

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

FILED

NOV 22 2011

BRENDA A. UMSTATTO
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

STAN MCCLATCHEY,)
1907 North Grove Drive)
Independence, Missouri 64058,)

and)

DONNA TURK,)
417 Southeast Annette Street)
Lee's Summit, Missouri 64063,)

and)

IVAN GRIFFIN,)
1828 East 76th Terrace)
Kansas City, Missouri 64132,)

and)

PATRICIA SMITH,)
6809 East 143rd Street)
Grandview, Missouri 64030,)

and)

MOLLY M. TEICHMAN,)
700 Clayton Drive)
Odessa, Missouri 64076,)

and)

LAURA MEEKS,)
16403 South Holmes Road)
Belton, Missouri 64012,)

and)

MATT ULLMANN,)
1 Northwest 82nd Street)
Kansas City, Missouri 64118,)

Plaintiffs,)

vs.)

Div. _____

Case No. _____

ROBIN CARNAHAN,)
in her official capacity as)
Missouri Secretary of State,)
))
Serve at:)
600 West Main Street)
Jefferson City, Missouri 65101,)
))
Defendant.)

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

**Count I
(Violation of Mo. Const. Art. III, § 45)**

Come now plaintiffs Stan McClatchey, Donna Turk, Ivan Griffin, Patricia Smith, Molly M. Teichman, Laura Meeks and Matt Ullmann, and for Count I of their cause of action against defendant Robin Carnahan, state, allege and aver as follows:

1. Plaintiffs bring these claims under the Constitution of Missouri, the Constitution of the United States of America, and the Revised Statutes of Missouri, as authorized by Chapter 527, R.S.Mo., Rule 87 of the Missouri Rules of Court, and the general legal and equitable powers of this Court.

2. This Court has personal jurisdiction over defendant because defendant is a statewide elected officer of the State of Missouri.

3. Venue is proper in this Court because all acts and omissions giving rise to these claims occurred, and/or are to be performed, in Cole County, Missouri, and because defendant’s principal office is in Cole County, Missouri.

4. This action for declaratory relief is proper under § 527.020, R.S.Mo., and Rule 87.02(a) because plaintiffs’ rights are being affected by the General Assembly’s May 2011 congressional redistricting map (“the Map”) and plaintiffs question the constitutional validity of

the Map. A true and accurate copy of the Map and closeup of the Greater Kansas City Area are attached hereto as Exhibits A and B and by this reference are incorporated herein.

5. Plaintiff Stan McClatchey is a citizen of the State of Missouri and resident of the City of Independence, Jackson County, Missouri.

6. Plaintiff Donna Turk is a citizen of the State of Missouri and resident of the City of Lee's Summit, Jackson County, Missouri.

7. Plaintiff Ivan Griffin is a citizen of the State of Missouri and resident of Kansas City, Jackson County, Missouri.

8. Plaintiff Patricia Smith is a citizen of the State of Missouri and resident of the City of Grandview, Jackson County, Missouri.

9. Plaintiff Molly M. Teichman is a citizen of the State of Missouri and resident of the City of Odessa, Lafayette County, Missouri.

10. Plaintiff Laura Meeks is a citizen of the State of Missouri and resident of the City of Belton, Cass County, Missouri.

11. Plaintiff Matt Ullmann is a citizen of the State of Missouri and resident of the City of Kansas City, Clay County, Missouri.

12. Plaintiffs desire to live and vote in congressional districts which are drawn in conformance with the Constitution of Missouri and the Constitution of the United States. Under the Map, all plaintiffs would live and vote in districts which fail to conform to state and federal constitutional requirements.

13. Defendant Robin Carnahan is the Secretary of State of Missouri and is sued in her official capacity as such. She is the State of Missouri's chief election official and, in that

capacity, presides over elections to public office in Missouri, including elections of Missouri's Representatives to the United States House of Representatives.

