

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

ROBYN RENEE ESSEX,)
et al.,)
 Plaintiffs,)
)
v.)
)
)
KRIS W. KOBACH,)
Kansas Secretary of State,)
)
 Defendant,)
)
and)
)
THE STATE OF KANSAS *ex rel.*)
DEREK SCHMIDT, Attorney)
General of Kansas,)
)
 Intervenor / Defendant.)
)
)
)
_____)

CIVIL ACTION

Case No. 12-CV-4046-KHV-JWL

**ANSWER OF INTERVENOR / DEFENDANT STATE OF KANSAS,
ex rel. DEREK SCHMIDT ATTORNEY GENERAL TO AMENDED COMPLAINT
OF INTERVENORS / PLAINTIFFS BERRY AND NICHOLS**

COMES NOW Intervenor / Defendant State of Kansas, on relation of Kansas Attorney General Derek Schmidt [State], by and through the undersigned counsel of record, and Answers the Amended Complaint of Intervenor / Plaintiffs Berry and Nichols.

1. Complaint paragraphs 1 and 2 allege facts for which this answering Defendant lacks sufficient knowledge and information upon which to form a belief as to their truth or falsity. Therefore, they are denied.

2. Complaint paragraphs 3 4 and 8 (2010 Census as adjusted by the Kansas Secretary of State) are admitted.

3. Complaint paragraphs 5, 6, 7, 9 and 10 are denied. A justiciable controversy exists that can be addressed by this federal panel or by the Kansas Supreme Court. No valid 2012 elections may be conducted based on the current districts. No unconstitutional election has occurred, and no Kansas voter's rights have been violated. This three-judge panel and the Kansas Supreme Court have concurrent jurisdiction to order constitutional maps in the absence of the enactment of redistricting legislation during the regular 2012 session of the Kansas legislature using 2010 Census data as adjusted by the Kansas Secretary of State. A claim for a constitutional injury by any Kansas voter is merely prospective and not ripe at this time.

4. Any allegation not expressly addressed is hereby denied.

PRAYER FOR RELIEF

WHEREFORE, Intervenor the State of Kansas, on the relation of Attorney General Derek Schmidt, prays the Court to order the following relief:

1. Pursuant to 28 U.S.C. § 2284(a), convene a three-judge panel to adjudicate this matter;

2. Issue a permanent injunction and judgment decreeing that the plan of 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, congressional apportionment or state board of education apportionment;

3. Issue an order including a valid plan of legislative reapportionment, congressional reapportionment and state board of education reapportionment with a level of deviation that is

clearly within the parameters of the United States Constitution and United States Supreme Court case law;

4. Hold in abeyance consideration of any award of attorneys fees or costs pending further proceedings on this issue; and

5. Grant such other and further relief as this Court deems just and equitable.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
DEREK SCHMIDT

s/ Jeffrey A. Chanay

Derek Schmidt, KS Sup. Ct. No. 17781

Attorney General of Kansas

Jeffrey A. Chanay, KS Sup. Ct. No. 12056

Deputy Attorney General

Marty M. Snyder, KS Sup. Ct. No. 11317

Assistant Attorney General

M. J. Willoughby, KS Sup. Ct. No. 14059

Assistant Attorney General

Memorial Bldg., 2nd Floor

120 SW 10th Avenue

Topeka, Kansas 66612-1597

Tel: (785) 296-2215

Fax: (785) 291-3767

Email: jeff.chanay@ksag.org

marty.snyder@ksag.org

mj.willoughby@ksag.org

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2012, I electronically filed the foregoing Answer with the clerk of the court by using CM/ECF system which will send a notice of electronic filing to all counsel of record.

s/ Jeffrey A. Chanay
Jeffrey A. Chanay
Deputy Attorney General, Civil Litigation Division