

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

ROBYN RENEE ESSEX,)
)
Plaintiff,)
and)
)
BRENDA LANDWEHR,)
GARY MASON and)
GREG A. SMITH)
)
Intervenor-Plaintiffs)
)
v.)
)
KRIS W. KOBACH,)
Kansas Secretary of State,)
)
Defendant.)

CIVIL ACTION

CASE NO. 12-4046-KHV-JWL-

**COMPLAINT OF INTERVENOR-PLAINTIFFS
BRENDA LANDWEHR, GARY MASON AND GREG A. SMITH**

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 Kansas State Representative Greg A. Smith is a citizen and qualified voter of the United States of America and of the State of Kansas, residing at 8605 Robinson, Overland Park, Johnson County, Kansas 66212.

3. Intervenor-Plaintiff Kansas State Representative Brenda Landwehr is a citizen and qualified voter of the United States of America and of the State of Kansas, residing at 2837 N. Edwards, Wichita, Sedgwick County, Kansas 67204.

4. Intervenor-Plaintiff Gary Mason is a citizen and qualified voter of the United States of America and of the State of Kansas, residing at 4245 Ironwood Street, Wichita, Sedgwick County, Kansas 67226.

5. Intervenor-Plaintiffs claim they are being denied their rights as citizens under the Equal Protection of the Laws and Due Process of Law provisions of the 14th Amendment to the United States Constitution, and under the Kansas Constitution, to seek election to public office in a free and fair election, as further alleged herein.

6. 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

7. 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.

8. The 2010 Federal Census is complete, and under Article 10 of the Kansas Constitution, the Kansas Legislature is required to reapportion Kansas Senate and Kansas House of Representatives districts during the regular 2012 legislative session.

9. 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 22,176 persons.

10. The Kansas Legislature is now in its regular 2012 session, and has yet to reapportion seats for the Kansas Senate and House of Representatives, as required by Article 10 of the Kansas Constitution.

11. Both houses of the Kansas Legislature have passed segments of reapportionment plans, but all bills proposed by both houses have at this date failed to advance, and the two houses of the Legislature are at an impasse in their efforts to reapportion Kansas' State Senate and House of Representatives districts.

12. On May 20, 2012, the Kansas Legislature adjourned until its sine die session on June 1, 2012, the last day of the Legislature's regular session.

13. 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.

14. In light of these facts, on information and belief, the United States Federal Census taken as of April 2010 shows that the Kansas 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 state legislative districts in the State of Kansas; and that the present apportionment of Kansas' state legislative districts are no longer based upon any constitutional or reasonable formula, but are arbitrary and capricious.

COUNT I

LEGISLATIVE MALAPPORTIONMENT

15. 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, and that duly-qualified citizens shall have the right to seek elective office in free and fair elections. The existing state statute, described in paragraph 7, effects an apportionment which, in light of the 2010 Census, discriminates against citizens in highly populous legislative districts and prefers other voters in the least populous legislative districts, thereby violating the above-quoted constitutional provision. Moreover, the proposed Kansas Senate redistricting plans so far considered and passed by the Kansas Senate, but not by the Kansas House of Representatives, have intentionally been unconstitutionally and unreasonably crafted almost *solely* for political purposes, to exclude each of the Intervenor-Plaintiffs from the Senate districts in which they currently reside, in order to preclude them from the opportunity to oppose the incumbent Senators in each of their districts in the election to be conducted on November 6, 2012, and in the process have continued to cause wide variances from the optimal goal of an equal 70,986 per new Senate district, in contravention of the one-person-one vote principle guaranteed by the Equal Protection clause of the 14th Amendment to the United States Constitution.

16. 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 State legislative districts in conformity with the United States Constitution during the 2012 Legislative Session.

17. In the absence of reapportionment of State legislative districts in conformity with the United States Constitution in 2012, the Intervenor-Plaintiffs will be deprived of their constitutional rights as citizens under the United States and Kansas Constitutions to seek election to the Kansas Senate in a free and fair election campaign.

18. 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.

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 that the present legislative apportionment 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 and that the Court issue a permanent injunction and judgment decreeing that the plan of the legislative 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.

Intervenor-Plaintiffs further pray that the Court permanently restrain Defendant from receiving nominations and petitions for state 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 by the Kansas Legislature in Chapter 4 of the Kansas unless and until such time as the State Legislature passes and the Governor approves

legislation reapportioning the state legislative districts in accordance with the United States Constitution. In the alternative, Intervenor-Plaintiffs pray that this Court will Order Defendant to accept nominations and petitions for state legislative office and issue certificates of nomination and election, and to carry out all acts necessary for the holding of elections for members of the Kansas Senate in the districts set forth in accordance with the state Senate redistricting plan entitled "Wheat State 5," attached hereto as Exhibit A.

Dated: May 25, 2012

Respectfully submitted,

s/John J. Rubin
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Mason and Smith*

CERTIFICATE OF SERVICE

I hereby declare and certify that on this 25th day of May, 2012, I filed the foregoing Complaint of Intervenor-Plaintiffs Brenda Landwehr, Gary Mason and Greg A. Smith with the Clerk of the Court and served copies thereof on all parties via the Court's electronic filing system.

s/John J. Rubin
John J. Rubin, #9408