14. In February 2011, the United States Census Bureau released the results of the 2010 Census, which reflected that, over the preceding ten years, Missouri's population grew at a lower rate than many other states. As a result, Missouri must lose one seat in the United States House of Representatives – dropping from nine seats to eight – for at least the elections in 2012, 2014, 2016, 2018 and 2020.

15. Mo. Const. art. III, § 45, provides that following certification of the decennial census results, “the general assembly shall by law divide the state into districts corresponding with the number of Representatives to which it is entitled, which districts shall be composed of contiguous territory as compact and as nearly equal in population as may be.” Accordingly, it fell to the Missouri General Assembly to draw the new congressional districts that will take effect for the 2012 election.

16. In February and March 2011, the Senate and House redistricting committees held hearings throughout Missouri for testimony from members of the public as to how the Congressional redistricting map should be drawn. These hearings were not publicized in any manner consistent with bringing any significant numbers of citizens of Missouri to the hearings. On information and belief, no state representative or state senator disseminated this information to their constituents, nor did any newspaper, television or radio advertisements publicize it. Additionally, the General Assembly chose to have an expedited calendar for citizen input that made it difficult, if not impossible, for many citizens to be notified in time to participate in the public hearing process.

17. In April 2011, both houses of the General Assembly adopted the Map, which largely ignored the principles and testimony adduced at the redistricting committee hearings.

18. The Map has the purpose and effect of protecting the interests of the incumbent Representatives and otherwise promoting the interests of the two major parties by creating six “safe” Republican and two “safe” Democrat districts among the eight congressional seats allocated to Missouri. In the Fifth and Sixth Districts, the Map achieves its purposes through extreme instances of bipartisan gerrymandering, among other constitutional deficiencies. The bipartisan gerrymander is a new twist on the partisan gerrymander. Rather than trying to gerrymander the opposing party’s incumbents out of office, the political parties effectively strike a bargain in order to maintain the status quo. Also known as “incumbent protection,” the parties are cooperating to protect all existing incumbents and, where possible, to preserve their traditional constituencies.

19. The most egregious aspect of the Map is the newly drawn Fifth District, which splits Jackson County among two districts and combines the highly urban portion of Jackson County with three primarily rural counties – Ray, Lafayette and Saline Counties – that extend 100 miles to the east. Moreover, the Map carves out a teardrop-shaped area of Jackson County and places it in the Sixth District, which otherwise is north of the Missouri River. The Fifth District has not previously crossed the Missouri River. A copy of the prior map, which was effective for Missouri congressional elections in 2002, 2004, 2006, 2008 and 2010, is attached hereto as Exhibit C.

20. The net effect of the new Fifth District is to dilute the urban areas of Jackson County with the unrelated rural areas of Lafayette, Ray, and Saline counties. Jackson County is unnecessarily divided between two districts, in the process removing

densely populated areas of Lee's Summit, Blue Springs, and eastern Independence, and placing them in the highly rural Sixth District. The Map unnecessarily divides major cities located entirely in Jackson County: Blue Springs and Independence. The Map also unnecessarily divides Lee's Summit, that has 97.9% of its 91,364 citizens in Jackson County. In addition, the smaller communities of Lake Lotawana and Grain Valley that are entirely in Jackson County are unnecessarily split. Lastly, the Jackson County portion of Oak Grove that contains 98.6% of that community's population is unnecessarily split.

21. Following the General Assembly's adoption of the Map, Governor Jay Nixon quickly vetoed it, stating that the Map "did not adequately protect the interests of all Missourians."

22. Subsequently, the General Assembly voted to override the Governor's veto.

23. The net effect of the two parties' success in imposing their bipartisan gerrymandered Map upon the State of Missouri is that for at least the next ten years, the politicians who play party politics the best will be selected by the Republican party in six of Missouri's congressional districts, and by the Democratic party in the other two districts. Over the last ten years, there were forty-five congressional election contests in Missouri. In all but one, the sitting party won. Forty-four of forty-five elections won represent a 98% incumbent party success rate. The Map, if left unchanged, will ensure for the next 10 years, if not much longer, 100% "super safe" districts for the incumbent parties. It will emasculate the "one-man, one-vote" principle.

