

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

Beverly Ehlen, Mik Chester,)	
Robert W. Wood, Steve Hunter,)	
Dr. John Lilly, Mark Muller,)	
and Sharon Hayes,)	
)	
Plaintiffs,)	Case No.
)	
vs.)	
)	
ROBIN CARNAHAN, Missouri Secretary)	
of State, in her official capacity,)	
Serve at:)	
Office of the Secretary of State)	
State Capitol, Room 208)	
Jefferson City, MO 65101)	
)	
Defendant.)	

**COMPLAINT FOR DECLARATORY JUDGMENT
AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

COME NOW Plaintiffs Beverly Ehlen, Mik Chester, Robert W. Wood, Steve Hunter, Dr. John Lilly, Mark Muller and Sharon Hayes, and for their complaint against Defendant, state and allege as follows:

PRELIMINARY STATEMENT

1. This is an action to enjoin Defendant from holding any election for the Missouri Senate using a districting plan which is undergoing final approval and which fails to comply with the Fourteenth Amendment of the United States Constitution and the equal population requirements of Article III,

section 5 of the Missouri Constitution. Given the tardiness of Missouri's approval of even the most recent unconstitutional districting plan, Plaintiffs also seek preliminary relief to allow the 2012 senate elections, for which candidate filing closes on March 27, 2012, to proceed under a plan previously proposed and approved by Missouri's nonpartisan appellate districting commission, but invalidated by the Missouri Supreme Court for procedural reasons.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action based upon the following provisions: 42 U.S.C. §§ 1983 and 1988 (civil rights); 28 U.S.C. § 1343(a)(3) and (4) (civil rights, equal protection, and the right to vote) and 28 U.S.C. § 2201 (declaratory judgment).
3. Venue is proper in this district because the Defendant Secretary of State has her official office in the Western District of Missouri.
4. This Court has personal jurisdiction over this matter. The Defendant has her office in and can be found within this judicial district.

PARTIES

5. Beverly Ehlen is a citizen and qualified voter of the United States of America and of the State of Missouri. Ms. Ehlen is a registered voter and resides in Warren County, Missouri.

6. Mik Chester is a citizen and qualified voter of the United States of America and of the State of Missouri. Mr. Chester is a registered voter and resides in Andrew County, Missouri.
7. Robert W. Wood is a citizen and qualified voter of the United States of America and of the State of Missouri. Mr. Wood is a registered voter and resides in Howard County, Missouri.
8. Steve Hunter is a citizen and qualified voter of the United States of America and of the State of Missouri. Mr. Hunter is a registered voter and resides in Jasper County, Missouri.
9. Dr. John Lilly is a citizen and qualified voter of the United States of America and of the State of Missouri. Dr. Lilly is a registered voter and resides in Greene County, Missouri.
10. Mark Muller is a citizen and qualified voter of the United States of America and of the State of Missouri. Mr. Muller is a registered voter and resides in Bates County, Missouri.
11. Sharon Hayes is a citizen and qualified voter of the United States of America and of the State of Missouri. Ms. Hayes is a registered voter and resides in Franklin County, Missouri.
12. Plaintiffs bring this action individually and as representatives of all of the citizens of the State of Missouri who are similarly situated, as being currently denied Equal Protection of the Laws, as further alleged herein.

13. Defendant Robin Carnahan is the duly elected Missouri Secretary of State. She is the chief election officer of the state. Her duties charge her, in her official capacity, with, *inter alia*: transmitting notices to election authorities of written notices of the offices to which candidates are to be nominated in primary elections (Section 115.345, RSMo.); receiving declarations of candidacy for the office of state senator (Section 115.353(1), RSMo.) between 8:00 a.m. on the last Tuesday in February and 5:00 p.m. on the last Tuesday in March immediately before the primary election (Section 115.349, RSMo.); receiving notices of a candidate's withdrawal of candidacy (Section 115.359, RSMo.); sending notices of vacancy to the applicable party nominating committees (Section 115.369, RSMo.); notifying election authorities of candidates who are properly nominated and certified by nominating committees (Section 115.381, RSMo.); sending a certified list, no later than ten Tuesdays before the primary date, to each election authority of all of the candidates for each office who will be voted on in the primary, along with the order in which the names are to appear on the ballot (Section 115.387, RSMo.); sending a similar certified list to each election authority ten Tuesdays before the general election (Section 115.401, RSMo.); preparing all forms necessary to carry out Missouri's election laws in Chapter 115, RSMo. (Section 115.403, RSMo.); convening and announcing the results of the board of state canvassers for primary and general elections (Section 115.511, RSMo.); and issuing certificates of nomination and election (Section 115.523,

RSMo.). Any failure to perform the duties enumerated in Chapter 115 at sections 115.001 to 115.641 is a class four election offense.

