

FILED  
FEB 09 2012  
FRANKLIN CIRCUIT COURT  
SALLY JUMP, CLERK

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II  
CIVIL ACTION NO. 12-CI-1 / 80

RECEIVED  
FEB 09 2012  
FRANKLIN CIRCUIT COURT  
SALLY JUMP, CLERK

CHRISTOPHER FROST,  
ELIZABETH FARLEY, AND  
PAULA LEWIS

PLAINTIFFS

v.

ALISON LUNDERGAN GRIMES, in her  
official capacity as the Secretary of State of the  
Commonwealth of Kentucky; and,

DEFENDANTS

MARYELLEN ALLEN, in her official capacity as the  
Executive Director of the Kentucky Board of Elections,  
And  
THE KENTUCKY BOARD OF ELECTIONS

and

JACK CONWAY, in his official capacity as the  
Attorney General of the Commonwealth of Kentucky

STATUTORY  
NOTICE PARTY

SERVE (as to all four pursuant to CR 4.04(6))  
: Jack Conway  
Attorney General  
The Capital, Suite 110  
Frankfort, KY 40601

VERIFIED COMPLAINT

\*\*\* \*\*

The Complainants, Christopher Frost, Elizabeth Farley, and Paula Lewis ("Plaintiffs"),  
by counsel, for their verified complaint against the Defendants allege and state as follows:

## Introduction

1. This is an action for:

A. Declaratory relief brought under KRS Chapter 418 to declare the present six United States Congressional districts (“Congressional Districts”) unconstitutional under the Sections 2, 3 and 6 of the Kentucky Constitution, and Article IV, § 2 of and the Fourteenth Amendment to the United States Constitution, due to the failure of those Districts to comport to the constitutional principal therein of strict equality of district population, i.e. “one person, one vote”;

B. Injunctive relief under CR 65.01, 65.03, and 65.04 to enjoin the Defendants from certifying the candidacy of any person that has filed under the present Congressional Districts, from certifying any ballot to be used in any election held under the present Congressional Districts, or otherwise using in any form the present Congressional Districts in conducting any election in this Commonwealth;

C. Pursuant to this Court’s general jurisdiction, to draw and create Congressional Districts that comport with the 2010 census data, and to further provide for the appropriate procedural and substantive deadlines and elements of an election using lawful and constitutional Congressional Districts.

2. An actual controversy exists between the Plaintiffs and Defendants so that the relief requested is appropriate herein.

## Parties

3. The Plaintiff, Christopher Frost, is a citizen, resident and registered voter of Lexington, Fayette County, Kentucky, which is within the current Sixth Congressional District.

4. The Plaintiff, Elizabeth Farley, is a citizen, resident and registered voter of Lexington, Fayette County, Kentucky, which is within the current Sixth Congressional District.

5. The Plaintiff, Paula Lewis, is a citizen, resident and registered voter of Lexington, Fayette County, Kentucky, which is within the current Sixth Congressional District.

6. The Defendant, Alison Lundergan Grimes, is the duly elected and serving Secretary of State for the Commonwealth of Kentucky. Secretary Grimes is the Chief Election Law Official of the Commonwealth, and as such is charged with a myriad of statutory duties regarding the conduct of elections and the enforcement of laws relating to the conduct of elections. Specifically, the Secretary is the filing official for all candidates seeking to run for the Office of United States Member of Congress, and, amongst other duties, is further charged with certifying the ballot to be used in the conduct of an election of a Member of Congress.

7. The Defendant, Kentucky State Board of Elections (“the Board”), is an independent Executive Branch agency governed by a seven-person Board that is chaired by the Secretary of State and is equally comprised of members of the Democratic and Republican parties. Pursuant to Kentucky law, the Board amongst other duties, generally administers the election laws of the Commonwealth, promulgates administrative regulations, supervises the registration and purgation of voters, appoints political party representatives to the county boards of election, and certifies election results, including elections of Members of Congress.

7. The Defendant, MaryEllen Allen, is the duly appointed and serving Executive Director of the Kentucky State Board of Elections, and is responsible for the day-to-day operation of the Board in the discharge of its statutory obligations.

8. Because this action challenges the constitutionality of an Act of the General Assembly, i.e. KRS 118B.110 (First Congressional District), .120 (Second Congressional

District), .130 (Third Congressional District), .140 (Fourth Congressional District), .150 (Fifth Congressional District), and .160 (Sixth Congressional District) (*see, Acts 2002, ch.1, §140, eff. January 31, 2002*), a copy of this Verified Complaint is being served upon the Attorney General, Jack Conway pursuant to CR 24.03 and KRS 418.075.