24. It is feasible to draw a congressional redistricting map with Fifth and Sixth Districts that comply with constitutional requirements and avoid the pitfalls of the Map. As one

illustration of this, plaintiffs attach as Exhibits D and E and incorporate herein an alternative Missouri congressional redistricting map that contains eight districts of almost equal population.

25. Under Mo. Const. art III, § 45, congressional districts must be “composed of contiguous territory as compact ... as may be.” Under the express language of this provision, the constitutional requirements are not satisfied by districts merely having *some* degree of compactness; rather, they must be *as compact as possible*.

26. The Fifth and Sixth Districts as drawn in the Map fail to satisfy this requirement in a number of respects, including but not limited to the following:

a. The new Fifth District is not compact as may be in that it has an irregular and bizarre shape, which has been likened to a dead lizard. It has a teardrop shaped area carved out of it, which is an unnatural appendage to the new Sixth District. Moreover, Ray County is attached to the new Fifth District as an unnatural appendage on the north side.

b. Also, the new Fifth District should not be regarded as comprised of contiguous territory in light of the teardrop shaped appendage protruding into it from the new Sixth District, and the narrowness of the area in the district lying south of the appendage. Traveling over land from the northwest portion of the Fifth District, lying within Clay or Jackson County, to the Ray, Lafayette or Saline County areas of the District, without leaving the District, would require a highly circuitous route.

c. The new Sixth District is not compact as may be in that it has an unnatural appendage carved out of the new Fifth District.

27. In addition to the foregoing, the requirements that districts be as compact and contiguous as possible concern more than merely the simple shape or layout of a district.

Ultimately, they concern the ability of citizens to relate to one another and to their representatives, and the ability of a representative to relate effectively to his or her constituency. Such relationships are fostered through creating districts comprised of citizens having geographical affinity and shared interests, i.e., communities of interest.

28. In this context, the Map violates Art. III, § 45, in a number of additional respects, including but not limited to the following:

a. The principle of keeping communities of interest together weighs strongly in favor of Jackson County being included within a single Congressional district. Conversely, the Map divides Jackson County among two Congressional districts.

b. As to the new Fifth District, Jackson County has sufficient population such that it easily could comprise its own Congressional District, coupled with an area from an adjoining county containing approximately 75,000 additional people. In drawing the new Fifth District, however, the General Assembly followed an approach – wholly unnecessary and explicable only as an act of political gerrymandering – of joining highly urban areas of Clay and Jackson Counties with largely rural areas distant from the Kansas City area.

29. In light of the many respects in which the Map departs from the Missouri constitutional requirements that Congressional districts be compact and contiguous, were the Map allowed to stand and govern the election of Missouri's Representatives to the United States House of Representatives in 2012, 2014, 2016, 2018 and 2020, it would violate the constitutional rights of countless Missourians of all political stripes who desire – and are entitled to – a fair political process for electing their congressional representatives.

30. In light of the machinations which led to the drawing and adopting of the Map, further efforts by the General Assembly would not lead to the adoption of a new, proper map complying with Art. III, § 45.

31. Residents of and candidates for the Fifth and Sixth Districts have a compelling need for a proper, constitutional congressional redistricting map to be drawn promptly, before the 2012 election cycle begins – which commences with the opening of candidate filing in February 2012.

32. The only feasible remedy for the constitutional violations alleged herein is for the Court to draw a new Congressional redistricting map – a remedy comparable to a panel of appellate judges being tasked with drawing new Missouri House and Senate districts between September and December 2011, in light of the failure of Missouri legislative redistricting commissions to agree on maps, due to partisan divides.

