

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ROBYN RENEE ESSEX, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 12-4046
	)	
KRIS W. KOBACH, Kansas Secretary of State,	)	
	)	
Defendant.	)	

PLAINTIFF ROBYN RENEE ESSEX’S TRIAL BRIEF

Introduction

Robyn Renee Essex filed this suit because she believed that the voting districts imposed on her by Kansas law were unconstitutional. The Kansas Secretary of State has now conceded that is so.

As relief, Ms. Essex seeks one thing: to vote in federal and state districts that are constitutionally permissible and fair. Since the state political process has failed to afford her that basic right, she offers the following maps (and related analysis) as one way to reach her goal. She welcomes, of course, any effort by this Court to refine these suggested maps so that the districts in which Ms. Essex ultimately votes hew as closely as possible with the Fourteenth Amendment’s one-person-one-vote requirement.

Facts

1. Ms. Essex lives at 1137 E. Frontier Dr., Olathe, KS, 66062, in Johnson County. *See* Joint Stip. at ¶ 1.
2. She is a registered voter and intends to vote in the upcoming primary and general elections. *See id.*; *see also* Exhibit 1, at 1 (affidavit of Robyn Renee Essex).
3. In April 2010, the federal government conducted the constitutionally required decennial census. *See* Joint Stip. at ¶ 31.
4. Following that census, the ideal standard population for congressional voting districts is 713,280. *Id.* at ¶ 34.
5. The ideal population for each state Senate district is 70,986. *Id.* at ¶ 37.
6. The ideal population for each House district is 22,716. *Id.*
7. The ideal population for each Board of Education district is 283,944. *Id.* at ¶ 39.
8. The current Kansas state and federal districts deviate substantially from these ideal districts. *Id.* at ¶¶ 40-42.
9. Notwithstanding those deviations, the Kansas Legislature failed to send any redistricting map to the Governor for his signature. *Id.*
10. The Kansas Legislature has adjourned its extended regular session. *Id.*

11. There is now no practical likelihood that the Legislature will pass redistricting maps. *Id.*

12. As a result, the task of drawing the new maps has fallen on this Court. *Connor v. Finch*, 431 U.S. 407, 415 (1977) (“In the wake of a legislature’s failure . . . a federal court is left with the unwelcome obligation of performing in the legislature’s stead . . .”).

DISCUSSION

I. General principles for drawing redistricting maps.

A. Constitutional concerns.

1. One person, one vote.

The most important “constitutional requirement imposed upon a [re-districting] plan . . . is that it must make ‘as nearly as is practicable one man’s vote in a congressional election . . . be worth as much as another’s.’”¹ *O’Sullivan v. Brier*, 540 F. Supp. 1200, 1203 (D. Kan. 1982) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964)). Indeed, the “one person, one vote” construct is “the preeminent, if not the sole, criterion on which to adjudge [the] constitutionality” of a re-apportionment plan. *Chapman v. Meier*, 420 U.S. 1, 23 (1975). Generally speaking, this mandate requires that each

¹ The “one person, one vote” requirement applies equally to federal congressional and state legislative districts. See *Reynolds v. Sims*, 377 U.S. 533 (1964).

voting district—whether state or federal—contain the same number of people.

“Precise mathematical equality, however, may be impossible to achieve in an imperfect world; [and] therefore the ‘equal representation’ standard is enforced only to the extent of requiring that districts be apportioned to achieve population equality as nearly as is practicable.” *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quotation omitted). The nearly-as-practicable standard, however, is not *carte blanche* to ignore one-person-one-vote. Rather, it “permits *only* the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.”² *Id.* (emphasis added) (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). Put differently, “there are no *de minimus* population variations, which could practicably be avoided, but which would nonetheless meets the standard of Art. I, § 2 [of the Constitution], ***without justification.***” *Karcher*, 462 U.S. at 734 (emphasis added).

With congressional redistricting, the one-person-one-vote standard requires a “good-faith effort to achieve precise mathematical equality.” *See*

² Although “[t]he precise point at which a [congressional redistricting] plan passes into the range of acceptable population deviation remains undefined and presumably varies with the plan,” “the district courts tend to invalidate deviations which are greater than” 5.97%. *Carstens v. Lamm*, 543 F. Supp. 68, 81 (D. Colo. 1982).

Karcher v. Daggett, 462 U.S. 725, 730 (1983) (quotation and citation omitted). There may be slightly more wiggle room with state maps. With such maps, “[s]o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.” *Reynolds*, 377 U.S. at 579. That said, “[a] court-ordered plan”—as opposed to a plan imposed through the state political process—“must be held to higher standards [and] any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features.” *Chapman*, 420 U.S. at 26.

2. Racial dilution.

“[I]n fashioning these constitutionally mandated equipopulous plans, the court must comply with the racial-fairness mandates of § 2 of the Voting Rights Act, 42 U.S.C.A. § 1973, and the purpose-or-effect standards of § 5 of the Voting Rights Act, 42 U.S.C.A. § 1973c.” *McConnell*, 201 F. Supp. 2d at 628 (citing *Abrams v. Johnson*, 521 U.S. 74, 90 (1997)). Thus, “plans which satisfy equal population requirements may still be vulnerable to [constitutional] attack on the issue of invidious racial discrimination.”

Carstens v. Lamm, 543 F. Supp. 68, 81 (D. Colo. 1982). “The constitutional right is one of equal access to the political process.” *Id.*

To date, there has been no suggestion that any of the proposed maps unconstitutionally discriminate on the basis of race. As such, it is assumed that the Court will follow the precedent it set in *O’Sullivan* and consider this factor not in the context of constitutional concerns, but instead as a part of the matrix of relevant extra-constitutional concerns.

B. Extra-constitutional concerns.

The two constitutional criteria discussed above, “population equality and absence of racial discrimination, have formed the foundation of judicial analysis on this issue” *Carstens*, 543 F. Supp. at 82. However, “[c]ourts frequently face situations in which several redistricting plans achieve virtually identical levels of population equality.” *O’Sullivan*, 540 F. Supp. at 1203. In those cases, “[t]he court must accommodate other relevant criteria in determining whether to accept a proposed plan or adopt a new one.” *Carstens*, 543 F. Supp. at 82.

These extra-constitutional factors include: (1) whether a proposed plan preserves county and municipal boundaries; (2) whether a plan dilutes the vote of any racial minority; (3) whether a plan creates districts that are compact and contiguous; (4) whether a plan preserves existing districts to the

greatest extent possible; (5) whether a plan groups together communities of interest; and (6) whether a plan has received political support. *See, e.g., O’Sullivan*, 540 F. Supp. at 1202-03; *Carstens*, 543 F. Supp. at 87-93.

This Court can also consider goals expressed by the state legislature, embodied here in Kansas’ Guidelines and Criteria for redistricting. *See Joint Stip.* at ¶ 45, Exhibit 9. Among other factors, those Guidelines express a desire to avoid contests between incumbents where possible. *See id.*

1. Preservation of county and municipal boundaries.

In discussing the “great importance” of preserving county and municipal boundaries, this Court has explained that “county lines are meaningful in Kansas, and . . . a redistricting plan should split counties only if absolutely necessary to maintain a constitutional population variance.” *O’Sullivan*, 540 F. Supp. at 1203. Indeed, “Kansas counties have historically been significant political units,” “[m]any officials are elected on a county-wide basis, . . . political parties have been organized in county units,” and “to a degree most counties are economic, social, and cultural units, or parts of a larger socio-economic unit.” *Id.* Thus, to the extent possible, maps should seek to preserve county and municipal boundaries.

2. Dilution of minority votes.

As this Court has noted, “[m]inorities find it difficult to make their

views count in a political system in which majorities rule.” *O’Sullivan*, 540 F. Supp. at 1204. That can be combated by “being able to maintain block voting strength in areas where they live closely together” *Id.* Thus, “splitting . . . large minority population[s] of [a single county] between two districts is undesirable unless compelled by some significant reason.” *Id.*

3. Compact and contiguous.

“Although there are several ways to measure compactness, one of the most accurate is to determine the smallest circle into which the district can be circumscribed and to compare the ratio of the area of the district inside the circle to the area of the circle itself.” *Id.* (quotation omitted); *see also Larios v. Cox*, 300 F. Supp. 2d 1320, 1331 (N.D. Ga. 2004) (noting that compactness can be measured by “the space occupied by a district as a proportion of the space of the smallest encompassing circle”). “The closer these figures come to a 1 to 1 ration, the more compact the district will be.”³ *Carstens*, 543 F. Supp. at 87.

The contiguity factor requires that “no part of one district be completely separated from any other part of the same district.” *Id.*; *see also Smith v.*

³ “In a practical sense, the compactness of a congressional district will be directly affected by the density and distribution of a state’s population,” and thus, because “population requirements have priority, compactness must often be sacrificed in order to achieve an acceptable range of population deviation.” *Carstens*, 543 F. Supp. at 87.

Clark, 189 F. Supp. 529, 541 (S.D. Miss. 2002). Because it is unlikely that any of the maps that the Court will be asked to consider will propose non-contiguous districts, this factor is likely of little concern. *See Wright v. Schoenberger*, 262 F. Supp. 2d 156, 158 (S.D.N.Y. 2003) (“With respect to ‘contiguity,’ plaintiffs’ claim borders on the frivolous . . . [because contiguity] simply . . . mean[s] territory touching, adjoining and connected, as distinguished from territory separated by other territory”) (quotation and citation omitted).

4. Preservation of existing congressional districts.

Court-chosen maps should also come as close as possible “to preserving prior congressional district lines by reassigning the fewest possible people from one district to another” *O’Sullivan*, 540 F. Supp. at 1204. This factor is not designed as an incumbent-protection plan. Rather, it ensures that, to the greatest extent possible, citizens are not shuffled into new districts and legislators with whom they are unfamiliar. Put simply, regularity and familiarity matter to voters, and maps should respect that by maintaining the status quo as much as possible.⁴

⁴ Maintaining the *status quo* also ensures that courts are involved in the inherently political process of district line-drawing only to the extent necessary to make current districts constitutional.

