plans is nearly indistinguishable overall. With regard to the areas of concern to the South-Central Kansas Intervenors, the compactness numbers are, with the exception of the oddly-created Senate District 16, which splits Butler County’s and Cowley County’s vote, materially indistinguishable:

Senate Districts	For the People 13b	Buffalo 30 Revised	Essex A
15	0.44	0.49	0.39
16	0.66	0.29	0.63
32	0.49	0.5	0.48
33	0.53	0.4	0.48

See Compactness Studies for For the People 13b, Buffalo 30 Revised, and Essex A (Attached hereto as Trial Brief Exhibits 506, 507, and 508). Additionally, none of the plans propose any breaks in contiguity of districts.

3. Most Plans Preserve Existing Senate Districts.

a. For The People 13b – Including Its Predecessors And Progeny – And Essex A Largely Preserve Existing Districts.

Almost all of the plans seriously considered by the Kansas Legislature, including For the People 13b, preserve existing Senate Districts. In 2002, the Kansas Supreme Court approved the current Senate Districts on May 9, 2002. *See* Current Senate Map (Attached hereto as Trial Brief Exhibit 509). Under the current plan, Senate District 16 includes Butler County and the southern portion of Greenwood County, including the City of Eureka. Senate District 32 is comprised of all of Cowley and Sumner counties plus the Mulvane area of Sedgwick County.

For the People 13b and Essex A keep these Senate Districts together. Both make Senate District 16 a single-county district, comprised of the entirety of Butler County, due to the area’s growth. Both also keep Senate District 32 entirely together but add a portion of extreme southwestern Sedgwick County to guarantee the ideal population levels. The majority of residents within the Senate Districts proposed by either For the People 13b or Essex A will continue enjoying a continuity of representation. *Cf. Carstens*, 543 F. Supp. at 88 (“Unnecessary fragmentation of these units not only undermines the ability of constituencies to organize effectively . . .”).

b. Buffalo 30 Transfers An Existing District To Johnson County And Re-Configures The Remaining South-Central Kansas Districts.

Buffalo 30 Revised, on the other hand, ignores existing Senate Districts and reconfigures south-central Kansas to eliminate a Senate District from the region. The

most significant contrast between the Buffalo 30 maps and all other maps considered by the Legislature is the evisceration of two historical voting alliances. From 1901 to 1964, the quad-counties of Sedgwick, Butler, Sumner, and Cowley counties each had their own Senate District. *See* Historical Senate Maps (Attached hereto as Trial Brief Exhibit 510); Joint Stipulation, Ex. 130. Then, for three years, Sumner's District included a portion of Sedgwick County and Cowley County was moved into a District with Elk and Greenwood counties. *See id.* But, starting in 1969 and until the present date, all or most of Sumner and Cowley counties have shared a Senate District. Although the population numbers have changed since the turn of the 18th Century, the shared Senate District has been the 32nd District since 1973. Butler County similarly has enjoyed a consistent identity in the historical Senate District maps. In other words, for almost 110 years, residents within the Wichita metropolitan area have enjoyed the voting cooperation of Sedgwick, Butler, Cowley, and Sumner counties to promote their shared interest, ideals, and identities.

Not only does Buffalo 30 Revised numerically reduce the representation to south-central Kansas residents, it also dilutes their shared interests. Specifically, the two formerly-connected counties would be split into three Senate Districts. Sumner County residents, in addition to losing their connection to neighboring Cowley County voters, would be represented by a Senator responsible for numerous rural counties in the western portion of the state. For example, the residents of Wellington (which is in Sumner County) would be in the same Senate District as Larned, Kansas, a distance of over 170

miles.⁷ Not surprisingly, neither Wellington residents nor Sumner County residents as a whole have significant economic, historical, cultural, or other ties, connections, or interests to Pawnee County or other western Kansas residents. On the other hand, Wellington lies a mere thirty minutes south of Wichita and is connected by an Interstate highway in much the same way that Gardner is connected to Kansas City.⁸ *See South Carolina State Conf. of NAACP v. Riley*, 533 F. Supp. 1178, 1181 (D. S.C. 1982) (“Certain adjoining counties have a special community of interest, for metropolitan areas overflow county boundaries.”).