33. Plaintiffs are damaged in having their votes diluted by the current redistricting Map.

WHEREFORE, plaintiffs pray the Court (1) to declare that the Map violates Mo. Const. art. III, § 45, and therefore is invalid; (2) preliminarily and permanently enjoin Defendant from conducting any elections utilizing the Map; (3) draw a new Congressional redistricting map consistent with the Constitution to govern the 2012, 2014, 2016, 2018 and 2020 Congressional elections in Missouri; (4) expedite this case so that all proceedings can be concluded in advance of the opening of candidate filing in February 2012; and (5) grant any other relief as the Court may deem just and proper.

COUNT II

(Violation of Mo. Const. art. I, § 2, and U.S. Const. Amend. 14)

34. Plaintiffs adopt and incorporate every allegation in paragraphs 1 through 33 above.

35. Mo. Const. art. I, § 2, provides, *inter alia*, “that all persons are created equal and are entitled to equal rights and opportunity under the law.”

36. U.S. Const. Amend. 14 provides, *inter alia*, “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.”

37. The General Assembly drew and adopted the Map for the purpose of preserving and enhancing the political power of the sitting incumbent Representatives.

38. The Map is a bipartisan political gerrymander, intended unfairly to enhance the election prospects of party-selected candidates for election to the United States House of Representatives.

39. The Map has the purpose – and will have the effect – of depriving plaintiffs and countless other Missouri citizens of the rights guaranteed to them under the state and Federal Constitutions, including equal rights, opportunity, and protection under the law to elect candidates of their choice to the United States House of Representatives.

40. The Map will discriminate in favor of the leadership of the two major political parties and against all regular Missourians, whether Republican, Democrat or other, who want to freely choose their congressional representatives.

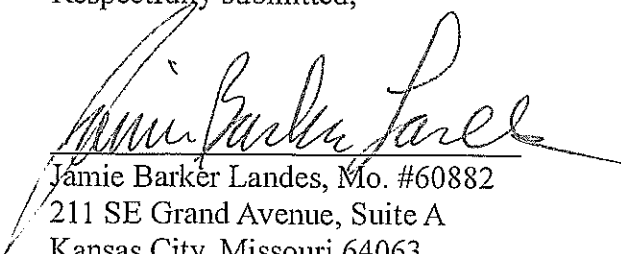
41. The Map virtually guarantees that none of Missouri’s eight seats in the United States House of Representatives will have competitive elections in the next decade.

42. No legal or other justification exists for drawing and adopting a congressional redistricting Map which has the purpose and effect of depriving plaintiffs and others similarly situated of their equal rights and opportunity under the law relating to Congressional elections.

43. Plaintiffs are damaged by the deprivation of their equal rights and opportunity under the current redistricting Map.

WHEREFORE, Plaintiffs pray the Court to (1) declare that the Map violates Mo. Const. art. I, § 2, and U.S. Const. Amend. 14, and thus is invalid; (2) preliminarily and permanently enjoin defendant from conducting any elections utilizing the Map; (3) draw a new Congressional redistricting map consistent with the Constitution to govern the 2012, 2014, 2016, 2018 and 2020 Congressional elections in Missouri; (4) expedite this case so that all proceedings can be concluded in advance of the opening of candidate filing in February 2012; and (5) grant any other relief as the Court may deem just and proper.

Respectfully submitted,



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COUNSEL FOR PLAINTIFFS


Certificate of Compliance and Courtesy Service

I hereby certify that on November 18, 2011, pursuant to § 527.110, R.S.Mo., and Rule 87.04, I mailed a true and accurate copy of the foregoing and its attached exhibits to the following:

The Honorable Chris Koster,
Missouri Attorney General
Post Office Box 899
Jefferson City, Missouri 65102
Telephone: (573) 751-3321
Facsimile: (573) 751-0774

I also hereby certify that on November 18, 2011, as a professional courtesy, I mailed a true and accurate copy of the foregoing and its attached exhibits to the following:

The Honorable Robin Carnahan, Defendant
Missouri Secretary of State
600 West Main Street
Jefferson City, MO 65101
Telephone: (573) 751-4936

A handwritten signature in cursive script, appearing to read "Robin Carnahan", is written over a horizontal line.

