

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ROBYN RENEE ESSEX,)	
)	
Plaintiff,)	
And)	
)	
WILLIAM ROY, JR. and PAUL DAVIS)	
)	
Intervenor-Plaintiffs)	
v.)	
)	
KRIS W. KOBACH,)	
Kansas Secretary of State,)	
)	
Defendant.)	

**CIVIL ACTION
CASE NO. 12-4046-KHV-DJW**

COMPLAINT OF INTERVENORS

JURISDICTION

1. Jurisdiction is proper in this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 2201, and 2202. A three judge panel is requested for hearing in this matter under 28 U.S.C. § 2284.

PARTIES

2. Intervenor-Plaintiff William Roy, Jr. is a citizen and qualified voter of the United States of America and of the State of Kansas, residing in Lenexa, Johnson County, Kansas.

3. Intervenor-Plaintiff Paul Davis is a citizen and qualified voter of the United States of America and of the State of Kansas, residing in Lawrence, Douglas County, Kansas.

4. Intervenor-Plaintiffs claim they are being denied Equal Protection of the Laws and Due Process of Law, as further alleged herein.

5. Defendant is the Secretary of State for the State of Kansas and is responsible under the laws of the state to oversee the conduct of elections. Defendant is sued in his official capacity.

STATEMENT OF FACTS

6. In 2002, the Kansas Legislature passed the current version of Chapter 4 of the Kansas Statutes, which apportioned districts for Kansas' congressional seats, and both houses of the Kansas Legislature, pursuant to the 2000 Federal Census.

7. The 2010 Federal Census is complete, and under Article 10 of the Kansas Constitution, the Kansas Legislature is required to re-apportion senate and house districts during the regular 2012 legislative session.

8. The Kansas Legislature is also commanded by Article I, Section 2 of the United States Constitution to apportion its congressional seats every ten years, with the last apportionment having taken place in 2002, as described in paragraph 6 of this Complaint.

9. Under the April 2010 Federal Census, the ideal Kansas congressional district would contain 713,280 persons.

10. Under the April 2010 Federal Census, the ideal population for each Kansas State Senate District is 70,986 persons. The ideal population for each Kansas State House of Representatives district is 22,716 persons.

11. The Kansas Legislature is now in its regular 2012 session, and has failed to reapportion districts for Kansas' congressional seats as commanded by Article I, Section 2 of the United State Constitution, and has failed to re-apportion seats for Kansas' State Legislature, as required by Article 10 of the Kansas Constitution.

12. Both houses of the Kansas Legislature have passed segments of reapportionment plans, but all bills proposed by both houses have failed to advance, and the two houses of the Legislature are at an impasse in their efforts to re-apportion Kansas' congressional and state legislative districts.

13. The Legislature's regular session is rapidly nearing conclusion.

14. The Kansas Legislature has before failed to enact proper redistricting maps following a census, *see O'Sullivan v. Brier*, 540 F. Supp. 1200 (D. Kan. 1982), as have several other states around the country.

15. In light of these facts, on information and belief, the United States Federal Census taken as of April 2010 shows that the Kansas Congressional districts and state legislative districts established in 2002 by the Kansas Legislature are now unequally apportioned; that despite the compilation of said census, the State of Kansas has failed and neglected, and unless otherwise ordered, will continue to fail and neglect to reapportion the congressional and state legislative districts in the State of Kansas; and that the present apportionment of Kansas' congressional and state legislative districts are no longer based upon any logical or reasonable formula, but are now arbitrary and capricious.

COUNT I
LEGISLATIVE MALAPPORTIONMENT

16. This case arises under the Fourteenth Amendment, Section 1, to the Constitution of the United States, which 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.

The provisions thereof guarantee to the citizens of each state the right to vote in State and Federal elections and that the vote of each citizen shall be equally effective with any other vote cast in such election. A state statute that effects an apportionment which discriminates against citizens in highly populous legislative districts and prefers other voters in the least populous legislative districts violates the above-quoted constitutional provision.

17. The current Kansas legislative apportionment system, established in 2002 by the Kansas Legislature, effects a legislative apportionment which discriminates against citizens in the most highly populous legislative districts, including Intervenor-Plaintiffs, and prefers other citizens in the least populous legislative districts in violation of the Fourteenth Amendment to the United States Constitution.

18. Intervenor-Plaintiffs are residents, citizens, and voters in Kansas Senate and Kansas House districts in which the population of each district has increased since the last Federal Census at a rate greater than the state's population as a whole.

19. The unequal population of the Kansas House of Representatives districts and the Kansas State Senate districts deprives Intervenor-Plaintiffs and all other citizens of the highly populated districts of the rights guaranteed to them by the Fourteenth Amendment to the United States Constitution, including the rights of Due Process of Laws and the Equal Protection of the Laws.

