

FRANKLIN CIRCUIT COURT
48TH JUDICIAL CIRCUIT
DIVISION 71

Civil Action No. 01-CI-1700

JOHN E. BICKEL, JR.
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Owensboro, Kentucky 42303

PLAINTIFFS

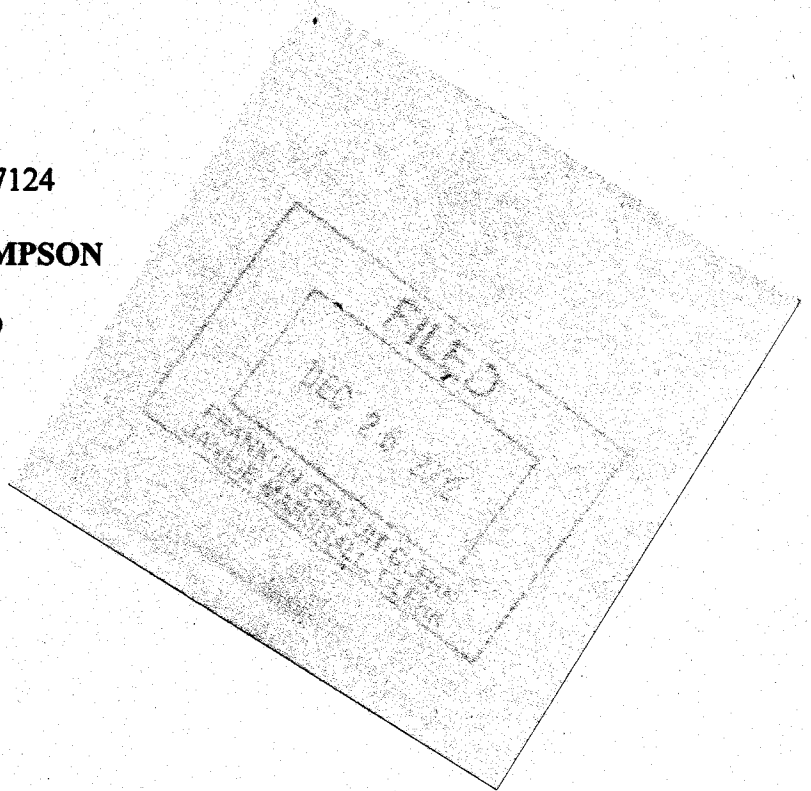
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JAMES F. ZIMMERMAN
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v. **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**KENTUCKY STATE BOARD OF
ELECTIONS;**

DEFENDANTS

Serve: A.B. Chandler, III
Attorney General
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Frankfort, Kentucky 40601-3449

MARY SUE HELM, in her official capacity
as Acting Executive Director of the State
Board of Elections;

Serve: Mary Sue Helm
Acting Executive Director
State Board of Elections
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COMMONWEALTH OF KENTUCKY;
PAUL E. PATTON, in his official capacity as
Governor of the Commonwealth of Kentucky;

Serve: A.B. Chandler, III
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JODY RICHARDS, in his official capacity as
Speaker of the Kentucky House of
Representatives;

Serve: A.B. Chandler, III
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A.B. CHANDLER III, in his official capacity
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DAVID L. WILLIAMS, in his official
capacity as Senate President of the
Commonwealth of Kentucky;

Serve: A.B. Chandler, III
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JOHN Y. BROWN III, in his official capacity
as Secretary of Commonwealth of Kentucky.

Serve: A.B. Chandler, III
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*** **

John E. Bickel, Jr., Jim Skaggs, Elizabeth Bedford Thompson, Basil Turbyfill, Robert L. Williams and James F. Zimmerman (collectively "Plaintiffs") set forth the following averments for their complaint against the Defendants:

I. INTRODUCTION

1. This suit is brought to remedy imminent violations of Plaintiffs' right to vote as secured by the Kentucky Constitution and the United States Constitution. Under current practice in the Commonwealth of Kentucky, and pursuant to the Kentucky Constitution, the districts for seats in the Kentucky General Assembly are drawn based on census figures determined every ten years. The current districts for the Kentucky General Assembly were determined using census data from the 1990 census. In 1990, Kentucky had a total population of 3,685,296. The 2000 census data shows that the state's population has grown to 4,041,768. As a result of this population growth, all the Plaintiffs now reside in state Senate or state House districts in which their right to vote is improperly diluted. Similarly, all the Plaintiffs also reside in congressional districts that were drawn using data from the 1990 census. These congressional districts have also grown in population since 1990, thus diluting all the Plaintiffs' right to vote. This unconstitutional dilution can only be resolved by redrawing the districts for both the General Assembly and the U.S. House of Representatives, to allocate the state's population according to state and federal constitutional requirements based on the data from the 2000 census. Unless such redistricting occurs early enough to be applicable to the 2002 elections, Plaintiffs will suffer an unconstitutional dilution of the relative weight of their votes.

2. Although preliminary census data was available in early 2001 and the final census data was delivered to the Commonwealth of Kentucky while the General Assembly was sitting in

its regular 2001 legislative session, the 2001 regular session of the Kentucky General Assembly adjourned *sine die* without passing any new redistricting plans. While the legislature has authority to draw a redistricting plan during a special session, because Governor Patton refused to call a special session, and because of an impasse between House and Senate leaders that has been widely reported in the media, no redistricting plans were passed in 2001. *See, e.g., Legislators' impasse on redistricting looms over 2002 session; GOP's Williams: Democrats ignored "most fair attempt,"* The Courier-Journal, December 7, 2001. Governor Patton has publicly stated that because the districts created from the 1990 census data were not implemented until 1996 – after the initial districts were declared unconstitutional—he believes there is no need for reapportionment until a ten year interval after 1996 has passed. “I could make that kind of argument if it suited my purposes,” Patton is quoted as saying. *See, Partisanship may delay redistricting,* The Courier-Journal, March 19, 2001.

3. As of December 26, 2001, it is plain that no special legislative session will be called before the next regular session of the General Assembly, which convenes on January 8, 2002. Even if a special session were to be called, or if the legislature were to take up redistricting during its 2002 legislative session, because control of the General Assembly is split between the Democrat and Republican parties, it is unlikely that any redistricting plan could be passed in both chambers. Even if a plan could be agreed upon, it is impossible that any plan ultimately passed by the Kentucky General Assembly and signed into law could be implemented on a schedule that would provide sufficient notice to potential candidates to permit informed choices about whether to run for office, or that any plan enacted under these circumstances would meet the requirements of the U.S. Constitution and the Kentucky Constitution.

4. Plaintiffs therefore request that the Court take jurisdiction of this matter and declare that the current districts for the Kentucky General Assembly and the Kentucky seats in

the U.S. House of Representatives violate both the U.S. Constitution and the Kentucky Constitution. Plaintiffs also request that the Court enjoin the state from preparing to conduct elections in the existing districts, by prohibiting the printing of ballots or other steps dependent upon the identity of the candidates. As well, Plaintiffs request that the Court enjoin the enforcement of the January 29, 2002 filing deadline for those candidates who may seek election to the General Assembly or to the U.S. House of Representatives from Kentucky, and any others that may be affected by redistricting. As part of that injunction, Plaintiffs request that the Court and that it set a deadline by which the legislature must have completed the task of redistricting, in sufficient time to permit candidates to know and understand their districts and file their petitions in time for the orderly conduct of the 2002 Kentucky General Assembly and congressional elections. If the legislature fails to meet this deadline, Plaintiffs request that this Court fashion a plan of redistricting and re-draw the districts in question itself, and set appropriate filing deadlines in order to prevent these potential violations of Plaintiffs' voting rights.

II. JURISDICTION AND VENUE

5. Jurisdiction regarding this action is proper in this Court pursuant to KRS 23A.010.
6. Pursuant to KRS § 5.05, this Court is the exclusive venue for actions relating to the redistricting process.

III. PARTIES

7. Plaintiff John E. Bickel, Jr. is a registered voter and votes in the Second Congressional District, the 8th Senate District, and 14th House District.
8. Plaintiff Jim Skaggs is a registered voter and votes in the Second Congressional District, the 32nd Senate District and the 20th House District.

9. Plaintiff Elizabeth Bedford Thompson is a registered voter and votes in Fourth Congressional District, the 20th Senate District, and the 58th House District.

10. Plaintiff Basil Turbyfill is a registered voter and votes in the Sixth Congressional District, the 22nd Senate District, and the 54th House District

11. Plaintiff Robert L. Williams is a registered voter and votes in the 4th Congressional District, the 11th Senate District and the 60th House District.

12. Plaintiff James F. Zimmerman is a registered voter and votes in the 4th Congressional District, the 26th Senate District and the 59th House District.

13. Defendants are the Commonwealth of Kentucky and its officials who have duties and responsibilities under the laws of the state to redistrict U.S. House of Representatives and state legislative districts in Kentucky following the release of the decennial census, or to enforce the laws and ensure that the new districts are used beginning with the 2002 election. Defendant Paul E. Patton is the Governor of the Commonwealth of Kentucky and chief executive officer of the Commonwealth of Kentucky. Defendant Patton has authority to call special legislative sessions and to sign bills into law that have been passed by the Kentucky General Assembly

14. Defendant Jody Richards is Speaker of the Kentucky House of Representatives, and is the presiding officer over the Kentucky House of Representatives.

15. Defendant David L. Williams is President of the Kentucky Senate, and is the presiding officer over the Kentucky Senate.

16. Defendant A.B. Chandler, III is the Attorney General of the Commonwealth of Kentucky, and is the primary officer responsible for the enforcement of state law.

17. Defendant John Y. Brown III is the Secretary of State for the Commonwealth of Kentucky, and pursuant to KRS 117.015 is the chairman of the State Board of Elections and the

chief election official of the Commonwealth. He is responsible under the laws of the state to oversee the conduct of elections, and pursuant to KRS 5.05 is a necessary party to this action.

18. Defendant Kentucky State Board of Elections is an agency of the Commonwealth of Kentucky created pursuant to KRS 117.015, and is responsible for administering the election laws of the state.

19. Defendant Mary Sue Helm is the Acting Executive Director of the Kentucky State Board of Elections, and is the chief administrative officer of the State Board of Elections.

20. All defendants are sued in their official capacities.

IV. BACKGROUND FACTS

21. The 135th Regular Session of the Kentucky General Assembly adjourned *sine die* on Monday, March 23, 2001, in Frankfort, Kentucky. Although members of the General Assembly were aware that the important and constitutionally required task of redrawing districts for both the Kentucky General Assembly and for Kentucky's delegation to the United States House of Representatives loomed ahead, the session adjourned without any legislative action regarding redistricting, and without any such plans being passed. Subsequently, because of the Governor's refusal to call a special session of the legislature for the purpose of enacting a redistricting plan, and because of an impasse between the House of Representatives and the Senate, the General Assembly has failed to convene in special session for purposes of addressing redistricting. By refusing to call a special session, and by adjourning without passing any redistricting plan, the Defendants responsible for ensuring the integrity of Plaintiffs' constitutional right to vote through the timely implementation of a redistricting plan have failed to do so, and have failed to address important issues affecting Plaintiffs' right to equal representation, including the growth of population in the state and shifts in population within the state.

22. The existing congressional and legislative districts were drawn using population data from the 1990 census. According to that census, Kentucky's total population was 3,685,296. Using this data, each of Kentucky's thirty-eight Senate districts had an ideal size of 96,981, and each of Kentucky's one hundred House districts had an ideal size of 36,853. Kentucky's six congressional districts each had an ideal number of 614,216 residents. All of Kentucky's existing legislative and congressional districts were drawn using these ideal numbers as a baseline.

23. Data from the 2000 census substantially alters these figures. According to the 2000 census data, redistricting is expected to require an upward movement of each state Senate district to approximately 106,362 residents per district, and an upward movement of each state House district to approximately 40,418 residents per district. Reapportionment and redistricting will also require an upward movement in the size of each congressional district to approximately 673,628 residents per district.

24. The 2000 census data was received by the Commonwealth of Kentucky on March 20, 2001. The Kentucky General Assembly had until the conclusion of the 135th Regular Session on March 23, 2001, to enact redistricting plans during the regular session. Following that, the legislature had many months to reach an informal agreement and to request that the Governor call a special session.

25. Although Defendant Williams, in his capacity as President of the Kentucky Senate, formally requested the Governor to call a special session, none of the other defendants joined in that request, or otherwise sought to have Governor Patton call such a session.

26. Notwithstanding his constitutional power pursuant to Section 80 of the Kentucky Constitution to call the General Assembly into special legislative session, and his duty pursuant to Section 81 to take care that the laws be faithfully executed, throughout 2001 Governor Patton

refused to call a special session of the legislature for the purpose of addressing redistricting, and publicly stated his intentions not to do so.

27. Because of the failure of the Governor and the General Assembly to enact redistricting legislation, the task of drawing Kentucky legislative and congressional districts will fall to the courts, unless the legislature suddenly and unexpectedly manages to break the impasse that has lasted throughout 2001, and that is certain to exist when the General Assembly convenes in 2002.

28. With less than two weeks before the 2002 regular session of the Kentucky General Assembly, there is no evidence now that the legislature will be called into special session, or that it will be able to successfully redraw the state's legislative and congressional districts during its regular session starting on January 8, 2002, within the strict time frame caused by the state's January 29, 2002 filing deadline for candidates for the affected offices. Furthermore, any plan passed in the 136th regular session could be rendered unenforceable, because the filing deadlines for the 2002 elections may already have passed, thus leaving Plaintiffs to suffer unconstitutional vote dilution from voting in the existing districts.

29. As a result, absent intervention by the courts, there is the very real possibility that new constitutionally valid districts will not be drawn in time to meet the January 29, 2002 filing deadline for the 2002 election cycle. This possibility is more than just a theoretical one. Michigan, for example, failed to adopt a congressional redistricting plan following the past three consecutive decennial censuses. After each census, the task of redrawing Michigan's congressional districts fell to the courts. Following the 1990 census, the Arizona state House and Senate were unable to agree on a single plan for congressional redistricting, leaving the decision to the federal courts. In the current cycle, many states including Alabama, Texas, and Colorado

have also reached a legislative impasse over redistricting. In these states, courts have either already redrawn the states' districts or are in the process of doing so.

30. Should new congressional and legislative districts not be speedily redrawn in Kentucky, Plaintiffs will be forced to vote in unconstitutional districts, and will suffer dilution of their vote in the 2002 elections. Many of the state House and Senate districts are over-populated, including the 14th, 20th, 58th, 59th, and 60th House Districts and the 20th, 22nd, 26th and 32nd Senate districts. The voters in these House and Senate districts which have experienced significant growth will also have their votes diluted if voting occurs using the current district lines.

31. Plaintiff John Bickel resides in the 14th Kentucky House district. Data from the 2000 census has revealed that the 14th district now contains 43,024 people, exceeding the ideal size by 6.45%. The 2000 census also reveals that the 13th Kentucky House district contains only 34,781 people, deviating from the ideal size in the other direction by 13.95%. Plaintiff Bickel would, therefore, experience significant vote dilution in comparison to a voter in the 13th District were an election to be held using the districts that are currently in place.

32. Plaintiff Basil Turbyfill resides in the 22nd Kentucky Senate district. Data from the 2000 census has revealed that the 22nd Senate district now contains 134,400 people, exceeding the ideal size by 26.36%. Plaintiff Turbyfill would consequently suffer significant vote dilution in comparison to a voter in the 38th Senate district were an election to be held using the Senate districts that are currently in place.

33. Plaintiff Robert Williams resides in the 60th House district. Data from the 2000 census has revealed that the 60th House district now contains 58,004 people, exceeding the ideal size by 43.51%. The 2000 census also reveals that the 65th House district contains only 34,860 people, and therefore is under-populated with respect to the ideal size by 13.75%. Plaintiff

Williams would therefore suffer significant vote dilution in comparison to voters in other House districts were an election to be held using the House districts that are currently in place.

34. Plaintiff James Zimmerman resides in the 26th Senate district. Data from the 2000 census has revealed that the 26th Senate district now contains 128,480 people, exceeding the ideal size by 20.80%. The 2000 census also reveals that the 27th Senate district contains only 98,595, and therefore is under-populated with respect to the ideal size by 7.30%.

Zimmerman also resides in the 59th House district, and data from the 2000 census reveals that the 59th House district now contains 50,249, exceeding the ideal size by 24.32%. The 2000 census also reveals that the 57th House district contains only 37,848 people, and therefore is under-populated with respect to the ideal size by 6.36%. Zimmerman would therefore suffer significant vote dilution in comparison to voters in other Senate and House districts were an election to be held using the districts that are currently in place.

