

IN THE TWENTY-NINTH JUDICIAL DISTRICT
WYANDOTTE COUNTY DISTRICT COURT
CIVIL DEPARTMENT

TOM ALONZO, SHARON AL-UQDAH,
AMY CARTER, CONNIE BROWN
COLLINS, SHEYVETTE DINKENS,
MELINDA LAVON, ANA MARCELA
MALDONADO MORALES, LIZ MEITL,
RICHARD NOBLES, ROSE SCHWAB, and
ANNA WHITE,

Plaintiffs,

v.

SCOTT SCHWAB, Kansas Secretary of State
and Kansas Chief Election Officer, in his
official capacity, and MICHAEL ABBOTT,
Wyandotte County Election Commissioner, in
his official capacity,

Defendants.

Case No. _____

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF AND MANDAMUS
PURSUANT TO K.S.A. CHAPTER 60

INTRODUCTION

1. The Kansas Constitution establishes a democracy in which “[a]ll political power is inherent in the people” and must be “founded on their authority.” Kan. Const. Bill of Rights, § 2. The Constitution declares that this State’s government is “instituted for the[] equal protection and benefit” of the people,” *id.*, and every Kansan is therefore “possessed of equal power and influence in the making of laws which govern him.” *Harris v. Shanahan*, 192 Kan. 183, 204, 387 P.2d 771, 789 (1963). Central to this democratic form of government are free and fair elections, in which

every citizen can exercise their fundamental “constitutional right” to vote on equal terms, with equal voting power. *State v. Beggs*, 126 Kan. 811, 271 P. 400, 402 (1928) (quoting *Wheeler v. Brady*, 15 Kan. 26, 32 (1875)).

2. But in a partisan gerrymander, the dominant party manipulates the district boundaries to dilute the voting power of the minority party’s voters and advantage the dominant party. The mapmakers classify voters on the basis of their political beliefs, and then systematically sort the minority party’s voters into districts to minimize their electoral influence—to prevent them from translating votes into seats. This practice is “incompatible with democratic principles.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 791 (2015) (alteration in original) (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 292 (2004) (plurality opinion)).

3. Last week, through manipulation and abuse of legislative procedures, the Kansas Legislature rushed through an extreme and intentional partisan and racial gerrymander of the state’s congressional districts. These actions were taken in open defiance of the Kansas Constitution and the Legislature’s own redistricting criteria. Moreover, the Legislature disregarded public input, including the testimony and public comment of scores of Kansans, and the well-recognized and longstanding importance of a united Kansas City Metro Area district. After three days of bizarre legislative maneuvering and arm-twisting, Republican legislators passed the Enacted Plan (Sub. Sen. Bill 355) through veto-override votes in the Senate and House.

4. The Enacted Plan was deliberately designed to consistently and efficiently elect exclusively Republicans to Congress, and specifically to prevent Democratic voters in the Kansas City Metro Area from electing their preferred candidate, currently Congresswoman Sharice Davids. Republican legislative leaders did not even try to hide it. Although it remains unclear who actually drafted the Enacted Plan, the intent of state Republican party leaders was made clear

in 2020, when then-Senate President Susan Wagle openly urged Republican legislators to pass a map “that takes out Sharice Davids up in the 3rd,” and boasted, “I guarantee you we can draw four Republican congressional maps.” Sherman Smith & Tim Carpenter, *Senate President Susan Wagle Embraces Gerrymandering to Benefit GOP in Kansas*, Kan. Reflector (Oct. 9, 2020), <https://kansasreflector.com/2020/10/09/senate-president-susan-wagle-embraces-gerrymandering-to-benefit-gop-in-kansas>.

5. The Enacted Plan achieves its desired effects. The map transforms the existing Congressional Third from a district with a Democratic majority into one that, based on recent statewide elections, will now favor Republicans. Under this plan, Kansas will likely find itself represented in Congress by four Republicans and zero Democrats—even though over 40% of Kansans have voted for Democratic candidates in recent statewide and congressional elections.

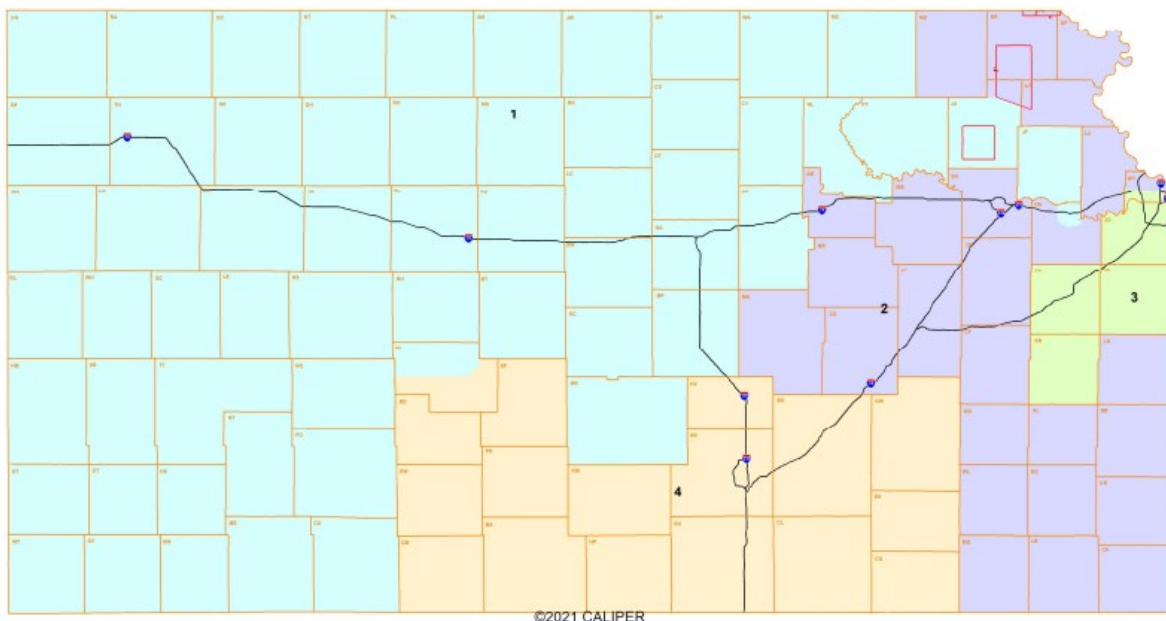
6. The map-drawers accomplished this goal by splitting the Kansas City Metro Area in two. The Kansas City portion of Wyandotte and Johnson Counties is an indivisible social, economic, and political unit, the division of which can be justified only on impermissible partisan grounds. While the Kansas City Metro Area has been united in a single district for the last fifty years, the Enacted Plan now places the northern half of Kansas City, Kansas in Congressional District 2, and the southern half in District 3. Wyandotte County—the State’s only majority-minority county—is split in two for the first time in 40 years.

7. The map also preserves Republican control of Congressional District 2 by carving the heavily Democratic city of Lawrence out of Douglas County and placing it in the new Congressional District 1. This was done to prevent the transplanted Wyandotte County Democratic voters in the new Congressional District 2—the majority of whom are racial and ethnic minorities—from joining with Democratic voters in Lawrence to elect their preferred candidates.

8. In addition to its extreme partisan bias, the Enacted Plan also intentionally discriminates on the basis of race. Although minority voters constitute less than a majority of voters in current District 3, they have succeeded in electing their preferred candidate—Representative Davids, a Native American woman—with the support of a portion of white voters who cross over to support the minority-preferred candidate. The Enacted Plan’s splitting of majority-minority Wyandotte County between two districts dilutes African American voting power and electoral influence by eliminating this performing “crossover district.” In particular, the Enacted Plan moves the bulk of Wyandotte County’s minority voters into District 2, where too few white voters cross over to enable the minority community to elect their preferred candidates.

