

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JEFFERSON COUNTY COMMISSION;
PATRICIA NOLAND, *as an individual
and behalf of all others similarly situated*;
and DALE MANUEL, *as an individual and
behalf of all others similarly situated*,

Plaintiffs, and

THORNTON COOPER,

Intervening Plaintiff,

v.

Civil Action No. 2:11-CV-989
(KING, BAILEY, BERGER)

NATALIE E. TENNANT, *in her capacity as
the Secretary of State*; EARL RAY TOMBLIN,
*in his capacity as the Chief Executive Officer
of the State of West Virginia*; JEFFREY
KESSLER, *in his capacity as the Acting
President of the Senate of the West Virginia
Legislature*; and RICHARD THOMPSON, *in
his capacity as the Speaker of the House of
Delegates of the West Virginia Legislature*,

Defendants.

MOTION BY THORNTON COOPER FOR SUMMARY JUDGMENT.

Thornton Cooper, the Intervening Plaintiff, hereby submits his Motion for
Summary Judgment in the above-captioned case.

Intervening Plaintiff Thornton Cooper moves that this Honorable Court issue an
order (1) that declares *W. Va. Code § 1-2-3*, as amended in 2011 by Enrolled Senate

Bill No. 1008, to be unconstitutional and null and void in violation of federal law, (2) that enjoins the Defendants from enforcing that statute in the 2012 elections, and (3) that requires the Defendants to conduct the 2012 congressional elections in West Virginia under one of the plans submitted by Intervening Plaintiff Cooper.

Attached hereto is an affidavit in support of this motion.

Also being filed on this date is a memorandum in support of this motion.

THORNTON COOPER

Intervening Plaintiff

Pro Se

/s/ Thornton Cooper
Thornton Cooper (WVSB No. 823)
3015 Ridgeview Drive
South Charleston, WV 25303
(304) 744-9616 (home)
thornbush@att.net

Dated: December 19, 2011

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Defendants.

CERTIFICATE OF SERVICE.

I, Thornton Cooper, Intervening Plaintiff, do hereby certify that on December 19, 2011, I electronically filed the foregoing **MOTION BY THORNTON COOPER FOR SUMMARY JUDGMENT** and the attached **AFFIDAVIT BY THORNTON COOPER IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court

using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

David M. Hammer, Esq.
Hammer, Ferretti & Schiavoni
408 West King Street
Martinsburg, WV 25401
Phone: (304) 264-8505
Fax: (304) 264-8506
dhammer@hfslawyers.com
Counsel for Plaintiffs;

George E. Carenbauer, Esq.
Steptoe & Johnson
P. O Box 1588
Charleston, WV 25326
Phone: (304) 353-8000
Fax: (304) 353-8180
George.Carenbauer@steptoe-johnson.com
Counsel for Defendant Jeffrey Kessler;

Thomas W. Rodd, Esq.
Assistant Attorney General
Office of the Attorney General
812 Quarrier Street, 6th Floor
Charleston, WV 25301
Phone: (304) 558-5830
Fax: (304) 558-5833
twr@wvago.gov
Counsel for Defendants Natalie E. Tennant
and Earl Ray Tomblin.

Stephen G. Skinner, Esq.
Skinner Law Firm
P. O. Box 487
Charles Town, WV 25414
Phone: (304) 725-7029
Fax: (304) 725-4082
sskinner@skinnerfirm.com
Counsel for Plaintiffs;

Anthony J. Majestro, Esq.
Cynthia A. Majestro, Esq.
Powell & Majestro, PLLC
405 Capitol Street, Suite P-1200
Charleston, WV 25301
Phone: (304) 346-2889
Fax: (304) 346-2895
amajestro@powellmajestro.com
cmajestro@powellmajestro.com
Counsel for Defendant Richard
Thompson; and

/s/ Thornton Cooper
Thornton Cooper (WVSB No. 823)
3015 Ridgeview Drive
South Charleston, WV 25303
(304) 744-9616 (home)
thornbush@att.net

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Defendants.

**AFFIDAVIT BY THORNTON COOPER IN SUPPORT OF HIS MOTION FOR
SUMMARY JUDGMENT.**

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

On this day came **Thornton Cooper**, who, after being duly sworn, did depose
and say:

(1) That I am an adult over the age of 18 years and am competent to make this Affidavit;

(2) That my full name is Stuart Thornton Cooper;

(3) That I am a native and resident of the City of South Charleston, which is located in Kanawha County, West Virginia;

(4) That I am a graduate of South Charleston High School (1968), Yale University (B. A., Political Science, 1972), and the West Virginia University College of Law (J.D., 1978);

(5) That I have been licensed to practice law in West Virginia since 1978 (West Virginia State Bar No. 823);

(6) That I am a political cartographer;

(7) That I have actively participated and testified in federal cases involving the redistricting of West Virginia's congressional districts following the 1980 and 1990 Censuses;

(8) That I was qualified as an expert in the latter case, *Stone v. Hechler*, 782 F. Supp. 1116, 1122, 1123 (N. D. W. Va. 1992);

(9) That I was a candidate for Congress in the 2008 Democratic primary in West Virginia's Second Congressional District, as it was then constituted;

(10) That I have reviewed the population figures for West Virginia's 55 counties and for many of the voting districts (precincts) in those counties under the 2010 Census;

(11) That I have reviewed the figures for the areas of West Virginia's 55 counties as that information is set forth in the 2007 edition of the **West Virginia Blue Book**;

(12) That, according to those figures, the populations of the West Virginia's fifty-five (55) counties under the 2010 Census and the areas of those counties (rounded to the nearest square mile) are as follows:

<u>County</u>	<u>2010 Population</u>	<u>Area(square miles)</u>
Barbour	16,589	343
Berkeley	104,169	322
Boone	24,629	503
Braxton	14,523	517
Brooke	24,069	93
Cabell	96,319	288
Calhoun	7,627	280
Clay	9,386	346
Doddridge	8,202	321
Fayette	46,039	669
Gilmer	8,693	340
Grant	11,937	480
Greenbrier	35,480	1,025
Hampshire	23,964	645
Hancock	30,676	88
Hardy	14,025	585
Harrison	69,099	417
Jackson	29,211	471
Jefferson	53,498	212
Kanawha	193,063	908
Lewis	16,372	390
Lincoln	21,720	439
Logan	36,743	456
McDowell	22,113	535
Marion	56,418	312
Marshall	33,107	312
Mason	27,324	445
Mercer	62,264	421
Mineral	28,212	329
Mingo	26,839	424
Monongalia	96,189	366
Monroe	13,502	474
Morgan	17,541	230
Nicholas	26,233	654
Ohio	44,443	109
Pendleton	7,695	698

Pleasants	7,605	135
Pocahontas	8,719	942
Preston	33,520	651
Putnam	55,486	350
Raleigh	78,859	609
Randolph	29,405	1,040
Ritchie	10,449	454
Roane	14,926	484
Summers	13,927	368
Taylor	16,895	176
Tucker	7,141	421
Tyler	9,208	261
Upshur	24,254	355
Wayne	42,481	512
Webster	9,154	556
Wetzel	16,583	361
Wirt	5,717	235
Wood	86,956	377
Wyoming	23,796	502
Total	1,852,994	24,231

(13) That, following the 2010 Census, West Virginia, with a population of 1,852,994, was assigned a total of three (3) members of Congress;

(14) That, under the 2001 redistricting statute, West Virginia, as of the beginning of 2011, was divided as follows: (a) The First Congressional District, with a 2010 population of 615,991, consisted of Barbour, Brooke, Doddridge, Gilmer, Grant, Hancock, Harrison, Marion, Marshall, Mineral, Monongalia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, and Wood Counties. (b) The Second Congressional District, with a population of 648,186, consisted of Berkeley, Braxton, Calhoun, Clay, Hampshire, Hardy, Jackson, Jefferson, Kanawha, Lewis, Mason, Morgan, Pendleton, Putnam, Randolph, Roane, Upshur, and Wirt Counties. (c) The Third Congressional District, with a population of 588,817, consisted of Boone, Cabell,

Fayette, Greenbrier, Lincoln, Logan, McDowell, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Raleigh, Summers, Wayne, Webster, and Wyoming Counties;