#### Facts

9. It is the duty of the Kentucky Legislature to redistrict the Commonwealth into a finite number of Congressional Districts from which members of the United States House of Representatives are elected to represent the citizens and residents of Kentucky that reside in that District.

10. The Congressional Districts drawn by the General Assembly must comport with the pertinent requirements of the Kentucky and United States Constitutions that it be fair and effective representation for all citizens. The constitutional principles of equality of population amongst districts and that the re-districting be accomplished without causing invidious racial discrimination are the constitutional principles that must be obeyed in forming Congressional Districts.

11. In drawing up Congressional Districts and assessing whether the re-districting plan comports with the law, reviewing courts (both State and Federal) look to three other criteria: compactness and contiguity of the districts; preservation of county and municipal boundaries; and preservation of communities of interest.

12. KRS 118B.110 (First Congressional District), .120 (Second Congressional District), .130 (Third Congressional District), .140 (Fourth Congressional District), .150 (Fifth Congressional District), and .160 (Sixth Congressional District) are based upon population data

derived from the 2000 United States Census that was deemed to be official by the United States Secretary of Commerce (“2000 Census Data”). *KRS 118B.010(2)(c)*.

13. Since the re-districting accomplished in 2002, the federal government undertook, completed and has certified as official the 2010 decennial census as required under Article I, Sections 2 and 9 of the Constitution. *2010 Re-Districting Census (Pub. L. 94-171)*, (“2010 Census Data”).

14. The 2010 Census Data in Kentucky evidences substantial changes in the distribution of population so that the Congressional Districts enacted into law in 2002, no longer comport to the permissible population variance amongst districts under the Kentucky and United States Constitutions.

15. On January 3, 2012, the Kentucky General Assembly convened itself into regular session.

16. On January 3, 2012, HB 2 (2012) was introduced into the House. HB 2 sought to repeal KRS 118B.110, *et seq.*, and re-enact a re-districting plan for the six Congressional Districts based upon the current 2010 Census Data. *Exhibit A, attached, HB-1, with all amendments, conference committee reports, impact statements, maps, and population charts.*

17. It has been determined by the Kentucky Legislative Research Commission (“LRC”), an agency of the General Assembly, from the 2010 Census Data that the total population of Kentucky is 4,339,367; and, applying the formula for constituting Congressional Districts set out in Article 1, Section 2 of the United States Constitution, that the ideal Congressional District Population is 723,228.

18. HB 2 (2012) passed the House on January 10, 2012, and received in the Senate the next day.

19. A committee substitute was made in Committee, and the Senate passed HB 1, with committee substitute, on January 18, 2012.

20. The House refused to accede and the Senate refused to recede, so that a Conference Committee was appointed by each Chamber on January 19, 2012.

21. On January 27, the Conference Committee reported out HB 1 which had been amended to simply extend the statutory filing deadline for candidates to a Congressional District until February 7, 2012.

22. As of the date of the filing of this Verified Complaint, the filing deadline has passed; and, the General Assembly has failed to enact a law providing for the redistricting of Congressional Districts using the 2010 Census Data.

23. Upon information and belief, and based upon reports printed in the two leading newspapers of general circulation in the Commonwealth (the Lexington Herald Leader and the Louisville Courier-Journal), Speaker of the House Greg Stumbo stated that "I think that ship's sailed. That bell has rung. I think the secretary of state will have to certify those candidates and so the current status of law is that in my opinion they would run in the current Congressional district." *Herald-Leader, February 9, 2012*. If the Defendants do, in fact, proceed in this fashion, then any election of Members of Congress using the 2002 Congressional Districts would be *per se* unconstitutional and illegal.

24. Upon information and belief, Plaintiffs believe that the Secretary of State and Board of Elections, unless enjoined, will proceed to conduct elections using the illegal and unconstitutional Congressional Districts enacted in 2002. Pursuant to the records of the LRC as archived on its website, the current "out-of-balance" composition of the six Congressional Districts is:

DISTRICT	POPULATION	DEVIATION	% DEVN.
1	686,989	-36,239	-5.01
2	760,122	36,894	5.10
3	721,536	-1,692	-0.23
4	741,271	18,043	2.49
5	670,252	-52,976	-7.32
6	759,197	35,969	4.97

This is explicit proof that these Congressional Districts are illegal under the 2010 Census Data.

