

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

COMMON CAUSE INDIANA, )  
ANDERSON-MADISON COUNTY )  
NAACP BRANCH 3058, LEAGUE )  
OF WOMEN VOTERS OF INDIANA, )  
CASSANDRA RIGGS, and )  
JEFFREY J. COTTRELL, )

Plaintiffs, )

) CAUSE NO. 1:23-cv-1022

v. )

CITY OF ANDERSON COMMON )  
COUNCIL, and the MADISON )  
COUNTY BOARD OF ELECTIONS, )

Defendants. )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**Introduction**

1. After the 2020 federal census was completed, the City of Anderson Common Council (“the Council”) had a statutory and constitutional duty to establish new districts for the election of the six members of the Council from separate, single-member districts. The Council failed to do so, and its districts remain significantly malapportioned as shown by the 2020 federal census. With the December 31, 2022, deadline for the Council to redistrict having passed, Indiana law, Ind. Code § 3-5-10-7(a)(6), prohibits the Council from redistricting absent a court order finding the

current plan unconstitutional or unlawful. The significant malapportionment of the six current single-member districts violates Plaintiffs' rights under the equal protection clause of the Fourteenth Amendment to the United States Constitution. Plaintiffs include Common Cause Indiana, Anderson-Madison County NAACP Branch, and League of Women Voters of Indiana—organizations that have voters who live and vote in all the Council districts—and an individual voter who resides in District 3, the most overpopulated district. Plaintiffs bring this action for appropriate injunctive and declaratory relief to protect their statutory and constitutional rights and those of the residents and voters of Anderson and ensure that the Council fulfills its duty under law to redistrict fairly and in compliance with the Voting Rights Act of 1965.

### **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. Plaintiff Common Cause Indiana is the Indiana affiliate of a national non-partisan organization, Common Cause. Common Cause Indiana advocates for, among other things, the fairness of elections and the elimination of barriers to voting, including vote dilution. It has over 11,000 members in Indiana, including more than 70 who reside in the City of Anderson, some of whom reside and vote in Council District 3.

8. Plaintiff Anderson-Madison County NAACP Branch is a non-partisan association headquartered in the City of Anderson and advocates for, among other things, the elimination of racist policies and barriers to voting, including vote dilution. It has members who reside and vote in the City of Anderson and Council District 3.

9. Plaintiff League of Women Voters of Indiana (“LWVIN”) is a nonpartisan, nonprofit corporation organized under the laws of the State of Indiana. LWVIN works with and through local Leagues around the state—including the League of Women Voters of Anderson & Madison County—and is part of the

League of Women Voters of the United States which has 700 state and local Leagues in all 50 states and the District of Columbia. LWVIN works to expand informed, active participation in state and local government, giving voice to all Hoosiers. LWVIN is a grassroots organization and works to increase understanding of major public policy issues and policy through education and advocacy. LWVIN is an organization fully committed to diversity, equity, and inclusion in principle and practice to engage people, communities, and policymakers with a focus on supporting fair elections and the elimination of barriers to voting. Among its more than 1700 members are 38 who reside and vote in the City of Anderson, some in Council District 3.

10. Plaintiffs Cassandra Riggs and Jeffrey Cottrell are adult residents and registered voters who live in the City of Anderson, Indiana, in Council District 3.

11. The Council is a nine-member elected body that constitutes the legislative branch of the City of Anderson, a second-class city. Six of those nine members are elected in districts, and three are elected at large.

12. The Madison County Board of Elections is the entity created by state law responsible for administering elections in Madison County and the City of Anderson.

### **Legal Background**

13. Indiana law, Ind. Code § 36-4-6-3(b), provides that the six single-member districts must:

- (1) be reasonably compact;
- (2) not cross precinct boundary lines except as necessary to make the districts contain equal population; and
- (3) contain, as nearly as possible, equal population.

14. Indiana law, I.C. § 36-4-6-3(g)(1), states that redistricting shall occur “during the second year after a year in which a federal decennial census is conducted,” and not later than December 31, 2022. I.C. § 3-5-10-7(a)(1).

### **Factual Allegations**

15. Council members are elected for terms of four years.

16. On information and belief, the 2020 census provided that the populations of the six single-member Council districts, after post-census annexations are taken into account, are as follows:

District 1: 9,627

District 2: 9,151

District 3: 11,644

District 4: 7,490

District 5: 8,494

District 6: 8,364

17. The “total deviation’ is determined by adding the deviation [from the average population of the six 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). The total deviation of the current Council districts is 46%.

18. This total deviation is more than a “minor deviation from mathematical equality” which demonstrates a prima facie case of discrimination that must be justified by the Council, and it renders the current districts presumptively unconstitutional. *Brown v. Thompson*, 462 U.S. 835, 842-43 (1983); *Conner v. Finch*, 431 U.S. 407, 418 (1977) (permitting total deviations of up to 10%).