5. Communities of interest.

In discussing this factor, commentators have observed that “[h]omogenous districts facilitate effective representation because community sentiments are more clearly defined and consistent policy positions are more likely.” Janet K. Boles & Dorothy K. Dean, *“Communities of Interest” in Legislative Redistricting*, 58 STATE GOVERNMENT 102 (1985).

6. Political support.

“[R]edistricting is primarily the state legislature’s task, but becomes a judicial task when the legislature fails to redistrict after having an adequate opportunity to do so.” *O’Sullivan*, 540 F. Supp. at 1202. Because this task is typically legislative, courts are “bound to give . . . ‘thoughtful consideration’” to legislative and/or executive support any particular map enjoyed before the process broke down. *Id.* (citing *Sixty-Seventh Minn. State Senate v. Beems*, 406 U.S. 187, 197 (1972)). This Court is not, however, “required to defer to any plan that has not survived the full legislative process to become law.” *Id.*

7. Avoiding forcing incumbents into the same district.

On January 9, 2012, the Kansas State Legislature published its *Guidelines and Criteria for 2012 Congressional Redistricting*. There, the legislature stated that “[c]ontests between incumbent members of the Legislature or the State Board of Education [should] be avoided whenever

possible.” See Joint Stip., ¶ 45, Ex. 9. This Court has previously indicated that such expressions of policy by state government should play some role in helping this Court settle on an appropriate map. *O’Sullivan*, 540 F. Supp. at 1203.

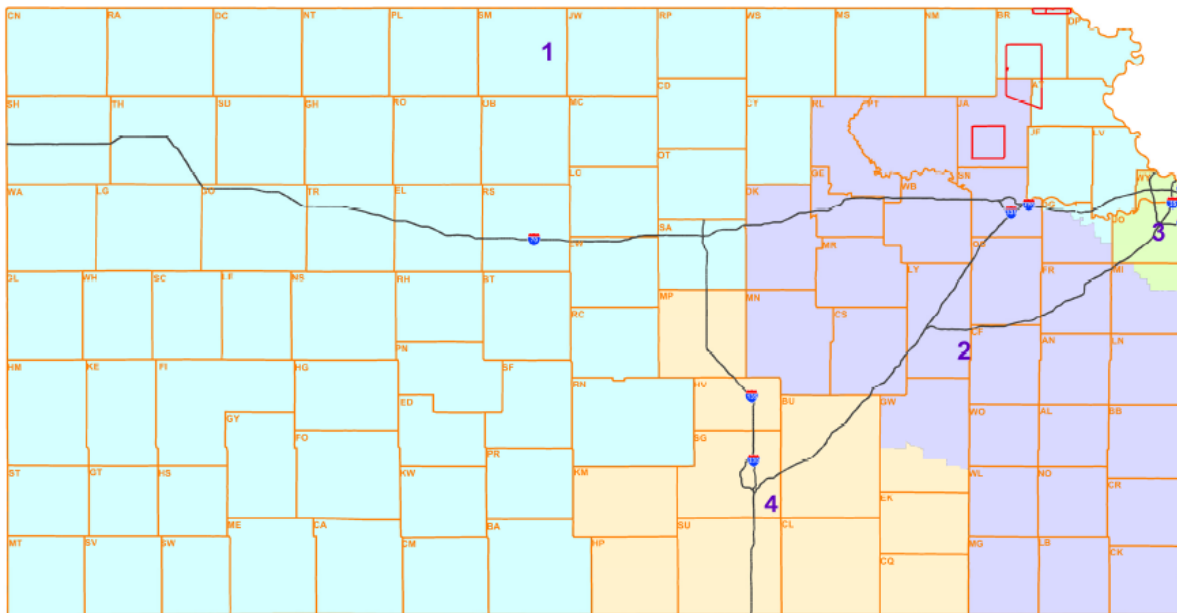
II. Application of the principles.

A. Congressional map.

Ms. Essex suggests the Court adopt the Kansas Six congressional map.

See Exhibit 2.⁵ Kansas Six looks like this:

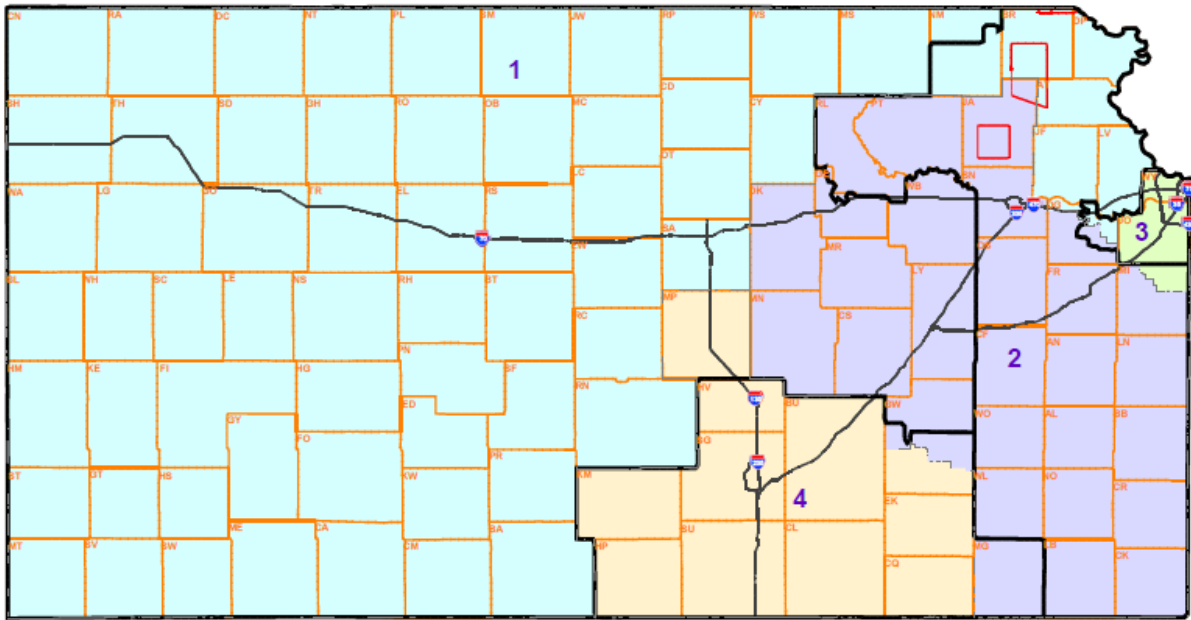
M5_Kansas Six for KLRD TR



And this image shows how Kansas Six compares with current congressional districts (with the black lines showing the existing districts):

⁵ Exhibits 2 through 7 to this brief are compilations of data relating to the maps suggested by Ms. Essex. With the exception of a handful of pages in Exhibit 5, each of the pages of these exhibits can be found at <http://www.sos.ks.gov/elections/redistricting/Maps> (last visited May 25, 2012) and/or http://redistricting.ks.gov/_Plans/plans_proposed_3.html (last visited May 28, 2012). The parties have stipulated that information available on these websites is admissible. See Joint Stip. at ¶¶ 88-93. The pages not in evidence are from analysis performed by the Kansas Legislative Research Department. Analysis of all other maps by KLRD has been stipulated as admissible. If necessary, counsel anticipates that the handful of pages referenced in Exhibit 5 that are not currently online will be moved into evidence at the hearing scheduled for May 29, 2012.

M5_Kansas Six for KLRD TR



For the following reasons, Kansas Six comports with established constitutional and extra-constitutional concerns.

1. Constitutional concerns.

a. One person, one vote.

Kansas Six tracks the one-person-one-vote requirement almost exactly. Specifically, proposed Districts 1 and 2 comport exactly with the ideal-population standard of 713,280. *See Exhibit 2, at Kansas Six Population Summary Report.* Proposed Districts 3 and 4 both have populations of 713,279—just one person shy of perfection. *See id.* In fact, every district proposed by Kansas Six deviates 0.00% from the one-person-one-vote ideal. *See id.* With deviations like that, Kansas Six unquestionably meets this

“preeminent” of requirements. *Chapman v. Meier*, 420 U.S. 1, 23 (1975).

2. Extra-constitutional criteria.

a. Preservation of county and municipal boundaries.

Kansas Six perfectly preserves the boundaries of 102 Kansas counties and 3,891 voting districts. *See* Exhibit 2, at Kansas Six Political Subdivisions Split Between Districts. It splits only three counties, and those three counties are split between only two districts each. *Id.*

This compares favorably with all other maps being offered to this Court. For example, Sunflower 13 and Sunflower 9c both also split three counties, and Free Willie splits four. *See* Sunflower 13 Political Subdivisions Split Between Districts,⁶ Sunflower 9 Political Subdivisions Split Between Districts,⁷ and Free Willie Political Subdivisions Split Between Districts.⁸ Only the map known as Black and White does better at two counties split, but Black and White splits that county into three separate congressional

⁶ Available at http://www.sos.ks.gov/elections/redistricting/Congressional/M5_Sunflower%2013/40-m5_sunflower13-split.pdf (last visited May 28, 2012).

⁷ Available at http://www.sos.ks.gov/elections/redistricting/Congressional/M5_Sunflower%209C/40-m5_sunflower9c-split.pdf (last visited May 28, 2012).