20. Upon information and belief, Intervenor-Plaintiffs allege that the Legislature of the State of Kansas has not, and will not, pass a law reapportioning the legislative districts in conformity with the United States Constitution during the 2012 Legislative Session. Intervenor-Plaintiffs further allege on information and belief that Defendant intends to and will, unless sooner restrained by an order of this Court, conduct the election for the 2013 Kansas State

Legislature during the year 2012 on the basis of the senatorial and representative districts established in 2002 by the Kansas Legislature in Chapter 4 of the Kansas Statutes. Further, until there is a legislative reapportionment, Defendant will continue to do so in subsequent elections for members of both houses of the Kansas State Legislature.

21. Intervenor-Plaintiffs further allege that they will vote, in the state primary and general elections to be held in 2012 and thereafter, for candidates for Kansas State Senate and Kansas House of Representatives. If said elections are conducted in accordance with the House and Senate districts as established in 2002 by the Kansas Legislature, it will continue to deprive Intervenor-Plaintiffs of their rights guaranteed under the Constitution of the United States.

22. In the absence of reapportionment of the legislative districts of the State of Kansas in conformance with the United States Constitution, any action of Defendant in conducting an election of the members of the Kansas Legislature in accordance with the House and Senate districts as established in 2002 by the Kansas Legislature in Chapter 4 of the Kansas Statutes will continue to deprive Intervenor-Plaintiffs of their constitutional rights under the Fourteenth Amendment to the Constitution of the United States.

23. By reason of the failure of the Legislature of the State of Kansas to reapportion the legislative districts of the state in conformity with the United States Constitution, thus violating the above-cited constitutional rights of Intervenor-Plaintiffs, a justiciable controversy exists.

COUNT II
CONGRESSIONAL REDISTRICTING

24. Plaintiff realleges paragraphs 1 through 23 hereof.

25. This case arises under Article 1, Section 2 of the United States Constitution, which requires apportionment of congressional seats every 10 years.

26. This case also arises under the Fourteenth Amendment, Section 1 of the Constitution of the United States, which 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.

The provisions thereof guarantee to the citizens of each state the right to vote in State and Federal elections and that the vote of each citizen shall be equally effective with any other vote cast in such elections. A state statute which effects an apportionment, which discriminates against citizens in highly populous congressional districts and prefers other citizens in the lesser populous congressional districts, violates the above-quoted constitutional provision.

27. Intervenor-Plaintiffs are citizens of the United States and of the State of Kansas, and have the rights conferred by the above provisions of the United States Constitution to have all Representatives in Congress from the State of Kansas apportioned and elected on the basis of the 2010 Federal Census.

28. By reason of the failure of the Legislature of the State of Kansas to reapportion the congressional districts of the state in conformity with the United States Constitution, thus violating the constitutional rights of Intervenor-Plaintiffs, a justiciable controversy exists.

WHEREFORE, Intervenor-Plaintiffs respectfully pray that, pursuant to the provisions of 28 U.S.C. § 2284(a), the Court convene a three-judge panel to adjudicate this matter. In addition, Intervenor-Plaintiffs ask the Court pursuant to 28 U.S.C. § 2201 to declare the present legislative apportionment and congressional districting of the State of Kansas as established in 2002 by the Kansas Legislature has deprived, and continues to deprive, Intervenor-Plaintiffs of rights under Article 1, Section 2, and the Fourteenth Amendment to the Constitution of the United States.

Intervenor-Plaintiffs further ask the Court to issue a permanent injunction and judgment decreeing that the plan of the legislative apportionment and congressional apportionment established in 2002 by the Kansas Legislature in Chapter 4 of the Kansas Statutes may not hereafter be used as a valid plan of legislative apportionment and permanently restrain Defendant from receiving nominations and petitions for legislative office, from issuing certificates of nominations and elections, and from all further acts necessary to the holding of elections for members of the Kansas Legislature in the districts established in 2002.

Intervenor-Plaintiffs further ask this Court to notify the Governor and Legislature of the State of Kansas that it will retain jurisdiction of this action and, upon the failure to adopt constitutionally valid plans of congressional redistricting and legislative reapportionment prior to the end of the current legislative session, the Court determine the congressional and legislative district boundaries to be used until such time as the Kansas Legislature passes and the Governor approves legislation reapportioning the districts in accordance with the constitutional mandate.

Finally, the Intervenor-Plaintiffs ask the Court to order Defendant to pay to Intervenor-Plaintiffs, pursuant to 42 U.S.C. § 1988, their reasonable attorney's fees and

expenses, expert fees, costs, and other expenses incurred in prosecuting this action and such other and future relief as is just in the circumstances.

Respectfully Submitted,

s/Steven R. Smith
Eldon J. Shields, #08266
Steven R. Smith, #09690
Attorneys for Proposed Intervenors
Gates, Shields & Ferguson, P.A.
10990 Quivira Rd., Suite 200
Overland Park, Kansas 66210
(913) 661-0222 Telephone
(913) 491-6398 Facsimile
ejshields@gsflegal.com
stevesmith@gsflegal.com

CERTIFICATE OF SERVICE

I hereby declare and certify that on this 21st day of May, 2012, I electronically filed the foregoing Complaint of Intervenors with the Clerk of the Court using the CM/ECF system, which will automatically send a notice of electronic filing to all interested parties of record.

s/Steven R. Smith
Steven R. Smith, #09690