(15) That, early in 2011, after the Census Bureau released the 2010 population figures for each of West Virginia 55 counties, I (using a calculator, pen, and paper) began analyzing those population figures and began grouping counties together to form possible congressional districts and possible state legislative districts;

(16) That, under the 2010 Census results, the ideal population for a West Virginia congressional district, to the nearest integer, is 617,665;

(17) That the congressional redistricting plan that would be closest to numerical equality among districts would result in one congressional district with a population of 617,664 and two congressional districts with a population of 617,665 each. $617,664 + 617,665 + 617,665 = 1,852,994$;

(18) That, on March 29, 2011, I telephoned one of my legislative representatives, State Senator Brooks McCabe, and requested that Senator McCabe informally sponsor my various redistricting plans so that those plans could be analyzed by the West Virginia Redistricting Office, which is located in the basement of the State Capitol Building, with the understanding that his sponsorship of these plans would be for the purpose of discussion only;

(19) That, during that telephone conversation, Senator McCabe agreed to have the Legislature's redistricting office analyze my congressional redistricting plans for the purpose of discussion;

(20) That, in April 2011, the West Virginia State Senate Redistricting Committee (with its staff, and prior to August 2011, also known as the State Senate Redistricting

Task Force) SSRC, chaired by State Senator John Unger, II, announced that it would begin holding public hearings across the state to obtain public comment on redistricting congressional districts, State Senate districts, and House of Delegates districts;

(21) That, on May 2, 2011, I attended the first of these public hearings, which was held in Martinsburg;

(22) That, on May 4, 2011, I sent an e-mail to Senator McCabe which set forth in detail three (3) separate congressional redistricting plans;

(23) That Senator McCabe then e-mailed those plans to the West Virginia Redistricting Office, which analyzed them, and after completing that analysis, eventually submitted the plans, with analysis, back to Senator McCabe;

(24) That, in turn, Senator McCabe e-mailed those plans, with analysis, back to me, so that I could then submit them as citizen submissions at the SSRC hearings;

(25) That, during May, June, and July of 2011, the SSRC held twelve (12) hearings across the state;

(26) That I attended all twelve (12) of the SSRC hearings, the last of which was held on Thursday, July 21, 2011, in Princeton;

(27) That, at those hearings, I submitted those three different plans to the SSRC and made oral presentations about my various proposals;

(28) That, as of the morning of Monday, December 19, 2011, those submissions (and my oral presentations to that committee) are set forth in detail, and are mapped out, on the State Senate's redistricting website;

(29) That, at those hearings, I repeatedly urged that the Legislature create congressional districts and legislative districts that would be equal in population as nearly as practicable;

(30) That one individual who attended several of those SSRC hearings was Aaron Allred, the Legislative Auditor and Legislative Manager for the Joint Committee on Government and Finance of the West Virginia Legislature;

(31) That Mr. Allred repeatedly told those at the public hearings that population variances among congressional districts were permissible if those variances did not exceed 1% of the population of a congressional district;

(32) That of all the plans that were submitted to the SSRC during these public hearings, my three (3) submissions to that committee are the plans closest to numerical equality that divide no counties between or among congressional districts;

(33) That, under the first of my congressional redistricting plans, which was identified by the redistricting office as "Congressional Plan 1 McCabe and Cooper", the populations of the three congressional districts are 617,341, 617,869, and 617,784;

(34) That a copy of that plan, including population and deviation figures and a color map of the districts, was attached to Intervening Plaintiff Cooper's Complaint as Attachment A;

(35) That under that plan, which will be referred to as Cooper Plan No. 1, West Virginia would be divided as follows: (a) The First Congressional District, with a 2010 population of 617,341, would consist of Brooke, Cabell, Calhoun, Clay, Gilmer, Hancock, Jackson, Lewis, Marshall, Mason, Monongalia, Ohio, Pleasants, Ritchie, Roane, Tyler, Wayne, Wetzel, Wirt, and Wood Counties. (b) The Second

