

**Bob Johnson, et al. v. State of Missouri, et al.**

What did the Supreme Court say?

The Supreme Court ordered that challenge to the New House Map must be heard in the Circuit Court first, but instructed the Circuit Court to “expedite this matter to ensure a prompt decision in this election case.” The Court required this process because it found that the determinations of whether the New House Map was drawn (1) with equal population in every district “as nearly as possible,” and (2) with each district comprised of contiguous territory, and (3) with every district as “compact as may be,” involved disputed questions of fact. However, the Court would not order the Circuit Court to make these determinations promptly unless these facts were material. In other words, if these facts (or any one of them) can be shown – and the evidence is undisputed – then the New House Map must be, and will be, declared invalid.

Who are the Plaintiffs?

The Plaintiffs are a bi-partisan group of Missouri citizens and voters, living in various rural, suburban, and urban areas of the state, each of whom individually (and all of whom, collectively) are aggrieved by the House reapportionment map filed by the Appellate Apportionment Commission with the Secretary of State on November 30, 2011 (the “New House Map”).

Who are the Defendants?

The State (through the Attorney General), the Secretary of State Robin Carnahan, and the members of the Appellate Apportionment Commission (the “Commission”)

What relief is requested?

Plaintiffs seek declaratory judgments that the New House Map is unconstitutional and that the Commission violated the Sunshine Law, and (for both of the foregoing reasons) the Secretary must be enjoined from making any use of the New House Map in connection with the candidate filings for the 2012 primary or general elections, or otherwise.

What are the Plaintiffs' claims?

The New House Map violates requirements of Article III, Section 2. When the House is reapportioned following a decennial census, Section 2 which requires that *every* district: (1) be as nearly equal in population "as possible," (2) be composed of contiguous territory, and (3) be as compact "as may be."

Population Equality: The overarching, irreducible test of a valid House apportionment is that every district must be equal in population to every other district. When this does not happen, one person's vote counts more than another's, in violation of equal protection and the constitutional guaranty of "free and open elections." Therefore, Section 2 requires that the population of every "district shall, **as nearly as possible, equal**" the total population of the State divided by the number of districts (i.e., 163). The New House Map does not even come close to this constitutional requirement. Instead, The New House Map misses this mandatory and objective population target by **at least 1,100 people (or 3.0% of the target) in no fewer than 40 districts, or 25% of all 163 districts statewide**. See Exhibit B to the Writ Petition, pp. 2-6 (Population Deviation Statistics submitted by the Commission). Moreover, the New House Map misses the constitutional population target by **at least 735 people (2.0% of the target) in 67 House districts, or 41% of all districts**. This falls far short of what is "possible," as amply demonstrated by the fact that, in August 2011, the Democratic Members and the Republican Members of the bipartisan apportionment committee each submitted proposed maps in which **not one single district** out of the combined 326 districts proposed in these two maps missed the constitutional population target by as much as 735 people (2.0% of the target), let alone the much more substantial and pervasive deviations in the New House Map. See Exhibit C to the Writ Petition, pp. 7-10 (comparing deviation data for the New House Map and the Republican and Democratic Commissioner proposals dated August 11, 2011). The Constitution demands equality "as nearly as possible." What was "possible" for these two politically motivated maps was surely "possible" for the New House Map. Thus, its failure to match (or exceed) their degree of population equality demonstrates that the districts in New House Map are not as nearly equal in population "as possible."

Contiguity: Article III, Section 2 requires that "[e]ach district shall be composed of contiguous territory[.]" The New House Map fails this requirement because Districts 49, 50, 53, 70, 98, 110 each have one portion of the district which is cut off from the remainder by a major river, with no connecting bridge in the district.

*See* Exhibit E, pp. 17-22 (maps of these six districts showing major rivers, which are not shown on the official maps). Thus, a resident of any of these districts cannot travel from one end of their district to the other without having to leave their district, cross through at least one or more other districts, just to find a bridge to give them access to the non-contiguous portion of their district. When the Missouri voters approved Section 2 and its requirement of contiguity, it cannot be asserted that they intended to authorize Districts 50 and 70, each of which is split nearly down the middle by the Missouri River, just as the Meramec River splits District 98.

Compactness: In the language used by the Supreme Court last week in the *Pearson* case, any “rational and objective” review of the New House Map will demonstrate as a matter of law that it falls far short of the constitutional requirement for districts to be “as compact as may be.” Although the Constitution requires senatorial districts to follow county lines as much as possible, nothing in Section 2 requires (or even expressly allows) this for House districts.

Sunshine Law Violation: The Commission violated the Sunshine Law by holding meetings from which the public was excluded, for which no proper public notice was provided, at which the procedures for going into closed or executive session were not followed, and concerning which no journal or minutes were kept. The Court may void all actions taken in violation of the Sunshine Law.

Why challenge the New House Map?

Missourians must live with these reapportionments for a long time. This is why the Constitution’s mandatory and objective requirements of equality, contiguity and compactness are meant to ensure that each map meets basic standards of fairness and equality. Thus, if it is possible to draw a map with districts more nearly equal in population, the Missourians are *entitled* to such a map under the Constitution. If it is possible to apportion the House without creating districts which span great rivers (even by accident), Missourians have a *right* to such a map under their Constitution. And, if it is possible to draw districts that are more compact, the Constitution requires that it be done (provided it does not infringe upon the higher constitutional priorities of contiguity and population equality).