⁸ Available at http://www.sos.ks.gov/elections/redistricting/Maps/Congressional/M5_Free%20Willie/free%20willie%20-split.pdf (last visited May 28, 2012).

districts. *See* Black and White Political Subdivisions Split Between Districts.⁹

As these examples show, almost every conceivable congressional map will split a handful of Kansas counties. That is inevitable. But by limiting splits to three counties, Kansas Six performs as well or better on this metric than almost all of the other major maps being offered to this Court. This bodes well for its adoption.

b. Dilution of minority votes.

Kansas Six affects no statistically significant changes in the racial composition of any congressional district. *See* 2, at Kansas Six Plan Comparison: Racial Composition and Hispanic Population. For example, the percentages of citizens who are African American in the current and proposed Kansas Six districts are as follows:

District	% African American
1 (current)	2.4%
1 (Kansas Six)	2.8%
2 (current)	4.9%
2 (Kansas Six)	4.9%

⁹ Available at http://www.sos.ks.gov/elections/redistricting/Congressional/M5_Black%20and%20White/40-m5_blackandwhite-split.pdf (last visited May 28, 2012).

3 (current)	8.6%
3 (Kansas Six)	8.9%
4 (current)	7.1%
4 (Kansas Six)	6.9%

See id. And the voting-strength percentages for all other racial minority groups remain equally stable between current districts and Kansas Six’s proposed districts. *See id.* Therefore, dilution presents no stumbling block to Kansas Six’s adoption.

c. Compactness.

Kansas Six also fares well on measures of compactness, with a mean compactness measure of 0.46 on the Reock scale.¹⁰ *See* Exhibit 2, at Kansas Six Measures of Compactness. Kansas Six’s most compact district is District 3, at 0.50, and its least compact district is District 1, at 0.36. *Id.*

These compactness metrics are comparable to other major maps being offered to this Court. For example, Sunflower 13 has a mean compactness measure of .48 on the Reock scale—only 2/100 of a percent better than

¹⁰ “The Reock test locates the two points on each district’s perimeter that are furthest apart and then uses the distance between the points as a diameter to construct the smallest circle completely encompassing the district. The ratio of the district’s area to the area of the circle is then computed, resulting in a number between 0.00 and 1.00. The nearer the ratio is to 1.00, the more compact the district.” *Stone v. Hechler*, 782 F. Supp. 1116, 1122 n.12 (N.D. W. Va. 1992).

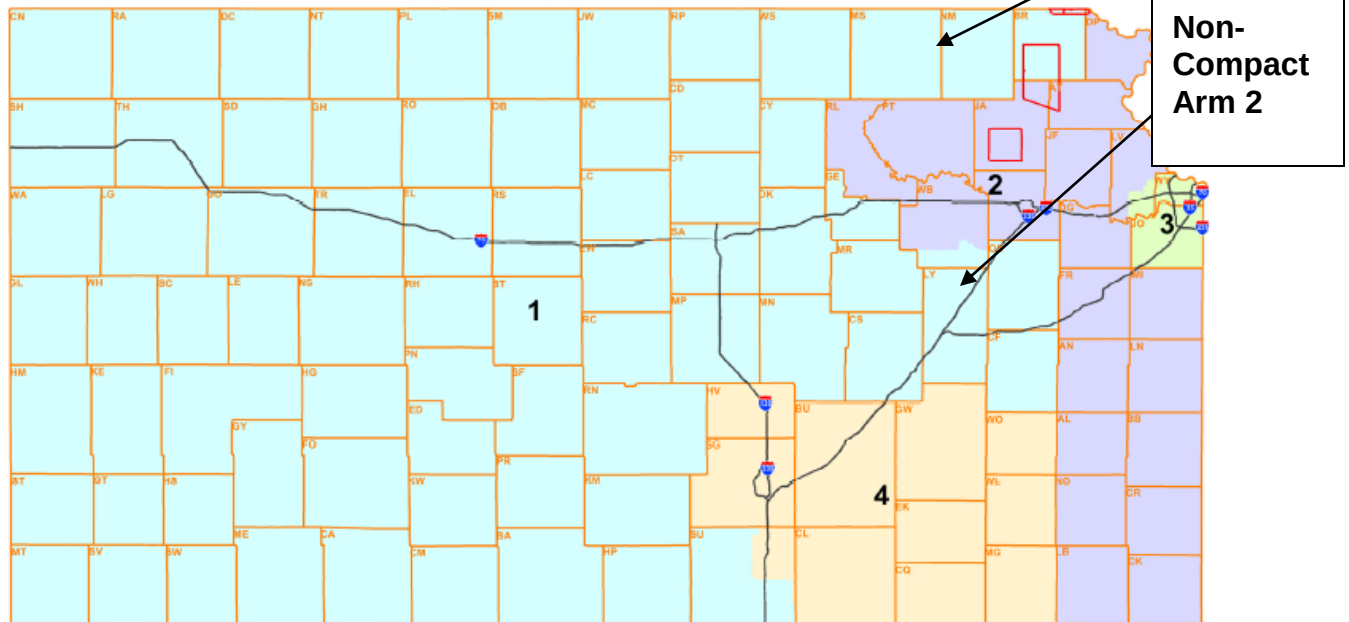
Kansas Six. *See* Sunflower 13 Measures of Compactness.¹¹ And Sunflower 13's least compact district—District 2—is .06 less compact than Kansas Six's least compact district.¹² *Id.* Differences like these are, frankly, statistically meaningless. Kansas Six is as compact as any other map being offered to this Court.

Indeed, these numeric comparisons play out visually. For example, Kansas Six's proposed District 1 is admittedly visually somewhat non-compact, with a portion of its area stretching out across northeastern Kansas. *See* Exhibit 2. But other major maps fare no better. For example, Sunflower 13's proposed District 1 has not just a single non-compact area, but two non-compact arms—one stretching across northeastern Kansas and another stretching into east central Kansas:¹³

¹¹ Available at http://www.sos.ks.gov/elections/redistricting/Congressional/M5_Sunflower%2013/40-m5_sunflower13-compact.pdf (last visited May 28, 2012).

¹² Sunflower 9c compares similarly, with a mean compactness measure identical to that of Kansas Six. *See* Sunflower 9c Measures of Compactness, available at http://www.sos.ks.gov/elections/redistricting/Congressional/M5_Sunflower%209C/40-m5_sunflower9c-compact.pdf (last visited May 28, 2012).

¹³ These compactness issues with District 1 likely stem from the fact that no matter how it's sliced, to contain enough citizens to comport with the Fourteenth Amendment's one-person-one-vote requirement, District 1 must be extremely large and yet avoid major metropolitan areas that would spike its population. This is entirely consistent with *Carstens'* teachings that, "the compactness of a congressional district will be directly affected by the density and distribution of a state's population" and that, because "population requirements have priority,

M5_Sunflower 13 for KLRD TR

As this visual shows, Kansas Six is as—or more—compact than most other major maps being offered to this Court. This too speaks well for its adoption.

d. Preservation of existing congressional districts.

Kansas Six also works to preserve existing congressional districts. This, of course, can be seen somewhat in the map above comparing current districts to those proposed by Kansas Six.

But it also plays in the numbers. For example, 98.4% of the citizens in Kansas Six's District 3 come from the current District 3. *See* Exhibit 2, at Kansas Six Plan Comparison with Population. Similarly, 95.9% of the

compactness must often be sacrificed in order to achieve an acceptable range of population deviation.” *Carstens*, 543 F. Supp. at 87.

citizens in Kansas Six’s District 4 come from the current District 4. *See id.* Indeed, even in Kansas Six’s “less preserved” districts—Districts 1 and 2—72.1% and 77.2%, respectively, of the citizens still stay within their current districts. *Id.* As these numbers show, although not perfect on this metric, Kansas Six keeps most Kansans within their current congressional districts.

Kansas Six’s District 3 also keeps together several historically joined counties. As Intervenor Denning has explained via affidavit, Wyandotte, Johnson, and portions of Miami County have historically fallen into District 3. *See* Denning Affidavit at 2-4. Kansas Six ensures that these historically combined counties remain together. *Id.* at 5. This too counsels in favor of its adoption.

e. Communities of interest.

Kansas Six also works to preserve communities of interest. To begin, Kansas Six ensures that all of Leavenworth County falls within the same congressional district. That is important. As explained by Intervenor John W. Bradford via affidavit, the Leavenworth County area is a well-known community of interest.¹⁴ *See* Doc. 160, Ex. 1. He writes, “the residents of

¹⁴ Notably, the *O’Sullivan* court observed that, although Leavenworth County “arguably is also part of the greater Kansas City metropolitan area,” its addition to a district that already includes Johnson and Wyandotte Counties “would exceed permissible population deviations.” 540 F. Supp. at 1204. Thus, the fact that Kansas Six excludes Leavenworth County from the District 1 is of no moment.

[Leavenworth County] share similar community, cultural and social attributes[,]” including its strong ties to the military and its significant ties to prison-related industries. *Id.* at 2-5. These shared interests make it particularly crucial that Leavenworth County be kept within a single district so that same person can advocate these strong community interests in the United States Congress. Kansas Six does that.

In contrast, Sunflower 13 splits Leavenworth County’s community of interest into Districts 2 and 3. *See* Sunflower 13 Political Subdivisions Split Between Districts.¹⁵ So do Sunflower 9c and Free Willie. *See* Sunflower 9c Political Subdivisions Split Between Districts¹⁶ and Free Willie Political Subdivisions Split Between Districts.¹⁷ That Kansas Six avoids this split leans in favor of its adoption

As another example, since they collectively “represent the Kansas portion of greater Kansas City,” “the logic is unavoidable that Johnson

¹⁵ Available at http://www.sos.ks.gov/elections/redistricting/Congressional/M5_Sunflower%2013/40-m5_sunflower13-split.pdf (last visited May 28, 2012).

¹⁶ Available at http://www.sos.ks.gov/elections/redistricting/Congressional/M5_Sunflower%209C/40-m5_sunflower9c-split.pdf (last visited May 28, 2012).

