No. 22-125083-S

IN THE SUPREME COURT OF THE STATE OF KANSAS

PETITION OF DEREK SCHMIDT, ATTORNEY GENERAL,
TO DETERMINE THE VALIDITY OF
SUBSTITUTE FOR SENATE BILL NO. 563
PROVISIONS REAPPORTIONING
STATE LEGISLATIVE DISTRICTS.

Petitioner's Response to Statements of Interested Persons

Original Action
Pursuant to Kan. Const. art. 10, § 1(b)

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RESPONSE TO STATEMENTS OF INTERESTED PERSONS

Petitioner, Attorney General Derek Schmidt, has reviewed the written statements submitted by interested persons, and they offer no reason for this Court to conclude that Sub SB 563 is invalid. Many of the statements address congressional redistricting or other matters irrelevant to the validity of the legislative maps (like preferences for an independent redistricting commission) and should therefore be disregarded by this Court. Other statements offer only conclusory opinions with no explanation or analysis and warrant no response. The remaining statements raise several general themes, so this response addresses them by topic rather than by responding to each statement individually.

Procedure

A few written statements complain about the procedure—in particular the 2021 listening tour—by which the Legislature obtained public input and developed the redistricting maps. But no statement identifies any *legal* deficiency with the process by which Sub SB 563 was enacted, and that process complied with all constitutional standards. In addition, although the Legislature was under no legal obligation to do so, the Legislature provided multiple opportunities for public comment both before and after the maps were proposed. The fact that some individuals would have preferred more opportunities to make their views known or believe that their views were not adequately considered is not a basis for finding Sub SB 563 to be invalid. *See In re Stephan* (*Stephan III*), 251 Kan. 597, 603, 836 P.2d 574 (1992).

Guidelines

Several statements also accuse the Legislature of failing to follow the "Guidelines" produced by the Legislature's Redistricting Advisory Group. Not only is that incorrect, for the reasons explained in the Attorney General's original Memorandum and Response to Senator Holland, but it is irrelevant. The Guidelines are not law, and thus provide no basis for this Court to invalidate Sub SB 563.

Compactness

Some statements comment on the compactness of certain districts. As noted in the Attorney General's original Memorandum (at p. 19), the average Reock score for the maps is in line with the scores for the 2012 court-drawn map. The same is true of the minimum Roeck scores. The lowest Reock score for the 2012 court-drawn maps was 0.17 for House District 34.[1] That is similar to the minimum score of 0.16 for this year's maps, again for House District 34 (similar in shape to the previous House District 34) and for Senate District 19 (which unites communities of interest in a Topeka-Lawrence corridor). In any event, no interested party has identified any constitutional or statutory provision that would be violated by allegedly non-compact maps.

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[1] *See* http://www.kslegresearch.org/KLRDweb/2012LDP/District_Court/m5_district%20court-house/63-districtcourt-house-compact.pdf.

The lowest score for a Senate district in 2012 was 0.19 for District 5. *See* http://www.kslegresearch.org/KLRD-web/2012LDP/District_Court/m5_district%20court%20-senate/63-m5_districtcourt-senate-compact.pdf.

Communities of Interest

The most common theme in the written statements is that the interested person would have liked particular districts to have been drawn differently to either better reflect what the person views as a community of interest or to not divide certain communities or political subdivisions. But the fact that someone may have drawn different lines does not render a map invalid. *See In re Stephan* (*Stephan I*), 245 Kan. 118, 128, 775 P.2d 663 (1989) ("Though we might have drawn district lines differently, we cannot substitute our judgment for that of the legislature."); *Stephan III*, 251 Kan. at 609 ("The fact that other plans could be devised that might avoid dividing certain communities and political entities into two or more districts does not, by itself, give us cause to reject the plan adopted by the legislature."). Districts can be drawn in innumerable different ways, and how various communities of interest are identified and placed in districts is a matter of legislative discretion. *Stephan III*, 251 Kan. at 608. Moreover, because all districts are interconnected as part of a single redistricting for the entire State, decisions about where local boundary lines are drawn may (and often do) cause a ripple effect that presents other issues or concerns in distant communities—that may be of no concern to individuals who filed statements but necessarily must concern the Legislature in its task to redistrict the entire State.