Missouri Office of Administration Redistricting

Geographic Information Systems

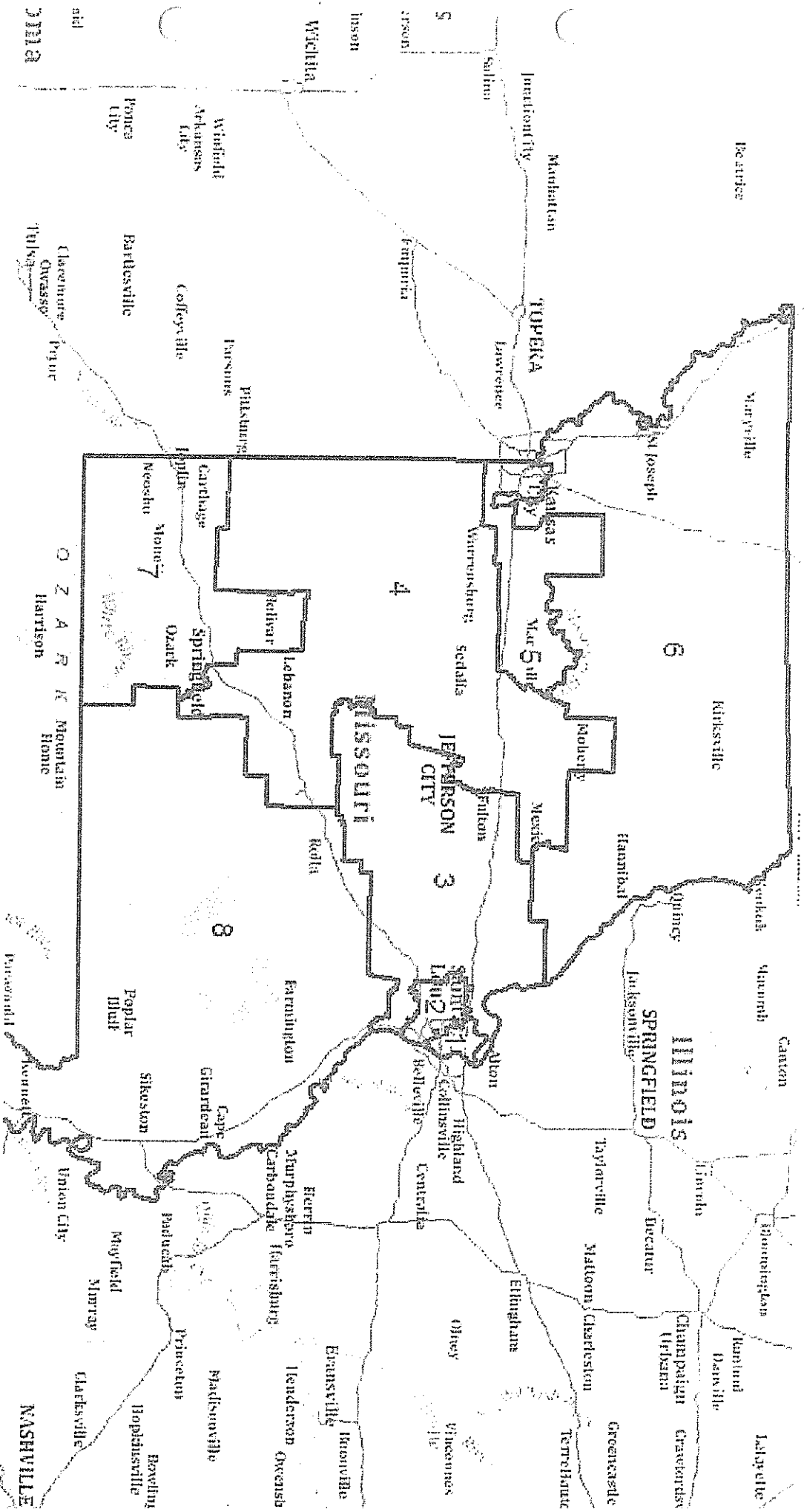


EXHIBIT A

Missouri Office of Administration Redistricting