Congressional District, with a population of 617,869, would consist of Barbour, Berkeley, Braxton, Doddridge, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jefferson, Marion, Mineral, Monroe, Morgan, Pendleton, Pocahontas, Preston, Randolph, Summers, Taylor, Tucker, Upshur, and Webster Counties. (c) The Third Congressional District, with a population of 617,784, would consist of Boone, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Putnam, Raleigh, and Wyoming Counties;

(36) That, under the second of my congressional redistricting plans, which was identified by the redistricting office as "Congressional Plan 2 McCabe and Cooper", the populations of the three congressional districts are 617,778, 617,432, and 617,784;

(37) That a copy of that plan, including population and deviation figures and a color map of the districts, was attached to Intervening Plaintiff Cooper's Complaint as Attachment B;

(38) That under that second plan, which will be referred to as Cooper Plan No.2, West Virginia would be divided as follows: (a) The First Congressional District, with a 2010 population of 617,778, would consist of Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Jefferson, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Preston, Randolph, Tucker, Tyler, and Wetzel Counties. (b) The Second Congressional District, with a population of 617,432, would consist of Braxton, Cabell, Calhoun, Clay, Gilmer, Greenbrier, Harrison, Jackson, Lewis, Marion, Mason, Monroe, Pocahontas, Ritchie, Roane, Summers, Taylor, Upshur, Wayne, Webster, Wirt, and Wood Counties. (c) The Third Congressional District, with a

population of 617,784, would consist of Boone, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Putnam, Raleigh, and Wyoming Counties;

(39) That, under the third of my congressional redistricting plans, which was identified by the redistricting office as "Congressional Plan 3 McCabe and Cooper", the populations of the three congressional districts are 617,778, 617,667, and 617,549;

(40) That a copy of that third plan, including population and deviation figures and a color map of the districts, was attached to Intervening Plaintiff Cooper's Complaint as Attachment C;

(41) That under that third plan, which will be referred to as Cooper Plan No. 3, West Virginia would be divided as follows: (a) The First Congressional District, with a 2010 population of 617,778, would consist of Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Jefferson, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Preston, Randolph, Tucker, Tyler, and Wetzel Counties. (b) The Second Congressional District, with a population of 617,667, would consist of Boone, Cabell, Clay, Jackson, Kanawha, Lincoln, Mason, Putnam, Ritchie, Roane, Wayne, Wirt, and Wood Counties. (c) The Third Congressional District, with a population of 617,549, would consist of Braxton, Calhoun, Fayette, Gilmer, Greenbrier, Harrison, Lewis, Logan, Marion, McDowell, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Raleigh, Summers, Taylor, Upshur, Webster, and Wyoming Counties;

(42) That, following the conclusion of these hearings by the SSRC, the First Extraordinary Session of the 2011 Legislature was convened in Charleston on Monday, August 1, 2011;

(43) That, as reconstituted as a legislative committee with the same members, the SSRC held no more public hearings, although several individuals, including WVU Law Professor Robert Bastress and me, were asked to address the committee during its meetings relating to congressional redistricting;

(44) That Professor Bastress told the committee that, in congressional redistricting, the Legislature should make a good-faith effort to achieve perfect equality;

(45) That, at the meeting of the SSRC on Wednesday, August 3, 2011, Senator Unger unveiled, on a computer screen, a redistricting plan which, he said, would divide West Virginia into three congressional districts with populations of 617,664, 617,665, and 617,665 and would split Kanawha County and another county between or among congressional districts;

(46) That because I do not have a copy of the plan unveiled by Senator Unger at that committee meeting, I cannot describe that proposal in more detail in this affidavit;

(47) That at the meeting of the SSRC on Thursday, August 4, 2011, that committee, after discussing a number of proposals, and voting down all but one of them, reported out a bill that would amend the congressional-districts language in *W.Va. Code* §1-2-3, as last amended in 2001, by moving Mason County from the Second Congressional District to the Third Congressional District and by making no other changes to the then existing congressional districts;

(48) That that bill, designated Senate Bill No. 1008, passed the State Senate and the House of Delegates on Friday, August 5, 2011;

(49) That Enrolled Senate Bill No. 1008 bill took effect from passage and was subsequently signed by Defendant, and then Acting Governor, Earl Ray Tomblin on Thursday, August 18, 2011;

