

**IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI**

KENNETH PEARSON, PHOEBE )  
OTTOMEYER, BRIAN MURPHY, )  
MILDRED CONNER, TIMOTHY )  
BROWN and JOAN BRAY, )

Plaintiffs, )

vs. )

CHRIS KOSTER, in his official capacity )  
as Missouri Attorney General, )

No.

Serve at: )  
207 W. High Street )  
Jefferson City, MO 65102 )

Div.

and )

ROBIN CARNAHAN, in her official )  
capacity as Missouri Secretary of State, )

Serve at: )  
600 W. Main Street )  
Jefferson City, MO 65202, )

Defendants. )

**PETITION**  
**(Declaratory Judgment and Injunctive Relief for  
Violations of Missouri Constitution)**

Plaintiffs Kenneth Pearson, Phoebe Ottomeyer, Brian Murphy, Mildred Conner, Timothy Brown and Joan Bray, for their causes of action against defendants Chris Koster and Robin Carnahan, state as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs, Missouri citizens and registered voters residing in various areas of the State, bring this action to challenge the validity of the congressional redistricting map adopted by

the Missouri General Assembly in May 2011, over the Governor's veto (the "Map," copy appended hereto as Exhibit 1). In drawing and adopting the Map, the General Assembly, currently dominated by the Republican party, utilized an overreaching process for wholly partisan purposes, and produced a Map designed solely to serve partisan ends, which will operate to the detriment of all who desire fair and legitimate districts for Missouri congressional elections through the next decade, including Democrats, Republicans and Independents. The Map violates the Missouri Constitution in multiple respects in that it creates districts which are not compact and contiguous, denies plaintiffs equal rights and opportunity under the law, and reflects an exercise of governmental power for the benefit of a few, rather than for the good of the whole and the general welfare of the people.

#### **PARTIES, JURISDICTION AND VENUE**

2. Plaintiff Kenneth Pearson is an adult citizen and resident of the State of Missouri, residing and registered to vote in Boone County.

3. Plaintiff Phoebe Ottomeyer is an adult citizen and resident of the State of Missouri, residing and registered to vote in Jefferson County.

4. Plaintiff Brian Murphy is an adult citizen and resident of the State of Missouri, residing and registered to vote in the City of St. Louis.

5. Plaintiff Mildred Conner is an adult citizen and resident of the State of Missouri, residing and registered to vote in Saline County.

6. Plaintiff Timothy Brown is an adult citizen and resident of the State of Missouri, residing and registered to vote in Jackson County.

7. Plaintiff Joan Bray is an adult citizen and resident of the State of Missouri, residing and registered to vote in St. Louis County.

8. All plaintiffs desire to live and vote in congressional districts which are drawn in conformance with the Missouri Constitution. Under the congressional redistricting Map drawn and adopted by the Missouri General Assembly in May 2011, all plaintiffs would live and vote in districts which fail to conform to Missouri constitutional requirements.

9. Defendant Chris Koster is the Attorney General of Missouri and is sued in his official capacity as such. He is a proper party in that this action involves allegations that the redistricting Map as drawn and adopted by the General Assembly is unconstitutional under the Missouri Constitution. Mo. Sup. Ct. R. 87.04 provides that, in such instances, the Attorney General of Missouri shall “be served with a copy of the proceeding and be entitled to be heard.”

10. Defendant Robin Carnahan is the Secretary of State of Missouri and is sued in her official capacity as such. She is a proper party in that she is the chief election official of the State of Missouri 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.

11. This Court has jurisdiction of this action pursuant to Art. 5, § 14 of the Missouri Constitution, and Mo. Rev. Stat. § 527.010.

12. Venue is proper in this Circuit in that each of the defendants is a state executive department head having his or her offices located, and principally performing his or her official duties, in Jefferson City, Missouri.

## **FACTS**

### **A. Congressional Redistricting Process**

13. 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 that of many other states. As a result, Missouri will lose one congressional seat – dropping from nine seats to eight – in the United States House of Representatives to be elected in

2012, and in the succeeding elections of 2014, 2016, 2018 and 2020, until the next census is taken in 2020.

14. Art. 3, § 45 of the Missouri Constitution provides that following certification of the 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, in the first instance, it fell to the Missouri General Assembly to draw the new congressional districts that will first take effect for the 2012 election.

15. As of 2011, the Republican party held an overwhelming majority in both the Missouri Senate and House of Representatives, and the Republican leadership in each chamber appointed a committee on redistricting, both of which were dominated by Republican members.

16. In February and March 2011, the Senate and House redistricting committees held a series of hearings around Missouri, to hear testimony from members of the public as to how the congressional redistricting map should be drawn. The bipartisan testimony presented at the hearings emphasized a number of generally accepted redistricting principles, including the importance of keeping together long-established geographic regions and communities of interest based on social, cultural, ethnic and economic similarities, and the undesirability of splitting regions and political subdivisions, such as counties, among multiple districts.

17. The point also was made at the hearings that when political parties work to draw safe seats for their incumbents, the result can be excessive partisanship and a loss of voter control over the political process; and voters would have more say over the process if districts were drawn to be more competitive.

## **B. Adoption of Redistricting Map**

18. In April 2011, both houses of the Republican-dominated General Assembly adopted, by a highly partisan vote in each chamber, the above-referenced congressional redistricting Map, which largely ignored the principles and testimony adduced at the redistricting committee hearings.

19. The Map has the clear purpose and effect of protecting the interests of certain incumbents, and otherwise promoting Republican interests, by creating six safe Republican districts among the eight congressional seats allocated to Missouri. The Map achieves its purposes through extreme instances of gerrymandering, among other constitutional deficiencies. (For an explanation and illustration of the meaning and origin of the term “gerrymandering,” see Exhibit 2 attached hereto [excerpt from <http://en.wikipedia.org/wiki/Gerrymandering>, last visited Sept. 23, 2011].)

20. One highly egregious aspect of the Map is its treatment of mid-Missouri – the area encompassing Cole County, Boone County and the Lake of the Ozarks – which includes the cities of Columbia and Jefferson City. Mid-Missouri generally has been viewed as one geographic region and the areas comprising it have highly similar interests. Accordingly, the principle of keeping communities of interest together weighs strongly in favor of mid-Missouri being included within a single congressional district. However, the Map divides the region among multiple congressional districts.

21. Another highly egregious aspects 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 largely rural counties – Ray, Lafayette and Saline Counties – which stretch 100 miles to the east. Moreover, the Map carves out a tear drop-shaped area of Jackson

County and places it in the Sixth District. The shape of the newly drawn Fifth District has been likened to a dead lizard.

22. Another highly egregious aspect of the Map is its treatment of Jefferson County. The Map divides Jefferson County among three congressional districts, and thus wholly ignores the undesirability of splitting up a political subdivision. Similarly, the Map divides each of Audrain, Camden, Clay, Jackson, St. Charles and Webster Counties among two districts.

23. Another highly egregious aspect of the Map is its treatment of the St. Louis metropolitan area, which constitutes a distinct and unique region. Among the unique aspects of the St. Louis region are that it encompasses a city which is not part of any county – the City of St. Louis – the only such entity in Missouri; the region historically has been represented by three members of Congress, with portions of the City of St. Louis lying in two districts; and the region is the primary economic engine of Missouri, generating 42 percent of the State’s income.

24. As defined by the United States Office of Management and Budget, resulting from applying published standards to United States Census Bureau data, the St. Louis Metropolitan Statistical Area (“MSA”) – a recognized indicator of the area comprising the St. Louis region – includes the Missouri counties of Crawford (partial), Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren and Washington, as well as the City of St. Louis. (A map depicting the St. Louis MSA as of 2008, before the addition of a portion of Crawford County, is appended hereto as Exhibit 3.)