Geographic Information Systems

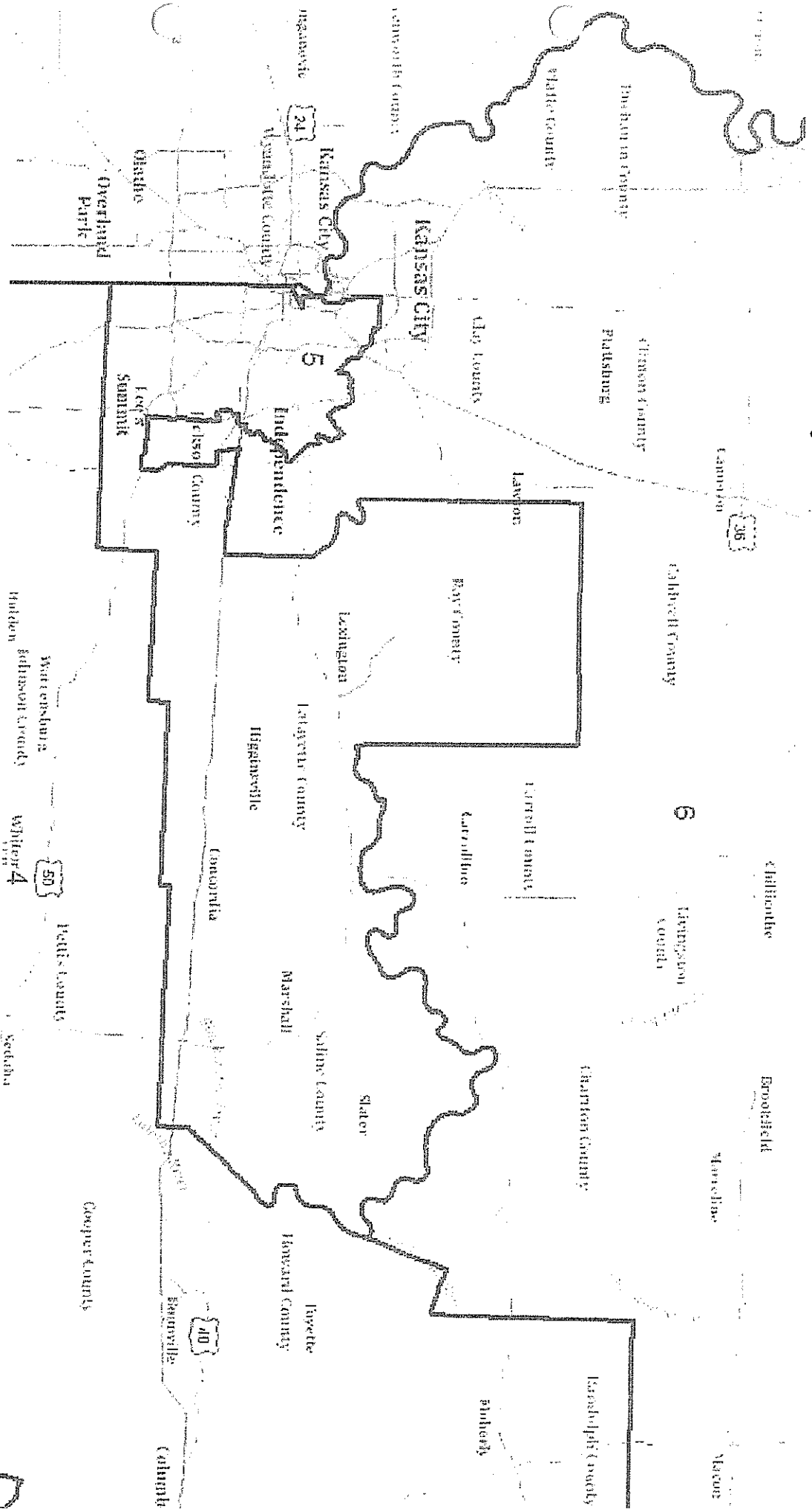


EXHIBIT B

Missouri Secretary of State, Robin Carnahan