¹⁷ Available at http://www.sos.ks.gov/elections/redistricting/Maps/Congressional/M5_Free%20Willie/free%20willie%20-split.pdf (last visited May 28, 2012).

County and Wyandotte County should be placed in one district.” *O’Sullivan*, 540 F. Supp. at 1204. Kansas Six does just that, placing both counties in District 1. This further counsels for its adoption.

What is more, Kansas Six also lumps several of the State’s leading institutions of higher education and the seat of State government into the same district. Specifically, it groups the University of Kansas, Kansas State University, Emporia State University, Washburn University, and Topeka into the District 2. This grouping of similar interests is of unquestionable importance. *Cf. id.* at 1205 (explaining that “the state’s two largest universities” should be grouped together and be “linked to Topeka, the state capital located in Shawnee County, because of the many state employees, educational connections, economic, educational, and social projects, and other demographic factors”).

Other major maps do not achieve this goal. For example, Sunflower 9C, places the state’s two major universities in separate congressional districts. It also places Emporia State University in a district that mostly covers rural western Kansas. This counsels strongly against adopting Sunflower 9C.

Finally, there should be a strong preference for grouping together “Sedgwick County and the socio-economic community related to Wichita,

Kansas’s largest city.” *Id.* at 1205. The *O’Sullivan* court wished to do this by joining Sedgwick, Reno, Sumner, Kingman, Harper, Marion, McPherson, and Harvey Counties, but felt it could not maintain constitutional variance limits if it did so. *See id.* As a result, the *O’Sullivan* court left McPherson, Harvey, and Marion Counties in the District 2 and grouped together only Sedgwick, Reno, Sumner, Kingman, and Harper Counties. *See id.*

Kansas Six more closely achieves *O’Sullivan*’s laudable goal. Specifically, Kansas Six groups together in the District 4 seven of the eight counties—Sedgwick, Reno, Sumner, Kingman, Harper, Marion, and Harvey—that the *O’Sullivan* court recognized as sharing a community of interest.

Once again, this meaningfully differentiates Kansas Six from many of the other proposed maps. For example, both Free Willie and Sunflower 13 exclude Harper, Kingman, Reno, McPherson, and portions of Sumner Counties from Sedgwick County. This splitting of a recognized, important community of interest counsels strongly against their adoption.

f. Previous legislative action.

On May 19, 2012, Kansas Six map was passed in the House as HB Sub 145, with 64 yeas and 51 nays.¹⁸ Kansas Six was not voted on by the Senate.

¹⁸ A record of those votes, per Joint Stipulation 92, can be found at http://www.kslegislature.org/li/b2011_12/asures/sb145/ (last visited May 28, 2012).

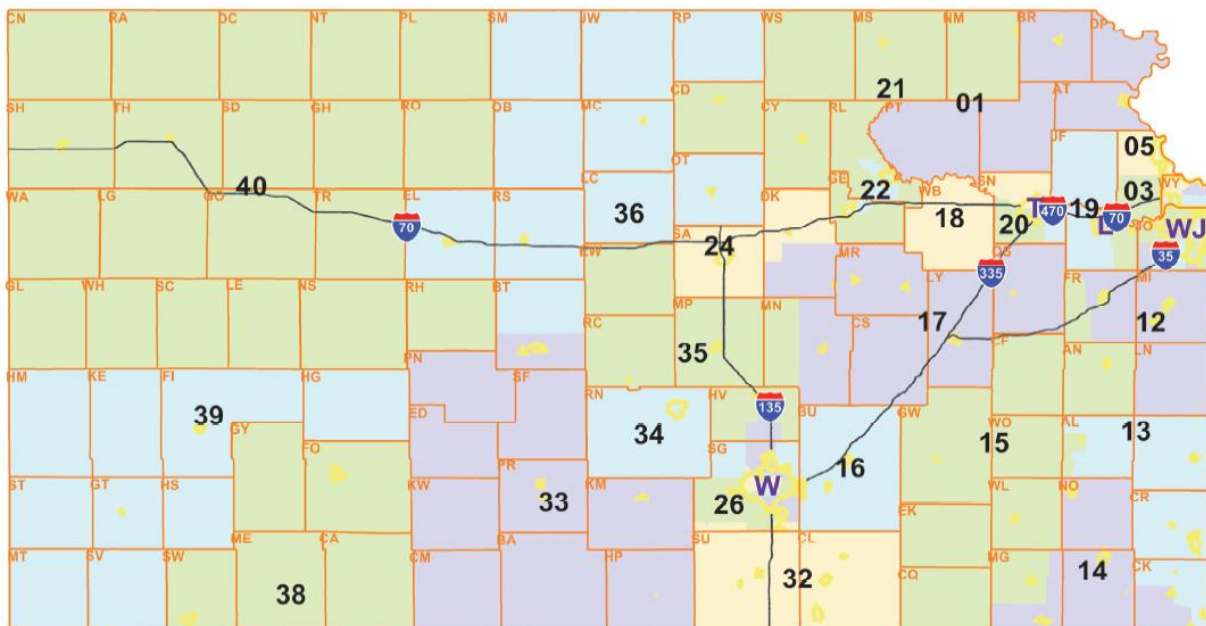
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Kansas Six has near-perfect deviation, does not dilute minority voting strength, is relatively compact, does not deviate significantly from existing districts, and preserves several important communities of interest. For those reasons, this Court should adopt Kansas Six as the congressional map for the upcoming elections.

B. State Senate map.

Ms. Essex suggests that the Court adopt one of the For the People series of Senate maps or a close derivation thereof.¹⁹ Possibilities include For the People 12:

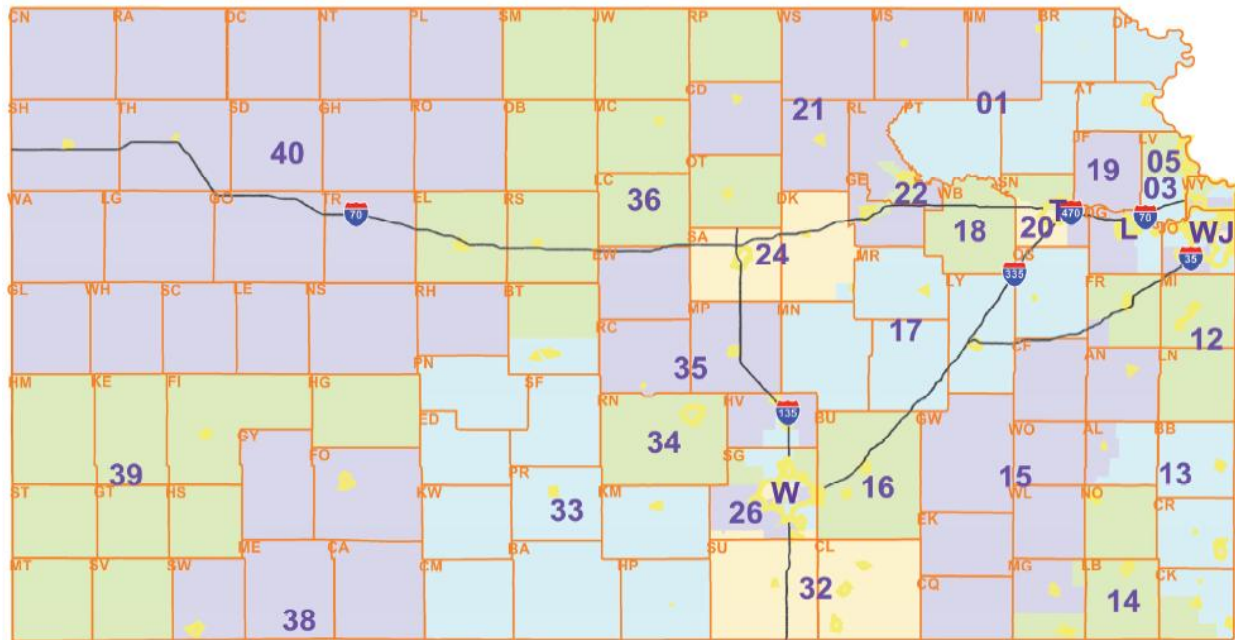
M5_For The People 12 for KLRD TR



¹⁹ State Board of Education maps are closely tied to Senate districts. Therefore, Ms. Essex suggests that this Court adopt one of the Board of Education maps tied to the For the People-style maps.

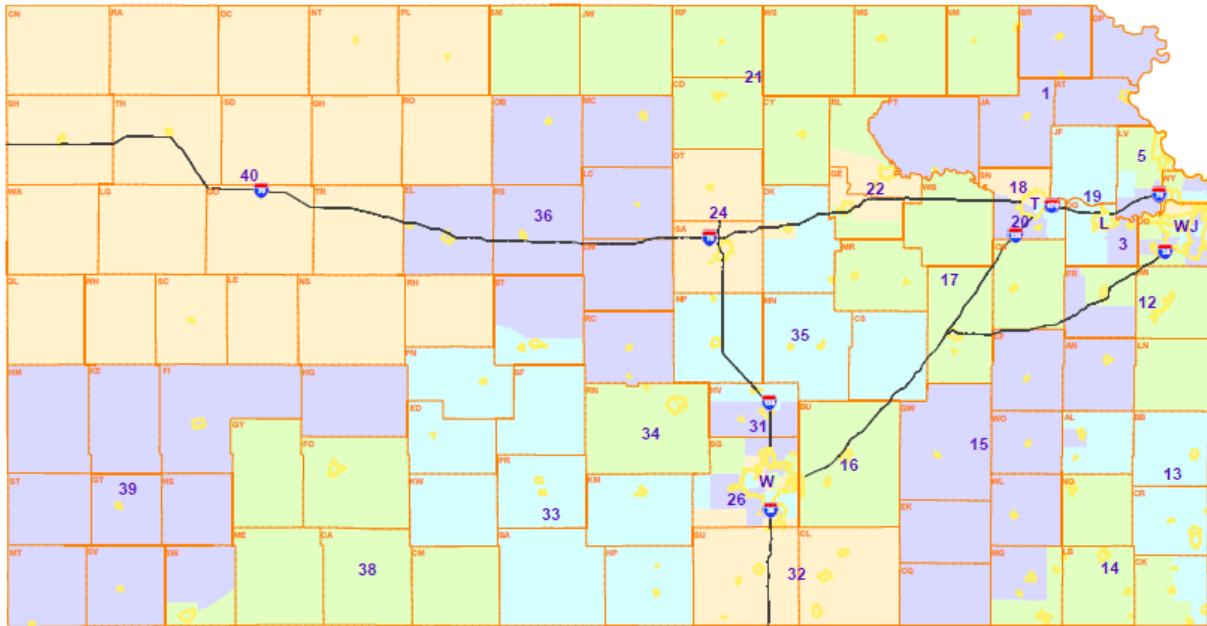
For the People 13b:

M5_For The People 13b for KLRD TR



And the Senate map attached as Exhibit A to Ms. Essex's complaint (a low-deviation version of the For the People series of senate maps):

M5_Essex A for KLRD TR



For the following reasons, this series of maps comports with established constitutional and extra-constitutional concerns.

