

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

SHARON RUSSELL,)	
)	
Plaintiff,)	
)	
v.)	No. 2:13-cv-47
)	
VIGO COUNTY COMMISSIONERS,)	
)	
Defendant.)	

Complaint for Declaratory and Injunctive Relief

Introduction

1. The Vigo County Commissioners (“the Commissioners”) have the responsibility, among other things, of establishing the election districts for the election of the four members of the County Council of Vigo County who are elected from separate districts. The Commissioners have failed to comply with their statutory obligation of redistricting following the 2010 census and, as a result, county council districts are not nearly equal in size. The gross disparity in electoral apportionment not only violates Indiana law, but also violates the equal protection clause of the Fourteenth Amendment to the United States Constitution. Plaintiff, a Vigo County voter, seeks appropriate injunctive and declaratory relief.

Jurisdiction, venue, cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1331 and 1343.
3. Declaratory relief is authorized pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C §§ 2201, 2202.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
5. This action is brought to redress the deprivation, under color of state law, of rights

secured by the Constitution of the United States.

6. This Court has jurisdiction of the supplemental state claim pursuant to 28 U.S.C. § 1367 in that the claims brought pursuant to Indiana law and the United States Constitution are so related that they form part of the same case or controversy under Article III of the United States Constitution.

Parties

7. Sharon Russell is an adult resident and registered voter who lives in Terre Haute in Vigo County, Indiana.

8. The Vigo County Commissioners are a three-member board that constitutes the county executive for Vigo County. Ind. Code § 36-2-2-2.

Legal background

9. The County Council of Vigo County is the fiscal body of Vigo County, Ind. Code § 36-2-3-2, and consists of seven members, three of whom are elected at large and four of whom are elected from single-member districts. Ind. Code § 36-2-3-4.

10. Indiana law, Indiana Code § 36-2-3-4(d), provides that the four single-member districts must:

- (1) be compact, subject only to natural boundary lines (such as railroads, major highways, rivers, creeks, parks, and major industrial complexes);
- (2) not cross precinct boundary lines;
- (3) contain, as nearly as possible, equal population; and
- (4) include whole townships, except when a division is clearly necessary to accomplish redistricting under this section.

11. Indiana law, Indiana Code § 36-2-3-4(e)(1), states that redistricting shall occur, among other times, “during the first year after a year in which a federal decennial census is conducted.”

Factual allegations

12. As prescribed by Indiana law, the County Council of Vigo County consists of seven members, three of whom are elected at large and four of whom are elected from four districts denominated as Districts 1 – 4.

13. Council members are elected for terms of four years. Ind. Code § 36-2-3-3(b).

14. On information and belief, the 2010 census provided that the populations of the four districts total:

District 1	28,699
District 2	22,548
District 3	25,105
District 4	31,478

15. District 4 contains the Federal Correctional Complex that has, as of the 2010 census, 3,251 prisoners.

16. Including the federal prisoners, the total deviation from the average population of the four districts, is 33%. Excluding the federal prisoners, the total deviation is 23.5%. As noted by then-District Judge John Daniel Tinder in 1993 in finding that the Commissioners had violated the Constitution for failing to properly apportion Vigo County Council districts, the “total deviation’ is determined by adding the deviation [from the average population of the four districts] of the district with the largest population to the deviation of the district with the smallest population.” *Vigo County Republican Cent. Comm. v. Vigo County Commissioners*, 834 F. Supp. 1080, 1083 n.5 (S.D. Ind. 1993).

17. Despite this, the Vigo County Commissioners did not engage in redistricting following the 2010 Census.

18. Elections for the at-large council position were held in November of 2012 and those for the district members will be held in 2014.

19. Sharon Russell is a registered voter who resides in Vigo County Council District No. 3 and who regularly votes in elections for the County Council of Vigo County, and who plans to vote in future elections, and who desires to have a vote that is equal to that of the votes of other Vigo County voters.

20. However, in elections for the County Council of Vigo County, voters in District 2 have the same voting strength as those in District 3, despite the fact that District 2 is less than 89% of the population size of District 3.

21. Sharon Russell's vote has been diluted and she objects to this.

22. Plaintiff is being caused irreparable harm for which there is no adequate remedy at law.

23. At all times defendant has acted under color of state law.

Legal claims

24. The lack of substantial equality of population among the districts from which members of the County Council of Vigo County are elected deprives plaintiff, as well as other citizens, of the right to have a vote that is approximately equal in weight to other voters in violation of the equal protection clause of the United States Constitution.

25. The failure of the County Commissioners to redistrict following the 2010 census violates Indiana Code § 36-2-3-4(e)(1).

Request for relief

WHEREFORE, plaintiff requests that this Court

1. Accept jurisdiction of this case and set it for hearing.
2. Declare that defendant has violated the United States Constitution and Indiana

law for the reasons noted above.

3. Enter a preliminary injunction, later to be made permanent, ordering defendant to reapportion the voting districts at the earliest opportunity.
4. Grant plaintiff her costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

/s/ Kenneth J. Falk
Kenneth J. Falk
No. 6777-49
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059 ext. 104
fax: 317/635-4105
kfalk@aclu-in.org

Attorney for Plaintiff