

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

ROBYN RENEE ESSEX,)	
)	
Plaintiff,)	
and)	
)	
MARTHA E. CROW,)	
)	
Intervenor-Plaintiff,)	CIVIL ACTION
)	CASE NO. 12-4046-KHV-DJW
v.)	
)	
KRIS W. KOBACH,)	
Kansas Secretary of State,)	
)	
Defendant.)	
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COMPLAINT OF INTERVENOR

JURISDICTION

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

PARTIES

2. Intervenor-Plaintiff Martha Crow is a citizen and qualified voter of the United States of America and of the State of Kansas, residing in Leavenworth, Leavenworth County, Kansas.

3. Intervenor-Plaintiff is a resident of the 2nd Congressional District.

4. Intervenor claims she is 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 pursuant to the 2000 Federal Census.

7. The 2010 Federal Census is complete, and under Article I, Section 2 of the United States Constitution, the Kansas Legislature is required to re-apportion districts during the regular 2012 legislative session.

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

9. Under the April 2010 Federal Census, the 2nd congressional district, of which the Intervenor-Plaintiff is a resident, is 3,233 people under the ideal Kansas congressional district population of 713,280 persons and violates the required deviations for congressional districts as provided by federal law.

10. The Kansas Legislature has completed its 2012 legislative session and failed to re-apportion district for Kansas' congressional seats as commanded by Article I, Section 2 of the United States Constitution.

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

12. Given these facts, the Federal Census taken as of April 2010 shows that the Kansas congressional 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 to reapportion the congressional districts in the State of Kansas; and that the present apportionment of Kansas' congressional districts are no longer based upon any logical or reasonable formula, but are arbitrary and capricious.

COUNT I
CONGRESSIONAL UNEQUAL APPORTIONMENT

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

14. This case also arises under the Fourteenth Amendment to the United States Constitution, Section 1, 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 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 apportionment, which discriminates against citizens in highly populous congressional districts and prefers other citizens in the least populous congressional districts violates the above-quoted constitutional provision.

15. Intervenor-Plaintiff is a citizen of the United States and of the State of Kansas, and has 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.

16. 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-Plaintiff, a justiciable controversy exists.

WHEREFORE, Intervenor-Plaintiff respectfully prays that, pursuant to the provisions of 28 U.S.C. Section 2284(a), the Court convene a three-judge panel to adjudicate this matter. In addition, Intervenor-Plaintiff asks the Court, pursuant to 28 U.S.C. Section 2201, to declare the present congressional districts of the State of Kansas as established in 2002 by the Kansas Legislature to deprive the Intervenor-Plaintiff of rights under Article 1, Section 2, and the Fourteenth Amendment to the Constitution of the United States.

Intervenor-Plaintiff further asks the Court to issue a permanent injunction and judgment decreeing that the plan of the 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 congressional apportionment and permanently restrain Defendant from receiving nominations and elections, and from all further acts necessary to the holding of elections for members of the congressional districts established in 2002.

Intervenor-Plaintiff further asks the Court to determine the congressional district boundaries to be used for the 2012 election and all subsequent congressional elections until such time that the Kansas Legislature reapportions the boundaries in 2022.

Finally, the Intervenor-Plaintiff asks the Court to order Defendant to pay to Intervenor-Plaintiff, pursuant to 42 U.S.C. Section 1988, her reasonable attorney 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,

**BEAM-WARD, KRUSE, WILSON,
WRIGHT & FLETES, LLC**

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ATTORNEYS FOR MARTHA E. CROW

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2012, I filed a true and correct copy of the above and foregoing with the Clerk of the District Court through the CM/ECF system, which is to serve notice of the filing on all interested parties in this action who have entered an appearance, either pro se or through an attorney of record.

/s/ W. Greg Wright
W. Greg Wright