GENERAL ALLEGATIONS

14. The Missouri Senate is comprised of 34 districts. Each district is numbered. Odd-numbered districts are elected in presidential election years, and even-numbered districts are elected in non-presidential election years.
15. Each district is represented by a senator. Senators must have been residents of their districts for one year before their election, but in the case of new districts, need only have been a resident of the “district or districts from which” the new district is created. Mo. Const. Art. III, section 6.
16. “For the election of senators, the state shall be divided into convenient districts of contiguous territory, as compact and nearly equal in population as may be.” Mo. Const. Art. III, section 5.
17. The process by which the state is divided into districts is controlled by Article III, section 7, of the Missouri Constitution. It provides, in relevant part, as follows:

Within sixty days after the population of this state is reported to the President for each decennial census of the United States, and within sixty days after notification by the governor that a reapportionment has been invalidated by a court of competent jurisdiction, the state committee of each of the two political parties casting the highest vote for governor at the last preceding election shall, at a committee meeting duly called, select by a

vote of the individual committee members, and thereafter submit to the governor a list of ten persons, and within thirty days thereafter the governor shall appoint a commission of ten members, five from each list, to reapportion the thirty-four senatorial districts and to establish the numbers and boundaries of said districts.

If either of the party committees fails to submit a list within such time the governor shall appoint five members of his own choice from the party of the committee so failing to act.

Members of the commission shall be disqualified from holding office as members of the general assembly for four years following the date of the filing by the commission of its final statement of apportionment.

The commissioners so selected shall on the fifteenth day, excluding Sundays and holidays, after all members have been selected, meet in the capitol building and proceed to organize by electing from their number a chairman, vice chairman and secretary and shall adopt an agenda establishing at least three hearing dates on which hearings open to the public shall be held. A copy of the agenda shall be filed with the secretary of the senate within twenty-four hours after its adoption. Executive meetings may be scheduled and held as often as the commission deems advisable.

The commission shall reapportion the senatorial districts by dividing the population of the state by the number thirty-four and shall establish each district so that the population of that district shall, as nearly as possible, equal that figure; no county lines shall be crossed except when necessary to add sufficient population to a multi-district county or city to complete only one district which lies partly within such multi-district county or city so as to be as nearly equal as practicable in population. Any county with a population in excess of the quotient obtained by dividing the population of the state by the number thirty-four is hereby declared to be a multi-district county.

Not later than five months after the appointment of the commission, the commission shall file with the secretary of state a tentative plan of apportionment and map of the proposed districts and during the ensuing fifteen days shall hold such public hearings as may be necessary to hear objections or

testimony of interested persons.

Not later than six months after the appointment of the commission, the commission shall file with the secretary of state a final statement of the numbers and the boundaries of the districts together with a map of the districts, and no statement shall be valid unless approved by at least seven members.

After the statement is filed senators shall be elected according to such districts until a reapportionment is made as herein provided, except that if the statement is not filed within six months of the time fixed for the appointment of the commission, it shall stand discharged and the senate shall be apportioned by a commission of six members appointed from among the judges of the appellate courts of the state of Missouri by the state supreme court, a majority of whom shall sign and file its apportionment plan and map with the secretary of state within ninety days of the date of the discharge of the apportionment commission. Thereafter senators shall be elected according to such districts until a reapportionment is made as herein provided...

18. In 2011, the results of the U.S. Census in Missouri were reported.

19. A bipartisan apportionment commission was duly appointed and met in the spring and summer of 2011 to conduct a reapportionment (the “2011 Bipartisan Commission”). On or about August 16, 2011, the commission decided that it was deadlocked and would be unable to adopt a plan.