1. Constitutional concerns.

a. One man, one vote.

i. For the People 12

For the People 12 has a relative population deviation that ranges from -2.73% to 2.49%. *See* Exhibit 3, at For the People 12 Population Summary

Report. Out of 40 Senate Districts, only 8 districts would deviate from the ideal by 2% or more. *Id.* Indeed, several of its proposed districts would have near-perfect deviation rates. For example, proposed District 23—Ms. Essex’s likely home district—would have 71,377 citizens, just 0.55% away from the ideal population of 70,986. *Id.* And several other districts would deviate from the ideal by less than 1%, including District 24 at -0.44%, District 26 at -0.72%, District 28 at -0.66%, District 29 at 0.59%, District 34 at 0.41%, District 36 at 0.16%, and District 40 at 0.30%. *Id.* Indeed, every single district proposed by For the People 12 deviates from the ideal by less than 3%. *Id.* These low deviation numbers weigh strongly in its favor.

ii. For the People 13b

For the People 13b has slightly higher deviation rates. Its relative population deviation spans from -4.38% to 3.03%. *See* Exhibit 4, at For the People 13b Population Summary Report. Out of 40 Senate Districts, only 16 of its districts deviate from the ideal by 2% or more. *Id.* Several of its proposed districts have deviation rates of or less than 1%, including District 5 at 1.08%, District 26 at -0.72%, District 28 at -0.66%, District 29 at 0.59%, District 36 at 0.16%, and District 40 at 0.30%. *Id.* And every single district proposed by For the People 13b deviates from the ideal by less than 4.4%. *Id.*

iii. Essex A

Essex A has the lowest deviation rates of any of the For the People-style maps—indeed, it has the lowest of any major plan proposed to this Court. The least populous district it proposes would have 70,292 people (694 less than ideal), while the most populous district proposed would have 71,695 people (709 more than ideal). *See* Exhibit 5, at Essex A Population Summary Report. This means that no district proposed by Essex A deviates from the absolute ideal by more than 1.00%. *See id.* Given that the “one person, one vote” construct will be a “preeminent” concern for the Court, *see Chapman*, 420 U.S. at 23, the fact that the Essex A map has the lowest deviations proposed counsels strongly for its adoption.

2. Non-constitutional criteria.

a. Preservation of county and municipal boundaries.

Senator Steve Abrams, one of the principle drafters of the For the People series of maps, has testified via affidavit that “[t]he premise for the ‘For the People’ maps was to the maximum extent respect the current districts, while achieving the goals of developing a map that complies with all criteria of the [Kansas Legislature’s redistricting] [g]uidelines.” Abrams Affidavit at 2. That is, the For the People series sought to ensure that “new districts should resemble the current districts as much as possible, avoiding a scorched earth approach to redistricting.” *Id.* As he has explained by

affidavit, “I developed the initial For the People map to not collapse any districts; maintain a large majority of the core of the current population in the respective districts and’ maintain all the districts within the required deviation.” *Id.* And this emphasis on stability, he has indicated, was designed to further the interests of Kansas citizens in voting stability. *Id.* at 2-3.

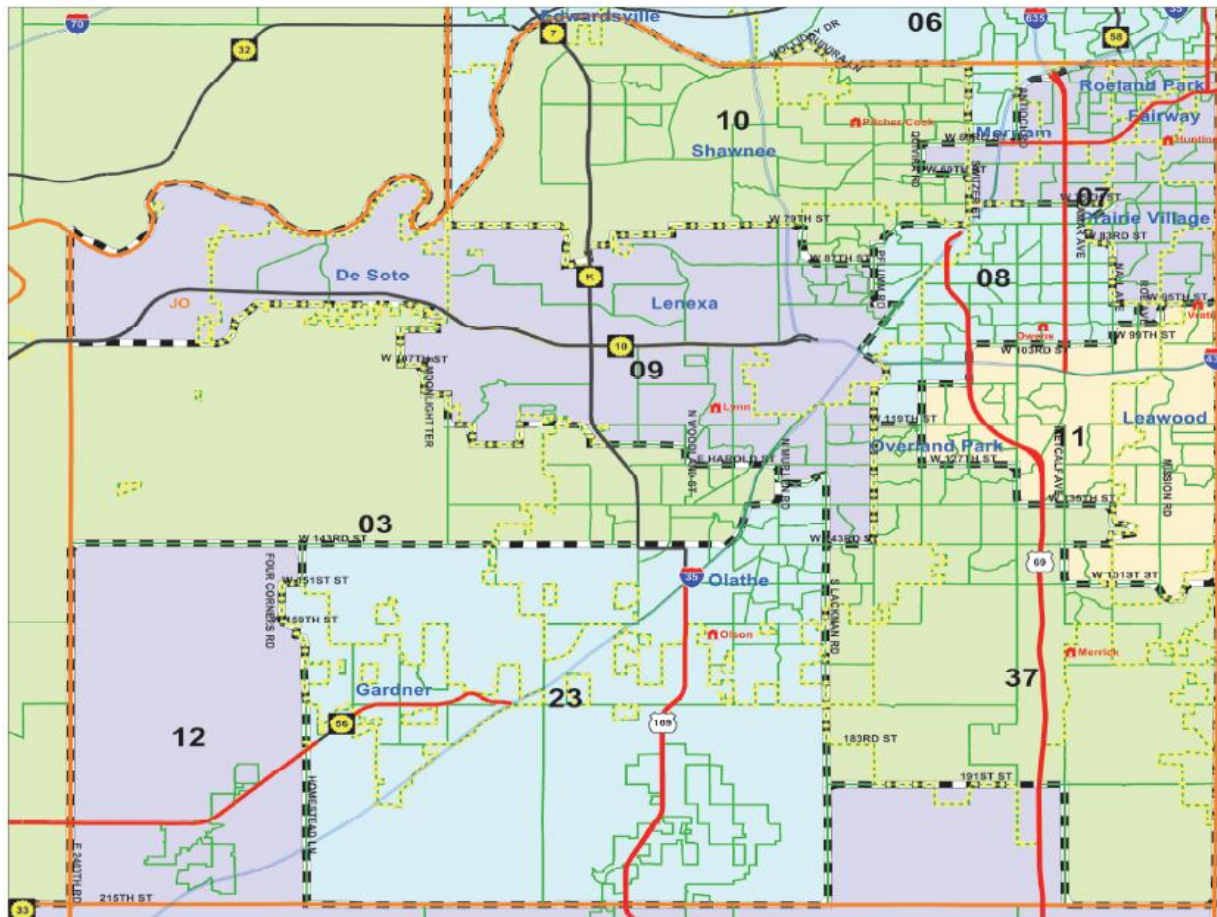
Senator Abrams statements are borne out in the objective data.

i. For the People 12.

For the People 12 maintains 89 counties and 3,785 voting districts completely intact. *See* Exhibit 3, at For the People 12 Political Split Between Districts. And three of these splits affect **no** population. *See id.*

Moreover, many of the counties that are split would be inevitable splits under any map. For example, For the People 12 splits Johnson County into several different Senate districts:

M5_For The People 12 for KLRD TR
Johnson County



But with a population of over 544,000,²⁰ those splits are required to bring Johnson County-related districts close to the ideal population of 70,986.

²⁰ See U.S. Census Bureau, Johnson County, Kansas, <http://quickfacts.census.gov/qfd/states/20/20091.html> (last visited May 26, 2012).

The same is true of splits seen in Sedgwick County (population 498,365),²¹ Shawnee County (population 177,934),²² Wyandotte County (population 157,505),²³ and other highly populated counties. For that reason, many of For the People 12's county splits are inevitable, population-required splits and, therefore, are not an affront to the unquestioned importance of counties to Kansas' political history. *O'Sullivan*, 540 F. Supp. at 1203 (explaining in a congressional redistricting case that "Kansas counties have historically been significant political units").

ii. For the People 13b.

For the People 13b slightly improves upon For the People 12's efforts to maintain county integrity. It keeps 90 counties and 3,790 voting districts completely intact. See Exhibit 4, at For the People 13b Political Split Between Districts. Three of these county splits affect *no* population. *Id.* And, like For the People 12, many of For the People 13b's county splits are inevitable, population-required splits.

iii. Essex A.

²¹ See U.S. Census Bureau, Sedgwick County, Kansas, <http://quickfacts.census.gov/qfd/states/20/20173.html> (last visited May 26, 2012).

