

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL COURT DEPARTMENT

SUSAN FRICK, LAUREN SULLIVAN,)
DARRELL LEA, and SUSAN SPRING)
SCHIFFELBEIN,)
)
Plaintiffs,)

v.)

Case No. _____

SCOTT SCHWAB, in his official)
capacity as Secretary of State for the)
State of Kansas, and)
)

Division

JAMIE SHEW, in his official)
capacity as County Clerk)
for Douglas County, Kansas,)
)
Defendants.)

Pursuant to K.S.A. Chapter 60

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Susan Frick, Lauren Sullivan, Darrell Lea, and Susan Spring Schiffelbein bring this Petition for Declaratory and Injunctive Relief pursuant to K.S.A. Chapter 60 against Defendants Scott Schwab, in his official capacity as Kansas Secretary of State, and Jamie Shew, in his official capacity as County Clerk of Douglas County, Kansas, and allege the following:

INTRODUCTION AND CERTAIN FACTS

1. The Kansas Legislature is controlled by a Republican veto-proof super majority. That Republican majority has manipulated and gerrymandered the boundaries of the State's U.S. Congressional Districts in an overt and intentional partisan political manner to purposely dilute (and practically void) the voting strength of Democratic, independent and third-party voters residing and registered to vote in Douglas County. By dividing Douglas County and creating extremely odd-shaped First and Second Districts that surgically remove the heavily Democratic

and independent vote in the City of Lawrence from the rest of Douglas County, and putting Lawrence into the overwhelmingly Republican-controlled First Congressional District, and the rest of Douglas County in the Second District, the Legislature has unlawfully and unconstitutionally sought to eliminate the possibility that a Democratic (or other affiliated) candidate for Congress will be elected from the Second District (historically that has never been a possibility in the First District).

2. As set forth below, such intentional partisan political gerrymandering violates the Constitution of the State of Kansas. Partisan political gerrymandering is incompatible with the Constitution's guarantees of equal and inalienable natural rights, the guarantee that all political power is inherent in the people and instituted for their equal protection and benefit, the right of the people to consult for the common good and to instruct their representatives, the right to free speech, the right to vote, the retention of powers by the people not delegated under the Constitution, and the democratic guarantees enshrined in the Kansas Constitution. Kansas Constitution Bill of Rights Sections 1, 2, 3, 11, 20; Article V, Section 1.

3. The Kansas Supreme Court has made clear that under "the express and implied provisions of the Constitution of Kansas every qualified elector of the several counties is given the right to vote for officers that are elected by the people, and he is 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). If a Kansas voter "is accorded less representation than he is due under the Constitution, to that extent the government processes fail to record the full weight of his judgment and the force of his will." *Id.* The right to vote under the Kansas Constitution "is pervasive of other basic civil and political rights, and is the bed-rock of our free political system." *Moore v. Shanahan*, 207 Kan. 645, 649, 486 P.2d 506, 511 (1971). Thus, "any alleged

restriction or infringement of that right strikes at the heart of orderly constitutional government, and must be carefully and meticulously scrutinized.” *Id.*

4. It is irrelevant that federal law does not recognize a claim to invalidate partisan political gerrymandering or that such a claim has not been considered previously in Kansas state courts. (The need for Kansas courts to address this unconstitutional act by the Legislature has not arisen until now.) First, it is well-settled that “the Kansas Constitution affords separate, adequate, and greater rights than the federal Constitution.” *Farley v. Engelken*, 241 Kan. 663, 671, 740 P.2d 1058, 1063 (1987); accord *Hodes & Nauser v. Schmidt*, 309 Kan. 610, 621-622, 440 P.3d 461, 470 (2019) (the Kansas Supreme Court has recognized that “section 1 of the Kansas Constitution Bill of Rights describes rights that are broader than and distinct from those in the Fourteenth Amendment”). Second, the Kansas Supreme Court almost sixty years ago emphatically rejected the assertion that the Legislature had sole power to determine reapportionment matters. In reviewing a challenge to reapportionment maps drawn by the Legislature after the 1960 census, the Court acknowledged it was the Legislature’s duty in the first instance to draw the maps, but “when legislative action exceeds the boundaries of authority limited by our Constitution, and transgresses a sacred right guaranteed or reserved to a citizen, final decision as to invalidity of such action must rest exclusively with the courts. *** However delicate that duty may be, we are not at liberty to surrender, or to ignore, or to waive it.” *Harris v. Shanahan*, 192 Kan. 183, 207, 387 P.2d 771, 791 (1963).

