

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PAUL BERRY III,

Plaintiff,

and

JOSEPH PERELES, MATTHEW BAX, IKE
GRAHAM, ROBERT SAUNDERS, and RACHEL
HOWARD,

Plaintiff-Intervenors,

v.

JOHN R. ASHCROFT, in his official capacity as
Missouri Secretary of State, and STATE OF
MISSOURI;

Defendants.

Case No. 4:22-CV-465-JAR

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff-Intervenors Joseph Pereles, Matthew Bax, Ike Graham, Robert Saunders, and Rachel Howard (collectively, “Plaintiff-Intervenors”) bring this Complaint for Declaratory and Injunctive Relief against Defendant John (“Jay”) Ashcroft, in his official capacity as the Missouri Secretary of State (“the Secretary”) and Defendant State of Missouri. This Complaint is based on the facts and allegations below. Plaintiff-Intervenors allege as follows:

INTRODUCTION

1. Missouri’s current congressional districts were enacted over a decade ago. As revealed by the 2020 Census, the intervening population shifts have rendered those districts unconstitutionally malapportioned. Absent a revised congressional map, Plaintiff-Intervenors, who live in overpopulated districts, will be forced to cast unequal votes relative to voters in underpopulated districts.

2. The current congressional plan therefore cannot be used in any upcoming elections, including the 2022 elections.

3. Moreover, the General Assembly has failed to enact new districts ahead of the period in which candidates can file written declarations of candidacy, which opened on February 22, 2022 and closed on March 29, 2022. § 115.349(2), RSMo.

4. The Missouri Legislature is hopelessly deadlocked on adoption of a congressional plan. And while the House and Senate each passed separate congressional redistricting plans earlier this year, neither survived the other chamber – the Senate failed to approve the House plan, and the House later rejected the Senate plan and instead requested to convene a conference committee to negotiate a compromise map, but the Senate refused. On May 4, after months of deadlock, the Missouri House passed another bill (House Bill 2909 (2022)) through committee that would create new congressional districts. But it is also unlikely to pass both chambers before the end of the legislative session on May 13.

5. The “General Assembly’s failure to provide a means for congressional representation would, if unremedied, result in an unconstitutional deprivation” of Plaintiff-Intervenors’ right to select representatives, as the current congressional districts are “patently and obviously unconstitutional.” *Shayer v. Kirkpatrick*, 541 F. Supp. 922, 925 (W.D. Mo. 1982) (quoting 17

Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure*, § 4235, at 400 (3d ed. 1988)).

6. If the General Assembly fails, “the only appropriate remedy is a court-ordered apportionment.” *Id.* at 927.

7. On March 11, 2022, Plaintiff-Intervenors filed a lawsuit in the Circuit Court of Cole County alleging that Missouri’s congressional districts are malapportioned and that a court-drawn remedial plan is required. That litigation is currently pending.

8. In *Grove v. Emison*, the Supreme Court reaffirmed that federal judges must “defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address the highly political task itself.” 507 U.S. 25, 33 (1993) (emphasis original). However, if it becomes “apparent that the state court ... [will] not develop a redistricting plan in time for the primaries,” federal intervention is necessary to ensure each vote is equal. *Id.* at 36.

PARTIES

9. Plaintiff-Intervenors are citizens of the United States and registered voters in Missouri. Plaintiff-Intervenors reside in the following congressional districts:

Plaintiff-Intervenor’s Name	County of Residence	Congressional District
Joseph Pereles	St. Louis County	MO-2
Matthew Bax	Johnson County	MO-4
Ike Graham	Jackson County	MO-5
Robert Saunders	Clay County	MO-6
Rachel Howard	Greene County	MO-7

**Motion to Intervene
EXHIBIT A**

10. As shown below, Plaintiff-Intervenors reside in congressional districts that are overpopulated relative to other districts in the State.