²² See U.S. Census Bureau, Shawnee County, Kansas, <http://quickfacts.census.gov/qfd/states/20/20177.html> (last visited May 26, 2012).

²³ See U.S. Census Bureau, Wyandotte County, Kansas, <http://quickfacts.census.gov/qfd/states/20/20209.html> (last visited May 26, 2012).

Essex A maintains the integrity of Kansas's political subdivisions in a manner akin to the For the People series of maps. More specifically, it keeps 87 counties and 3,777 voting district complete intact. *See* Exhibit 5, at Essex A Political Split Between Districts. And moreover, among the 18 counties that are split, 2 are split in a manner that affects *no* population, while 11 are divided into only 2 districts and 4 counties are split into only 3 districts. *See id.* This effort by the For the People-style maps to keep counties intact weighs strongly in its favor.

iv. Other maps.

Importantly, the metrics for these For the People-style maps compare favorably to competing maps. For example, the Buffalo 30 Revised would affect 19 county splits, with 18 affecting population. *See* Buffalo 30 Revised Political Subdivisions Split Between Districts.²⁴

b. Dilution of minority votes.

i. For the People 12.

For the People 12 preserves minority voting strength. *See* Exhibit 3, at For the People 12 Plan Comparison Recalculated: Racial Composition and Hispanic Population. Indeed, under For the People 12, Senate districts that

²⁴ Available at http://www.sos.ks.gov/elections/redistricting/Senate/M5_Buffalo%2030%20Revised/40-m5_buffalo30revised-split.pdf (last visited May 28, 2012).

currently contain large concentrations of minority voters keep nearly identical concentrations:

District	Current Concentration	Concentration Under For the People 12
4	47.2% Black	43.6% Black
6	35.2% Hispanic	30.2% Hispanic
29	33.4% Black	30.3% Black
38	45.7% Hispanic	45.8% Hispanic
39	41.0% Hispanic	39.4% Hispanic

Id. In fact, the largest percentage change in any district appears to be in District 3, whose Hispanic population would change from 3.2% to 9.4%—an ***increase*** in minority voting strength of 6.2%. *Id.* As these statistics show, For the People 12 faithfully preserves minority voting strength. This too counsels for its adoption.

ii. For the People 13b.

For the People 13b preserves minority voting strength almost identically to For the People 12. See Exhibit 4, at For the People 13b Plan Comparison Recalculated: Racial Composition and Hispanic Population. This weighs in its favor.

iii. Essex A.

As the table below shows, Essex A also maintains minority voting strength:

District	Current Concentration	Concentration Under Essex A
4	45.0% Black	42.8% Black
6	35.2% Hispanic	33.3% Hispanic
29	33.4% Black	32.4% Black
38	45.7% Hispanic	45.1% Hispanic
39	41% Hispanic	39.2% Hispanic

See Exhibit 5, at Essex A Plan Comparison Recalculated: Racial Composition and Hispanic Population.

This preservation of minority voting percentages also weighs in favor of adopting one of these maps.

c. Compact and contiguous.

None of the For the People series of maps propose any non-contiguous Senate districts. As such, the only inquiry with respect to this factor is compactness.

i. For the People 12.

For the People 12 also presents fairly compact districts, with a mean

compactness measure of 0.44 on the Reock scale. *See* Exhibit 3, at For the People 12 Measures of Compactness. For the People 12's most compact district is District 16 at 0.66, and its least compact district is District 9 at 0.27. *Id.* Indeed, many of For the People 12's districts score at or above 0.50 on the Reock scale, including District 11 at 0.53, District 12 at 0.50, District 20 at 0.51, District 23 at 0.55, District 29 at 0.52, District 30 at 0.57, District 33 at 0.53, District 38 at 0.54, and District 40 at 0.58.

ii. For the People 13b.

For the People 13b proposes districts with almost identical measures of compactness. *See* Exhibit 4, at For the People 13b Measures of Compactness.

iii. Essex A.

Essex A proposes Senate districts that, on average, are actually slightly more compact than those proposed by the other For the People-style maps. More specifically, the mean Reock score for the districts proposed by Essex A is 0.45. *See* Exhibit 5, at Essex A Measures of Compactness. The range of compactness proposed is likewise similar, going from 0.27 to 0.63. *See id.*

iv. Other maps.

The compactness metrics of the For the People series of maps are comparable to other major maps being offered to this Court. For example, Buffalo 30 Revised has an identical mean compactness measure of .44 on the

Reock scale.²⁵ *See* Buffalo 30 Revised Measures of Compactness.²⁶ Buffalo 30 Revised's most compact district is District 31 at .60—6/100 less compact than For the People 12's most compact district. *Id.* And four of Buffalo 30 Revised's district score in the .20s, with District 10 coming in at the lowest at .26. *Id.*

Buffalo 30 Revised also visually presents several oddly shaped districts, including:

- proposed District 6, which is so skinny in parts that it almost becomes non-contiguous:

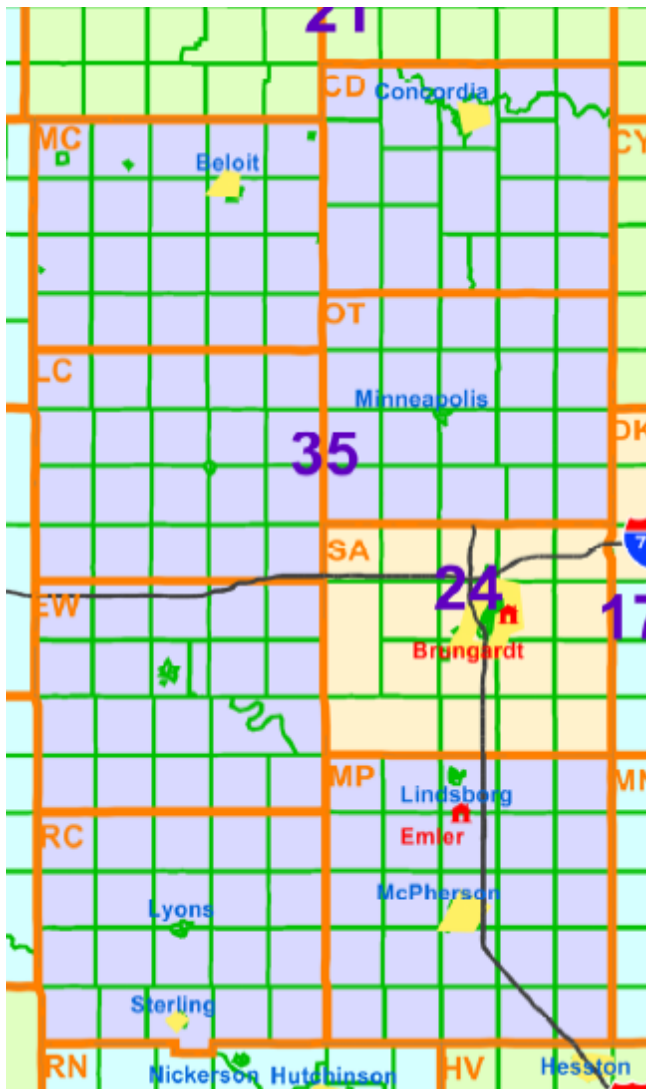


²⁵ Buffalo 30's compactness statistics are nearly identical.

²⁶ Available at http://www.sos.ks.gov/elections/redistricting/Senate/M5_Buffalo%2030%20Revised/40-m5_buffalo30revised-compact.pdf (last visited May 28, 2012).



- proposed District 35, which encloses District 24 on three sides:



And there is some indication that some of Buffalo 30 Revised's districts were drawn for purely partisan reasons. Specifically, Gary Mason—a non-incumbent candidate for Kansas Senate—has indicated via affidavit that, after he announced his intention to challenge a sitting Kansas senator in current District 31, the Buffalo series of maps (among others) was drawn in such a way as to split the very residential subdivision in which he lives to

exclude him from District 31. *See* Mason Affidavit at 1-3. These odd patterns have led him to conclude that, “[i]n [his] opinion, such plans were drawn up purely or primarily for political purposes, to redraw Kansas Senate districts in the Wichita area in a tortured fashion in order to preclude [him] from opposing the incumbent Senator in the 31st Kansas Senate District in which [he] currently reside[s]” *Id.* at 2.

As these examples show, the For the People series of maps proposes districts that are as, or more, compact as any other major map being offered to this Court. That too counsels in favor of this Court adopting one of the For the People-style maps.

d. Preservation of existing Senate districts.

Where the For the People series of maps really shine is in preserving the *status quo*. *See* Exhibit 4, at For the People 13b Plan Comparison with Recalculated Population. This chart—drawn from Plan Comparison data—illustrates this point by comparing For the People 13b with Buffalo 30 Revised (with differences of 30% or greater highlighted):

District	Percentage of Citizens Who Keep the Same Senate District Under For the People 13b	Percentage of Citizens Who Keep the Same Senate District Under Buffalo 30 Revised
1	100.00%	69.90%
2	80.90%	54.10%
3	51.30%	67.90%

4	83.70%	88.20%
5	90.40%	94.50%
6	79.80%	79.60%
7	83.20%	77.30%
8	76.50%	46.40%
9	70.40%	69.50%
10	98.00%	61.30%
11	86.80%	69.10%
12	97.40%	79.40%
13	94.90%	89.20%
14	89.70%	77.60%
15	76.60%	29.60%
16	94.40%	34.00%
17	75.40%	78.90%
18	88.80%	95.30%
19	59.70%	90.10%
20	93.50%	97.80%
21	73.90%	41.10%
22	95.00%	94.60%
23	94.70%	91.40%
24	89.50%	92.70%
25	88.50%	76.50%
26	88.20%	77.50%
27	95.60%	76.60%
28	85.50%	67.20%
29	91.10%	73.50%
30	100.00%	87.50%
31	65.60%	92.80%
32	94.80%	0.00%
33	90.00%	56.30%
34	92.50%	88.90%
35	66.50%	69.00%
36	68.70%	59.80%
37	83.00%	56.10%
38	98.50%	98.50%
39	94.10%	92.00%
40	87.20%	84.10%

Stability Average	85.36%	73.15%
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As this comparison shows, in many, many districts, Buffalo 30 Revised would be radically destabilizing. Countless citizens would be forced into districts and populations with which they have no familiarity. With such dramatic shuffling of citizens, it seems almost unimaginable the Buffalo 30 Revised took seriously this Court’s admonition to preserve the *status quo* to the greatest extent possible.