5. The intention of the Republican legislative caucus to violate the rights of non-Republican voters was made clear as early as the fall of 2020, when then-Kansas Senate President, Republican Susan Wagle, promised Republican donors in a closed-door speech that the Republican-controlled Legislature would deliver “a Republican bill that gives us

[Republicans] four Republican congressmen,.... We can do that. I guarantee you. We can draw four Republican congressional [districts].” And they proceeded to do exactly that, but only by manipulating, gerrymandering and diluting non-Republican votes.

6. The Ad Astra 2 map renders Democratic, independent and third-party votes in Douglas County a practical nullity. The City of Lawrence is surgically removed from the rest of Douglas County and the Second District and placed in the First District which has a supermajority of Republican voters. This maneuver includes the University of Kansas and its 25,000 students all of whom are removed from the Second District and placed in the western Kansas, very rural, and Republican-controlled First District.

7. The Ad Astra 2 map is an obvious partisan Republican political gerrymander, diluting (if not completely nullifying) the votes of Democratic, independent, and third-party voters of Douglas County and the influence their votes may have in possibly electing Democratic members of Congress. And in so doing, this unconstitutional gerrymander interferes with several individual rights of Douglas County voters protected by the Kansas Constitution as set forth above and ensures a Republican election victory in the Second District in the 2022 mid-term election, and beyond.

8. By waiting until nearly the last possible minute to enact a redistricting plan, the Republican legislative caucus seeks to impede or prevent Plaintiffs and others from contesting the Ad Astra 2 map in Kansas district courts, including this Court. The Republican legislators carried out a non-transparent process of making good on then-Senate Present Wagle’s promise to achieve four Republican Congressional Districts by rushing the passage of the Ad Astra 2 map in slightly more than a week before it was delivered to the Governor. After the Governor vetoed it, the Republican legislators limited debate and public participation to quickly override her veto.

JURISDICTION AND VENUE

9. This action is authorized by K.S.A. 60-1701 and 1703 (declaratory relief) and K.S.A. 60-901 and 902 (injunctive relief).

10 This Court has general jurisdiction pursuant to K.S.A. 20-301.

11. This Court has personal jurisdiction over each Defendant in their official capacities as officers of the State of Kansas.

12. Venue exists and is proper in this Court under K.S.A. 60-602(2) because this action seeks an injunction regarding “acts done or threatened to be done by each Defendant in this district.” Venue is also proper in that each Plaintiff is a resident of this county and district and the place of their cognizable injury caused by Ad Astra 2 is within this county and district.

13. This court is the appropriate forum for this case as the claims arise exclusively under the Kansas Constitution.

PARTIES

14. Plaintiff Susan Frick is a resident of Douglas County and the City of Lawrence and is a registered Democratic voter. Plaintiff intends to remain a resident of Douglas County and a Democratic voter for the foreseeable future, including the scheduled primary and general elections in 2022. Under Ad Astra 2, this Plaintiff’s vote is diluted by intentional and purposeful partisan political gerrymandering in violation of the Kansas Constitution Bill of Rights, Sections 1, 2, 3, 11, 20, and Article V, Section 1.

15. Plaintiff Lauren Sullivan is a resident of Douglas County and is a registered Democratic voter. Plaintiff intends to remain a resident of Douglas County and a Democratic voter for the foreseeable future, including the scheduled primary and general elections in 2022.