Buffalo 30 also dilutes the previously-unbroken history of Butler County residents voting together. Instead of honoring this historical connection among voters, Buffalo 30 Revised seeks to split those that live in Andover from the other three-fourths of Butler County, including Augusta and El Dorado. Residents of Augusta and El Dorado would be in the same district as Independence, Kansas, a nearly two-hour drive. Buffalo 30 Revised completes the fragmentation of Butler County by creating a new Senate District 16 that takes the Andover portion of Butler County and includes it with the western one-third of Cowley County. In effect, Buffalo 30 Revised dilutes the votes of exurban Wichita by spreading them among rural communities with whom they have no shared interest. *See Reynolds v. Sims*, 377 U.S. 533, 566 (1964) (“Diluting the weight of votes

⁷ The nearly 3-hour trip from Wellington to Larned is roughly the equivalent of driving – in mileage and time – from Lawrence, Kansas to Joplin, Missouri.

⁸ Buffalo 30 Revised, of course, would place Gardner in the same Senate District as Olathe, not in a rural county over 170 miles away.

because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race . . . or economic status”); *Shayer v. Kirkpatrick*, 541 F. Supp. 992, 934 (W.D. Mo. 1982) (“We do not mean to suggest that all rural interests are identical; rather, we believe that the differences among various rural interests are less than the differences between any rural interest and an urban interest.”); *LaComb v. Growe*, 541 F. Supp. 145, 148 (D. Minn. 1982) (drawing a map to reflect the varying interests between urban/exurban residents and rural residents so as to not dilute their effective representation);

4. Most Plans Continue To Group Together Communities That Have Been Historically Tied Together By Their Common Economic, Social, And Cultural Interests.

This Court previously recognized that the “lodestar of [its] analysis” is the “grouping together of as many major communities of common economic, social, and cultural interests as possible without breaking county lines.” *O’Sullivan*, 540 F. Supp. at 1204; *Graham v. Thornburgh*, 207 F. Supp. 2d 1280, 1296 (D. Kan. 2002) (citing *Bush v. Viera*, 517 U.S. 952, 977 (1996)). As the Court can no doubt appreciate, the communities within Butler, Cowley, and Sumner counties are critical components of the greater Wichita area.

Unlike the For the People series of maps and Essex A, the Buffalo 30 and Buffalo 30 Revised maps would significantly impair the franchise of Berry, Nichols, and other voters in south-central Kansas by shattering this community of interests. The Buffalo 30 maps needlessly undermine longstanding political and geographic political boundaries and sever natural economic and social communities of interest.

The communities within Butler, Cowley, and Sumner counties have been historical economic and civic allies within the greater Wichita area. Business and political leaders rely upon that cooperative nature to lobby for economic opportunities that bring in heavy manufacturing work, related suppliers, logistics and transportation between them, and a well-trained work force to produce world-class products. Of course, as the “Air Capital of the World,” these goods are brought to market either via air transportation or along the interstate highway system that connects these communities to each other. For example, regional political and civic leaders advocated for and obtained funding for regional initiatives, including the National Institute for Aviation Research, the National Center for Aviation Training, and the Kansas Affordable Airfares Program. *See* Watkins Declaration, ¶ 11; *see also* Nichols Declaration, ¶ 13-14. Another example of cooperative government-economic development concerns the recently opened Kansas Star Casino, which is anticipated to draw 900 or more direct jobs, provide tax revenue, and spur other growth.

Residents in Butler, Cowley, and Sumner counties share much in common. Perhaps owing to geography and/or the ready-access the transportation system between the nearby communities, residents within these four counties frequently participate in each other’s celebrations, including the Wichita River Festival, Wheat Festival, and the Walnut Valley Bluegrass Festival. They also shop in one another’s businesses and frequently commute from an adjoining suburb into the core of the City of Wichita. Finally, there are multiple social events within a thirty-minute drive, including the arts, religious, dining, and entertainment venues.

Although they share common interests with one another, residents of the current Senate 16th and 32nd Senate Districts share little more than Kansas pride in common with the residents of current Senate Districts 15 and 33. For example, the expanse of these Senate Districts makes frequent trips particularly difficult. Moreover, these counties are more rural, have a lower population, and depend more on agriculture than on manufacturing or other traditionally-urban industries. By way of example, there are no members of the Wichita Chamber that live in or operate a business in Senate Districts 15 and 33, whereas there are 35 member businesses in current Senate Districts 16 and 32 that employ nearly 1800 Kansans.