25. Based on population growth in the areas surrounding its core, as well as its overall population, the St. Louis region has ample population to warrant three congressional districts being drawn within the region’s boundaries. Such an approach would further the interests of keeping distinct regions and communities of interest together, and leave the St. Louis region

represented by an aggregate of three members of Congress – with portions of the City of St. Louis lying in two districts – as is the case currently.

26. However, under the Map drawn and adopted by the General Assembly, only the new First and Second districts – which encompass St. Louis City, St. Louis County and portions of St. Charles and Jefferson Counties – lie wholly within the St. Louis MSA. The remaining counties forming part of the St. Louis MSA are included in the new Third district, which also includes, and is dominated by, a number of counties in mid-Missouri which are not part of the St. Louis region.

27. The net effect of the Map's configuration of the new First, Second and Third Districts is to reduce the St. Louis region's congressional representation from three representatives to two, and leave the St. Louis region underrepresented and unnecessarily divided.

### **C. Veto and Override**

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

29. Subsequently, the Republican-dominated Missouri General Assembly voted to override the veto and thus impose the Map on the State, despite the Governor's veto.

30. The maneuverings by which the Republican-dominated General Assembly mustered the votes in the Missouri House of Representatives necessary to override the Governor's veto were unseemly, at best. The Republican party mustered the vote of every Republican representative; and, as described by numerous news reports, extracted the votes of four Democratic representatives through trading various perks and promises of future political favors, and subjecting certain representatives to extreme pressure.

31. The net effect of the Republicans' success in imposing their highly partisan, gerrymandered Map upon the State is that in a democracy built on the principle that the people are supposed to select their representatives, Missourians will live under a system in which their representatives select their voters.

32. A further net effect of the Republicans' success in imposing their highly partisan, gerrymandered Map upon the State is that for at least the next ten years, six out of Missouri's eight congressional seats likely will be safe Republican seats, despite the fact that, according to the results of recent statewide and national elections, Missouri appears to be equally divided between Republican and Democratic voters.

33. It is readily feasible to draw a congressional redistricting map which complies with Missouri Constitutional requirements and avoids the pitfalls of the Map drawn and adopted by the General Assembly. As one illustration of the feasibility of drawing an alternative map, attached hereto as Exhibit 4 is an alternative congressional redistricting map for Missouri, which contain eight districts of equal population. In contrast to the General Assembly's Map, which provides for a single district to straddle distinct regions in two instances – the St. Louis and mid-Missouri regions – the map attached as Exhibit 4 confines each district to a single region, and thus better fulfills the goal of keeping communities of interest together within a common district. Moreover, under Exhibit 4 hereto, no county is split among more than two districts, whereas, the General Assembly's Map (Exhibit 1 hereto) splinters Jefferson County among three different districts.

**COUNT I**  
**(Violation of Art. III, § 45 of the Missouri Constitution)**

34. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 33 above.



35. Under Art. 3, § 45 of the Missouri Constitution, congressional districts must be “composed of contiguous territory as compact ... as may be.” Under the plain language of Art 3, § 45, the constitutional requirements are not satisfied by districts merely having some degree of compactness; rather, districts must be compact as can be.

36. Looking, first, to the shape and layout of the districts reflected in the Map, the districts fail to satisfy the requirement that they be compact and contiguous in a number of respects, including but not limited to the following:

a. The new Fourth district is not compact as may be in that its borders to the east, northeast and south are irregularly shaped. The northeast corner of the district mirrors the shape of the State of Texas. The eastern portion of the district has an unnatural appendage from the new Third district protruding into it, and the southern portion is penetrated by an unnatural appendage from the new Seventh district, comprised of Polk County. The overall shape of the district may be likened to a three-headed toad.

b. The new Jackson County 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.

c. Also, the new Jackson County 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 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.

d. The new Third district is not compact as may be in that it has two unnatural appendages shaped like lobster claws extending east around St. Louis. Moreover, the dividing line between the new Third and Fourth districts is irregularly shaped. The western portion of the new Third district, comprised of Cole and Miller Counties and a portion of Camden County, constitutes an unnatural appendage which thrusts well into the new Fourth district.