9. The result is a map so patently gerrymandered that District 2 has earned the moniker “The Waglemander,” a reference to the salamander shape of Elbridge Gerry’s original gerrymandered district from the early 1800s and to its first Kansas Republican endorser, Senator Wagle.

M3_AdAstra_2 for KLRD TR



10. This gerrymandered map is not only unfair and wrong; it violates the Kansas Constitution. When voters are classified and sorted into districts based on their political beliefs to minimize the minority party's electoral influence, their treatment is not "equal." Kan. Const. Bill of Rights, §§ 1, 2. When the minority party's voters are drawn into districts to ensure they cannot elect candidates of their choice, they are denied their rights to "freely speak" and assemble. *Id.* §§ 3, 11. And when the map prevents the minority party's voters from translating their votes into seats, it impermissibly burdens the fundamental right of suffrage. Kan. Const. art. V, § 1. In addition, the intentional destruction of a performing crossover district, represented by a Native American woman, violates the equal protection guarantees of the Kansas Constitution.

11. Plaintiffs request that this Court declare the Enacted Plan invalid under the Kansas Constitution, enjoin use of the Enacted Plan, order the Legislature promptly to adopt a lawful new plan, and retain the authority to draw a map itself if the legislature fails to timely do so.

12. This matter is of great urgency and significant public concern. Plaintiffs intend to file a motion to expedite this case to enable decision and the adoption of the new map in advance of the June 1, 2022 candidate filing deadline for the primary elections.

JURISDICTION

13. This is an action for mandamus, declaratory, and injunctive relief authorized by K.S.A. 60-802 (mandamus), 60-1701, 60-1703 (declaratory relief), and K.S.A. 60-901, 60-902 (injunctive relief).¹ The Court has general jurisdiction under K.S.A. 20-301.

14. The Court has personal jurisdiction over Defendants, Secretary of State Scott Schwab and Wyandotte County Election Commissioner Michael Abbott, because they are state

¹ This complaint alleges causes of action only under the state Constitution, and does not allege any federal cause of action.

government officials and are sued in their official capacity. *See Merriman v. Crompton Corp.*, 282 Kan. 433, 439, 146 P.3d 162, 168 (Kan. 2006).

15. Venue is proper under K.S.A. 60-602(2) and K.S.A. 60-608 because this action seeks declaratory and injunctive relief against public officers for acts done or threatened to be done in Wyandotte County by those officers under color of their office.

PARTIES

16. Plaintiff Tom Alonzo, a 64-year-old gay Latinx man who lives in Kansas City, Kansas, in Wyandotte County, is a retired federal government employee and engaged community member in the Kansas City area. He votes for Democratic candidates and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, Plaintiff Alonzo will no longer be a voter in Congressional District 3; his precinct will be moved to Congressional District 2, where his vote will be diluted and he will have no chance of electing a Democrat to Congress. He intends to vote in 2022 and in future elections.

17. Plaintiff Sharon Al-Uqdah, a 67-year-old Black woman who lives in Kansas City, Kansas, in Wyandotte County, is the former president and director of the American Postal Workers Union in Kansas City, Missouri, and an engaged community member in the Kansas City area. She votes for Democratic candidates and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, Plaintiff Al-Uqdah will no longer be a voter in Congressional District 3; her precinct will be moved to Congressional District 2, where her vote will be diluted and she will have no chance of electing a Democrat to Congress. She intends to vote in 2022 and in future elections.

18. Plaintiff Connie Brown Collins, a 68-year-old Black woman who lives in Kansas City, Kansas, in Wyandotte County, is the founder and organizer of the nonpartisan Voter Rights

Network of Wyandotte County, and an engaged community member in the Kansas City area. She votes for Democratic candidates and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, Plaintiff Brown Collins will no longer be a voter in Congressional District 3; her precinct will be moved to Congressional District 2, where her vote will be diluted and she will have no chance of electing a Democrat to Congress. She intends to vote in 2022 and in future elections.

19. Plaintiff Amy Carter, a 44-year-old white woman who lives in Overland Park, Kansas, in Johnson County, is a self-employed Certified Public Accountant and an engaged community member in the Kansas City area. She votes for Democratic candidates and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, she will remain a voter in Congressional District 3, but the cracking of Democratic voters in District 3 substantially decreases the chance that she and other Democratic voters will be able to elect the candidate of their choice. She intends to vote in 2022 and in future elections.

20. Plaintiff Sheyvette Dinkens, a 36-year-old Black woman who lives in the Rosedale neighborhood of Kansas City, Kansas, in Wyandotte County, is an educator, runs a civic engagement organization for youth in the Kansas City Metro Area, and participates in numerous community and faith-based groups. She is an engaged community member in the Kansas City area, votes for Democratic candidates, and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, she will remain a voter in Congressional District 3, but the cracking of heavily Democratic communities in District 3 substantially decreases the chance that she and other Democratic voters will be able to elect the candidate of their choice. She intends to vote in 2022 and in future elections.

21. Plaintiff Melinda Lavon, a 42-year-old white woman who lives in Lawrence, Kansas, in Douglas County, is a midwife who practices in Lawrence, Kansas, in Douglas County, in Chanute, Kansas, in Neosho County, and throughout Congressional District 2. She is an engaged community member in Lawrence and throughout Congressional District 2, votes for Democratic candidates, and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, Plaintiff Lavon will no longer be a voter in Congressional District 2; her precinct would be moved to Congressional District 1. Although the cracking of heavily Democratic Kansas City from District 3 into District 2 could have enabled Plaintiff Lavon to elect a candidate of her choice if she remained in District 2, the mapmakers cracked her community and moved her and other Democratic voters in Lawrence into District 1 to prevent her from electing a candidate of her choice. Plaintiff Lavon intends to vote in 2022 and in future elections.

22. Plaintiff Ana Marcela Maldonado Morales, a 33-year-old Latinx woman who lives in Kansas City, Kansas, in Wyandotte County, is a business owner and an engaged community member in the Kansas City area. She votes for Democratic candidates and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, Plaintiff Maldonado Morales will no longer be a voter in Congressional District 3; her precinct will be moved to Congressional District 2, where her vote will be diluted and she will have no chance of electing a Democrat to Congress. She intends to vote in 2022 and in future elections.

23. Plaintiff Liz Meitl, a 45-year-old white woman who lives in Overland Park, Kansas, in Johnson County, is an educator and human resources advisor for USD 500 and an engaged community member in the Kansas City area. She votes for Democratic candidates and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, she will remain a voter in Congressional District 3, but the cracking of heavily Democratic communities in District 3

substantially decreases the chance that she and other Democratic voters will be able to elect the candidate of their choice. She intends to vote in 2022 and in future elections.

24. Plaintiff Richard Nobles, a 40-year-old Black man who lives in Overland Park, Kansas, in Johnson County, is a clinical psychologist with the University of Kansas Health System and an engaged community member in the Kansas City area. He votes for Democratic candidates and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, he will remain a voter in Congressional District 3, but the cracking of heavily Democratic communities in District 3 substantially decreases the chance that he and other Democratic voters will be able to elect the candidate of their choice. He intends to vote in 2022 and in future elections.

25. Plaintiff Rose Schwab, a 35-year-old white woman who lives in Kansas City, Kansas, in Wyandotte County, is a pastor at Shawnee Mission Unitarian Universalist Church in Johnson County and an engaged community member in the Kansas City area. She votes for Democratic candidates and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, Plaintiff Schwab will no longer be a voter in Congressional District 3; her precinct will be moved to Congressional District 2, where her vote will be diluted and she will have no chance of electing a Democrat to Congress. She intends to vote in 2022 and in future elections.