19. The ideal population for each single-member district is 9,130 persons, a number derived by dividing Anderson’s total population (54,777) by 6.

20. Despite knowledge that its single-member districts were severely malapportioned, the Council on December 11, 2022, voted 6-3 not to engage in redistricting following the 2020 Census.

21. The primary election was held on May 2, 2023, using the malapportioned districts, and the general election is scheduled to be held on November 7, 2023.

22. Plaintiffs Riggs and Cottrell, as well as members of Plaintiffs Common Cause, NAACP, and LWVIN, who are registered voters residing in Council District 3, desire to have a vote that is substantially equal to the votes of other voters in the City of Anderson.

23. In elections for the Council, Plaintiffs Riggs and Cottrell and other voters in substantially overpopulated District 3—which include members from Plaintiffs Common Cause, NAACP, and LWVIN—have less voting strength than voters in Districts 4, 5 and 6, which are underpopulated.

24. The individual Plaintiffs' vote, as well as that of similarly situated Anderson voters who reside in Council District 3 and are members of Common Cause Indiana, the NAACP, or the LWVIN, has been diluted.

25. Plaintiffs Riggs and Cottrell are being caused irreparable harm for which there is no adequate remedy at law.

26. Plaintiffs Common Cause, NAACP, and LWVIN have members who reside in Council District 3 and will be irreparably harmed for which there is no adequate remedy at law.

27. At all times the Council has acted or failed to act under color of state law.

28. As the entity charged by Indiana law with conducting elections in Madison County, the Madison County Board of Election's involvement is

necessary to implement any remedy ordered by this Court, and for this reason the Board is named as a defendant pursuant to FRCP 19(a)(1)(A) without which the Court cannot accord Plaintiffs complete relief.

### **Legal Claims**

29. The lack of substantial equality of population among the districts from which members of the Council are elected deprives Plaintiff Cottrell, Plaintiffs Common Cause, NAACP, and LWVIN members, and other residents in District 3, of a vote that is approximately equal in weight to that of other voters, in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

30. The failure of the Council to redistrict following the 2020 census also violates Indiana Code §§ 36-4-6-3(g)(1) and 3-5-10-7(a).

31. Plaintiffs have no adequate remedy at law and will suffer irreparable harm unless a preliminary injunction is issued prohibiting the Board from holding an election in the currently malapportioned districts that dilute their vote.

32. Plaintiffs are likely to prevail on the merits of their constitutional claim.

33. The public interest will be served by holding a special election in 2024, as well as any future elections for the City of Anderson Common Council, in



districts that are of substantially equal population as shown by the 2020 federal census, as required by the equal protection clause of the Fourteenth Amendment.

### **Request for Relief**

WHEREFORE, Plaintiffs request that this Court:

- a. Accept jurisdiction of this case and expeditiously set it for hearing.
- b. Declare that defendant Council has violated both the United States Constitution and Indiana law and order into effect a remedial plan that complies with the equal population principles of the Fourteenth Amendment as well as Section 2 of the Voting Rights Act of 1965 prohibiting racial discrimination in voting.
- c. After hearing the parties' respective evidence and testimony, enter a preliminary injunction, later to be made permanent, enjoining the Board of Elections from holding of any further elections in the Council's malapportioned districts beginning in 2024 and beyond.
- d. Shorten the terms of the Council members in single-member districts and order special primary and general elections for the Council to be held coterminous with the primary and general elections scheduled in May and November, 2024.
- e. Alter any pre-election deadlines or residency requirements, if necessary, in order to conduct special and primary elections in 2024 for the Council's six single-member districts under a districting plan approved by the Court that

complies with the equal population principles of the Fourteenth Amendment and Section 2 of the Voting Rights Act of 1965.

f. Award Plaintiffs their costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988, and any other or further relief the Court deems appropriate to remedy the Council's constitutional equal protection violations.

Respectfully submitted,

William R. Groth, Of Counsel  
Daniel Bowman

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Indianapolis IN 46227  
Phone: (317) 353-9363  
Email: [wgroth@fdgtlaborlaw.com](mailto:wgroth@fdgtlaborlaw.com)

*Attorneys for Plaintiffs*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

COMMON CAUSE INDIANA, ET AL.

(b) County of Residence of First Listed Plaintiff MARION (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) WILLIAM R. GROTH, BOWMAN & VLINK, LLC, 3719 S. East St. Indianapolis IN 46227 PH: (317) 502-4803

DEFENDANTS

CITY OF ANDERSON COMMON COUNCIL and MADISON COUNTY BOARD OF FICTIONS

County of Residence of First Listed Defendant MADISON (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 1983. Brief description of cause: SUIT OVER MALAPPORTIONED CITY COUNCIL DISTRICTS

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



Civil Action No. 1:23-cv-1022

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



Civil Action No. 1:23-cv-1022

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I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: