

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

ROBYN RENEE ESSEX, et al)	
)	
Plaintiffs,)	CIVIL ACTION
)	
v.)	Case No. 5:12-cv-04046-KHV-DJW
)	
KRIS W. KOBACH,)	
Kansas Secretary of State,)	
)	
Defendant.)	

COMPLAINT OF INTERVENOR-PLAINTIFF MIKE O’NEAL

JURISDICTION AND VENUE

1. Jurisdiction and Venue are proper in this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and a three judge panel has been designated under 28 U.S.C. § 2284.

PARTIES

2. Intervenor-plaintiff Michael O’Neal is a citizen and qualified voter of the United States of America residing in Hutchinson, Reno County, Kansas.

3. Intervenor-plaintiff Mike O’Neal is politically active, has voted in the past and intends to vote in the primary and general elections in 2012.

4. Intervenor-plaintiff Mike O’Neal is Speaker of the Kansas House of Representatives, Chair of the House Standing Committee on Redistricting, and Representative for the 104th District.

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, which are organized around geographic legislative districts. Defendant is sued in his official capacity.

STATEMENT OF FACTS

6. The Kansas Constitution provides for
 - a. Forty state senate districts with senators elected to 4-year terms. Kansas Constitution, Article Two, Section 2.
 - b. One hundred twenty five state house districts with representatives elected to 2-year terms. Kansas Constitution, Article Two, Section 2.
 - c. Ten state school board districts, comprised of four contiguous state senate districts each with board members elected to 4-year terms. Kansas Constitution, Article Six Section 3(a)
7. In 2002, the Kansas Legislature passed the current version of Chapter 4 of the Kansas Statutes, which apportioned districts for Kansas' congressional seats (§§ 4-139 – 4-142) using the Census population numbers and the Kansas Senate (§§ 4-4,454 – 4-4,493); the Kansas House (§§ 4-3,734 – 4-3,858) , and the Kansas State School Board (§§ 4-516 – 4-525) pursuant to the 2010 Federal Census, as adjusted by the Secretary of State pursuant to Article Ten, Section 1 of the Kansas Constitution.
8. The Federal Census, as of April 1, 2010, is complete and all necessary data for redistricting has been delivered to Kansas.
9. Under Article 10, Section 1, of the Kansas Constitution, the Kansas Legislature is required to re-apportion senate and house districts during the regular session of 2012. Under the

Equal Protection Clause of the 14th Amendment these districts must be reapportioned to be substantially equal in population.

10. Under Article 1, Section 2, of the United States Constitution, the Kansas Legislature must adjust the boundaries of the congressional districts every ten years to make them equal in population.

11. Under the April 2010 Federal Census, Kansas has a population of 2,853,118; making the ideal Congressional District population 713,279.5. *See* Secretary of State 2010 Census Adjustment, July 26, 2011, at 30. (www.kssos.org/forms/elections/2010CensusAdj.pdf)

12. The 2010 Census populations of for the four congressional districts are, in order, 655,310; 710,047; 767,569, and 720,192. *See* <http://factfinder2.census.gov>.

13. Under the April 2010 Federal Census, the population of Kansas, as adjusted pursuant to Article Ten, Section 1, of the Kansas Constitution, is 2,839,445.

a. The ideal population for each of the 40 Kansas Senate Districts is 70,986.125.

b. The ideal population for each of the 125 Kansas House Districts is 22,715.56.

14. The adjusted census populations of the 40 state senate, 125 state house, and 10 state school board districts can be found at *See* Secretary of State 2010 Census Adjustment, July 26, 2011, at 31-38 (setting forth the adjusted population and deviation from the ideal population for each senate, house, and school board district) and these numbers are incorporated herein.

15. In January 2012, the Kansas House and Senate agreed to Guidelines and Criteria for the 2012 Legislative and Congressional Redistricting that include: compactness, contiguity, preserving existing political subdivisions, similarities or communities of interest, and avoiding contests between incumbents. The full guidelines can be found at:

(http://www.kslegislature.org/li/b2011_12/committees/misc/ctte_h_redist_1_20120109_01_other.pdf)

16. The Kansas Legislature has completed its regular 2012 session, and the state legislature has failed to approve new districts, signed by the Governor, and approved by the State Supreme Court.

17. The Standing Redistricting Committee led by plaintiff-intervenor and the entire Kansas House passed a House redistricting plan in early February 2012 with a strong bi-partisan vote of 109-14. The map only collapsed districts with no incumbent based on known retirements.

18. The Senate failed to pass that House plan on to the Governor, as was the traditional process used in 2002 and 1992, and instead held the House map until a Senate map was passed.

19. The bill passed by the Senate included both a Senate map and the original House map but the Senate plan was voted down by the House due to irregularities in the manner in which Senate districts were drawn, including, but not limited to,

- a. intentional partisan gerrymandering by drawing out of senate districts known challengers to favored incumbent senators
- b. intentional partisan gerrymandering by drawing districts to pit disfavored senate incumbents against each other, and
- c. collapsing a southwest Kansas majority-minority district such that a significant, predominantly Hispanic, minority base was diluted and virtually eliminated.