The ties that bind Butler, Cowley, Sedgwick and Sumner counties are deep, interdependent, and significantly greater than with any of the counties within the Senate Districts proposed by Buffalo 30 Revised. Indeed, separating Butler, Cowley, and Sumner counties from one another would inhibit their shared economic, political, and cultural identities. These counties have no similar connection to any of the counties in the proposed Senate Districts to which they would be reassigned. *Cf. O'Sullivan*, 540 F. Supp. at 1206 (excluding McPherson and Harvey counties from the Fourth District because demographics more closely matched Marion County, not Sedgwick County).

C. Policy Considerations Suggest This Court Adhere, As Close As Possible, To Historic State Senate District Alignments.

In addition to utilizing traditional districting considerations, this Court should also consider policy issues affecting this exercise. First, this Court should consider and rely upon the historical Senate District alignments and alter them as little as possible. Second,

this Court must base its analysis on actual census data, not a party's self-interested speculation about what may occur in upcoming years within its geographic area. Third, this Court should not rely upon the votes of 21 Senators as reflecting agreed state policy.

1. Adherence To Historical Boundaries Promotes Public Confidence In The Judicial Process.

Constitutional analysis can be esoteric and intellectually challenging, but this Court cannot lose sight of the fact that the public's perception of the decision is important to promoting respect for the rule of law. Courts, after all, are the only government institution in our republic insulated from the at-times unseemly nature of politics that invariably led to this litigation.

Public confidence will be at its highest if this Court's ruling continues to roughly reflect existing Senate Districts. Because all but two of the maps being offered by the parties honor and respect the Senate Districts as they have evolved since at least 1901, this Court can either adopt an existing map or create its own that complies with the Constitution and adheres to the public's expectations of their Senate Districts. After all, what will a Wellington wheat farmer or a teacher from Winfield think upon learning that a federal court has moved *their* Senate District to Johnson County? Uprooting a Senate District and ousting *their* Senator⁹ from office is a politically-charged, legislative act that

⁹ The Court in *South Carolina State Conf. of NAACP v. Riley*, 533 F. Supp. 1178 (D. S.C. 1982), recognized the shock and dismay Senate District 32 residents would likely have were Buffalo 30 Revised adopted:

Incumbents know their constituents in the old districts, and many of those constituents will know their congressman as "my congressmen." Many of the constituents would have been served by the congressmen in

should not originate in this Court. This Court can and should adopt a plan that, as For the People 13b and Essex A do, closely mirrors the existing Senate Districts. *See South Carolina State Conf. of NAACP v. Riley*, 533 F. Supp. 1178, 1181 (D. S.C. 1982) (“great alterations of the old districts should not be undertaken if lesser change will achieve the desired result”).

2. The Constitutional Rights Of The South-Central Kansas Intervenors Must Be Based Upon Actual Data, Not Speculation.

Only two numbers, which all parties agree upon, are relevant to this Court’s analysis. First, the Kansas Constitution requires Kansas be subdivided into 40 Senate Districts. *See* Joint Stipulation, ¶ 36. Second, the ideal population within each district is 70,986. *See* Joint Stipulation, ¶ 37. Everything else is purely a line-drawing exercise that supports the status quo.

Parties supporting Buffalo 30 Revised are likely to point to the overall growth of Johnson County as justification for reducing the effective representation of the South-Central Kansas Intervenors. But, as the 2010 census data demonstrates, the Wichita area is growing, too. *See* Population Change Map (Attached hereto as Trial Brief Exhibit 511). That trend is likely to continue, given the economic development initiatives currently occurring in south-central Kansas.

ways calculated to obtain and enhance loyal support. Such voters ought not be deprived of the opportunity to vote for a candidate that has served them well in the past and enjoy his continued representation of them.

Riley, 533 F. Supp. at 1181.

There are fundamental legal reasons to ignore any attempts by proponents of the “population growth” theory to justify current – but allegedly only temporary – over-representation in the Johnson County area. As the Court in *Kirkpatrick v. Preisler*, 394 U.S. 526, 535 (1969), noted:

Situations may arise where substantial population shifts over such a period can be anticipated. Where these shifts can be predicted with a high degree of accuracy, States that are redistricting may properly consider them. By this we mean to open no avenue for subterfuge. **Findings as to population trends must be thoroughly documented and applied throughout the State in a systematic, not an *ad hoc*, manner.**