20. The August 16, 2011, meeting was transcribed. The official transcript of that meeting shows that the Chairman of the commission, a Democrat, Douglas Harpool, stated: “We have reasons for our numbering. We think that when a senator is elected, he doesn’t represent a district number, but he represents the people.”

21. The Bipartisan Commission’s deadlock meant that, under the Missouri Constitution, a nonpartisan appellate apportionment commission consisting

of Missouri Court of Appeals judges would be tasked with drawing districts.

22. In the fall of 2011, the nonpartisan appellate commission (the “Nonpartisan Commission”) met and on November 30, 2011, issued a map (the “First Nonpartisan Plan”).

23. On December 9, 2011, the Nonpartisan Commission withdrew its earlier map and filed a revised map on December 9, 2011 (the “Second Nonpartisan Plan”). The plan had an overall population difference of 7.79% between its least and most populous districts. A true and correct copy of the plan is attached hereto as Exhibit A.

24. On January 17, 2012, in *State ex rel. Teichman v. Carnahan* (Case No. SC92237), the Missouri Supreme Court *per curiam* granted a writ of prohibition against Secretary of State Robin Carnahan prohibiting her from conducting Missouri’s 2012 senate elections using the Second Non-Partisan or First Non-Partisan Plans. The court held that the first plan was constitutionally infirm, and that because its authority had lapsed with the filing of the first plan, the Nonpartisan Commission had no authority to issue the second plan. The Court noted that it “assumes that all those tasked with duties to reapportion the senate districts in accordance with art. II, sec. 7, will do so in an expedited manner to provide the Secretary of State with a valid plan and map for the upcoming election.”

25. On or about January 31, 2012, a second bipartisan commission (the “2012 Bipartisan Commission”) was duly appointed by Missouri Governor Jeremiah

("Jay") Nixon.

26. The 2012 Bipartisan Commission met on Saturday, February 18, 2012, in Jefferson City, Missouri, and immediately adopted a schedule for four public hearings to occur on Sunday, February 19, 2012; Monday, February 20, 2012; Tuesday, February 21, 2012; and Wednesday, February 22, 2012.

27. The public portions of each meeting were transcribed.

28. At the Sunday, February 18, 2012, meeting, the 2012 Bipartisan Commission was addressed by Missouri Solicitor General James Layton. The following exchange took place:

MR. LAYTON:

...Let me comment on one last thing that I hadn't thought about until -- seriously, until the end of the judge's process. And that's this: In addition to doing the boundaries, you have to give them numbers. And odd numbers are up this year, right? year?

COMMISSIONER MYERS: Yes.

MR. LAYTON: Odd numbers are running this year.

COMMISSIONER ELLINGER: Yes.

MR. LAYTON: Ten years ago, Harry Kennedy, following the redistricting, represented a district in rural Missouri about 100 miles from his home. I don't know that -- I -- I assume Harry Kennedy didn't like that, but I'm sure the people in his district didn't like that. You have to give them numbers and -- and that suggests -- I don't want to give you political advice, but I'm going to come close to that here -- that to minimize the lack -- the alleged lack of representation. Because there's some people who have actually argued that they can't be left without representation. It -- it is worth at least thinking about putting the -- if you're going to move a district dramatically, making it an odd-numbered district, that is, moving so that they can elect their own senator this year rather than living with someone who was elected by

someone else.

I don't think that our population move is quite so dramatic this time that that has to happen. But there are certainly districts that will have to move substantially. And it's worth thinking about the representation of the people in the district as you're thinking about what number to put on that particular district. Okay?

29. At the Commission's February 22, 2012 meeting, which carried over into the early morning hours of February 23, 2012, the Commission reached tentative agreement on a new districting plan for the Missouri Senate.
30. The approved plan (the "2012 Plan") was transmitted to the Missouri Secretary of State on February 23, 2012, by a letter signed by Chairman Doug Harpool, who had also chaired the 2011 Bipartisan Commission. A true and correct copy of the letter of transmittal, associated maps, and demographic data tables is attached hereto as Exhibit B.
31. The 2012 Plan contains a deviation between the most underpopulated and overpopulated districts of approximately 9.6%. Ranking, pairing, and adding the deviations of the most overpopulated and underpopulated districts, the paired sixth-place districts evidence a deviation of 7.26%.
32. The following table summarizes data regarding the top six population deviations:

Positive Deviation (Overpopulated)				Negative Deviation (Underpopulated)			
State Senate District	Classification	Counties	Deviation	State Senate District	Classification	Counties	Deviation
21	Rural	Caldwell, Ray, Livingston, Carroll, Chariton, Lafayette, Saline, Howard and Johnson	4.87%	7	Urban	Jackson (Part)	-4.72%
20	Rural	Christian, Greene (part)	4.31%	9	Urban	Jackson (Part)	-4.69%
32	Rural	Newton, Jasper, Dade	4.12%	11	Urban	Jackson (Part)	-4.47%
26	Sub/Rural	Franklin, St. Louis County (part)	3.80%	28	Rural	Pettis, Benton, Hickory, Cedar, Polk, Dallas, Laclede	-4.42%
31	Rural	Cass, Bates, Henry, St. Clair, Vernon, Barton	3.42%	30	Urban	Greene (part)	-4.14%
12	Rural	Atchison, Holt, Wroth, Harrison, Mercier, Putnam, Andrew, Gentry, Dekalb, Daviess, Grundy, Sullivan,	3.31%	13	Urban	St. Louis County (part)	-3.95%

		Clinton, Clay (Part)					
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33. The data show that the six greatest population deviations serve to favor urban areas over rural areas, invidiously discriminating against residents of rural Missouri counties.

34. The three most underpopulated districts are all in urban Jackson County, Missouri, and all involve areas that are heavily Democratic and vote to elect Democratic senators. The three most overpopulated areas are all in rural areas, are Republican, and vote to elect Republican senators. Further, three of the six most overpopulated senate districts—the 21st, 31st, and 12th, are packed with voters and ring the underpopulated districts in Jackson County.

35. The urban 30th District in Greene County appears as an island on the map because it is completely surrounded by the 20th District. The 30th District contained sufficient population so as not to require a redrawing of its lines using the 2010 Census. Yet 10,813 residents were pushed out of the 30th and into the surrounding 20th. The net effect of this urban-to-rural shift of voters was to make the 20th District Missouri’s second-most severely overpopulated district, but to make the 30th District Missouri’s fifth-most severely underpopulated district.

36. In the St. Louis area, residents have been moving and are continuing to move from the City and County of St. Louis to more outlying areas. This included the 2nd District in St. Charles and Lincoln Counties, which contained tens of

thousands of surplus voters and, without redistricting, would have been severely overpopulated. This northern and western population shift required the drawing of a new district to the northwest (the “East-Central Missouri District”) and the elimination and/or geographic expansion of districts comprising St. Louis City and County.

37. The 2012 Plan did, in fact, redrew several districts in the St. Louis area. The 13th District in north St. Louis County, an urban district that votes heavily Democratic, became the sixth-most underpopulated in Missouri. To allow for the drawing of the new East Central Missouri District north and west of St. Louis, a Republican district in northern and western St. Louis County which was due to have an election in 2012, the 7th, was eliminated; its territory was distributed among the neighboring 14th, 24th, and 26th. In the process, the 26th, a heavily Republican district that included rural Franklin County, became the fourth most heavily overpopulated district in Missouri.

38. The heavily overpopulated 2nd District was made smaller and confined to western St. Charles County, while the other part of the old 2nd, Lincoln County, was combined with pieces of four other Republican-leaning, even-numbered districts to the new 2nd's north and west to create the East-Central Missouri District, a brand new predominantly rural, Republican-leaning district.

39. The purpose and result of these shifts, therefore, was the elimination of the old 7th District to allow for the drawing of the East-Central Missouri District.

Figuratively, the 7th District was simply “moved” from St. Louis County to the growing rural and exurban areas north and west of St. Charles County.

40. The 2012 Plan resulted in overpopulation and underpopulation throughout the state and was flawed for the reasons discussed above. Having drawn those flawed districts, the 2012 Bipartisan Commission was then faced with the task of assigning district numbers. In the St. Louis area, it could simply have allowed the 7th District designation to move out to the new East Central Missouri District. Had the East-Central Missouri District simply been designated the 7th, its residents (owing to the odd number designation) would have been able to elect a new senator from among their own number almost immediately, in the November 2012 election.