Under Ad Astra 2, this Plaintiff's vote is diluted by intentional and purposeful partisan political gerrymandering in violation of the Kansas Constitution Bill of Rights, Sections 1, 2, 3, 11, 20, and Article V, Section 1.

16. Plaintiff Susan Spring Schiffelbein is a resident of Douglas County and is a registered Democratic voter. Plaintiff intends to remain a resident of Douglas County and a Democratic voter for the foreseeable future, including the scheduled primary and general elections in 2022. Under Ad Astra 2, this Plaintiff's vote is diluted by intentional and purposeful partisan political gerrymandering in violation of the Kansas Constitution Bill of Rights, Sections 1, 2, 3, 11, 20, and Article V, Section 1.

17. Plaintiff Darrell Lea is a resident of Douglas County and the City of Lawrence and is a registered Democratic voter. Plaintiff intends to remain a resident of Douglas County and a Democratic voter for the foreseeable future, including the scheduled primary and general elections in 2022. Under Ad Astra 2, this Plaintiff's vote is diluted by intentional and purposeful partisan political gerrymandering in violation of the Kansas Constitution Bill of Rights, Sections 1, 2, 3, 11, 20, and Article V, Section 1.

18. Defendant Scott Schwab is the Secretary of State of the State of Kansas and, as such, is the chief election official of the State, responsible for carrying out the State's election laws, including any Congressional redistricting plans such as Ad Astra 2.

19. Defendant Jamie Shew is the County Clerk for Douglas County and, as such, manages and supervises elections in Douglas County and Lawrence. He will be responsible for administering the upcoming primary and general Congressional elections in Douglas County and Lawrence.

ADDITIONAL FACTS

20. The Republican-controlled Senate enacted S.B. 355, the congressional redistricting plan also known as Ad Astra 2, on January 21, 2022 by a 26-9 margin. The House passed it on January 26 by a vote of 79-37. Both votes were along party lines. No Democratic legislators voted in favor. Only one Republican Senator voted against it. Governor Laura Kelly vetoed the plan, stating in her veto message, with respect to Douglas County, “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 in Western Kansas and unnecessarily dividing communities of interest in Eastern Kansas.” The Legislature overrode her veto on February 3 on a party-line vote.

21. By dividing Douglas County between two districts, the Ad Astra 2 map ignores the Legislature’s own redistricting guidelines and traditional redistricting principles. The map does so on a purely arbitrary partisan political basis, carving out the County’s urban area (Lawrence), with its predominantly non-Republican voters, and moving them to the “Big First” District which stretches to the Colorado border and is historically controlled by an overwhelming Republican voter base. The map leaves the bulk of Douglas County in the Second District.

22. Since 2012, the whole of Douglas County has been located within the boundaries of the Second Congressional District.

23. The Legislature could have created a redistricting map that allowed all the population of Douglas County to remain in the Second District while still accomplishing the legal requirements of redistricting. But the Republican super-majority caucus intentionally chose not to do so.

24. The Legislature’s Redistricting Committees adopted specific, seemingly non-partisan, criteria to govern the drawing of the new Congressional Districts map. In addition to achieving population equality among the four districts, these criteria called for them to follow specific non-partisan “Adopted Guidelines,” including that (1) The plan “will have neither the purpose nor the effect of diluting minority voting strength, (2) “Districts should be as compact as possible and contiguous,” (3) “There should be recognition of communities of interest,” (4) “The core of existing congressional districts should be preserved when considering the communities of interest to the extent possible,” and (5) “*Whole counties should be in the same congressional district to the extent possible*” because, among other things, “[c]ounty lines are meaningful in Kansas and Kansas counties historically have been significant political units.” (Emphasis added).

25. The Ad Astra 2 map violates every one of these self-imposed non-partisan guidelines, evidencing the Republicans’ intentional partisan political intent to destroy the Douglas County communities of interest, dilute and make meaningless the votes of its residents, and ensure the election of Republicans in all four Congressional Districts. Nothing could be more blatantly unconstitutional.

