

## Redistricting Kansas

*Essex v. Kobach*

(*Kathryn H. Vratil, D. Kan. 5:12-cv-4046*)

On May 3, 2012, a Kansas voter filed a federal complaint against Kansas's secretary of state in the federal courthouse in Topeka, seeking reapportionment in light of the 2010 census for congressional districts, districts for both of Kansas's legislative houses, and state board of education districts.<sup>1</sup>

On May 16, the secretary filed an answer,<sup>2</sup> and on the following day he filed an unopposed motion to expedite resolution of the case.<sup>3</sup> “In the increasingly unlikely event that the Kansas Legislature somehow manages to complete reapportionment plans at this late hour, a motion can [be] entered [at] that time to dismiss this case as moot.”<sup>4</sup>

On May 17, Judge Kathryn H. Vratil set a hearing for May 30 on proposed reapportionment plans.<sup>5</sup> The hearing was later reset for May 29.<sup>6</sup> On May 18, Chief Tenth Circuit Judge Mary Beck Briscoe appointed herself, Judge Vratil, and Judge John Lungstrum as a three-judge court to preside over the reapportionment action.<sup>7</sup>

From May 18 through May 21, 13 voters, including some elected representatives, filed seven motions to intervene,<sup>8</sup> and the three-judge court granted intervention at a status hearing on May 21.<sup>9</sup> Also on May 21, Kansas's attorney general and 13 other voters, including elected representatives and a local party chair,

1. Complaint, *Essex v. Kobach*, No. 5:12-cv-4046 (D. Kan. May 3, 2012), D.E. 1; *Essex v. Kobach*, 874 F. Supp. 2d 1069, 1074, 1078 (D. Kan. 2012); see Tim Carpenter, *Redistricting Lawsuit Hits Federal Court*, Topeka Capital-J., May 4, 2012, at A; see also Tim Carpenter, *Senate Passes Another Redistricting Map*, Topeka Capital-J., May 19, 2012, at A (“The lawsuit was filed by a Johnson County Republican precinct committeewoman, with ties to the House Republican leadership.”).

2. Answer, *Essex*, No. 5:12-cv-4046 (D. Kan. May 16, 2012), D.E. 8; *Essex*, 874 F. Supp. 2d at 1078; see Tim Carpenter, *Kobach Asks a Federal Court to Settle Redistricting*, Topeka Capital-J., May 17, 2012, at A; Steve Kraske & Brad Cooper, *Kobach Asks Federal Judges to Redraw Kansas Districts*, Kan. City Star, May 16, 2012 (also reporting, “Of the 50 states, Kansas now stands as the only one that has yet to draw new congressional boundaries.”).

3. Expedition Motion, *Essex*, No. 5:12-cv-4046 (D. Kan. May 17, 2012), D.E. 9; *Essex*, 874 F. Supp. 2d at 1078.

4. Expedition Motion, *supra* note 3, at 2.

5. Docket Sheet, *Essex*, No. 5:12-cv-4046 (D. Kan. May 3, 2012).

Tim Reagan interviewed Judge Vratil for this report by telephone on July 8, 2013.

6. *Id.*

7. Order, *Essex*, No. 5:12-cv-4046 (D. Kan. May 18, 2012), D.E. 13.

8. Intervention Motions, *id.* (May 18–21, 2012), D.E. 16, 20, 23, 26, 37, 41, 44.

9. Intervention Order, *id.* (May 25, 2012), D.E. 47, available at [2012 WL 1901284](#); Minutes, *id.* (May 21, 2012), D.E. 47; *Essex v. Kobach*, 874 F. Supp. 2d 1069, 1078–79 (D. Kan. 2012) (“Most of the intervenors have unabashedly political reasons for intervening, and they seek to advance their respective political agendas by arguing for and against various maps that the legislature considered . . .”); see Andy Marso, *Court Adds More Plaintiffs*, Topeka Capital-J., May 22, 2012, at A.