11. Defendant JOHN R. ASHCROFT is the Missouri Secretary of State and is named as a Defendant in his official capacity.

12. The Secretary of State is the State's chief election official and is responsible for implementing laws related to voting across the State, including the State's current congressional districts and candidate filing for the next election.

13. Defendant STATE OF MISSOURI is one of the states of the United States of America.

JURISDICTION & VENUE

14. Plaintiff-Intervenors bring this action under 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States and involve the assertion of a deprivation, under color of state law, of a right under the Constitution of the United States. This Court has the authority to enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and authority to enter injunctive relief under Federal Rule of Civil Procedure 65.

15. This Court has personal jurisdiction over Defendants, who are sued in their official capacities and reside within this State.

16. Venue is proper in this Court and this Division under 28 U.S.C. §§ 105(a)(1) and 1391(b) because a substantial part of the events that give rise to Plaintiff-Intervenors' claims occurred in this judicial district.

**Motion to Intervene
EXHIBIT A**

17. A three-judge district court has jurisdiction to adjudicate this dispute because Plaintiff-Intervenors “challeng[e] the constitutionality of the apportionment of [Missouri’s] congressional districts.” 28 U.S.C. § 2284(a).

GENERAL ALLEGATIONS

I. Missouri’s current congressional districts were drawn using 2010 Census data.

18. On April 27, 2011, over a decade ago, the Republican-controlled General Assembly sent legislation creating new congressional districts to Governor Jay Nixon, a Democrat. Governor Nixon vetoed the map on May 2, 2011.

19. Following the veto, both houses of the General Assembly voted to override the Governor’s veto and adopted the map on May 4, 2011.

20. Using the 2010 Census, Missouri had a resident population of 5,988,927. Accordingly, a decade ago, the ideal population for each of Missouri’s eight congressional districts (i.e., the State’s total population divided by the number of districts) was 748,616 persons.

21. According to 2010 Census data, the 2011 congressional plan had a maximum deviation (i.e., the difference between the most populated district and least populated district) of exactly one person: seven districts had a population of 748,616, and one district had a population of 748,615.

22. Since the 2011 congressional district plan went into effect, Missouri has not redrawn its congressional districts, meaning that Missouri’s current congressional districts were drawn using data from the 2010 Census.

II. Population numbers from the 2020 Census reveal that Missouri’s population has grown over the last decade.

23. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution.

24. On April 26, 2021, the U.S. Secretary of Commerce delivered the apportionment results of the 2020 Census to the President. The results of the 2020 Census report that Missouri’s resident population is 6,154,913.

25. Accordingly, the ideal population for each of Missouri’s congressional districts is now 769,364.

III. As a result of significant population shifts, Missouri’s congressional districts are unconstitutionally malapportioned.

26. In the past decade, Missouri’s population has shifted significantly.

27. Because the 2020 Census has now been completed, the 2010 population data used to draw Missouri’s current congressional districts are obsolete, and any prior justifications for the existing map’s deviations from population equality are inapplicable.

28. On August 12, 2021, the U.S. Census Bureau delivered to Missouri its redistricting data file in legacy format, allowing the State to tabulate the new population of each political subdivision. These data are commonly referred to as “P.L. 94-171 data,” a reference to the legislation enacting this process. *See* Pub. L. No. 94-171, 89 Stat. 1023 (1975).

29. These data make clear that significant population shifts have occurred in Missouri since 2010, skewing the current congressional districts far from population equality.

30. The table below, generated from the P.L. 94-171 data file provided by the Census Bureau on August 12, 2021, shows how the populations of each of Missouri’s congressional districts have shifted between 2010 and 2020. For each district, the “2010 Population” column

represents the district’s 2010 resident population according to the 2010 Census, and the “2020 Population” column indicates the district’s 2020 population according to the P.L. 94-171 data. The “Shift” column represents the shift in population between 2010 and 2020. The “Deviation from Ideal 2020 Population” column shows how far the 2020 resident population of each district strays from the ideal 2020 congressional district population. And the “Percent Deviation” column shows that deviation as a percentage of the ideal 2020 district population.