(50) That the population variances among congressional districts under Enrolled Senate Bill No. 1008 are much greater than the population variances under any of Cooper Plans Nos. 1, 2, and 3 and are also much greater than the population variances in the 1991 legislation that was allowed to stand in *Stone v. Hechler, supra*;

(51) That, under Enrolled Senate Bill No. 1008, West Virginia is divided as follows: (a) The First Congressional District, with a population of 615,991, consists of Barbour, Brooke, Doddridge, Gilmer, Grant, Hancock, Harrison, Marion, Marshall, Mineral, Monongalia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, and Wood Counties. (b) The Second Congressional District, with a population of 620,862, consists of Berkeley, Braxton, Calhoun, Clay, Hampshire, Hardy, Jackson, Jefferson, Kanawha, Lewis, Morgan, Pendleton, Putnam, Randolph, Roane, Upshur, and Wirt Counties. (c) The Third Congressional District, with a population of 616,141, consists of Boone, Cabell, Fayette, Greenbrier, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Raleigh, Summers, Wayne, Webster, and Wyoming Counties;

(52) That the new Second Congressional District, in which Plaintiff Jefferson County Commission is located, and in which Plaintiffs Patricia Noland and Dale Manuel and Intervening Plaintiff Thornton Cooper reside, is the most populous of these districts, exceeding the population of the old and new First Congressional District by 4,871 people;

(53) That, in early December 2011, I developed a fourth congressional redistricting plan, which will be referred to as Cooper Plan No. 4;

(54) That, on Saturday, December 17, 2011, I filed with this Court a description of Cooper Plan No. 4, along with maps and population figures;

(55) That plan Cooper Plan No. 4 divides one county, Taylor County, between the First and Third Congressional Districts and divides no other county;

(56) That, under Cooper Plan No. 4, six (6) Taylor County precincts -- Taylor County Voting Districts 3 (with a population of 1,108), 9 (with a population of 538), 10 (with a population of 1,411), 11 (with a population of 266), 12 (with a population of 956), and 14 (with a population of 1,079) -- with a total population of 5,358, are placed in the First Congressional District;

(57) That, under Cooper Plan No. 4, the other twelve (12) Taylor County precincts -- Taylor County Voting Districts 1 (with a population of 2,214), 2 (with a population of 1,202), 4 (with a population of 968), 6 (with a population of 427), 17 (with a population of 1,084), 19 (with a population of 1,201), 23 (with a population of 570), 25 (with a population of 726), 26 (with a population of 502), 29 (with a population of 314), 31 (with a population of 1,051), and 36 (with a population of 1,278) -- with a total population of 11,537, are placed in the Third Congressional District;

(58) That, under Cooper Plan No. 4, West Virginia would be divided as follows:
(a) The First Congressional District, with a 2010 population of 617,663, would consist of all of Berkeley, Brooke, Grant, Hampshire, Hancock, Hardy, Jefferson, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pleasants, Preston, Tucker, Tyler, and Wetzel Counties and of part of Taylor County. (b) The Second Congressional District,

with a population of 617,667, would consist of all of Boone, Cabell, Clay, Jackson, Kanawha, Lincoln, Mason, Putnam, Ritchie, Roane, Wayne, Wirt, and Wood Counties.

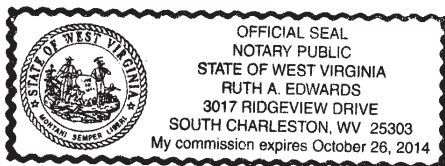
(c) The Third Congressional District, with a population of 617,664, would consist of all of Barbour, Braxton, Calhoun, Doddridge, Fayette, Gilmer, Greenbrier, Harrison, Lewis, Logan, McDowell, Mercer, Mingo, Monroe, Nicholas, Pendleton, Pocahontas, Raleigh, Randolph, Summers, Upshur, Webster, and Wyoming Counties and of part of Taylor County;

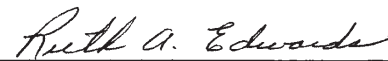
And further, this Affiant saith naught.


THORNTON COOPER

Taken, subscribed and sworn to before me this 19th day of December, 2011.

My commission expires October 26, 2014




Notary Public