

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION
05 MAY 16 PM 3:22
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

PETER A. VOGT, DIANA BAYLOR,
ROGER A. BAYLOR, JEFF GILLENWATER,
RUTHANNE WOLFE, JOHN GONDER,
MILDRED GONDER, RICK CARMICKLE,
RANDY SMITH, GREG ROBERTS,
GREG PHIPPS, MARK SANDERS,
TED FULMORE, JIM SPRIGLER,
TABITHA SPRIGLER, LLOYD WIMP,
NORA EGAN, VALERIA MUNFORD,
L. E. WILLIAMS, JR., and
DAN CONNOR, JR.

Plaintiffs

VS

THE CIVIL CITY OF NEW ALBANY, INDIANA,
THE CITY COUNCIL FOR THE CITY OF
NEW ALBANY, INDIANA, and
DAN COFFEY, BILL SCHMIDT,
STEVE PRICE, LARRY KOCHERT,
BEVERLY CRUMP, JEFF GAHAN,
DONNIE BLEVINS, JACK MESSER, and
MARK SEABROOK, EACH IN THEIR
OFFICIAL CAPACITIES AS MEMBERS OF
THE CITY COUNCIL OF NEW ALBANY,
INDIANA

Defendants

CASE NO.

4:06-cv-0076-JDT-WGH

COMPLAINT

Come now the Plaintiffs, named above, by their counsel, and for their complaint
against the Defendants, named above, respectfully allege as follows:

1. The Plaintiffs are lawful permanent residents of the City of New Albany,
Indiana and are registered voters thereof.

2. The Defendant, CIVIL CITY OF NEW ALBANY, INDIANA, is a political subdivision of the State of Indiana.
3. The CITY COUNCIL for the CITY OF NEW ALBANY, INDIANA is the designated legislative body of the City and the individual Defendants are the duly elected members of the CITY COUNCIL: Defendant, DAN COFFEY, is the elected representative from the First Legislative District; Defendant, BILL SCHMIDT is the duly elected member of the CITY COUNCIL from the Second District; Defendant, STEVE PRICE, is the duly elected member from the Third District; that the Defendant, LARRY KOCHERT, is the duly elected member of the Fourth District; that the Defendant, BEVERLY CRUMP, is the duly elected member of the Fifth Legislative District; Defendant, JEFF GAHAN, is the duly elected member of the Sixth Legislative District; and that Defendants, DONNIE BLEVINS, JACK MESSER, and MARK SEABROOK, are the duly elected members of the City Council from the three at-large districts.
4. That this Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. Section 1331 and 42 U.S.C. Section 1983 in that this is a civil action arising under the Constitution of the United States, made applicable to the States and their political subdivisions by virtue of the Fourteenth Amendment, alleging a denial of equal representation and the fundamental right of every citizen to have his or her vote weighted equally with those of all other citizens.

5. That at all times pertinent to this complaint, the State of Indiana maintained a law set out at Indiana Code 36-4-6-3(b) which provides in part as follows:

The legislative body shall adopt an ordinance to divide the City into six (6) districts that:

1. Are composed of continuous territory, except for territory that is not continuous to any other part of the City;
2. Are reasonably compact;
3. Do not cross precinct boundary lines, except as provided in Subsection (c) or (d); and
4. Contain, as nearly as is possible, equal population.

Further that statute provides as follows:

I.C. 36-4-6-3(g) the division under Subsection (b) shall be made in 2002, every ten years after that, and when required to assign annexed territory to a district.

6. That according to the United States Census, conducted during the year 2000, the City Council Districts are now grossly malapportioned. According to the data maintained at the Office of the Floyd County Clerk, the Districts had the following number of registered voters in the year 2002:

First District	3,993
Second District	7,481
Third District	4,572
Fourth District	4,293
Fifth District	4,230
Sixth District	5,030
TOTAL REGISTERED VOTERS	29,599

7. That if the precincts of the City of New Albany were equally divided into six districts, each district would have Four Thousand Nine Hundred Thirty-three (4,933) registered voters.
8. Despite the mandate of Indiana Law set out in I.C. 36-4-6-3(g) the City Council of the City has failed, through inertia, lack of will, or the distraction of political infighting, to redraw and divide the City precincts into councilmanic districts that “contain, as nearly as is possible, equal population”.
9. As a result of the City Council’s failure to make the division required by the Indiana Law, the rights of the Plaintiffs and all citizens of New Albany under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to have their votes weighed equally with those of other citizens in the election of members of the Council have been and will continue to be abridged unless this Court grants them a revenue.
10. That the City of New Albany, Indiana proposes to conduct an election for the City Council with the primary to be held in May 2007 and the general election in November 2007; further candidates for the City Council must file their declarations of candidacy no later than Seventy-four (74) days before the primary election and not sooner than One Hundred and Four (104) days before the primary election.
11. That the Plaintiffs and all other citizens and registered voters of the City of New Albany will suffer irreparable and un-Constitutional delusion of their votes in the 2007 elections unless this Court compels the division of the city precincts into six (6) more or less equal councilmanic districts.

WHEREFORE, the Plaintiffs pray as follows:

1. To enter a judgment declaring the current council manic districts to be malapportioned and thus a denial of the equal protections of the Plaintiff's Fourteenth Amendment rights.
2. To appoint a Special Commission consisting of Five (5) apolitical citizens of New Albany to study a division of the City into more or less equal council manic districts in keeping with the requirements of Indiana Code 36-4-6-3(b) and to make proposals to the Court for such a division.
3. For the Court to receive and examine the proposals of the Special Commission and to conduct a hearing on the same with notice to all parties and ultimately to enter an Order dividing the City's precincts as required by State Law.
4. To award Plaintiff's their reasonable attorneys fees and costs herein pursuant to 42 U.S.C. 1988.
5. To grant the Plaintiffs any and other further relief as may be called for in the premises.

RESPECTFULLY SUBMITTED,



STEPHEN J. BEARDSLEY
Attorney for Plaintiffs
227 Pearl Street
New Albany, Indiana 47150
(812) 948-0223