26. Plaintiff Anna White, a 35-year-old white woman who lives in Kansas City, Kansas, in Wyandotte County, is an independent contractor and consultant, and an engaged community member in the Kansas City area. She votes for Democratic candidates and intends to vote for Democratic candidates in future elections. Under the Enacted Plan, she will remain a voter in Congressional District 3, but the cracking of heavily Democratic communities in District 3

substantially decreases the chance that she and other Democratic voters will be able to elect the candidate of their choice. She intends to vote in 2022 and in future elections.

27. Plaintiffs have standing because the partisan gerrymandering of the Enacted Map dilutes their voting power and ability to elect the representatives of their choice. Each Plaintiff in the Kansas City Metro Area resides in current Congressional District 3, but under the Enacted Plan, they will be split into two districts where they will be unable to elect their preferred candidates. One Plaintiff lives in Lawrence, in the current Congressional District 2, but under the Enacted Plan, will be moved into Congressional District 1.

28. Each Black and Latinx plaintiff likewise has standing because they are currently able to elect a candidate of their choice in Congressional District 3, a performing crossover district. In the Enacted Plan, however, Congressional District 3 is cracked and a portion of its racial and ethnic minority voters are moved apart from other racial and ethnic minority voters and crossover white voters. These racial and ethnic minority voters are instead submerged in a district—either the new Congressional District 2 or new Congressional District 3—in which white bloc voting will prevent them from electing their preferred candidates.

29. Defendant Scott Schwab is the Kansas Secretary of State and the state's chief elections officer. The Secretary of State's Office is responsible for administering elections. All candidates for national office must file their candidacy with the Secretary of State's office, and the Secretary is responsible for furnishing county election officers with ballots and certifying the names of candidates to county election officers. He is sued in his official capacity.

30. Defendant Michael Abbott is the Wyandotte County Election Commissioner. As Election Commissioner, Mr. Abbott is responsible for managing and conducting elections

throughout Wyandotte County, including managing voter registration and early voting, and collecting and tabulating ballots. He is sued in his official capacity.

FACTUAL ALLEGATIONS

A. Kansas's Current Congressional Delegation Has Three Republicans and One Democrat, Reasonably in Line With the State's Political Makeup

31. For the last four years, Kansas has been represented in the U.S. House of Representatives by three Republicans and one Democrat.

32. The Republicans are Tracey Mann (First District), Jacob LaTurner (Second District), and Ron Estes (Fourth District).

33. The Democrat is Sharice Davids, who represents the Third District and whose historic 2018 election made her the first openly LGBTQ Native American in Congress and, at the time, just the second Native American in the entire chamber.

34. Representative Davids defeated Republican incumbent Kevin Yoder by a 10% margin in 2018, 53.6% to 43.9%.

35. Representative Davids won again in 2020, defeating Republican challenger Amanda Adkins by a similar margin, 53.6% to 43.6%.

36. The 3-1 Republican-Democrat split in Kansas's congressional delegation generally reflects statewide political preferences, and, if anything, underrepresents Kansas voters' growing support for Democratic candidates. Democrats hold only 25% of the state's congressional seats despite winning over 40% of the statewide vote in the 2020 Presidential, Senate, and Congressional

elections.² Kansas also has a Democratic Governor, Laura Kelly, who was elected in 2018 by a five-point margin with 48% of the vote.

37. Kansas has had at least one Democratic congressperson for six of the last fifteen years. Prior to Representative Davids's victory in 2018, Democratic congresswoman Nancy Boyda represented the Second District from 2007-2009.

38. Prior to Governor Kelly's election in 2018, Kansas also had a Democratic Governor from 2003 to 2011 (Kathleen Sebelius and Mark Parkinson).

39. Indeed, in the 12 gubernatorial elections since Kansas adopted four-year terms in 1974, Democratic candidates have won six times and Republican candidates have won six times.

B. Republican Leaders Announced Their Plan to Gerrymander the New Map to Lock in Four Republican Seats and Eliminate Representative Davids's Seat

40. The Enacted Plan, introduced in the statehouse under the name "Ad Astra 2" is a direct response to Representative Davids's defeat of former Representative Yoder in 2018.

41. In fact, former Kansas Senate President Susan Wagle raised the idea of eliminating the ability of Democratic voters to reelect Representative Davids through redistricting even before Representative Davids won reelection in 2020.

42. Two months before the 2020 midterms, former Senator Wagle emphasized the importance of retaining a veto-proof Republican supermajority in the state Senate so that Republicans could gerrymander Representative Davids out of her seat. Senator Wagle told a Republican gathering, "So redistricting, it's right around the corner. And if Governor Kelly can

² The 2020 election results were as follows. Presidential election: 56.21% Republican; 41.56% Democrat. Senatorial election: 53.22% Republican; 41.79% Democrat. Statewide Congressional results: 57.1% Republican; 41.0% Democrat. Election results are obtained from Kansas Secretary of State, *2020 General Election Official Vote Totals* (<https://sos.ks.gov/elections/elections-results.html>).

veto a Republican bill that gives us four Republican congressmen, that takes out Sharice Davids up in the 3rd—we can do that. I guarantee you we can draw four Republican congressional maps. But we can’t do it unless we have a two-thirds majority in the Senate and House.” Sherman Smith & Tim Carpenter, *Senate President Susan Wagle Embraces Gerrymandering to Benefit GOP in Kansas*, Kan. Reflector (Oct. 9, 2020), <https://kansasreflector.com/2020/10/09/senate-president-susan-wagle-embraces-gerrymandering-to-benefit-gop-in-kansas/>. Although Senator Wagle is no longer in the Kansas legislature, current Republican leaders followed through on Wagle’s guarantee.

C. The Legislature Passed the Enacted Plan in a Rushed Process That Substantially Departed from Ordinary Legislative Procedures

43. In the 2020 elections, Republicans secured their veto-proof supermajorities in both chambers of the Legislature, and they used those supermajorities to pass a gerrymandered congressional map targeting Representative Davids, just as Senator Wagle proposed.

44. The Kansas Legislature adopted the Enacted Plan in a rushed process that substantially departed from the ordinary procedure for passing legislation of major public import.

45. In the summer of 2021, the Kansas Legislature initiated the 2022 redistricting process. The Legislature exclusively scheduled town halls before the release of census data, ensuring that public comments were limited to generalized input rather than specific requests.

46. Rejecting requests from advocacy groups, the Legislature scheduled the town halls with limited advance notice, during working hours, in inaccessible locations, and in crowded indoor spaces without masking requirements despite the ongoing pandemic.

47. Nevertheless, over 500 concerned Kansans—including Plaintiffs Brown Collins, Carter, and Nobles—submitted testimony over the course of the 14 town halls. The vast majority of those who provided testimony, whether written or oral, urged the Legislature to preserve metro

Kansas City in a single congressional district, or at the very least to preserve Wyandotte County in a single congressional district.

48. The census data, released on August 12, 2021, showed that while population growth made it impossible to keep both Wyandotte and Johnson County whole in a single district, it was possible to preserve the Kansas City Metro Area in a single district, and it was possible to preserve Wyandotte County. Removing the Miami County portion of current District 3 along with the rural portions of Johnson County would have balanced the population of new District 3.

49. The Legislature held four additional town halls between August 12, 2021 and the start of the 2022 legislative session on January 10, 2022, but they were scheduled for the days immediately before and after the Thanksgiving holiday, and participation was limited.