The For the People series of maps, on the other hand, takes stability seriously. *See* Abrams Affidavit at 1-3. Indeed, under For the People 13b, twenty-nine of Kansas’ forty Senate districts have stability rates of 80% or higher—and two districts have a 100% stability rate. *See* Exhibit 4, at For the People 13b Plan Comparison with Recalculated Population.

Not only will those high stability rates give Kansas’ citizens the stability they deserve, but, if adopted, it would also ensure that this Court’s plan would deviate as little as possible from the status quo—truly a virtue when a Court forced to undertake “the unwelcome obligation of performing in the legislature’s stead” *Connor v. Finch*, 431 U.S. 407, 415 (1977).

e. Communities of interest.

The For the People-style maps (For the People 12, For the People 13b,

and Essex A) also do much to preserve important communities of interest.

For example, it preserves current Senate District 32, which includes several counties with similar economic, social, political, and cultural ties.²⁷ *See* Abrams Affidavit at 3-4. Specifically, for several years the counties within current District 32 have worked collectively to promote economic opportunities for the region, approaching their relationship with Wichita with a more unified voice. *Id.* These counties also share close ties to agriculture and attend many of each other's festivals, including Sumner County's Wheat Festival. *Id.* The For the People-style maps respect these common ties. *Id.*

In contrast, Buffalo 30 Revised would break current District 32 into three pieces. As Senator Abrams has explained via affidavit:

Sumner County [would] join[] District 33, which would consist of largely rural counties that would stretch from the Kansas-Oklahoma border to the northwest of Larned, Kansas, a distance of over 170 miles. Under Buffalo 30 revised, Cowley County would be divided between District 16, which would consist of the western one-third of Cowley County, the southwestern eighth of Butler County and portions of eastern Sedgwick County. The remainder of Cowley County would join Augusta and the remainder of Butler County, along with Elk Chautauqua, Greenwood and a large part of

²⁷ This is but one example. Ms. Essex understands that other parties intend to address additional communities of interest maintained by the For the People series.

Montgomery counties.

Id. Tearing of these common ties should not occur.

f. Avoiding forcing incumbents into the same district.

For the People 12, For the People 13b, and Essex A all ensure that no incumbent Senator will be forced into the district of another. *See* Exhibit 3, at For the People 12 Districts & Their Incumbents; Exhibit 4, at For the People 13b Districts & Their Incumbents; Exhibit 5, at Essex A Districts & Their Incumbents.

This differentiates the For the People series of maps from several of the other proposed maps. For example, the Buffalo 30 Revised map would drive Senator Steve Abrams, a Republican who currently resides in District 32, into District 16, where Republican Senator Ty Masterson is the current incumbent. *See* Buffalo 30 Districts & Their Incumbents.²⁸ And the Ad Astra series of maps would drive Senator Allen Schmidt, a Republican who currently resides in District 38, into District 36, where Senator Garrett Love, a Democrat, is the current incumbent. *See* Ad Astra Revised Wichita 3

²⁸ Available at http://www.sos.ks.gov/elections/redistricting/Senate/M5_Buffalo%2030%20Revised/40-m5_buffalo30revised-incumb.pdf (last visited May 28, 2012).

Districts & Their Incumbents.²⁹

As these examples show, the For the People-style of maps takes seriously the need to avoid forcing incumbents into the same district. This too weighs in its favor.

g. Previous legislative action.

The For the People-style maps also enjoy broad political support.

For example, For the People 12 was introduced as an attempted amendment to HB 2371 on May 1, 2012 in the Kansas Senate. It garnered 19 votes, falling just two shy of passage. *See* Joint Stip., Exhibits 116, 117, 118, and 119. And in the House, For the People 13b (along with the State Board of Education map of “For the People 13bv1-SBOE”) passed by a vote of 67 to 50. *See* Joint Stip., Exhibits 124, 125 and 126.

As these statistics show, the For the People-style maps have passed the House and nearly passed the Senate. Therefore, they enjoy as broad—or broader—political support as any other map being offered to this Court. This too weighs in favor of adopting one of the For the People-style maps.

* * * * *

The For the People-style maps have very low deviation rates (especially

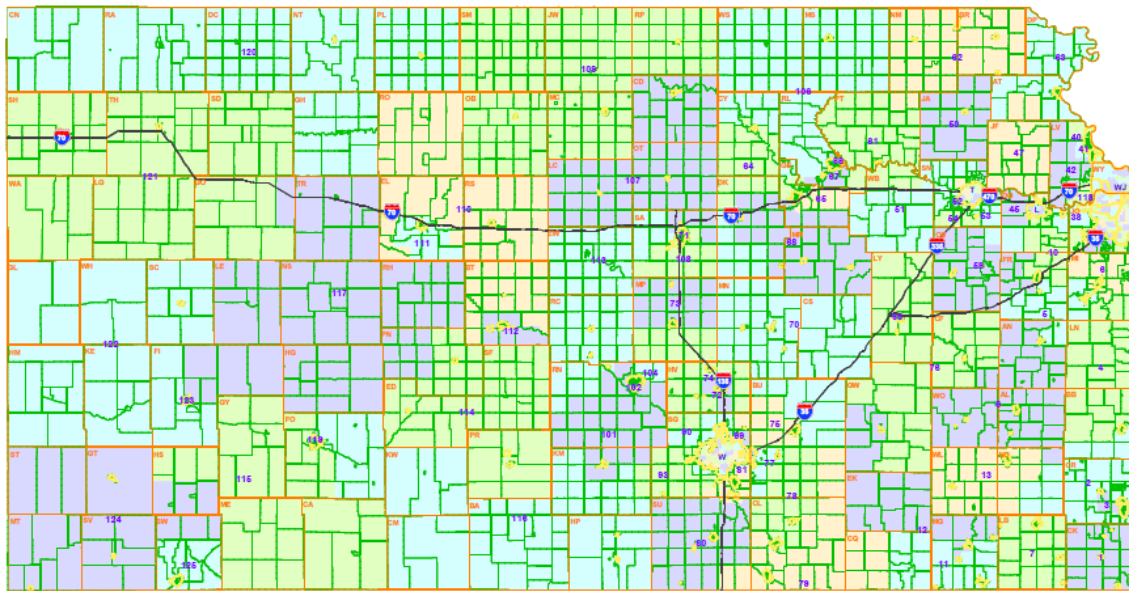
²⁹ Available at http://www.sos.ks.gov/elections/redistricting/Senate/M1_Ad%20Astra%20Revised%20Wichita%203/40-1_adastrarevisedwichita3-incumb.pdf (last visited May 28, 2012).

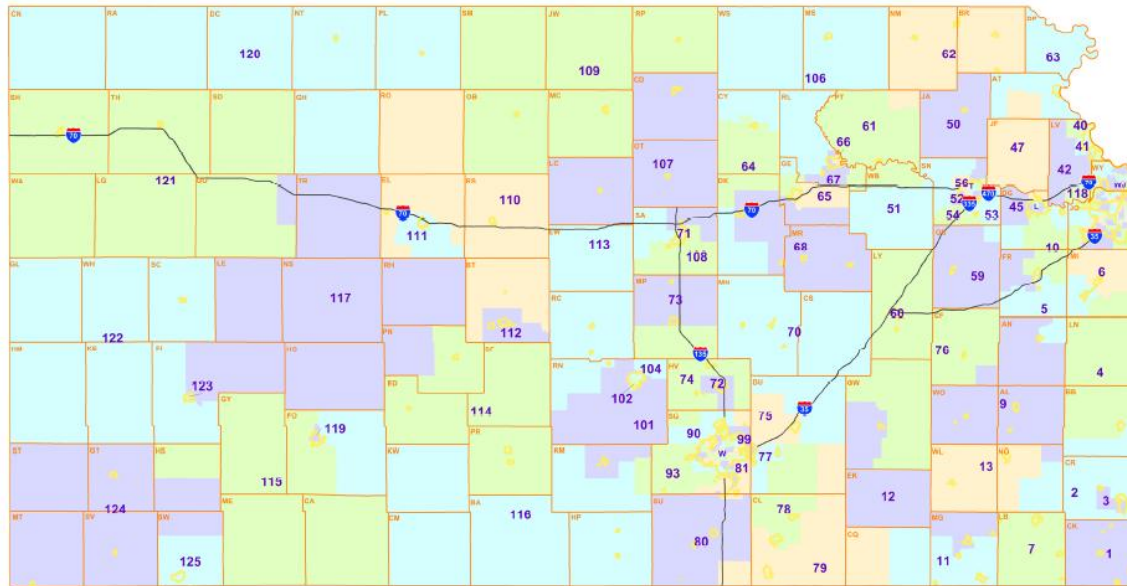
Essex A with no district that deviates from the absolute ideal by more than 1.00%), preserve minority voting strength, are relatively compact, take seriously the need to preserve existing districts, and preserve several important communities of interest. For those reasons, this Court should adopt one of the For the People-style maps as the Senate map for the upcoming elections.