20. Notwithstanding requests by the House and Governor to send the unopposed House map to the Governor for approval and subsequent statutory court review, the Senate

refused. Although the House map passed both the House and Senate in the same form, the Senate has blocked review by the Governor and the State Supreme Court.

21. During the session the House passed two Congressional plans, the Senate passed one, and there was no final agreement on any of them.

22. This leaves Kansas with the current 2002 districts which are, due to population changes, unconstitutional.

- a. The four congressional districts are unconstitutional for failure to comply with the equal population requirement of Article 1, Section 2, of the Constitution requiring district populations of 713,279.
- b. State senate, house, and state school board districts are unconstitutional for failure to comply with the substantially equal population standard required by the Equal Protection Clause of the 14th Amendment as interpreted by the Supreme Court.

ALLEGATIONS COMMON TO ALL COUNTS

23. When determining the new district lines:

- a. Congressional districts must meet the equal population standard.
- b. State Legislative districts must meet the substantially equal population standard.
- c. Districts may not violate applicable sections of the Voting Rights Act by having the intent or effect of diluting minority voting strength. *See* Pub L. No 89-110, 79 Stat 437 (1965) (codified as amended at 42 USC §§ 1971, 1973 to 1973bb-1.)

24. So long as it complies with the mandatory provisions listed above, the Court may apply other criteria in determining district boundaries including compactness (measured by a variety of mathematical models); contiguity, preservation of political subdivisions (counties and

cities), preservation of communities of interest (an inherently vague and elastic concept); and preserving cores of prior districts. *See, e.g. Karcher v. Daggert*, 462 U.S. 725, at 740-41 (1983).

25. The Kansas legislature had agreed on the additional criteria it would use in drawing legislative and congressional districts.

COUNT I

FAILURE TO ENACT CONGRESSIONAL DISTRICTS WITH EQUAL POPULATION

26. All allegations of the above paragraphs are incorporated herein.

27. Article 1, Section 2 of the Constitution requires equal population for all congressional districts based on the population enumerated in the April 1, 2010, Census.

28. None of the current four congressional districts in Kansas have or are even close to the ideal population of 713,279.

29. The current Kansas congressional districts are, therefore, unconstitutional and cannot be used for the November 2012 general election or election activities associated with it.

30. The current congressional districts discriminates against Kansas residents in the higher populated districts, creating a per se violation of the constitutional standard, rendering all congressional districts unconstitutional and thus harming intervenor-plaintiff.

31. It is of particular importance that Riley County remain in the Second Congressional District so that the core of Kansas' animal health business community of interest (commonly known as the 'animal health corridor') and the National Bio and Agro-Defense Facility are in the same district.

COUNT II

FAILURE TO ENACT STATE LEGISLATIVE DISTRICTS WITH SUBSTANTIALLY EQUAL POPULATION

32. All allegations of the above paragraphs are incorporated herein.

33. The Equal Protection Clause of the 14th Amendment requires substantially equal population for each state senate district and state house district.

34. State school board districts consist of four contiguous state senate districts and must be substantially equal, but to a lesser degree than the component state senate districts.

35. The current state senate districts, as constituted in 2002, are not substantially equal to the ideal district population.

36. The current state house districts, as constituted in 2002, are not substantially equal to the ideal population.

37. The current state school board districts, comprising four state senate districts as constituted in 2002 are also not substantially equal to the ideal population.

38. The current legislative districts discriminate against Kansas residents in the higher populated districts, creating a per se violation of the constitutional standard, rendering all legislative districts unconstitutional and thus harming intervenor-plaintiff.

WHEREFORE, Intervenor-Plaintiff Mike O'Neal respectfully prays that, pursuant to the provisions of 28 U.S.C. § 2284(a), the Court's three-judge panel adjudicate this matter and

- A. Issue a permanent injunction on the Defendant prohibiting the use of the districts established by the Kansas Legislature in 2002 for any purposes connected with the November 6, 2012, general election.
- B. Determine the congressional and state senate, house, and school board 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.

- a. Plaintiff-intervenor respectfully suggests the Court adopt the House map passed by the House in February since it was approved by both the Kansas House and Kansas Senate.
 - b. Plaintiff-intervenor respectfully requests that the Court not adopt any suggested districts that include partisan gerrymandering expressly designed to exclude potential challengers.
 - c. Plaintiff-intervenor respectfully requests that the Court pay particular attention to racial minorities in Wyandotte county, Sedgwick county, and southwestern Kansas when determining state legislative district lines.
 - d. Plaintiff-intervenor respectfully requests that the Court ensure that Riley County remain in the Second Congressional District.
- C. Intervenor-Plaintiff Mike O’Neal **Does Not** seek reimbursement from the State of Kansas for his reasonable attorney’s fees, costs, expenses, expert fees, and other expenses incurred in prosecuting this action under 28 USC §1988.

s/Michael R. O’Neal
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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 2012, I electronically filed the foregoing Complaint 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/Michael R. O'Neal

Michael R. O'Neal

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