50. At their initial meetings on January 12, 2022, the Senate and House Committees on Redistricting adopted joint congressional redistricting guidelines substantively identical to guidelines from prior cycles. These 2022 Guidelines provide that:

1. The basis for congressional redistricting is the 2020 U.S. Decennial Census. The “building blocks” to be used for drawing district boundaries shall be Kansas counties and voting districts (VTDs) as described on the official 2020 Redistricting U.S. Census maps.
2. Districts are to be as nearly equal to 734,470 population as practicable.
3. Redistricting plans will have neither the purpose nor the effect of diluting minority voting strength.
4. Subject to guideline No. 2 above:
 - a. Districts should be as compact as possible and contiguous.
 - b. There should be recognition of communities of interest. Social, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation should be considered.
 - c. The core of existing congressional districts should be preserved when considering the communities of interest to the extent possible.
 - d. Whole counties should be in the same congressional district to the extent possible while still meeting guideline No. 2 above. County lines are meaningful in Kansas and Kansas counties historically have been significant political units. Many officials are elected on a countywide basis, and political parties have been organized in county units. Election of the Kansas members of Congress is a political process requiring political

organizations which in Kansas are developed in county units. To a considerable degree most counties in Kansas are economic, social, and cultural units, or parts of a larger socioeconomic unit. These communities of interest should be considered during the creation of congressional districts.³

51. A majority of the members of the House and Senate Redistricting Committees are Republicans.

52. Following the adoption of 2022 Guidelines, the House and Senate each adopted the Enacted Plan, known as “Ad Astra 2,” at lightning speed: it took eight days from introduction of the map to passage in both chambers.

53. What became the Enacted Plan was introduced in the House and Senate on January 18, 2022, and originally called “Ad Astra.” The plan split Wyandotte County and the Kansas City Metro Area between District 2 and District 3. Democrats on the House and Senate Committees, as well as outside groups, presented draft maps that preserved Wyandotte County and the urban core of Johnson County together in District 3.

54. In the Senate, the Committee Chair scheduled debate on the maps for Thursday, January 20, less than 48 hours after their introduction. Under Senate rules, all persons submitting hearing testimony were required to do so 24 hours in advance, that is, by 10:00 a.m. on Wednesday, January 19, less than 24 hours after the proposals were introduced. The Kansas Legislative Research Department (KLRD) did not publicly release the underlying data and boundary lines of the proposed maps until the afternoon of January 19, after the deadline for testimony had passed.

³ Kan. Off. of Revisor of Statutes, *Guidelines and Criteria for 2022 Kansas Congressional and State Legislative Redistricting* (http://kslegislature.org/li/b2021_22/committees/ctte_h_redistricting_1/misc_documents/download_testimony/ctte_h_redistricting_1_20220112_02_testimony.html).

55. Eighty-six members of the public—including Plaintiffs Brown Collins, Carter, and Nobles—presented written or oral testimony at the January 20 Senate Redistricting Committee hearing. The testimony overwhelmingly supported preserving the Kansas City Metro Area as a cohesive community of interest within District 3. Much of the testimony also criticized the lightning speed with which the Committee was moving and its failure to follow a process that permitted adequate public input.

56. When debate resumed after the public testimony, senators raised concerns about the political motivation behind the map and its impact on minority communities. Senator Corson noted that the map deliberately diluted the most racially diverse county in Kansas. Senate President Masterson responded that he “reject[s] even the underlying assumption that all minority voters think alike or vote alike.”

57. In response to criticism that the Ad Astra map needlessly split the Kickapoo Native American reservation into two congressional districts, Senate President Masterson submitted a revised map dubbed “Ad Astra 2” that kept the Kickapoo tribe in a single district and slightly adjusted other district lines to account for the population shift.

58. After roughly an hour and a half of debate—and less than 24 hours after data on the maps was published—the Senate Redistricting Committee voted the Ad Astra 2 map, now known as Sub. Sen. Bill 355, out of committee.

59. Less than 24 hours later, on Friday, January 21, the full Senate met to consider the bill. Several amendments were offered and rejected.

60. Senate leadership then invoked emergency action to call a final vote on the bill, even though there was no emergency.

61. The Senate passed the map 26-9. No Democrats voted in favor of the map, and one Republican voted against it. Five members (three Democrats, two Republicans) were absent.

62. In the House, Chairman Croft likewise introduced the Ad Astra map at the House Redistricting Committee's January 18 hearing, the same day it was introduced in the Senate Redistricting Committee.

63. Both the House and Senate Committees then held hearings on January 20 at the same time, discouraging members of the public from testifying at both. As in the Senate, Democratic legislators in the House Redistricting Committee introduced proposed maps that preserved Wyandotte County and the urban core of Johnson County together in District 3.

64. Like in the Senate, the House Committee scheduled hearings on the proposals for two days later, Thursday, January 20. House rules, like Senate rules, required witnesses to submit testimony at least 24 hours before the Thursday meeting, although Chairman Croft made an exception and allowed testimony submitted late. And again, the KLRD did not release the data underlying the House maps until after that deadline.

65. The testimony before the House Committee overwhelmingly opposed the Ad Astra map, or any map that would divide the Kansas City Metro Area into multiple congressional districts, and lamented the speed of the proceedings and the exclusion of meaningful public input.

66. The House continued to hear testimony the following day, Friday, January 21, while the Senate was passing the Ad Astra 2 map. This testimony continued to overwhelmingly oppose the Ad Astra map and any proposal that would split Metro Kansas City.

67. During House Committee debate, multiple representatives raised concerns that the map was a partisan gerrymander, especially because of how it broke up the metro Kansas City area and split Lawrence off from Douglas County. Representatives reiterated those concerns during

the House Committee’s meeting on January 24, and Representative Burroughs specifically stated: “To have someone present a map that impacts that diversity to the extent that it mutes voices is of great concern. Was that the intent of the map when it was present initially, to mute minority voices in electing public officials in a congressional map?... I'm just asking because I think it's important knowing the intent behind this map - to disenfranchise a community that is made up of the ethnic division that we have, the ethnic population that we have in Wyandotte County.”

68. The House received the substitute bill advancing Ad Astra 2 from the Senate on Monday, January 24, and referred it to the House Committee on the Whole the same day. On January 25, 2022, the House Committee on the Whole passed the Senate Bill containing the Ad Astra 2 map.

69. On Wednesday, January 26, the House passed the map 79-37. No Democrats voted in favor of the map, and one Republican voted against it. Nine members did not vote or were absent.

70. On February 3, 2022, Governor Kelly vetoed the bill, explaining:

Senate Bill 355, known as Ad Astra 2, does not follow [the Legislature’s] guidelines and provides no justification for deviation from those guidelines. Wyandotte County is carved into two separate congressional districts. Without explanation, this map shifts 46% of the Black population and 33% of the Hispanic population out of the third congressional district by dividing the Hispanic neighborhoods of Quindaro Bluffs, Bethel-Welborn, Strawberry Hill, Armourdale and others from Argentine, Turner and the rest of Kansas City, Kansas south of I-70. To replace lost population in the third district, this map adds in counties that are more rural to the south and west of the core of the Kansas City metropolitan area.

Ad Astra 2 also separates the city of Lawrence from Douglas County and inserts urban precincts of Lawrence into the largely rural Big First Congressional District, reducing the strength of communities of interest in Western Kansas and unnecessarily dividing communities of interest in Eastern Kansas.

Several alternatives would allow for the same deviation as Ad Astra 2 while protecting the core of the existing congressional districts and without diluting minority communities’ voting strength. I am ready to work with the Legislature in

a bipartisan fashion to pass a new congressional map that addresses the constitutional issues in Senate Bill 355. Together, we can come to a consensus and pass a compromise that empowers all people of Kansas.⁴

D. Republican Legislators Overrode the Governor’s Veto of the Enacted Plan Amidst a Circus Atmosphere

71. On February 7, 2022, the Senate convened to override Governor Kelly’s veto. The affirmative vote of 27 senators is necessary to override a veto. The initial vote was 25-13, with two senators (one Republican and one Democrat) not present.

72. The Republican Senate leadership held the vote open for hours under the pretext of a call of the Senate; Republican Sen. Thompson was reported to be “hiding” in the building in order to allow Senate leadership to hold the vote open as they attempted to browbeat the two Republicans who voted against the override to change their votes. During this hours-long charade, a third Republican Senator, John Doll, switched his vote from “yea” to “nay.”

73. After hours of this ruse, Republican leader Sen. Masterson switched his vote to “nay” as a procedural maneuver that would allow him to move to reconsider the vote later. He then quickly moved to adjourn. Doing so guaranteed an additional 24 hours for Senate leadership to extract the necessary votes to override the veto.

74. The tactic succeeded. Two Republican senators who had voted to sustain the veto switched their votes, and on February 8, 2022 the necessary 27 senators voted to override Governor Kelly’s veto. One of those Republican senators has indicated that he switched his veto-override vote to “yea” in exchange for a commitment by Republican leadership to advance a bill that would

⁴ Press Release, Governor Laura Kelly, Governor Laura Kelly Vetoes Congressional Redistricting Map, Senate Bill 355 (Feb. 3, 2022) (<https://governor.kansas.gov/governor-laura-kelly-vetoes-congressional-redistricting-map-senate-bill-355/>).

effectively ban Kansas's Board of Healing Arts from investigating him for COVID-19 related misconduct in his capacity as a private physician.

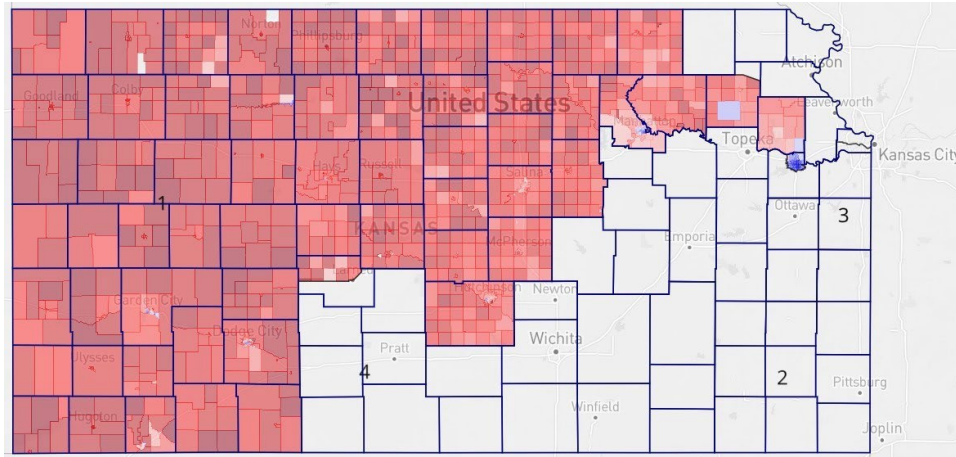
75. On February 9, 2022, the House engaged in similar antics, holding a call of the House until Republican leadership obtained sufficient votes. The House then voted to override the veto, 85-37. No Democrat voted in favor of overriding the veto, and one Republican voted against it.

76. The Enacted Plan became law on February 9, 2022.

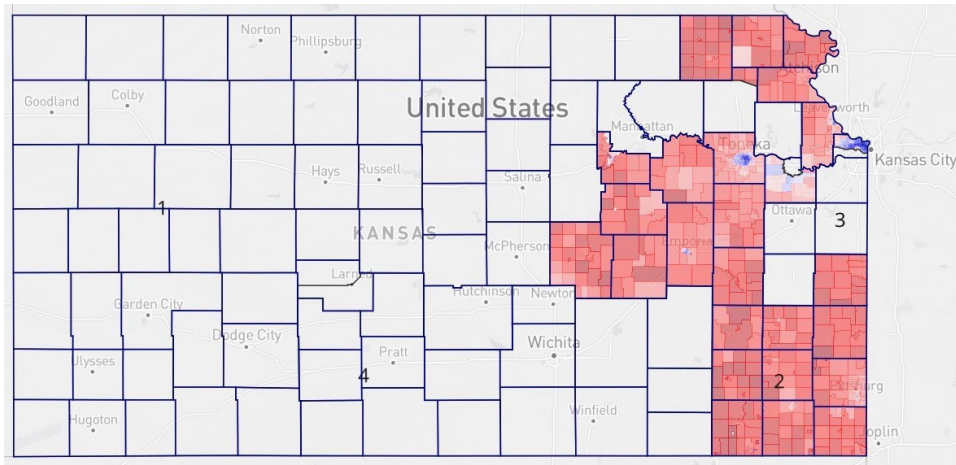
E. The Enacted Plan Is a Partisan Gerrymander that Maximizes Republicans' Chance of Winning All Four Congressional Seats

77. The Enacted Plan achieves its intended result: it minimizes the ability of Kansas Democrats to elect a representative to Congress, likely leading to a 4-0 Republican delegation. It achieves this result by cracking Democratic voters out of Districts 2 and 3 and distributing them into other districts where their votes will be wasted.

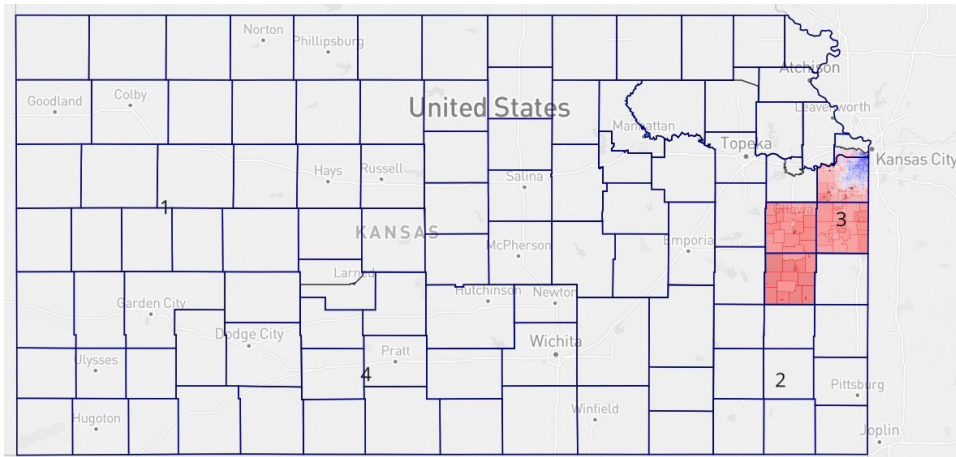
78. The so-called "Big First" already covered much of Northwestern Kansas, occupying its entire western border with Colorado and stretching east nearly to Topeka. The Enacted Plan extends the northern portion of the Big First even further east, passing above Topeka just far enough to scoop the city of Lawrence out of Douglas County and District 2. This move splits Douglas County, which is overwhelmingly Democratic, in order to safeguard the Republican advantage in District 2 against the increase in Democratic voters from Wyandotte County, whom the Enacted Plan cracks out of District 3. Under the Enacted Plan, the Big First retains a 30-point Republican advantage, down from its current 40-point spread. The following map is shaded red and blue to show the partisan performance of each VTD in District 1 in the Enacted Plan, showing how the city of Lawrence is added to an overwhelming Republican District to waste the votes of Lawrence Democrats:



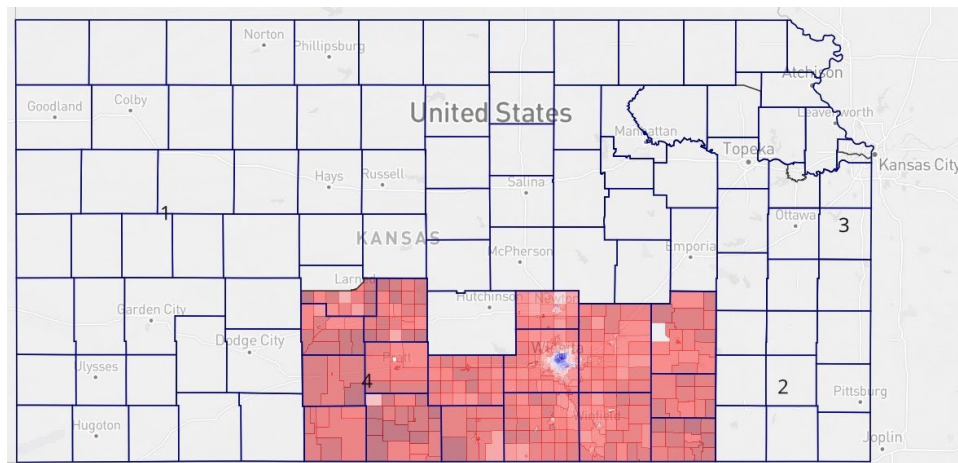
79. The Second District currently occupies all of Kansas’s eastern border—from Oklahoma in the south to Nebraska in the north—with the exception of the northeastern shoulder along the Kansas City side of the Missouri border that is home to District 3. The Enacted Plan replaces the previously compact Second District with a salamander shape resembling the infamous 1800s district that inspired the term “gerrymander.” The tail of the salamander retains most of southeastern Kansas but bends just enough to add the heavily Republican counties of Anderson and Franklin to the Congressional Third. The District then contorts itself west to accommodate the Third District but then doglegs east through Douglas County but below the city of Lawrence. It ultimately runs northeast through Wyandotte County to the Missouri border, splitting Kansas City, Kansas between congressional districts and cracking two-thirds of Wyandotte County into the Second District. The Second District retains its existing 15-point Republican advantage:



80. The Kansas City Metro Area has been the core of the Congressional Third since 1982. The District currently contains Johnson County and Wyandotte Counties, which form metro Kansas City along the Missouri border, and part of the much smaller Miami County. The 2020 census data made keeping all of Johnson County and Wyandotte County in the same district impossible. But rather than preserve the urban core of Kansas City in the Congressional Third, as courts have instructed for 40 years, the Enacted Plan splits the northern half of Wyandotte County into District 2. The map keeps the southern half of Wyandotte County in the Third District with Johnson County. It also adds the rest of Miami County and Anderson and Franklin Counties to the Third District. All three of these counties are rural, heavily Republican, and share much less in common with the Kansas City portion of the district than does the northern half of Wyandotte County. District 3 currently votes Democrat by over 10 points, but shifts to a Republican-leaning district under the Enacted Plan.

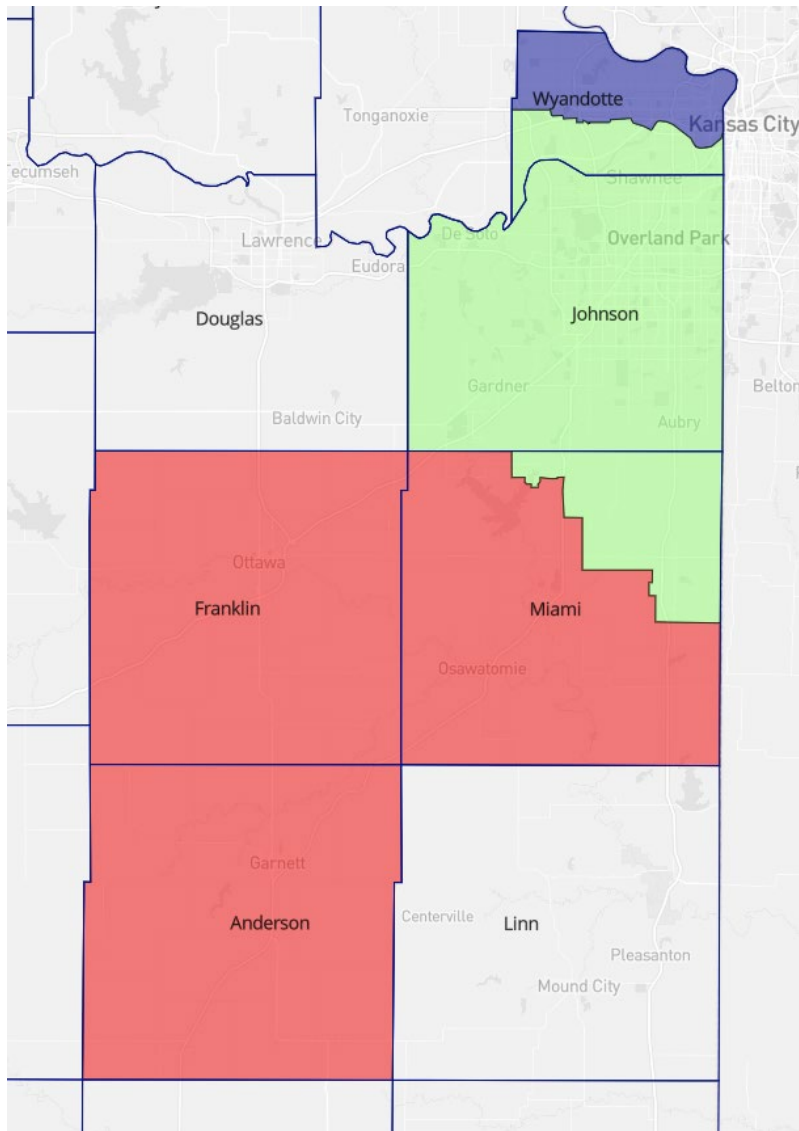


81. The Fourth District is the least changed. Under the Enacted Plan, the Congressional Fourth continues to occupy the central portion of Southern Kansas, including the city of Wichita. The Fourth retains its existing 20-point Republican advantage.



82. This cracking of Democratic voters is not justified based on population changes. After the 2020 census, existing District 3 was overpopulated by 57,816 people. But instead of moving that number of people out of the district, the Legislature instead exported 112,661 Wyandotte County residents out of the district—nearly twice the magnitude of the district’s overpopulation. The Legislature then imported into the district 54,845 residents from Miami, Franklin, and Anderson Counties who had previously been in District 2. The Legislature thus moved 167,506 people in order to resolve a deviation of 57,816. The map below illustrates the

population shifts in District 3: the green area remained the same, the blue area was removed, and the red area was added to the district.



83. The population removed from the Third District, shown in blue, is 29.2% white, 34.7% Hispanic, 28.6% Black, and 6.2% Asian. This area is overwhelmingly Democratic.

84. The population added to the Third District, shown in red, is 90.3% white, 3.1% Hispanic, 2.0% Black, and 0.7% Asian. This area is overwhelmingly Republican.

85. The plan preserves Republican control of the Second District, despite the influx of Democratic voters from Wyandotte County, by severing the city of Lawrence from the rest of Douglas County and moving it from the Second District to the First District, combining it with rural counties with which it has no common interest and stretching over 375 miles to the Colorado border. In the current plan, the Second District is underpopulated by 21,463. The enacted plan adds 208,237 people (the majority of whom vote Democratic) and removes 186,774 (the majority of whom vote Democratic).

