

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

JEFFERSON COUNTY COMMISSION;  
PATRICIA NOLAND, *as an individual  
and behalf of all others similarly situated*;  
and DALE MANUEL, *as an individual and  
behalf of all others similarly situated*,

Plaintiffs, and

THORNTON COOPER,

Intervening Plaintiff,

v.

Civil Action No. 2:11-CV-989  
(KING, BAILEY, BERGER)

NATALIE E. TENNANT, *in her capacity as  
the Secretary of State*; EARL RAY TOMBLIN,  
*in his capacity as the Chief Executive Officer  
of the State of West Virginia*; JEFFREY  
KESSLER, *in his capacity as the Acting  
President of the Senate of the West Virginia  
Legislature*; and RICHARD THOMPSON, *in  
his capacity as the Speaker of the House of  
Delegates of the West Virginia Legislature*,

Defendants.

**RESPONSE BY THORNTON COOPER TO ORDER ON REMAND.**

Thornton Cooper, the Intervening Plaintiff, hereby submits his **Response** to the **Order on Remand** issued by the District Court on October 5, 2012, in the above-captioned case.

Having reviewed the Opinion and Order of September 25, 2012, by the Supreme Court of the United States, Mr. Cooper has concluded that that opinion appears to allow the West Virginia Legislature, under certain circumstances, to draw congressional district lines in such a fashion as to avoid dividing counties if the maximum population variance between the most populous district and the least populous district is somewhat less than one percent of the average population per congressional district.

However, the District Court still needs to rule on the issue of whether each of the congressional districts is compact. Mr. Cooper remains of the opinion that the congressional redistricting plan adopted by the Legislature in 2011 does **not** comply with the compactness requirement set forth in the first sentence of *Article I, § 4*, of the *Constitution of West Virginia*.

Since he first read the Order on Remand, Mr. Cooper has designed several new congressional redistricting plans which, he believes, do comply with that compactness requirement. Each of these plans splits no counties between or among congressional districts. Each of these plans has a population variance that is significantly less than the population variance in the 2011 plan approved by the Legislature. These plans are not in evidence before the District Court.

Mr. Cooper believes that these plans, and possibly other plans, should be received into the evidence and that the compactness of each district should be mathematically analyzed in the manner heretofore used with respect to the plans that are already in evidence.

If these plans are allowed to be received into evidence, then obviously additional evidence and briefing would be of assistance in disposing of the compactness claim first raised by the original Plaintiffs.

Mr. Cooper is further of the opinion that the question of law with respect to compactness probably should be certified to the Supreme Court of Appeals of West Virginia since this is primarily a state-law issue of first impression. It is, however, his understanding that there may have been a compactness requirement in federal statutory law at the time that the *Constitution of West Virginia* was drafted and ratified in 1872, but that this federal statutory requirement was subsequently removed.

Mr. Cooper does not now express any opinion as to further proceedings with respect to the numerical-equivalence requirement set forth in the *Constitution of West Virginia*. On that issue, he will defer to the original Plaintiffs.

Finally, Mr. Cooper would note that he will be out of state between October 24, 2012, and November 2, 2012, on family matters. He will also be out of state between December 21 and 23, 2012, and out of Kanawha County between December 21 and 27, 2012.

**THORNTON COOPER**

**Intervening Plaintiff**

**Pro Se**

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Dated: October 24, 2012

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his capacity as the Speaker of the House of  
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Defendants.

**CERTIFICATE OF SERVICE.**

I, Thornton Cooper, Intervening Plaintiff, do hereby certify that on October 24, 2012, I electronically filed the foregoing **RESPONSE BY THORNTON COOPER TO**

**ORDER ON REMAND** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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