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

f. The new Seventh district is not compact as may be in that its border to the north is irregularly shaped, marked by an unnatural appendage comprised of Polk County, which protrudes into the Fourth district.

37. In addition to the foregoing, the requirements that districts be compact and contiguous concern more than simply the shape or layout of a district. Those requirements ultimately 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; and such relationships are fostered through creating districts comprised of citizens having geographical affinity and shared interests, *i.e.*, communities of interest.

38. In the context of compactness and contiguousness connoting that communities of interest should be kept together in drawing congressional districts, the Map drawn and adopted by the General Assembly violates the requirements of Art. III, § 45 of the Missouri Constitution 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 mid-Missouri being included within a single congressional district. However, the Map divides mid-Missouri among multiple 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. However, in drawing the new Fifth district, 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.

c. The Map divides Jefferson County among three congressional districts, and thus ignores the undesirability of splitting up a political subdivision and the resulting splintering of a natural community of interest, instead of keeping Jefferson County whole and part of a St. Louis regional district. In the same vein, and with similar effects, the Map divides each of Audrain, Camden, Clay, Jackson, St. Charles and Webster Counties among two districts.

d. With respect to the St. Louis region, the Map leaves it underrepresented and unnecessarily divides the region by placing a portion of it into the new Third district, which is dominated by mid-Missouri counties.

39. 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 State constitutional

rights of countless Missouri citizens – including Democrats, Independents and Republicans – who desire, and are entitled to, a fair political process for electing their congressional representatives.

40. In light of the machinations which led to the drawing and adopting of the Map, as alleged above, there is no reason to believe that further efforts by the General Assembly would lead to the adoption of a proper Map complying with Missouri constitutional requirements. Moreover, there is 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. Accordingly, 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.

41. Absent the relief requested herein being granted, plaintiffs will suffer irreparable harm.

42. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray the Court, pursuant to this Count I, to enter judgment in their favor and against the defendants; enter a declaratory judgment that the Map as drawn by the General Assembly is improper and invalid as contravening the Missouri Constitution; grant preliminary and permanent injunctive relief precluding defendants from conducting any elections utilizing the Map; draw a new congressional redistricting map, consistent with Missouri constitutional requirements, to govern the 2012, 2014, 2016, 2018 and 2020 congressional

elections in Missouri; expedite the adjudication of this action so that all proceedings, including any appeals, can be concluded in advance of the opening of candidate filing in February 2012; award to plaintiffs from defendants the costs of this action, including reasonable attorney's fees; and grant such other and further relief as the Court may deem just and proper.

**COUNT II**  
**(Violation of Art. I, § 2 of the Missouri Constitution – Equal Rights)**

43. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 42 above.

44. Art I, § 2 of the Missouri Constitution provides, among other things, “that all persons are created equal and are entitled to equal rights and opportunity under the law.”

45. The Republican-dominated General Assembly drew and adopted the Map for the purpose of preserving and enhancing the political power of the Republican party.

46. The Map, as drawn and adopted by the General Assembly, represents a partisan political gerrymander, intended to unfairly enhance the election prospects of Republican candidates for election to the United States House of Representatives.

47. The Map, as drawn and adopted by the General Assembly, has the purpose, and will have the effect, of depriving plaintiffs and countless other Missouri citizens of their constitutional rights guaranteed to them under the Missouri Constitution of equal rights and opportunity under the law to elect candidates of their choice to the United States House of Representatives.

48. The Map, as drawn and adopted by the General Assembly, will discriminate in favor of Republicans, and against Democrats and Independents, with respect to their respective ability to elect candidates of their choice to the United States House of Representatives.

49. Among the evidence of the discriminatory purpose and effect of the Map, as alleged above, is that Missouri may be viewed as a State which has roughly equal numbers of Republican and Democratic voters, based on election results from recent statewide and national elections; however, the Map virtually guarantees that of Missouri's eight seats in the United States House of Representatives, six of them – 75 percent – will be safe Republican seats.

50. 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 of their equal rights and opportunity under the law relating to congressional elections.