35. Plaintiff Elizabeth Bedford Thompson resides in the 20th Senate district. Data from the 2000 census reveals that the 20th Senate district now contains 118,163 people, exceeding the ideal size by 11.10%. The 2000 census also reveals that the 19th Senate district contains only 105,506 people, and therefore is under-populated with respect to the ideal size by 0.8%. Plaintiff Thompson also resides in the 58th House district. Data from the 2000 census reveals that the 58th House district now contains 50,648 people, exceeding the ideal size by 25.31%. The 2000 census also reveals that the 57th House district contains only 37,848 people, and therefore is under-populated with respect to the ideal size by 6.36%. Thompson would therefore suffer significant vote dilution in comparison to voters in other Senate and House districts were an election to be held using the districts that are currently in place.

36. Plaintiff Jim Skaggs resides in the 32nd Senate district. Data from the 2000 census reveals the 32nd Senate district now contains 119,095 people, exceeding the ideal size by

11.97%. The 2000 census also reveals that the 27th Senate district contains only 98,595, and therefore is under-populated with respect to the ideal size by 7.30%. Skaggs also resides in the 20th House district. Data from the 2000 census also reveals that the 20th House district now contains 43,073 people, exceeding the ideal size by 6.57%. The 2000 census also reveals that the 23rd House district contains only 339,204 people, and therefore is under-populated with respect to the ideal size by 3.00%. Skaggs would therefore suffer significant vote dilution in comparison to voters in other Senate and House districts were an election to be held using the districts that are currently in place.

37. Kentucky's existing even-numbered congressional districts are also overpopulated – the Sixth District by more 41,000 individuals – thus deviating from the ideal size necessary to ensure that a person's vote in one district weighs the same as a person's vote in another district. The remaining three districts are under-populated – the Third District by almost 57,000 individuals. Population disparities of this magnitude in Kentucky federal congressional districts are of great concern to the Plaintiffs because of the vote dilution they entail. The individual plaintiffs vote in the Second, Fourth, and Sixth Congressional Districts. Plaintiffs and thousands of other voters in these districts that have experienced significant growth will have their votes diluted if voting for the U.S. House of Representatives occurs using current district lines.

V. VIOLATIONS OF LAW

38. The population increases and population variances described in this complaint demonstrate that the voting districts for the Kentucky General Assembly and Kentucky's congressional delegation as currently drawn violate both:

- a. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, because Plaintiffs are denied their right to equal representation in the Kentucky General Assembly and U.S. Congress, and

b. The principle pervading Section 33 of the Kentucky Constitution requiring that "every district be as nearly equal in population as may be," because Plaintiffs currently reside in districts of unequal population, which could be remedied by the Defendants if they fulfilled their duty to redraw the existing General Assembly districts.

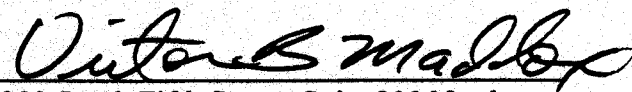
VI. REQUEST FOR RELIEF

Plaintiffs therefore respectfully request that the Court:

1. Assume jurisdiction over this matter;
2. Enter a declaratory judgment that the current Kentucky legislative and congressional districts violate Plaintiffs' rights under both federal and state law, and enjoin the Commonwealth of Kentucky through the appropriate defendants from continuing use of those districts in any future primary or general election;
3. Set strict timetables for the accomplishment of all necessary redistricting;
4. Extend by injunction the January, 29 2002 filing deadline for candidates for election to those offices subject to redistricting, including all seats in the Kentucky General Assembly and Kentucky's seats in the United States Houses of Representatives, so that the state legislature can have a reasonable period of time in which to accomplish redistricting in accordance with this court's schedule, and so that candidates will have a reasonable amount of time within which to make an informed judgment about whether to seek election in the new districts;
5. Draw constitutional legislative and congressional districts in time for the proper conduct of the 2002 election cycle, should the General Assembly fail to meet this Court's reasonable timetable;
6. Grant Plaintiffs their reasonable attorney fees and costs in this action; and
7. Grant Plaintiffs such further relief as may be necessary and appropriate.

Respectfully submitted,

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