District	2010 Population	2020 Population	Shift	Deviation from Ideal 2020 Population	Percent Deviation
1	748,616	714,731	-33,885	-54,633	-7.64%
2	748,616	777,688	+29,072	8,324	1.07%
3	748,615	804,505	+55,890	35,141	4.37%
4	748,616	777,217	+28,601	7,853	1.01%
5	748,616	788,310	+39,694	18,946	2.40%
6	748,616	781,000	+32,384	11,636	1.49%
7	748,616	792,419	+43,803	23,055	2.91%
8	748,616	719,043	-29,573	-50,321	-7.00%

31. The table above indicates that population shifts since 2010 have rendered Missouri’s Second, Third, Fourth, Fifth, Sixth, and Seventh Congressional Districts overpopulated, and its First and Eighth Congressional Districts significantly underpopulated. According to these figures, the maximum deviation among Missouri’s congressional districts increased from 0 percent to more than 12 percent between 2010 and 2020.

32. In light of these population shifts, Missouri’s existing congressional district configurations are unconstitutionally malapportioned.

33. If used in any future election, these district configurations would unconstitutionally dilute the strength of Plaintiff-Intervenors' votes in congressional elections because Plaintiff-Intervenors live in districts with populations that are significantly larger than those in which other voters live.

IV. Missouri's political branches are deadlocked and will fail to enact a lawful congressional district map in time for the next election.

34. New congressional districts in Missouri are typically created through legislation passed by both houses of the General Assembly and signed by the Governor, Mo. Const. art. III, §§ 45, 31, or passed by a two-thirds majority of both houses following the Governor's veto, *id.* at § 32.

35. In the Senate, “[d]eep fissures between the Republican majority and the Conservative Caucus” over competing visions for a congressional map “have repeatedly stalled legislative work.”¹

36. Senators from the Conservative Caucus have “held the floor hostage for hours on routine motions” and filibustered a proposed congressional redistricting bill for 31 hours on the Senate floor.²

37. The Kansas City star reported that “no compromise was in sight” despite convening for sessions during weekends – a rare move – as a group of unwavering conservatives engaged in what their colleagues called “hardball tactics.”³

¹ Tessa Weinberg, *Filibuster continues after Missouri Senate rejects '7-1' redistricting plan*, MISSOURI INDEPENDENT (Feb. 8, 2022, 8:03 AM), available at: <https://missouriindependent.com/2022/02/08/filibuster-continues-after-missouri-senate-rejects-7-1-redistricting-plan/>.

² *Id.*; see also Tessa Weinberg, *Missouri's redrawn congressional map remains in limbo after 31-hour Senate filibuster*, MISSOURI INDEPENDENT (Feb. 8, 2022 7:28 PM), available at: <https://missouriindependent.com/2022/02/08/filibuster-of-missouri-congressional-redistricting-plan-passes-26-hour-mark/>.

³ Jeanne Kuang, *'Definition of insanity: ', MO Senate ends week of filibuster with no redistricting deal*, KANSAS CITY STAR (Feb. 13, 2022, 11:15 AM), available at: <https://www.kansascity.com/news/politics-government/article258331253.html>.

38. Talks broke down as conservative and moderate Republican senators traded “scathing” accusations, resulting in a “near-physical” altercation. *Id.* President Pro Tem Dave Schatz admitted that any compromise would be a “magic path.” *Id.*

39. On February 12, after nearly a week of the entire Senate debating congressional redistricting, Senate leadership abandoned their effort to pass a congressional redistricting bill for the time being.