filed eight additional motions to intervene,<sup>10</sup> which the court granted on May 23 and 24.<sup>11</sup>

On May 22, Judge Vratil issued an order for the court informing the parties that the unconstitutionality of existing districts was uncontested and that proposals for congressional districts would be considered from 9:00 to noon on May 29, for the state legislature from 1:00 to 5:00, and for the state board of education on the following morning.<sup>12</sup> Because of the public interest in the case, the court used a Tenth Circuit courtroom for the proceedings, which was larger than Judge Vratil's courtroom and which could more easily accommodate three judges and the large number of litigants.<sup>13</sup>

The court established a special website for public access to the case file and other information about the case.<sup>14</sup> As a pilot court for cameras in the courtroom, the court also recorded the proceedings on video.<sup>15</sup> Because video recording was not customary in the court of appeals, recording equipment had to be brought in for this case.<sup>16</sup>

With the assistance of an analyst employed by the Kansas Legislative Research Department,<sup>17</sup> the judges began the process of drawing district lines immediately after court proceedings.<sup>18</sup> Hardware and software were set up in Judge Vratil's chambers, and the analyst worked with the judges in confidence.<sup>19</sup>

The court announced new districting plans late at night on June 7.<sup>20</sup> Traffic to the court's website nearly crashed the site.<sup>21</sup>

The Secretary of State advised us of the June 11, 2012 filing deadline that candidates for Congress, the state legislature and the Kansas Board of Education face, and we have endeavored to complete this order as expeditiously as possible to permit that deadline to remain in place.

...

... Thanks to impressive focus, industry and organization by dozens of lawyers, the Court was in a position to receive a huge volume of evidence on short notice, in a highly compressed and efficient format. . . . [N]one of the proposed plans are both constitutional and fully comport with the non-constitutional criteria that apply to redistricting plans ap-

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10. Intervention Motions, *id.* (May 21, 2012), D.E. 54, 56, 59, 60, 62, 65, 68, 72.

11. Intervention Order, *supra* note 9; Docket Sheet, *supra* note 5.

12. Trial Order, *Essex*, No. 5:12-cv-4046 (D. Kan. May 22, 2012), D.E. 82; *see* Brad Cooper, *Judges Will Now Draw Kansas Political Districts*, Kan. City Star, May 30, 2012; Andy Marso & Aly Van Dyke, *Differing Maps Presented to Court*, Topeka Capital-J., May 30, 2012, at A.

13. Interview with Hon. Kathryn H. Vratil, July 8, 2013.

14. <http://www.ksd.uscourts.gov/redistricting-case/>; *see* Andy Marso, *Redistricting Trial to Begin*, Topeka Capital-J., May 28, 2012, at A

15. <http://www.uscourts.gov/Multimedia/Cameras/DistrictofKansas/12-cv-4046.aspx>.

16. Interview with Hon. Kathryn H. Vratil, July 8, 2013.

17. *Essex v. Kobach*, 874 F. Supp. 2d 1069, 1079 (D. Kan. 2012).

18. Interview with Hon. Kathryn H. Vratil, July 8, 2013.

19. *Id.*

20. *Essex*, 874 F. Supp. 2d 1069 (comprising 194 reporter pages); *see* Steve Kraske & Dave Helling, *Federal Judges Impose New Kansas Political Lines*, Kan. City Star, June 8, 2012.

21. Interview with Hon. Kathryn H. Vratil, July 8, 2013.

proved or crafted in a judicial context. As a result, the Court has regrettably resorted to the painstaking task of drawing its own plans.<sup>22</sup>

The court awarded both the original plaintiff and some intervening plaintiffs a total of \$379,447.15 in attorney fees and expenses.<sup>23</sup>

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22. *Essex*, 874 F. Supp. 2d at 1074, 1079.

23. Opinion, *Essex*, No. 5:12-cv-4046 (D. Kan. June 6, 2013), D.E. 328.