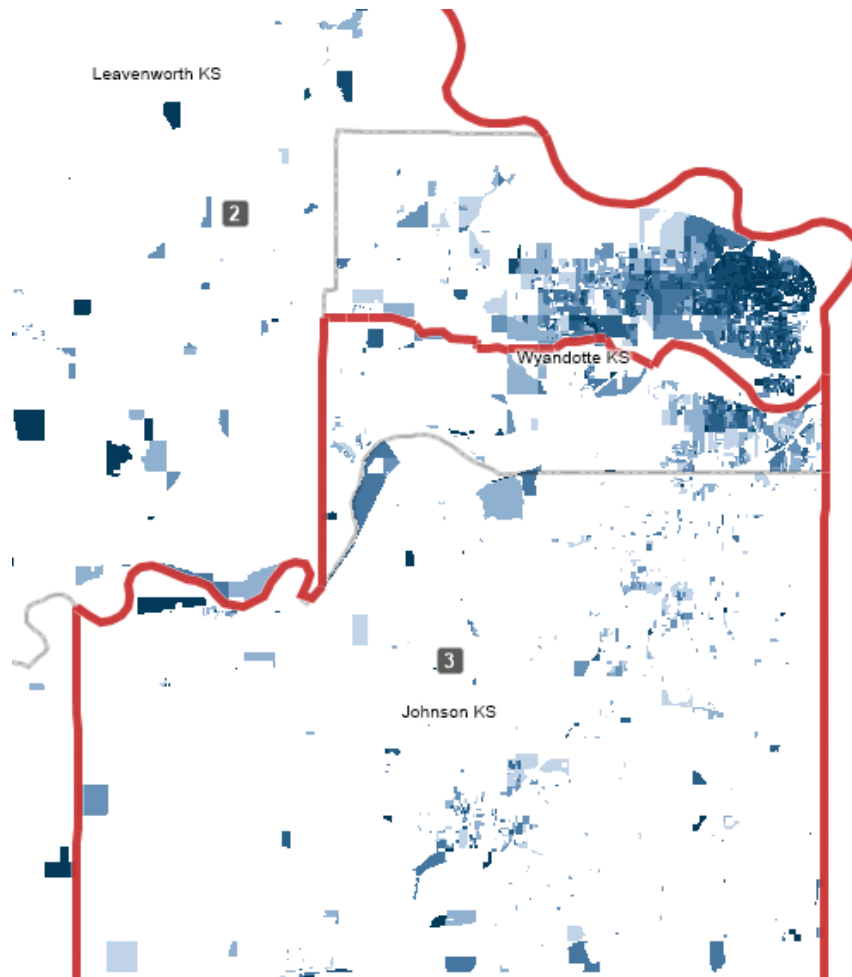
86. The plan thus moves 395,011 people in or out of the Second District—a district with just a 21,463-person deviation—in order to ensure that the minority Democratic voters from Wyandotte County could not join with the white Democratic voters from Lawrence to elect a Democratic congressperson in the revised Second District.

87. The district boundaries in the Enacted Plan, and in particular the cracking of Wyandotte County and the city of Lawrence, can only be explained by the mapmakers' intentional effort to maximize the likelihood of four Republican seats and eliminate Representative Davids' district.

F. The Enacted Plan Intentionally Dilutes the Voting Power of Minority Communities

88. The Enacted Plan also impermissibly targets minority voters. Minority voters comprise 32.4% of District 3 residents and 29% of its voting age population, and they are able to elect their preferred candidate with assistance from a portion of white voters. Specifically, minority voters in the Kansas City metropolitan area strongly prefer Democratic candidates. While white voters in Kansas strongly prefer Republican candidates overall, enough white voters in current District 3 cross over to support minority-preferred Democratic candidates to permit those candidates to prevail.

89. The Enacted Plan intentionally dilutes the votes of minority voters in District 3 and targets their district for elimination. As the map below illustrates, the Legislature achieved this outcome by cleaving through Wyandotte County's minority population, shown in blue (with darker shades reflecting greater concentrations of minority voters).



90. Splitting Wyandotte between Districts 2 and 3 had the obvious and intentional effect of diluting minority voting power. Wyandotte County's total population is 62.7% minority and its voting age population is 57.6% minority. And the Enacted Plan surgically targets for transfer those portions of Wyandotte with the highest concentration of minority voters.

91. This directly violates the Legislature’s neutral, agreed upon redistricting criteria, specifically point 3: “Redistricting plans will have neither the purpose not the effect of diluting minority voting strength.”

92. In addition to cracking apart Wyandotte County’s minority population—stranding the bulk of the County’s minority population in District 2 in which they will have no opportunity to elect their preferred candidates—the Enacted Plan adds several rural white counties whose voters strongly vote against minority-preferred candidates.

93. As discussed above, the population removed from current District 3 is over 70% minority, while the population added to District 3 is over 90% white. These shifts were made to destroy District 3 as a performing crossover district in which minority voters were able to elect their preferred candidate, currently a Native American woman.

G. The Kansas City Metro Area Is a Single Community of Interest that Naturally Belongs in the Third District

94. No neutral principle or aspect of Kansas’s political geography justifies cracking Democrats and minority voters in the Kansas City Metro Area. In fact, it is the opposite: the Kansas City Metro Area is a single community of interest, made up of Wyandotte County and northern Johnson County, that naturally belongs in its traditional place in the Third District.

95. The Kansas City portions of Wyandotte and Johnson Counties are a discrete community of interest because of their shared “social, cultural, racial, ethnic, and economic interests.”⁵

⁵ Kan. Office of Revisor of Statutes, *Guidelines and Criteria for 2022 Kansas Congressional and State Legislative Redistricting*, http://kslegislature.org/li/b2021_22/committees/ctte_h_redistricting_1/misc_documents/download_testimony/ctte_h_redistricting_1_20220112_02_testimony.html.

96. Wyandotte County and northern Johnson County contain communities that cross municipal and county lines for numerous social and cultural activities, including religious services, schooling, sports, and more. Because of the compactness of these municipalities, residents, including Plaintiffs, frequently live or work in one municipality, but travel to others on a daily basis for education or extracurricular activities.

97. For example, Plaintiff Brown Collins lives in Bethel Welbourn, a neighborhood within Kansas City, Kansas that is north of I-70, but frequently walks in parks in other parts of Kansas City, and takes yoga classes in Overland Park, in Johnson County. She attends a church over the state line in Kansas City, Missouri. She uses services in Fairway, Kansas (southern Wyandotte County) and attends classes at Kansas City, KS Community College, Johnson County Community College, and a community college in Missouri.

98. Likewise, Plaintiff Rose Schwab lives in Wyandotte County, but is the pastor of a church in Shawnee, in Northern Johnson County. Her parishioners come from all over the Kansas City Metro Area, including Wyandotte County and the communities in Johnson County that are near the Wyandotte County and Missouri borders.

99. The interconnectedness of this dense, urban community creates shared social and cultural values and experiences for the residents of Wyandotte and northern Johnson Counties.

100. The population density of this area also contributes to its shared environmental interests and concerns. Increased traffic flow, air quality, water quality, flooding, and water runoff are shared concerns among residents of these communities, which are primarily urban and suburban. Testimony before the Legislature described how Wyandotte and Johnson Counties share transportation networks and infrastructure systems, such as sewers and water systems. Because of their urban landscape and environment, communities in the immediate vicinity of Kansas City,

Missouri experience many of the same issues, and desire many of the same solutions. The same cannot be said about the more rural communities in the southern portion of Johnson County.

101. Wyandotte County is one of the most diverse counties in the entire state of Kansas, and it is the only county that is majority-minority. Wyandotte County alone has a Black or African American population of 22.6% and a Hispanic or Latino population of 29.8%.⁶ This is more than double the percentage of the Black and Hispanic population in Kansas as a whole.

102. The racial and ethnic diversity of Wyandotte County does not split among any physical north/south barrier, such as I-70 or the Kansas River. Communities of color live all over Wyandotte County, with the greatest concentration being in Kansas City, Kansas, a city that encompasses the entire southeastern half of the county.

103. Wyandotte and northern Johnson County are “an engine of economic growth and innovation for Kansas” and “share deep economic and cultural connections” that “contribute to [the area’s] growth and success.”⁷ Because these communities are dense, urban, and closely connected, many individuals work, shop, learn, or utilize public services in one county while living in the other.

104. Wyandotte and northern Johnson County also share a multi-county transportation system, and rely on close relationships among municipal leaders and congressional representatives to ensure expansion, improvement, and repair of the metro-Kansas City area’s highways.