40. Senate Majority Leader Caleb Rowden announced in a statement that day that the Senate would “step away from this debate on the senate floor.” Lamenting that “business critical to [Missouri] citizens has been delayed,” Senator Rowden acknowledged that a court may be forced to draw the map.⁴

41. After the official debate on the floor paused on February 12, progress remained stalled behind closed doors as well. While conservative senators anticipated a last-ditch effort to pass a bill on March 2, the Senate failed to take up redistricting whatsoever.⁵

42. After extended deadlock, the Senate finally passed a congressional map on March 24. However, the House rejected the Senate plan and instead requested to convene a conference committee to negotiate a compromise map, but the Senate refused.

43. Even if the General Assembly changed course and mustered simple majorities behind a redistricting bill, that option is already too late: without an emergency clause, any redistricting bill could not take effect for 90 days—blowing past the August 2 primary election.

⁴ Emily Manley, *Missourians have right to be disappointed about redistricting, Senate GOP leaders say*, FOX 4 (Feb. 14, 2022, 7:49 PM), available at: <https://fox4kc.com/news/senate-majority-leadership-missourians-have-every-right-to-be-disappointed/>.

⁵ Jack Suntrup, *GOP leader unloads on Missouri Senate colleagues who’ve delayed redistricting*, ST. LOUIS POST-DISPATCH (Mar. 5, 2022), available at: https://www.stltoday.com/news/local/govt-and-politics/gop-leader-unloads-on-missouri-senate-colleagues-who-ve-delayed-redistricting/article_7cf29847-d1b9-5ab3-bd7a-0c2ab78f4b31.html.

44. For the General Assembly to include an emergency clause, both chambers would need approval by a two-thirds majority. Mo. Const. art. III, § 29.

45. Candidate filing has already opened and closed in Missouri, § 115.349(2), RSMo, but voters do not even know in which districts they reside or will be eligible to vote. As a result, voters do not even know which congressional candidates would represent them in the next Congress if elected. It is in the interests of voters, candidates, and Missouri's entire electoral apparatus that new congressional districts be established as soon as possible.

46. The judicial redistricting process in several other states where the political branches have been unable to pass congressional maps is completed. In Minnesota, Wisconsin, and Pennsylvania, for instance, courts have already adopted new congressional maps following political impasse. *See Wattson v. Simon*, Nos. A21-0243, A21-0546 (Minn. Feb. 15, 2022) (Order Adopting a Cong. Redistricting Plan); *see also Johnson v. Wis. Elections Comm'n*, 971 N.W.2d 402 (Wis. Mar. 1, 2022) (Order); *Carter v. Chapman*, 270 A.3d 444 (Pa. Feb. 23, 2022) (Order).

47. The General Assembly and Governor have failed to enact a new congressional plan. Unless a court-adopted map is put in place, the 2022 election will be held using illegal district maps, depriving Plaintiff-Intervenors of their constitutional rights.

V. Redistricting litigation over the legislative impasse is currently proceeding in Missouri courts.

48. On March 11, 2022, Plaintiff-Intervenors filed a lawsuit in the Circuit Court of Cole County alleging that Missouri's congressional districts are malapportioned and that a court-drawn remedial plan is required. *See Pet. for Relief, Pereles v. Ashcroft*, No. 22AC-CC00114 (Cir. Ct., Cole Cnty. Mar. 11, 2022).

49. On March 31, 2022, another group of plaintiffs filed similar claims in the Circuit Court of Cole County. *See* Pet. for Relief, *Thomas v. Missouri*, No. 22AC-CC00222 (Cir. Ct., Cole Cnty. Mar. 11, 2022).

50. On April 18, 2022, the Secretary of State filed a motion to dismiss in the *Pereles* litigation. On April 25, the *Thomas* plaintiffs filed a motion to consolidate the two suits. Both motions are currently pending before the state court.

CLAIMS FOR RELIEF

COUNT I

Congressional Malapportionment in Violation of Article III, Section 45, of the Missouri Constitution

51. Plaintiff-Intervenors reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the count below as though fully set forth herein.

52. Article III, Section 45 of the Missouri Constitution requires that after each decennial census, “the general assembly shall by law divide the state into districts corresponding with the number of representatives to which it is entitled, which districts *shall* be composed of contiguous territory as compact and as *nearly equal in population as may be*” (emphasis added). The Missouri Supreme Court has affirmed that “numerical equality [is] mandatory.” *Pearson v. Koster*, 359 S.W.3d 35, 39 (Mo. Banc 2012). Section 45 is “triggered when the results of the . . . United States Census [are] revealed.” *Id.* at 37.

53. In order to comply with this requirement, the deviation in population among Missouri’s congressional districts should be no more than one person. The Missouri General Assembly achieved that goal following the 2010 Census. Now, as indicated in the table above, the population deviation among the current congressional districts is as high as nearly 90,000 persons.

54. Given the significant population shifts that have occurred since the 2010 Census, and the publication of the results of the 2020 Census, Missouri’s congressional districts—which were drawn based on 2010 Census data—are now unconstitutionally malapportioned.

55. Any future use of Missouri’s current congressional district plan would violate Plaintiff-Intervenors’ constitutional right to cast an equal, undiluted vote.

COUNT II

**Violation of Article I, Section 2 of the U.S. Constitution
42 U.S.C. § 1983
Congressional Malapportionment**

56. Plaintiff-Intervenors reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the count below as though fully set forth herein.

57. Article I, Section 2 of the U.S. Constitution requires “that when qualified voters elect members of Congress each vote be given as much weight as any other vote.” *Wesberry v. Sanders*, 376 U.S. 1, 8 (1964). This means that state congressional districts must “achieve population equality ‘as nearly as is practicable.’” *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry*, 376 U.S. at 7-8).

58. Article I, Section 2 requires an even higher standard of exact population equality among congressional districts than what the Fourteenth Amendment requires of state legislative districts. It “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.” *Karcher*, 462 U.S. at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). Any variation from “absolute population equality” must be narrowly justified. *Id.* at 732-33.

59. Given the significant population shifts that have occurred since the 2010 Census, Missouri's congressional districts are now unconstitutionally malapportioned and their use would violate Plaintiff-Intervenors' constitutional right to an undiluted vote.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenors respectfully request that this Court:

- a) Notify the Chief Judge of the U.S. Court of Appeals for the Eighth Circuit of this action and request that two other judges be designated to form a three-judge district court, 28 U.S.C. § 2284(b)(1);
- b) Declare a date by which the Missouri legislature and/or Missouri state courts must establish a congressional redistricting plan to avoid federal intervention;
- c) Declare that the current configuration of Missouri's congressional districts violates Article III, Section 45 of the Missouri Constitution and Article I, Section 2 of the United States Constitution;
- d) Enjoin Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with them, from implementing, enforcing, or giving any effect to Missouri's current congressional district plan;
- e) Establish a schedule that will enable the Court to adopt and implement a lawful congressional district plan in time for the 2022 elections in the event that neither the Missouri Legislature nor the Missouri state courts have done so;
- f) Award Plaintiff-Intervenors their costs, disbursements, and reasonable attorneys' fees; and
- g) Grant such other and further relief as the Court deems just and proper.

Dated: May 6, 2022

Respectfully Submitted,

/s/ Jeremy A. Root

Charles W. Hatfield, No. 40363
Jeremy A. Root, No. 59451
Alixandra S. Cossette, No. 68114
STINSON LLP

230 W. McCarty Street
Jefferson City, MO 65101
Phone: (573) 636-6263
Facsimile: (573) 636-6231
chuck.hatfield@stinson.com
jeremy.root@stinson.com
alixandra.cossette@stinson.com

Abha Khanna*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
Telephone: (206) 656-0177
Facsimile: (206) 656-0180
akhanna@elias.law

William Hancock*
Francesca Gibson*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
Telephone: (202) 968-4659
Facsimile: (202) 968-4498
whancock@elias.law
fgibson@elias.law

Counsel for Plaintiff-Intervenors
* *Pro Hac Vice* applications forthcoming

Motion to Intervene
EXHIBIT A