41. Alternatively, the Commission could have designated the East-Central Missouri District as the 26th or 2nd, both of which gave up counties to help form the District and both of whose incumbents had formerly represented the most populous counties in the new District. It could then have designated the 2nd or 26th District as the 7th. One advantage of having designated the old 26th District as the new 7th would have been to preserve some core constituency of both the 7th (in St. Louis County) and the 26th (in Warren County) under incumbents. The 2012 Bipartisan Commission chose none of these numbering options.

42. Instead, and with no rational basis, the 2012 Bipartisan Commission assigned the East-Central Missouri District a number from the urban core of

Kansas City on the far western side of the state: the 10th.

43. Senator Jolie Justus, a Democrat, was elected from the 10th District and is term-limited after completing her current term in 2014. Upon information and belief, Sen. Justus has no intention of moving to the 10th District. She is employed as the director of pro bono services for the Kansas City law firm of Shook, Hardy & Bacon LLP and represents on her website that she “lives in downtown Kansas City and is the proud co-parent of a 16-year-old daughter.” The fact that Sen. Justus is term-limited means that she is not entitled to run for re-election in the new 10th District even if she wanted to, meaning that for the next two years, the citizens of the new 10th have no meaningful democratic check on the decisions that Sen. Justus makes from her home in Kansas City or in her office in Jefferson City.

44. To cover the territory of the 10th in the urban core of Kansas City, the 7th District number was reassigned across the state from St. Louis. But unlike the citizens of the Republican-leaning East-Central Missouri District, who will have Senator Justus, a lame duck and term-limited Democrat for the next two legislative sessions until November 2014, Kansas City’s urban core will be able to elect a new senator in just a few months, in November 2012.

45. Further, the “new” 7th District, in the urban core of Kansas City, was packed within a long, narrow, few-mile band of far western Jackson County, making it by far the most underpopulated of all Missouri Senate districts. This was despite the fact that the 7th could constitutionally have been expanded to

cross the county line and cover part of neighboring Cass County, which is part of the 31st—the fifth-most overpopulated district in Missouri. Again, all of the three most underpopulated districts in Missouri cover urban Jackson County, and with the number change, all are now odd-numbered and can immediately elect senators in the November 2012 election.

46. The intent and effect of Commission's bizarre rearrangement of district numbers and deliberate concentration of odd-numbered, underpopulated districts in urban Kansas City is to invidiously increase the representation of urban regions and decrease the representation of rural regions in the General Assembly. This intent and effect is most obvious in the "transfer" of Sen. Jolie Justus as an incumbent to smother a Republican-leaning district in a distant rural region for over two legislative sessions.

47. At the same time, the Commission ensured that urban interests would not lose the transferred Senator's home territory in the urban core of Kansas City. The Commission ensured the safety of Sen. Justus' home territory by switching it to an odd-numbered designation so that it can immediately elect another senator to take her place, by keeping the district small, by making it the most underpopulated in the state, and by keeping it reliably urban and Democrat, even though an overpopulated rural district, the 31st, abuts it, and the most overpopulated district in the state, the 21st, is next door in Lafayette County. As Chairman Harpool stated on the record, "when a senator is elected, he doesn't represent a district number, but he represents the people."

Senator Justus lives in and was elected as a Democrat by the people of a heavily Democratic district in the urban core of Kansas City. She does not represent the “number” 10, which is now assigned to a district across the state to a rural and Republican-leaning district.

48. The Commission’s action in drawing six severely overpopulated and six severely underpopulated districts invidiously discriminates against rural interests in favor of urban districts. Regional favoritism is an impermissible districting criterion.

49. Further, the Commission’s action was not compelled by principles of compactness, keeping counties whole, even-handedly protecting incumbents, protecting historical cores of districts, or any other traditional redistricting principles.

50. First, 2012 Plan results in districts that are less compact than the earlier Second Nonpartisan Plan, even while the population disparities are greater than the disparities in that earlier plan. Second, the bizarre cross-state transfers of district numbers and unnecessarily prolonged mismatching of incumbents and constituents is unique to the 2012 Plan and violates every principle of traditional redistricting. Third, a member of the Commission, Marc Ellinger, candidly admitted after the fact to a meeting of Republican senators that the cross-state transfers of district numbers was required by the Democrat members of the committee in order to avoid a deadlock. He made no attempt to argue that the move allowed for adequate representation

of the voters of the “new” 10th District or was compelled by a traditional principle such as compactness, contiguity, or preserving the historical core of a district.

51. Accordingly, the underpopulation and overpopulation of Missouri Senate districts is not based on legitimate considerations incident to a rational state policy, is not free from any taint of arbitrariness and discrimination, and does not reflect an honest and good faith effort to draw districts as nearly equal in population as practicable or as may be.

52. In numbering these already-flawed districts, the Commission’s action in designating the new East-Central Missouri District as the 10th, rather than allowing the 7th designation to flow to it, debases, dilutes, and wrongfully denies the votes of residents of the “new” 10th, providing them with inadequate representation. As Solicitor General Layton warned the commissioners at the inception of their proceedings, such irrational cross-state number-switching has been known to raise claims of inadequate representation

53. In this case, the commissioners ignored the Solicitor General’s advice and did precisely what they had been warned against. The new 10th District’s residents are assigned a senator for whom no one in the district has ever voted, for whom no one in the district can ever vote, who lives in and represents an urban area in a distant part of the state, and who will remain in office for over two years. Instead of, as Solicitor General Layton suggested,

“making it an odd-numbered district...so that they can elect their own senator this year rather than living with someone who was elected by someone else,” the Commissioners blocked the flow of the 7th District designation to the new district and reassigned it across the state to allow Senator Justus’ constituents back in Kansas City to quickly and conveniently “back-fill” her in a grossly underpopulated urban core district. This violates the right to vote of citizens of the “new” 10th District and invidiously discriminates against them.

COUNT I
FEDERAL EQUAL PROTECTION—ONE PERSON, ONE VOTE
MISSOURI CONSTITUTION, ARTICLE III, SECTION 5

54. Plaintiffs re-allege and incorporate paragraphs 1 through 53 as though fully set forth here.

55. This count arises under the Fourteenth Amendment, Section 1, of the Constitution of the United States. It provides in pertinent part:

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

56. The provisions of the Fourteenth Amendment guarantee to the citizens of each state the right to vote in state elections and that the vote of each citizen shall be equally effective with any other vote cast in such election. State

action which enforces or effects a districting plan which invidiously discriminates against citizens in highly populous legislative districts and prefers other voters in the least populous legislative districts violates the Fourteenth Amendment.

57. This count also arises under Article III, section 5 of the Missouri Constitution, which provides: “For the election of senators, the state shall be divided into convenient districts of contiguous territory, as compact and nearly equal in population as may be.” The intent and the purpose of this provision is to require that the members of the Missouri Senate be elected by the people of the State of Missouri on a basis of equal representation of the individual citizens of the state.

58. Plaintiffs, citizens of the United States and of the State of Missouri, have the rights conferred by the above provisions of the United States Constitution and the Missouri Constitution to have state senatorial districting in Missouri be based on equal population.

59. The 2012 Plan results in some senate districts that are under-populated and some that are over-populated. Some of the differences are substantial.

60. The deviation between the most under-populated and most over-populated districts is 9.6%.

61. Not coincidentally, the U.S. Supreme Court has held that when the population deviation of state legislative districts reaches 10%, the burden is placed on the state to show that the deviations do not result from invidious

discrimination in violation of the Fourteenth Amendment.

62. The Commission's willingness to manipulate district populations by walking its 2012 Plan to within a few millimeters of the 10% threshold does not insulate the Plan from attack.

63. As set forth above, the six most overpopulated and underpopulated districts show a clear pattern of discrimination in favor of urban regions and against rural regions. Further, specific trade-offs can only be explained as attempts to dilute rural votes and political power in favor of urban votes and political power.

64. First, nearly 11,000 voters were moved from an urban island district in Springfield and packed into a rural surrounding district even though no population shifts would have been required under the districts' old "shoreline."

65. Second, after the Commission eliminated the 7th District in St. Louis County to allow the creation of a new rural East Central Missouri District, the Commission refused to allow the 7th's designation to flow out to the new district and allow those residents, as Solicitor General Layton suggested, the right to elect a resident senator. Instead, the Commission wrenched the long-held 10th district designation from the urban core of Kansas City to smother the voters of the new rural district with an unknown, distant incumbent, delaying until 2014 their ability to elect their own rural legislator. The Commission then perversely redirected the old 7th designation to the old 10th

District's territory in order to allow a 2012 election of a new urban Kansas City senator in a severely underpopulated and safe district. Regionalism is an impermissible, arbitrary, discriminatory, and unlawful basis for deviations in district population.

66. Further, as discussed above no traditional districting principle or non-discriminatory purpose can explain the population deviations.

67. Indeed, the Nonpartisan Commission's Second Plan achieved a permissible amount of population deviation that does not exhibit a pattern of invidious discrimination or violate any federal or state constitutional requirement.

68. Accordingly, the 2012 Plan invidiously discriminates against overpopulated rural districts and in favor of underpopulated urban districts on the basis of regionalism.

69. The 2012 Plan deprives Plaintiffs and all similarly situated residents of equal protection of the laws, violating their rights under the Fourteenth Amendment to the U.S. Constitution. Further, it violates their rights under Article III, section 5, of the Missouri Constitution.

70. The Plaintiffs are informed and believe and, therefore, allege that the Commission will vote to finally approve and file with the Secretary its 2012 Plan no later than March 12, 2012, and that the Secretary will immediately begin to accept declarations of candidacy for the senate and conduct 2012 and future Missouri Senate elections under the 2012 Plan unless restrained by an order of this Court. Candidate filing began in Missouri on February 28, 2012,

and will conclude at 5:00 p.m. on March 27, 2012.

71. Plaintiffs further allege that they intend to and will vote in the primary and general elections to be held in 2012 and thereafter for candidates for Missouri Senate; and that said elections conducted in accordance with the 2012 Plan will continue to deprive Plaintiffs of their rights guaranteed under the Constitution of the United States and the Constitution of Missouri.

72. By reason of the failure of Missouri to reapportion its senatorial districts conformity with the Missouri Constitution and U.S. Constitution, thus violating the above-cited constitutional rights of these Plaintiffs and of all other members of the class of citizens and voters whom they represent, a justiciable controversy exists.

73. The Second Nonpartisan Plan was approved by a duly-appointed Nonpartisan Commission, is devoid of federal or state constitutional defects, and would, if implemented, remedy Plaintiffs' injury, in that it does not invidiously discriminate against any Plaintiff's exercise of his or her right to vote.

COUNT II
EQUAL PROTECTION—RIGHT TO VOTE—INADEQUATE
REPRESENTATION

74. Plaintiffs re-allege and incorporate paragraphs 1 through 73 as though fully set forth here.

75. This Count arises under the Fourteenth Amendment to the United States

Constitution.

76. Plaintiffs and all Missouri voters have a right under the Fourteenth Amendment to vote without having their vote diluted, debased, or wrongfully denied.

77. Plaintiff Ehlen and all voters in the new East-Central Missouri District, which is now designated as the 10th, are subject to the dilution, debasement, and denial of their right to vote for and elect their state senator.

78. The Commission's actions in numbering the already-flawed districts in the 2012 Plan further diluted, debased, and denied the right to vote of Plaintiff Ehlen and the other residents of the "new" 10th, providing them with inadequate representation. The Commission accomplished this feat by designating the new East-Central Missouri District as the 10th, rather than simply letting the designation of the 7th—which was eliminated precisely to create the new district—flow to the new district. As Solicitor General Layton warned the commissioners at the inception of their proceedings, such irrational cross-state number-switching has been known to raise claims of inadequate representation.

79. In this case, the commissioners ignored the Solicitor General's advice and did precisely what they had been warned against. The new 10th District's residents are assigned a senator for whom no one in the district has ever voted, for whom no one in the district can ever vote, who lives in and represents an urban area in a distant part of the state, and who will remain

in office for over two years.

80. Instead of, as Solicitor General Layton suggested, “making it an odd-numbered district...so that they can elect their own senator this year rather than living with someone who was elected by someone else,” the Commissioners redirected the 7th district designation to Kansas City to allow Senator Jolie Justus’ urban constituents to quickly and conveniently “back-fill” her in a grossly underpopulated urban core district. This violates the right to vote of citizens of the “new” 10th District and invidiously discriminates against them.

81. No rational, legitimate, non-arbitrary, non-discriminatory reason exists for the Commission’s surprise decision not to allow the 7th designation, which was odd, to flow to the residents of the newly-created district so that they could elect their own resident senator in the November 2012 elections. The number-switching scheme was tied up with the decision to keep the new 7th safely urban, causing it to be the most underpopulated district in the state. But the mere switching of district numbers advanced no other traditional redistricting interest; indeed, it could not logically have had anything to do with compactness, preservation of core constituencies or historical district associations, or protection of incumbents.

82. The Commission’s elaborate number-switching scheme smacks not of mere carelessness, but of the deliberate decision to use illegitimate, arbitrary, discriminatory, and unlawful criteria—i.e., regionalism, the favoring of urban

over rural regions—to burden the residents of the new rural East-Central Missouri District and prefer the residents of the “old” 10th District in Kansas City’s urban core. One Republican commissioner, Marc Ellinger, has already admitted that the switch was purposeful and was made in response to a demand by Democratic commissioners and not for purposes of satisfying traditional neutral districting principles.

83. Accordingly, Missouri’s preference of other residents over the residents of the 10th District is an invidious discrimination and denies Plaintiff Ehlen and all other similarly-situated residents of the equal protection of the laws under the Fourteenth Amendment of the United States Constitution.

84. The Plaintiffs are informed and believe and, therefore, allege that the Commission will vote to finally approve and file with the Secretary its 2012 Plan no later than March 12, 2012, and that the Secretary will immediately begin to accept declarations of candidacy for the senate and conduct 2012 and future Missouri Senate elections under the 2012 Plan unless restrained by an order of this Court. Candidate filing began in Missouri on February 28, 2012, and will conclude at 5:00 p.m. on March 27, 2012.

85. Plaintiffs further allege that they intend to and will vote in the primary and general elections to be held in 2012 and thereafter for candidates for Missouri Senate; and that said elections conducted in accordance with the 2012 Plan will continue to deprive Plaintiffs of their rights guaranteed under the Constitution of the United States.

86. By reason of the failure of Missouri to reapportion its senatorial districts conformity with the Missouri Constitution and U.S. Constitution, thus violating the above-cited constitutional rights of these Plaintiffs and of all other members of the class of citizens and voters whom they represent, a justiciable controversy exists.

87. The Second Nonpartisan Plan was approved by a duly-appointed Nonpartisan Commission, is devoid of federal or state constitutional defects, and would, if implemented, remedy Plaintiffs' injury, in that it does not invidiously discriminate against any Plaintiff's exercise of his or her right to vote.

WHEREFORE, Plaintiffs respectfully pray that:

1. this Court declare the rights of these Plaintiffs pursuant to 28 U.S.C. § 2201, to wit:

That the present plan of state senate districting as established by the 2012 Plan deprives Plaintiffs and the class they represent of Equal Protection of the Laws in violation of the Fourteenth Amendment to the Constitution of the United States; and that the 2012 Plan fails to comply with Article III, section 5 of the Missouri Constitution.

2. the Court issue a permanent injunction and judgment decreeing that the 2012 Plan may not hereafter be used as a valid plan of state senate districting.

3. the Court permanently restrain the Defendant from receiving nominations and petitions for Missouri State Senator, from issuing certificates of nomination and elections, and from all further acts necessary to the holding of elections for state senators in the districts established by the 2012 Plan.

4. the Court order that Defendant conduct the 2012 primary and general elections using the state senate districts approved by the Nonpartisan Commission in its Second Nonpartisan Plan.

5. the Court order Defendant to pay to Plaintiffs, pursuant to 42 U.S.C. §1988, their reasonable attorneys fees and expenses, expert fees, costs and other expenses incurred in prosecuting this action.

6. the Court provide such other and future relief as is just in the circumstances.

Respectfully Submitted by:

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