C. State House map.

Ms. Essex respectfully suggests that both the Cottonwood I and Cottonwood II maps present constitutionally appropriate options for re-drawing the 125 districts in the Kansas House of Representatives. *See* Exhibit 6; Exhibit 7. These maps are shown below:

M5_Cottonwood 1 for KLRD TR



M5_Cottonwood II for KLRD TR**1. Constitutional concerns.****a. One person, one vote.**

Following the 2010 Census, the ideal population for each House district is 22,716 people. *See* SOF No. 6. Both the Cottonwood I and Cottonwood II maps propose districts that range in population from 21,599 people (1,117 less than ideal) to 23,838 people (1,122 more than ideal). *See* Exhibit 6, at Cottonwood I Population Summary Report; Exhibit 7, at Cottonwood II Population Summary Report. The relative range of deviations from the ideal would stretch from -4.92% to 4.94%. *See id.* Although not perfect, given the other factors discussed below, these deviation rates are likely acceptable.

2. Extra-constitutional criteria.

a. Preservation of county and municipal boundaries.

Kansas has 105 counties. As such, in order to draw 125 House districts, some divisions among counties will be inevitable. This is particularly so given the immense differences in population between certain rural and urban counties. Both the Cottonwood I and Cottonwood II maps achieve the necessary divisions in a manner that preserves Kansas's counties to the greatest extent possible.

The majority of counties—sixty-three to be precise—remain intact. *See* Exhibit 6, at Cottonwood I Political Subdivisions Split Between Districts; Exhibit 7, at Cottonwood II Political Subdivisions Split Between Districts. The remaining forty-two counties are split into more than one district, with two of those splits affecting zero population. *See id.* Twenty-two of the counties that are divided are split only into two districts,³⁰ while nine counties are divided into three districts,³¹ four counties are divided into four

³⁰ Anderson, Atchison, Barton, Bourbon, Chautauqua, Cherokee, Clay, Coffey, Crawford, Ellis, Gove, Greenwood, Harvey, Haskell, Lyon, McPherson, Montgomery, Osage, Pawnee, Pottawatomie, Seward, and Wabaunsee.

³¹ Cowley, Dickinson, Finney, Ford, Franklin, Kingman, Miami, Neosho, and Sumner.

districts,³² and four separate counties are divided into five (Riley County), six (Butler County), seven (Douglas County), eight (Wyandotte County) and nine (Shawnee County) districts, respectively. *See id.* Only two of Kansas's most urban counties, Johnson County and Sedgwick County, which are split into twenty-six districts, are more divided. *See id.*

Even the most cursory review of demographics reveals why the divisions that are proposed by the Cottonwood I and Cottonwood II maps are necessary and appropriate. The counties which the maps propose to split are the most populous; *e.g.*, Johnson, Sedgwick, Shawnee, Wyandotte, Douglas, Butler and Riley. Counties in which there is greater population must be split in order to achieve relatively equipopulous districts.

b. Dilution of minority votes.

A comparison of the existing House districts to both the Cottonwood I and Cottonwood II maps reveals that the proposed maps maintain a relatively constant concentration of minorities within the districts. This demonstrates that neither the Cottonwood I nor Cottonwood II map would affect any meaningful dilution of minority voting power.

Of particular note, as the table below demonstrates, both the Cottonwood I and Cottonwood II map preserve the *status quo* in nearly all of

³² Geary, Leavenworth, Reno, and Saline.

the districts in which a single minority group previously constituted a majority or something close to it in a district:

District	Current Concentration	Cottonwood I	Cottonwood II
32	48.00% Hispanic	49.4% Hispanic	49.4% Hispanic
34	55.3% Black	56.0% Black	56.0% Black
35	52.3% Black	50.2% Black	50.2% Black
37	52.5% Hispanic	50.5% Hispanic	50.5% Hispanic
84	47.6% Black	48.1% Black	48.1% Black
89	41.2% Black	36.4% Black	36.4% Black
103	47.7% Hispanic	42.2% Hispanic	42.2% Hispanic
123	45.2% Hispanic	46.9% Hispanic	46.9% Hispanic
125	57.00% Hispanic	57.00% Hispanic	57.00% Hispanic

See Exhibit 6, Cottonwood I Plan Comparison; Exhibit 7, at Cottonwood II Plan Comparison.

The only district for which the Cottonwood I and Cottonwood II maps propose a meaningful difference in this regard is District 117. Presently, District 117 is 38.5% Hispanic. Under both the Cottonwood I and Cottonwood II maps, District 117 would become 19.5% Hispanic. Given the many other benefits of these maps, this reduction should not prevent the

Court from adopting either the Cottonwood I or Cottonwood II map.

c. Compact and contiguous.

Neither Cottonwood I nor Cottonwood II proposes any non-contiguous House districts. As such, the only inquiry with respect to this factor is the compactness of the districts.

Both the Cottonwood I and Cottonwood II maps propose House districts that, based on Reock score, range in compactness from 0.17 to 0.64, with a mean of 0.44. *See* Exhibit 6, at Cottonwood I Measures of Compactness; Exhibit 7, at Cottonwood II Measures of Compactness. Given that there are no alternative maps being meaningfully urged by any party, it would appear that these scores are permissible and appropriate. *See O’Sullivan*, 540 F. Supp. at 1204 (“We are also concerned with compact and contiguous districts, but neither plan presented varies significantly in that respect; both are as good as can be expected considering the distribution of the population among counties in Kansas.”).

d. Preservation of existing districts.

Both the Cottonwood I and Cottonwood II maps preserve the integrity of existing House districts to the greatest extent possible. Fifty-one of the proposed districts are comprised of 90% or more of an existing district.³³ *See*

³³ Districts 1, 6, 7, 8, 15, 17, 25, 27, 28, 30, 31, 32, 34, 35, 36, 37, 45, 47,

Exhibit 6, at Cottonwood I Plan Comparison with Recalculated Population and Race; Exhibit 7, at Cottonwood II Plan Comparison with Recalculated Population and Race. Fifty-four proposed districts are compromised of at least 70% of an existing district, with most exceeding 80%.³⁴ *See id.* And nine districts—Districts 6, 8, 17, 30, 52, 54, 66, 72, 125—would remain unchanged. *See id.* These numbers demonstrate that existing maps served as a meaningful starting point for the drawing of both Cottonwood I and Cottonwood II.

e. Communities of interest.

Ms. Essex anticipates that other parties will speak to how the Cottonwood series of maps preserve important communities of interest.

f. Avoiding forcing incumbents into the same district.

Both Cottonwood I and Cottonwood II avoid pairing incumbent Legislators to the greatest extent possible. Both create only four districts—8, 69, 91, and 118—with no incumbent. *See* Exhibit 6, at Cottonwood I Districts & Their Incumbents; Exhibit 7, at Cottonwood II Districts & Their

50, 51, 52, 53, 54, 57, 58, 60, 61, 62, 63, 66, 67, 72, 73, 75, 79, 82, 83, 89, 90, 94, 99, 104, 111, 112, 114, 115, 119, 123, 124, and 125.

³⁴ Districts 2, 3, 4, 4, 5, 9, 10, 11, 12, 14, 18, 20, 21, 22, 23, 24, 26, 29, 33, 38, 42, 46, 48, 59, 64, 65, 68, 70, 71, 74, 76, 77, 78, 80, 81, 84, 86, 91, 92, 93, 95, 97, 98, 100, 101, 102, 105, 106, 107, 109, 110, 116, 120, 121, and 122.

Incumbents. The incumbents in these districts are driven into Districts 13, 71, 105 and 122, respectively. *See id.* In the proposed Districts 71, 105 and 122, this will potentially pit two Republican incumbents against one another. *See id.* Meanwhile, the proposed District 13 will potentially pit a Republican incumbent against an incumbent from the Democratic party. *See id.* Given that it seems inevitable that some incumbents will be forced into single districts, the fact that there will be only four of 125 races pitting incumbents against one another appears to achieve the state goal of the redistricting committee.

g. Previous legislative action.

Both the Cottonwood I and Cottonwood II maps enjoyed broad legislative support. More specifically, the House passed HB 2606 containing Cottonwood 1 by a vote of 109-14. *See Joint Stip.*, Exhibits 98, 99, and 99a.

The Kansas Senate also passed Cottonwood 1 in HB2371, which passed by a 21-19 vote on May 1, 2012. That bill also contained versions of the maps “Ad Astra Revised JOCO Wichita 3” for Senate districts, and “Ad Astra Revised-SBOE” for the State Board of Education. *See id.*, Exhibits 110, 111, and 112. HB 2371 was voted down by House on a vote of 43-72 on May 2, 2012, *see id.*, Exhibit 120, but presumably for reasons other than the inclusion of Cottonwood 1, which passed overwhelmingly in HB 2606.

Cottonwood II passed the House in SB 176 in a 81-43 vote. *See id.*, Exhibits 105, 106 and 107. SB 176 also contained the map “Bob Dole 1”. The Senate voted down SB 176 on March 30, 2012 on a motion to concur vote of 14-24. *See id.*, Exhibits 108 and 109.

Cottonwood II was passed again by the House on May, 2012 in SB 102 on a vote of 67-50. *See id.*, Exhibits 124, 125, and 126. SB 102 also contained the maps “For the People 13b” for the Senate and “For the People 13bv1-SBOE” for the State Board of Education.

* * * * *

The Cottonwood maps have passable deviation rates, preserve minority voting strength, are relatively compact, and enjoy wide-spread political support. For those reasons, this Court should adopt one of the Cottonwood maps as the House map for the upcoming elections.

Conclusion

As noted at the outset, Ms. Essex seeks one thing: to vote in constitutional and fair districts. She offers Kansas Six, the For the People-style maps, and the Cottonwood maps as one way to achieve that goal. She most assuredly welcomes, however, any effort to modify these suggested maps so

that she ultimately votes in districts that more closely hew to the Constitution's one-person-on-vote requirement.

Respectfully submitted,

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