SOS Home :: Elections :: District Maps :: U.S. Congressional Districts

Missouri's 108th Congressional Districts

Statewide Map

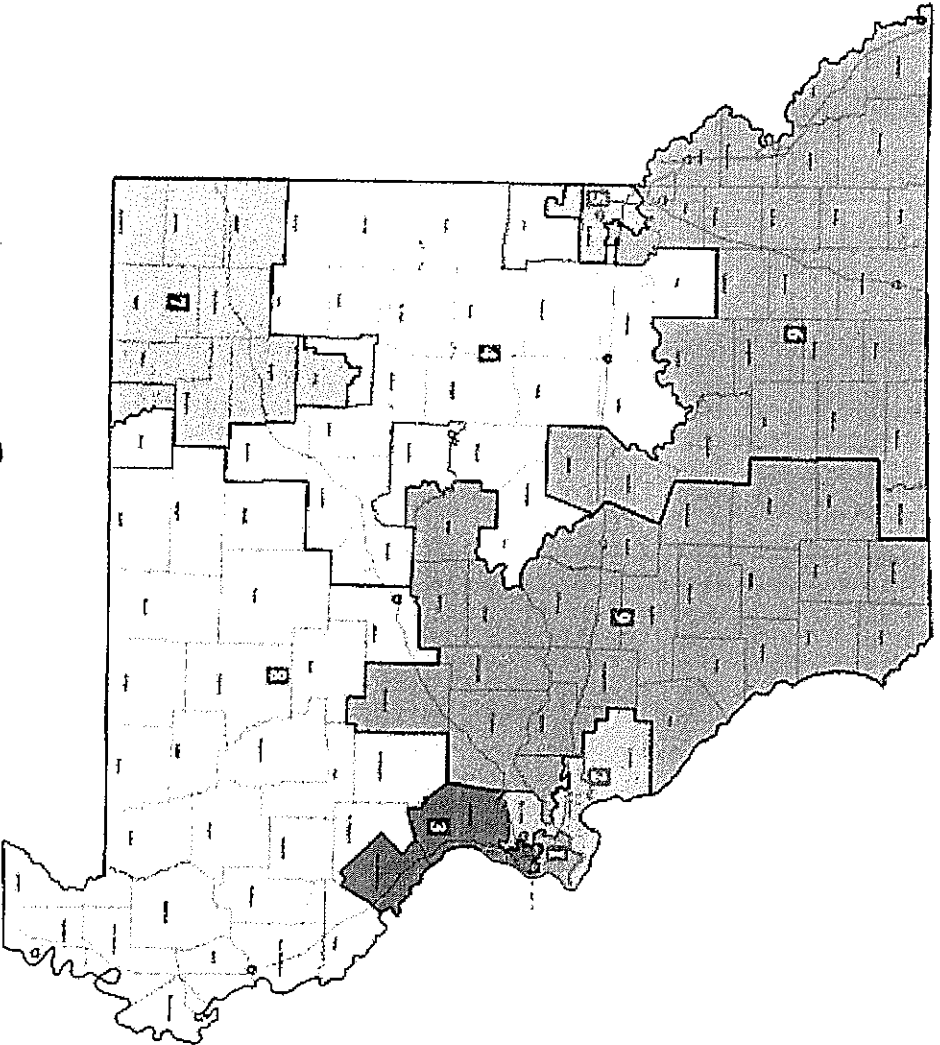