Count 1 - Declarative

25. Plaintiffs incorporate as if fully set forth herein the allegations set out in paragraphs 1 through 24.

26. KRS 118B.110 (First Congressional District), .120 (Second Congressional District), .130 (Third Congressional District), .140 (Fourth Congressional District), .150 (Fifth Congressional District), and .160 (Sixth Congressional District) are based upon 2000 Census Data, and therefore violate the equal protection provisions of Sections 2, 3 and 6 of the Kentucky Constitution, and Article IV, § 2 of and the Fourteenth Amendment to the United States Constitution, due to the failure of those Districts to comport to the constitutional principal therein of equality of district population, i.e. "one person, one vote".

27. Therefore, pursuant to KRS Chapter 418, the Court must declare those Congressional Districts unconstitutional.

### Count 2 – Injunctive

28. Plaintiffs incorporate as if fully set forth herein the allegations set out in paragraphs 1 through 27.

29. Because the filing deadline has passed, and the Secretary of State and the Board of Elections has begun the process of holding elections under the illegal and unconstitutional Congressional Districts, the Plaintiffs have clearly shown that they will suffer immediate and irreparable injury by harming their concrete and fundamental right to vote and be represented as required by the Kentucky and United States Constitutions, that the harm will be immediate and not speculative, the Plaintiffs have posed a substantial question to be determined in this action, and the equities strongly weigh in favor of granting injunctive relief.

30. Therefore, pursuant to CR 65.03, the Court must immediately restrain the Defendants from taking any action to conduct an election using the 2002 Congressional Districts, and thereafter, under CR 65.04 to temporarily enjoin such action until this Court enters the requested declarative relief.

### Count 3 – Equitable Relief

31. Plaintiffs incorporate as if fully set forth herein the allegations set out in paragraphs 1 through 27.

32. Under the present circumstances and in the face of the failure of the Legislative Branch to do its duty as set out in the Kentucky and United States Constitutions to enact legal Congressional Districts premised on the 2010 Census Data, this Court has the power to, itself, draw the six Congressional Districts using the constitutional principles of equality of representation and prohibition against invidious discrimination, along with the criteria of compactness and contiguity; preservation of county and municipal boundaries; and, preservation



of communities of interest. *Grove v. Emison*, 507 U.S. 25 (1993); and, *Carstens v. Lamm*, 543 F.Supp. 68 (D.Co. 1982).

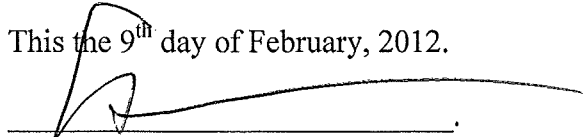
33. Therefore, based upon its inherent and equitable powers and general jurisdiction, this Court should immediately undertake to take evidence on population data, district composition, and communities of interest, and draw legal Congressional Districts, and thereafter order the Defendants to conduct elections using those legal Congressional Districts.

Prayer

The Plaintiffs pray that:

1. The Court grant the declarative, injunctive, and equitable relief sought in Counts 1, 2, and 3.
2. Such other and further relief as the Court deems appropriate.

This the 9<sup>th</sup> day of February, 2012.

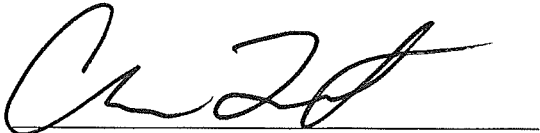


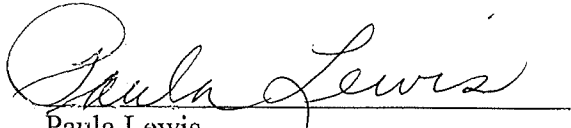
---

Scott White  
John T. McGarvey  
Sarah S. Mattingly  
Morgan & Pottinger, P.S.C.  
133 W. Short Street  
Lexington, KY 40507  
859.226-5288 (DIRECT)  
859.255-2038 (FAX)  
[tsw@m-p.net](mailto:tsw@m-p.net)

VERIFICATIONS

After first being duly sworn, Christopher Frost and Paula Lewis, appeared before me and stated that to the best of their knowledge the factual averments set forth in the "Facts" section of this Verified Complaint are true, and if not based on personal knowledge, believe them to be true.

  
\_\_\_\_\_  
Christopher Frost

  
\_\_\_\_\_  
Paula Lewis

COMMONWEALTH OF KENTUCKY  
COUNTY OF FAYETTE

I certify that Christopher Frost and Paula Lewis appeared before me on February 9, 2012, and after first being sworn, executed this Verification.

\_\_\_\_\_  
Scott White  
Notary Public

My Commission Expires on April 17, 2012.