WHEREFORE, plaintiffs pray the Court, pursuant to this Count II, to enter judgment in their favor and against the defendants; enter a declaratory judgment that the Map as drawn by the General Assembly is improper and invalid as contravening the Missouri Constitution; grant preliminary and permanent injunctive relief precluding defendants from conducting any elections utilizing the Map; draw a new congressional redistricting map, consistent with Missouri constitutional requirements, to govern the 2012, 2014, 2016, 2018 and 2020 congressional elections in Missouri; expedite the adjudication of this action so that all proceedings, including any appeals, can be concluded in advance of the opening of candidate filing in February 2012; award to plaintiffs from defendants the costs of this action, including reasonable attorney's fees; and grant such other and further relief as the Court may deem just and proper.

### **COUNT III**

#### **(Violation of Art. I, §§ 1 and 2 of the Missouri Constitution – Good of the Whole)**

51. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 50 above.

52. Art. I, § 1 of the Missouri Constitution provides, in part, that "all political power ... is instituted solely for the good of the whole."

53. Art. I, § 2 of the Missouri Constitution provides, in part, that “all constitutional government is intended to promote the general welfare of the people.”

54. The Republican-dominated General Assembly drew and adopted the Map for the purpose of preserving and enhancing the political power of the Republican party.

55. The Map, as drawn and adopted by the General Assembly, represents an overreaching partisan political gerrymander, intended to unfairly enhance the election prospects of Republican candidates for election to the United States House of Representatives

56. The Map, as drawn and adopted by the General Assembly, reflects an exercise of political power instituted for the good of partisan Republicans, rather than the good of the whole, is intended to promote the general welfare of partisan Republicans, and does not promote the general welfare of the people.

57. 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 of their aforesaid rights guaranteed under Art. I, §§ 1 and 2 of the Missouri Constitution.

WHEREFORE, plaintiffs pray the Court, pursuant to this Count III, to enter judgment in their favor and against the defendants; enter a declaratory judgment that the Map as drawn by the General Assembly is improper and invalid as contravening the Missouri Constitution; grant preliminary and permanent injunctive relief precluding defendants from conducting any elections utilizing the Map; draw a new congressional redistricting map, consistent with Missouri constitutional requirements, to govern the 2012, 2014, 2016, 2018 and 2020 congressional elections in Missouri; expedite the adjudication of this action so that all proceedings, including any appeals, can be concluded in advance of the opening of candidate filing in February 2012;

award to plaintiffs from defendants the costs of this action, including reasonable attorney's fees; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

SPENCER FANE BRITT & BROWNE LLP

Dated: September 23, 2011

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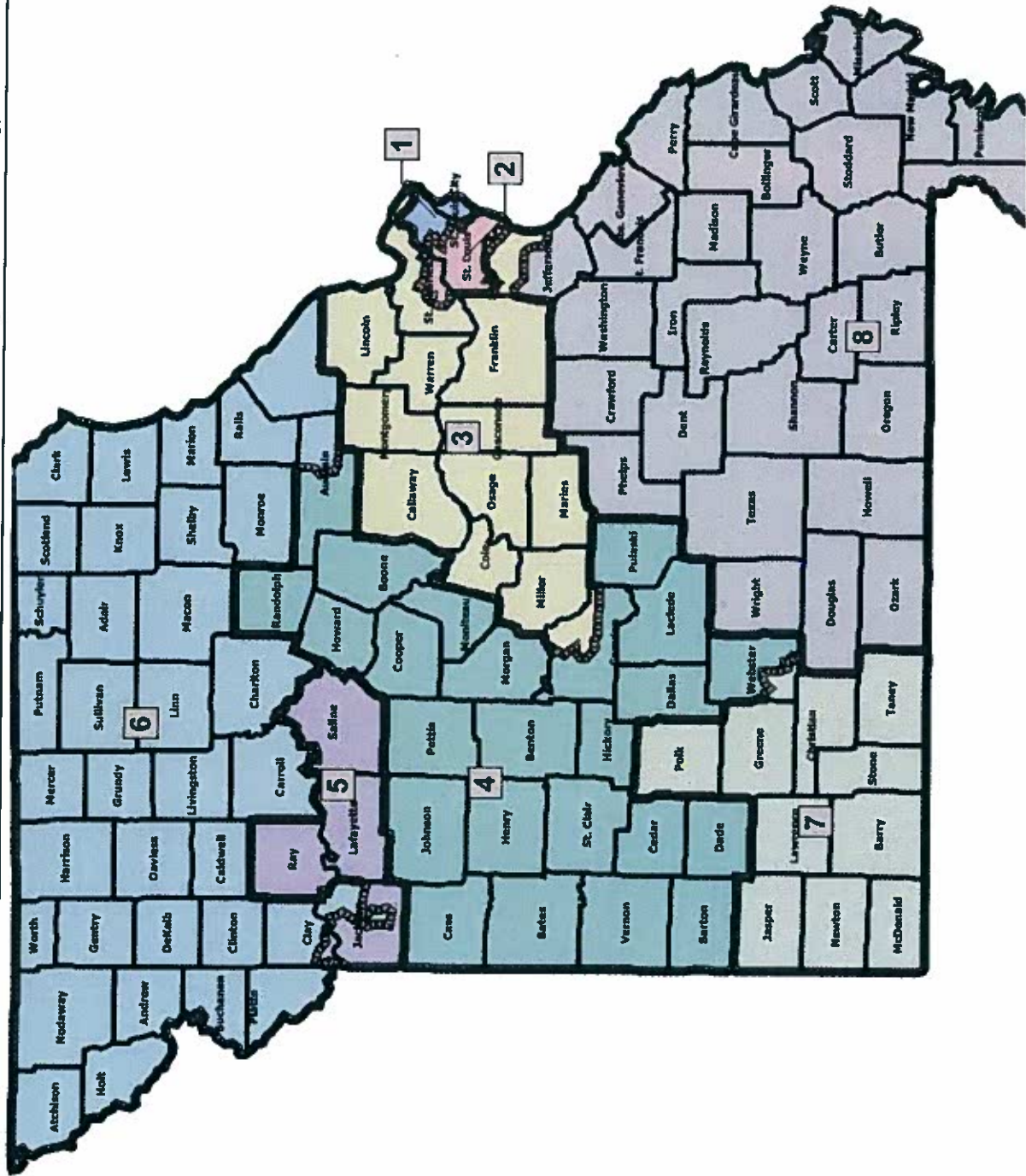
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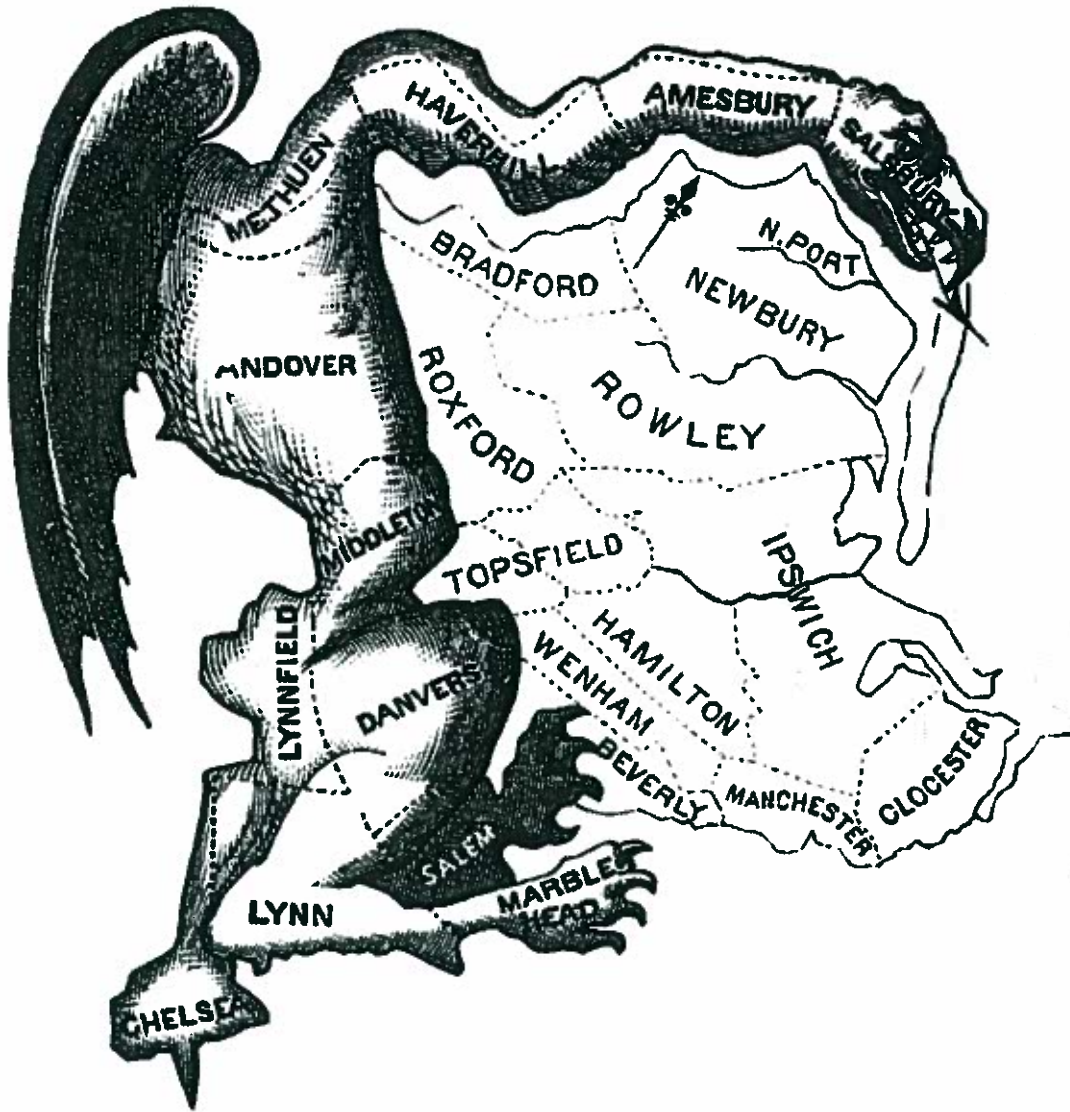
Attorneys for Plaintiffs



# Grand Compromise

District	Population	Deviation	% Deviation	White	% White	Black	% Black	Hispanic Origin	% Hispanic Origin	18+ Pop	% 18+ Pop
1	748616	0	0%	330268	44.12%	370546	49.5%	22786	3.04%	576747	76.91%
2	748616	0	0%	675749	90.27%	25215	3.37%	17729	2.37%	572953	76.53%
3	748616	-1	-0%	698355	93.28%	24048	3.21%	15883	2.12%	563121	75.22%
4	748616	0	0%	674153	90.05%	34424	4.6%	24261	3.24%	573148	76.56%
5	748616	0	0%	515002	68.79%	164763	22.01%	62451	8.34%	569092	76.02%
6	748616	0	0%	686754	91.74%	29618	3.92%	24969	3.34%	564604	75.42%
7	748616	0	0%	686569	91.71%	12149	1.62%	32310	4.32%	571294	76.31%
8	748616	0	0%	891930	92.43%	33627	4.49%	12081	1.61%	573532	76.61%





First printed in March 1812, this political cartoon was drawn in reaction to the state senate electoral districts drawn by the Massachusetts legislature to favour the Democratic-Republican Party candidates of Governor Elbridge Gerry over the Federalists. The caricature satirises the bizarre shape of a district in Essex County, Massachusetts as a dragon. Federalist newspapers editors and others at the time likened the district shape to a salamander, and the word *gerrymander* was a blend of that word and Governor Gerry's last name.