105. Municipalities in Wyandotte County and northern Johnson County participate in metropolitan area-wide planning and service provision with the Mid-America Regional Council

⁶ See U.S. Census Bureau, QuickFacts, Wyandotte County, KS, <https://www.census.gov/quickfacts/wyandottecountykansas>.

⁷Testimony of Dr. Mildred Edwards, Chief of Staff to Mayor Tyrone Garner, Jan. 20, 2022, http://www.kslegislature.org/li/b2021_22/committees/ctte_s_redistricting_1/misc_documents/download_testimony/ctte_s_redistricting_1_20220120_10_testimony.html

(MARC). It is uncommon in Kansas, a state with a high rural population, for so many urban and suburban municipalities to exist in a single geographic region, thereby making coordination of representation among these municipalities through MARC, and a unified voice in Congress, essential.

106. Several municipalities in Wyandotte County and northern Johnson County participate in the First Suburbs coalition, a part of MARC that organizes “communities where a majority of the housing was built shortly after World War II and limited amounts of undeveloped land exist within the city’s boundaries.”⁸ These communities include Fairway and Kansas City, KS in Wyandotte County; and Merriam, Mission, Mission Hills, Mission Woods, Overland Park, Prairie Village, Roeland Park, Westwood, and Westwood Hills in Johnson County.⁹ Federal funding is often needed to improve and revitalize these neighborhoods, making unified representation in Congress essential to their joint interests.

107. Kansas City, Kansas is a Democratic stronghold.

108. Wyandotte County is likewise a Democratic stronghold. Its precincts vote more heavily Democratic as their minority populations increase, with pockets of Republican precincts in central and western parts of the County.

109. Johnson County is politically competitive. For example, President Biden carried it in 2020 while former President Trump carried it in 2016. The County’s Democratic voters are concentrated in the Kansas City metropolitan area in the northeastern part of the County. The southern and western part of the County is Republican leaning.

⁸ See Mid-America Regional Council, First Suburbs Coalition, <https://www.marc.org/Community/First-Suburbs-Coalition>.

⁹ Member Cities, First Suburbs Coalition Member Cities, <https://www.marc.org/Community/First-Suburbs-Coalition/General-Information/Member-Cities>.

GROUND FOR RELIEF

Count One

Partisan Gerrymander in Violation of Kansas Constitution's Equal Rights and Political Power Clauses, Bill of Rights §§ 1 & 2

110. Plaintiffs restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

111. Irrespective of the U.S. Constitution, the Enacted Plan violates Sections 1 and 2 of the Kansas Bill of Rights because it has the intent and effect of depriving a disfavored class of Kansas voters of an equal opportunity to elect congressional representatives.

112. Section 1 of the Kansas Constitution's Bill of Rights provides that all Kansans are entitled to "equal rights" and Section 2 provides that "[a]ll political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit."

113. The Enacted Plan violates Plaintiffs' rights under Sections 1 and 2 because it targets them for differential treatment based upon their political beliefs and past votes.

114. The Enacted Plan cracks apart Plaintiffs and other likeminded Democratic voters in order to prevent them from translating their votes into victories at the ballot box. By systematically disfavoring Democratic voters and favoring Republican voters—in numbers that are vastly disproportionate to their regional and statewide numbers—the Enacted Plan shifts political power from all the people and places it instead in a subset of the people. It thus robs Plaintiffs and other likeminded Kansans of "equal protection and benefit" from their government in violation of Sections 1 and 2 of the Kansas Constitution.

Count Two
Partisan Gerrymander in Violation of Kansas Constitution's
Free Speech (Liberty of Press and Speech; Libel) and Free Assembly (Right of Peaceable
Assembly; Petition) Clauses, Bill of Rights §§ 3 & 11

115. Plaintiffs restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

116. Irrespective of the U.S. Constitution, the Enacted Plan violates Sections 3 and 11 of the Kansas Bill of Rights because it discriminates against Kansas Democrats based on their protected political views and past votes, burdens the ability of those voters to effectively associate, and retaliates against Democrats for exercising political speech.

117. The Enacted Plan does so by targeting Democratic voters based upon their historical voting preferences and surgically drawing district lines to prevent them from being able to coalesce their votes and elect their preferred candidates who share their political views.

Count Three
Partisan Gerrymander in Violation of Kansas Constitution's
Right to Suffrage, Art. 5, § 1

118. Plaintiffs restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

119. Irrespective of the U.S. Constitution, the Enacted Plan violates Article V, Section 1 of the Kansas Constitution because it imposes a severe burden on the right to vote that cannot be justified by a compelling state interest.

120. By targeting Democratic voters to prevent them from translating their votes into victories at the ballot box, the Enacted Plan imposes a severe burden on Plaintiffs' constitutional right to vote as part of a deliberate effort to make their votes ineffective.

Count Four
Racial Discrimination in Violation of Kansas Constitution's Equal Rights and Political Power Clauses, Bill of Rights §§ 1 & 2

121. Plaintiffs restate and incorporate by reference all allegations above as though fully set forth in this paragraph.

122. Irrespective of the U.S. Constitution, the Enacted Plan constitutes unlawful racial discrimination in violation of Sections 1 and 2 of the Kansas Constitution's Bill of Rights.

123. Under the current plan, minority voters in Wyandotte County—the State's only majority-minority county—have the ability to elect the candidate of their choice with the assistance of a portion of white voters who likewise support Democratic candidates. Currently, Wyandotte's minority voters and like-minded white voters in Congressional District 3 have elected Representative Davids, a Native American woman.

124. The Enacted Plan intentionally dilutes the voting power of Wyandotte County's minority voters by surgically removing the county's most heavily minority areas from District 3 and placing them in District 2, an overwhelmingly Republican-leaning district. In District 2 under the Enacted Maps, Wyandotte County's minority voters will no longer have the ability to elect candidates of their choice. The minority voters who remain in District 3 are then submerged into a district in which additional rural, white voters are added who will overpower their voting strength and lead to the likely defeat of their preferred candidates. What's more, the Enacted Plan was created specifically to eliminate the only seat currently held by a minority, Representative Davids.

125. Based on both its racially discriminatory intent and effect, the Enacted Plan's cracking of minority voters in Wyandotte County violates Sections 1 and 2 of the Kansas Constitution's Bill of Rights.

RELIEF SOUGHT

WHEREFORE, for the reasons stated herein and in Plaintiff's Motion to Expedite, Petitioner requests that this Court:

- a. Declare that the Enacted Plan is unconstitutional and invalid because it violates the rights of Plaintiffs under the Kansas Constitution's Equal Rights Clause, Political Power Clause, Right of Peaceable Assembly; Petition Clause, Liberty of Press and Speech; Libel Clause, and Qualifications of Electors Clause;
- b. Enjoin Defendants and their agents, officers, and employees from administering, preparing for, or moving forward with the 2022 primary and general elections for Congress using the Enacted Plan;
- c. Compel Defendants and their agents to perform their official duty in a manner that comports with the Kansas Constitution;
- d. Set a deadline by which a new redistricting plan that complies with the Kansas Constitution shall be enacted, and, failing such enactment or failing the enactment of a plan that satisfactorily remedies the violations, order a Court-imposed plan that complies with the Kansas Constitution;
- e. Establish a new congressional districting plan that complies with the Kansas Constitution if the Kansas Legislature fails to enact a new congressional districting plan that comports with the Kansas Constitution by a deadline imposed by the Court;
- f. Retain jurisdiction of this action to render any further orders that this Court may deem appropriate, including determining the constitutionality of any new congressional redistricting plans adopted by the Legislature,

- g. Award Plaintiffs their reasonable attorneys' fees and costs, and
- h. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF KANSAS**

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