EXHIBIT C

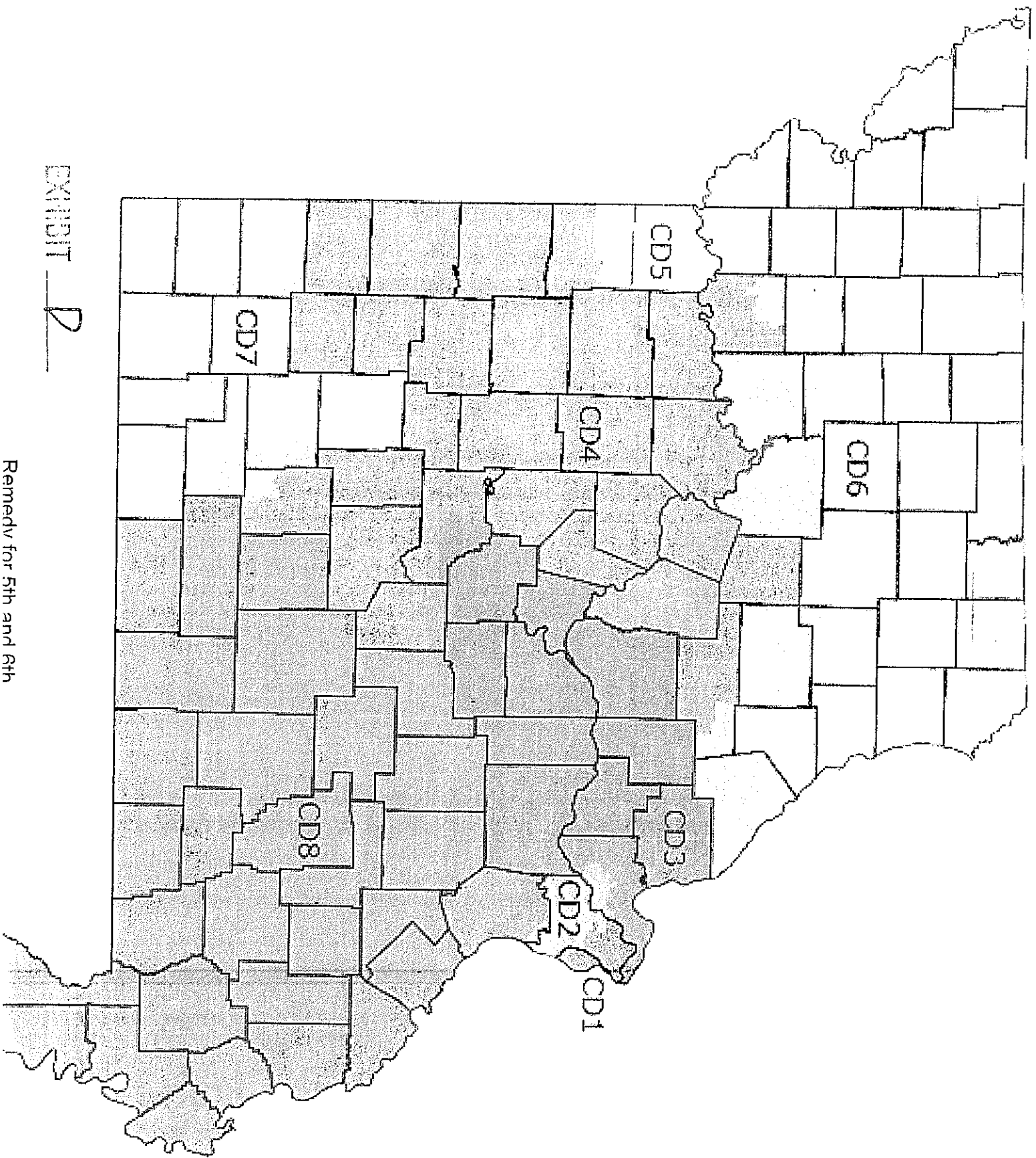


EXHIBIT D

Remedy for 5th and 6th

CD6

Clay

Ray

Jackson

Lafayette

Saline

CD5

CD4

CD3

EXHIBIT E