(emphasis added). This is because the federal census is presumed (and, as here, stipulated to be, *see* Joint Stipulations, ¶ 90) accurate and is, therefore, the best measure of population before the Court today. *In re Petition of Stephan*, 245 Kan. 118, 123, 775 P.2d 663, 667 (1989) (citing *Kirkpatrick v. Preisler*, 394 U.S. 526, 535 (1969), *Graves v. Barnes*, 446 F. Supp. 560, 568 (W.D. Tenn. 1977), and *Dixon v. Hassler*, 412 F. Supp. 1036, 1040 (W.D. Tenn. 1976)). Extrapolating based on past trends is overly-simplistic, crude, and generally insufficient to override unquestionably accurate census data. *See Perez v. Pasadena Indep. Sch. Dist.*, 958 F. Supp. 1196, 1210 (S.D. Tex. 1997), *aff'd*, 165 F.3d 368 (5th Cir. 1999) (citing *McNeil v. Springfield Park Dist.*, 851 F.2d 937, 946 (7th Cir. 1988)); *see also Benavidez v. Irving Independent School Dist.*, 690 F. Supp. 2d 451, 460 (N.D. Tex. 2010).

The projections would also be too narrowly focused. It is anticipated that the data proponents of Buffalo 30 Revised will want the Court to consider is based upon the population trend and economic environment currently existing in Johnson County.

Leaving aside the fact that southern Johnson County has been outpacing northern Johnson County (yet Buffalo 30 Revised seeks to add Senate District 32 in Lenexa), there has been no evidence presented regarding the population trends expected to occur statewide, such as in Liberal, Dodge City, Hays, Garden City, Great Bend, Salina, Emporia, or any other area of the state. At least in south-central Kansas, however, Berry and Nichols are justifiably optimistic of continued growth. *See* Trial Br. Exhs. 501-03 & 511. Relying on evidence of population growth in one area of the state without giving any consideration to growth trends in every other area of the state is precisely what the *Kirkpatrick* Court prohibited. *See* 394 U.S. at 535.

3. The Kansas Legislature’s Failure To Enact A Map Establishes No Policy Upon Which This Court May Rely.

Proponents of Buffalo 30 Revised are also likely to argue that this Court is (or should feel) constrained by the Senate’s policy choices as expressed in their 21-17 vote approving Buffalo 30 Revised. *See* Joint Stipulation, ¶ 87. No deference is due. Comity principles require deference to the legislative policy choices only in certain circumstance not present here. No map received bicameral support and the endorsement of the Governor. *See* Joint Stipulation, ¶¶ 40-42. Accordingly, this Court has no map evidencing the policy choice expressed by the State of Kansas to which deference is due. *See Cartsens*, 543 F. Supp. at 78-79 (rejecting the argument that a map passed by the legislature – but not signed by the Governor – represents state policy); *Shayer v. Kirkpatrick*, 541 F. Supp. 922, 932 (W.D. Mo. 1982) (“failure of a bill to be enacted evidences a legislative policy that the bill is not desired by the legislature”).

One could argue the opposite is true. The current Senate Districts have been in place since 2002. All but two of the maps considered by the Kansas Legislature largely reflect not only the 2002 map but also those that had historically been in effect. *See* Joint Stipulation, ¶ 93, Ex. 130. If Kansans wanted dramatic change, surely their representatives would have been responsive to such change or produced an array of maps that broke with the traditional alignment of Senate Districts. *Cf. South Carolina State Conf. of NAACP v. Riley*, 533 F. Supp. 1178, 1180-81 (D. S.C. 1982) (“Any new plan should alter the old only insofar as necessary to obtain an acceptable result.”) That they did not – and the historical treatment of south-central Kansas, including Butler, Cowley, and Sumner counties as a part of the Wichita core – suggests that Kansans favor continuing the status quo. *See Shayer*, 541 F. Supp. at 933 (recognizing historical practice is evidenced by prior maps but choosing not to rely upon prior maps because of the intervening loss of a seat).

III. CONCLUSION

Like this Court, the South-Central Kansas Intervenors are caught in a mess they did not choose. Nonetheless, this Court can award the South-Central Kansas Intervenors' equal representation – while respecting the rights of **all** Kansans – by adhering to the Senate District apportionment plans that are based upon county and municipal boundaries, are compact and contiguous, preserve existing Senate Districts, and maintain communities that share common economic, social, civic, and cultural interests. All but two maps do this. The South-Central Kansas Intervenors therefore respectfully request this Court adopt For the People 13b, Essex A, or some derivation of the two that retains the Senate Districts in South-Central Kansas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2012, a true and correct copy of the above and foregoing was filed using the Court's CM/ECF filing system, which will serve all interested parties of record by electronic mail.

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