Incumbents

Other statements objected that certain districts appear to be drawn either to protect or target certain incumbents. But as this Court has recognized, redistricting

inevitably has political consequences, including pitting incumbents against each other. *Stephan I*, 245 Kan. at 128 ("The mere fact that the plan pits incumbents against incumbents furnishes no reason for a court to invalidate the legislative plan."). The number of potential incumbent contests is consistent with past maps this Court has determined to be valid. Attorney General Memo. at 23-24.

One group of statements focused on a proposed challenger who is no longer in the district where he intended to run. But the proposed candidate remains free to run in his new district. Potential candidates have no legal right to be placed in the district of their choosing, even if they preannounce their intention to run.

Political Gerrymandering

Several statements allege that the legislative maps are a form of political gerrymandering. But as the Attorney General has explained both in his response to Senator Holland and more fully in *Rivera v. Schwab*, No. 22-125092-S, political gerrymandering claims present political questions that are nonjusticiable under the Kansas Constitution. Indeed, the nature and volume of written statements in this case underscore this point. Anyone who believes a redistricting map is unfair or dissatisfying in some respect can claim gerrymandering, but there is no legal standard to measure such claims. Entertaining political gerrymandering claims would require this Court to substitute its political judgment for that of the Legislature and plunge this Court into a political morass.

Even if political gerrymandering claims were justiciable, it is impossible to square the allegations of political gerrymandering to disadvantage Democrats with

the fact that the legislative maps received significant support from Democrats. Four Democrats in the Kansas Senate (of Eleven total) voted for the conference committee report on Sub SB 563, which contained the House and Senate maps, including Senator Pittman, who has submitted a written statement objecting to the maps that he voted for. *See* 2022 Senate Journal 1690. A fifth Democrat had voted for Sub SB 563 at its initial consideration by the Senate before it was amended by the other chamber to include the House map and further amended by the conference committee to include the State Board of Education map, and two more Democrats were present but passed on the initial vote. Both the House and Senate maps also received the support of nearly all of the Democrats (34 of 39) in the House when the bill initially passed, before the State Board of Education map was added by the conference committee. *See* 2022 House Journal 2396-97. And the maps were signed into law by the Governor, who is a Democrat. The notion that all of these Democrats supported an anti-Democrat gerrymander is implausible to say the least.

A couple of comments base their gerrymandering allegations on the fact that the maps do not provide for proportional representation, i.e., provide every political party with a similar number of seats in the Legislature as the percentage of vote the party receives on average in statewide elections. But that has never been required or provided for in past maps approved by this Court. *See In re Senate Bill No. 220*, 225 Kan. 628, 637, 593 P.2d 1 (1979).

Racial Vote Dilution

Finally, several statements allege that Sub SB 563 is an illegal racial gerrymander, despite the fact that a number of minority Legislators voted in favor of the maps, including some who represent the areas about which some persons filing statements complain. *See* 2022 Senate Journal 1690; 2022 House Journal 2396-97. These statements contain no evidence of impermissible racial vote dilution. Both the House and Senate maps create majority-minority districts, and none of the statements appears to allege that additional majority-minority districts are required. Rather, the statements focus on minor changes to the racial composition of certain districts. But small fluctuations to the racial makeup of districts is to be expected when boundary lines are redrawn based on demographic changes over the past decade. Opponents of the maps have provided no authority for the proposition that Section 2 of the Voting Rights Act requires districts to contain at least the same percentage of minority voters as under previous maps. The information they have provided fails to demonstrate illegal racial vote dilution.

CONCLUSION

This Court should determine that the legislative reapportionment contained in Sub SB 563 is valid.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 12, 2022, the above Response was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants.

/s/ *Brant M. Laue*
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