

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

ROBYN RENEE ESSEX,	)	
	)	
<i>Plaintiff</i>	)	
	)	
WALTER T. BERRY and	)	
LYNN NICHOLS,	)	
	)	
<i>Proposed Intervenors</i>	)	
	)	
v.	)	Case No. 12-4046
	)	
KRIS W. KOBACK, Secretary of State	)	
	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**INTERVENORS' COMPLAINT**

**COME NOW** Proposed Intervenors Walter T. Berry and Lynn Nichols, by and through their attorneys, Foulston Siefkin LLP, and for their causes of action state as follows:

1. Walter T. Berry is a citizen and registered and qualified voter of the United States of America residing at 3550 N. 127th Street East, Wichita, Sedgwick County, Kansas. Berry is a registered voter and votes in Kansas' Fourth Congressional District, the 31st State Senate District, 99th State House District, and the Seventh State Board of Education District. Berry is an active member of the business and civic community in the Wichita, Kansas area, including serving as the current President of the Wichita Chamber of Commerce, and has voted and plans to vote the upcoming election(s).
2. Lynn Nichols is a citizen and registered and qualified voter of the United States of America residing at 2308 Flint Hills National Parkway, Andover, Butler County, Kansas. Nichols is a registered voter and votes in Kansas' Fourth Congressional District, the 16th

State Senate District, 99th State House District, and the Eighth Board of Education District. Mr. Nichols (“South-Central Kansas Intervenor”) is an active member of the business and civil community in the Andover, Kansas area, and has voted and plans to vote the upcoming election(s).

3. Defendant Kris W. Kobach is the Secretary of State for the State of Kansas and is responsible under the laws of Kansas for the conduct of elections within the State of Kansas. Defendant is sued solely in his official capacity.
4. This Court has subject-matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 2201, and 2202. A three-judge panel is required for hearing in this matter pursuant to 28 U.S.C. § 2284.
5. The Kansas Legislature has failed to pass and the Governor has been unable to sign the necessary and appropriate legislation to re-apportion Kansas congressional and state voting districts based upon the 2010 Federal Census. As a result, voting districts are unbalanced, causing Berry and Nichols to be deprived of or threatened with the imminent deprivation of Equal Protection of Law and denial of Due Process of the Law in violation of, among others, the United States Constitution.
6. The United States Constitution grants each citizen the right to enjoy representative democracy. Article 1, Section 2 of the United States Constitution requires reapportionment of congressional districts. Section 1 of the Fourteenth Amendment to the United States Constitution guarantees equal and effective voting rights and privileges to all voters.

7. The current congressional districts violate the United States Constitution by denying Berry and Nichols the right to have and enjoy an equal vote due to the population of the current voting districts.
8. Berry and Nichols and similarly situated citizens and voters have the right to have all members of the United States House of Representatives from the State of Kansas apportioned and elected on the basis of the 2010 Federal Census.
9. Unless lawfully restrained by this Court, inaction by the Legislature will lead to the actual or attempted conduct of the 2012 elections based on the existing congressional districts, thereby violating Berry's and Nichols' constitutional rights and similarly-situated citizens and voters.
10. A justiciable controversy exists because the State of Kansas has failed, through the legislative process, to reapportion the congressional districts in a constitutional manner, thus denying Berry and Nichols their constitutional rights.

**WHEREFORE**, Proposed Intervenors Walter T. Berry and Lynn Nichols respectfully pray for the Order of this Court as follows:

A. Pursuant to 28 U.S.C. § 2284, the Court convene a three-judge panel to adjudicate this matter;

B. Declare that the present congressional apportionment of the State of Kansas violates the rights of Walter T. Berry and Lynn Nichols under state and federal law, including the United States Constitution;

C. Issue a permanent injunction and decree that the existing congressional districts may not be utilized for purposes of any 2012 primary or general election and permanently restraining defendant from accepting nominations, issuing certificates of nominations and

elections and from any other acts necessary to the holding of election for members of the Kansas delegation to the United States House of Representatives until such time as the Legislature and the Governor adopt a constitutionally-sufficient reapportionment plan or a Court of final jurisdiction has ordered such a plan, all in accordance with the United States Constitution; and

D. Award such other and further relief as deemed equitable and just.

Respectfully submitted,

FOULSTON SIEFKIN LLP

By: /s/ Toby Crouse  
Toby Crouse, KS #20030

James D. Oliver, KS #08604  
32 Corporate Woods, Suite 600  
9225 Indian Creek Parkway  
Overland Park, Kansas 66210-2000  
(913) 498-2100  
(913) 498-2101 FAX  
Email: [tcrouse@foulston.com](mailto:tcrouse@foulston.com)  
[joliver@foulston.com](mailto:joliver@foulston.com)

and

Jay Fowler, KS #10727  
1551 N. Waterfront Parkway, Suite 100  
Wichita, Kansas 67206  
(316) 267-6371  
(316) 267-6345  
Email: [jfowler@foulston.com](mailto:jfowler@foulston.com)

ATTORNEYS FOR WALTER T. BERRY  
and LYNN NICHOLS

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of May, 2012, a true and correct copy of the above and foregoing was filed using the Court's CM/ECF filing system, which will serve all interested parties of record by electronic mail, including the following:

Attorneys for Plaintiff Robyn Renee Essex

Brent E. Haden  
Hayden & Byrne LLC  
717 Cherry Street, Suite B  
P.O. Box 30095  
Columbia, Missouri 65202  
Email: [brent@showmelaw.com](mailto:brent@showmelaw.com)

Jeb Boatman  
Michael K. Avery  
McAfee & Taft, P.C.  
Tenth Floor, Two Leadership Square  
211 N. Robinson  
Oklahoma City, Oklahoma 73102  
Email: [jeb.boatman@mcafeetaft.com](mailto:jeb.boatman@mcafeetaft.com)  
[michael.avery@mcafeetaft.com](mailto:michael.avery@mcafeetaft.com)

Attorneys for Defendant Kris W. Kobach

Ryan A. Kriegshauser  
Kris W. Kobach  
Memorial Hall, 1st Floor  
120 SW 10th Avenue  
Topeka, Kansas 66612-1597  
Email: [sos@sos.ks.gov](mailto:sos@sos.ks.gov)

Attorneys for Benjamin D. Craig and Larry Winn III

Mark P. Johnson  
Wade P. K. Carr  
SNR Denton US LLP  
4520 Main Street, Suite 1100  
Kansas City, Missouri 64111  
Email: [mark.johnson@snrdenton.com](mailto:mark.johnson@snrdenton.com)  
[wade.carr@snrdenton.com](mailto:wade.carr@snrdenton.com)

Attorneys for Thomas C. Owens, John E. Henderson, Bernie Shaner, and Ron Wimmer

John C. Frieden  
Kevin N. Fowler  
Clinton E. Patty  
Eric I. Unrein  
Frieden, Unrein & Forbes, LLP  
555 S. Kansas Avenue, Suite 303  
P.O. Box 639  
Topeka, Kansas 66601  
Email: [jfrieden@fuflaw.com](mailto:jfrieden@fuflaw.com)  
[kfowler@fuflaw.com](mailto:kfowler@fuflaw.com)  
[cpatty@fuflaw.com](mailto:cpatty@fuflaw.com)  
[eunrein@fuflaw.com](mailto:eunrein@fuflaw.com)

Attorneys for Frank Beer

Greg L. Musil  
Jay E. Heidrick  
Polsinelli Shughart PC  
6201 College Boulevard, Suite 500  
Overland Park, Kansas 66211  
Email: [gmusil@polsinelli.com](mailto:gmusil@polsinelli.com)  
[jheidrick@polsinelli.com](mailto:jheidrick@polsinelli.com)

Attorneys for William Roy, Jr. and Paul Davis

Eldon J. Shields  
Steven R. Smith  
Gates, Shields & Ferguson, P.A.  
10990 Quivera Road, Suite 200  
Overland Park, Kansas 66210  
Email: [ejshields@gsflegal.com](mailto:ejshields@gsflegal.com)  
[stevesmith@gsflegal.com](mailto:stevesmith@gsflegal.com)

/s/ Toby Crouse

ATTORNEY FOR WALTER T. BERRY  
and LYNN NICHOLS