26. The Ad Astra 2 map has all the indicia of partisan political gerrymandering, especially as it pertains to Douglas County. It unnecessarily and inexplicably shifts City of Lawrence voters out of their prior district, with no population-based need or legitimate justification for doing so, violating the Legislature’s own redistricting guidelines. In so doing, it targets Democratic and other non-Republican voters in Lawrence and the University of Kansas, thus “cracking” or deliberately dispersing voters of a disfavored party across multiple districts to minimize and diminish the strength of their voting block and political influence on the candidates. By doing this, Republican legislators strived to ensure that the Second District could

withstand a non-Republican voter influx from the Third District's new boundaries and defeat their candidate, or, at a minimum, influence the policies he or she espouses.

27. Independent observers, upon reviewing the Ad Astra 2 map, opined that it made the Second and Third Districts more favorable to Republicans, while the First District, already overwhelmingly Republican, remained so.

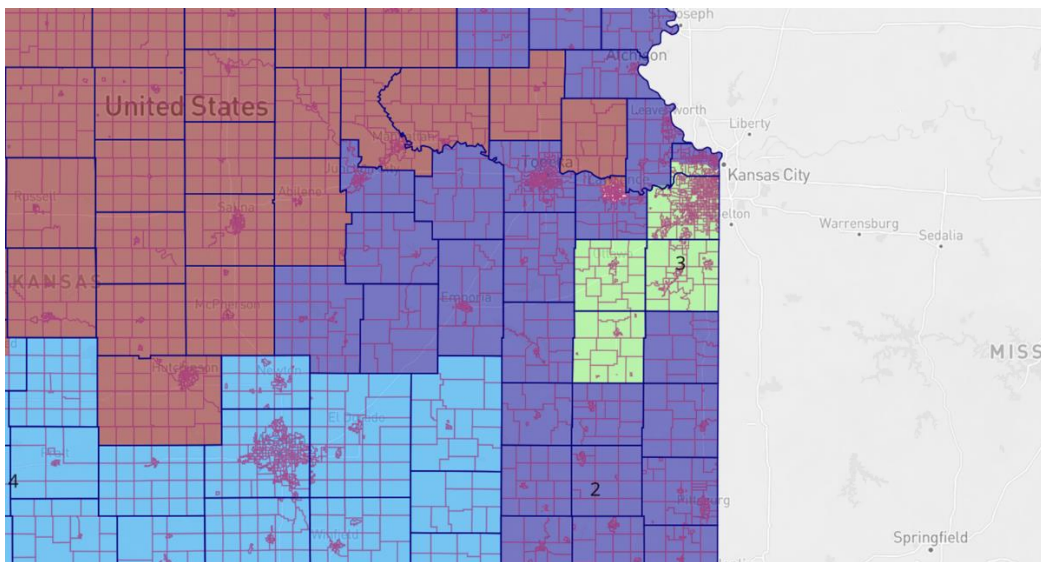
28. Making the districts safe for Republicans betrays the statewide preferences of voters. Between 2016 and 2020, Democrats received, on average 40 percent of the votes cast, compared to 55 percent Republican. During that period, voters elected a Democratic governor and Member of Congress in the Third District. Ad Astra 2 creates a high likelihood that Democrats will have no chance of being elected to the Second District, thus negating Douglas County Democratic voters' votes and political influence. Independent and third-party voters will be similarly affected.

29. To the extent the 2022 census mandated movement of voters among the districts to achieve equalization, the Legislature could easily have done so without violating the constitutional rights of Douglas County voters. In fact, during the committee process, several alternative maps were offered by interested persons that achieved population equalization among the districts without carving up Douglas County. The Republican controlled committees, and full Legislature, intentionally disregarded every proffered constitutional map in order to achieve their unconstitutional goal of four "safe" Republican-controlled districts and the 2022 election of four Republicans to Congress.

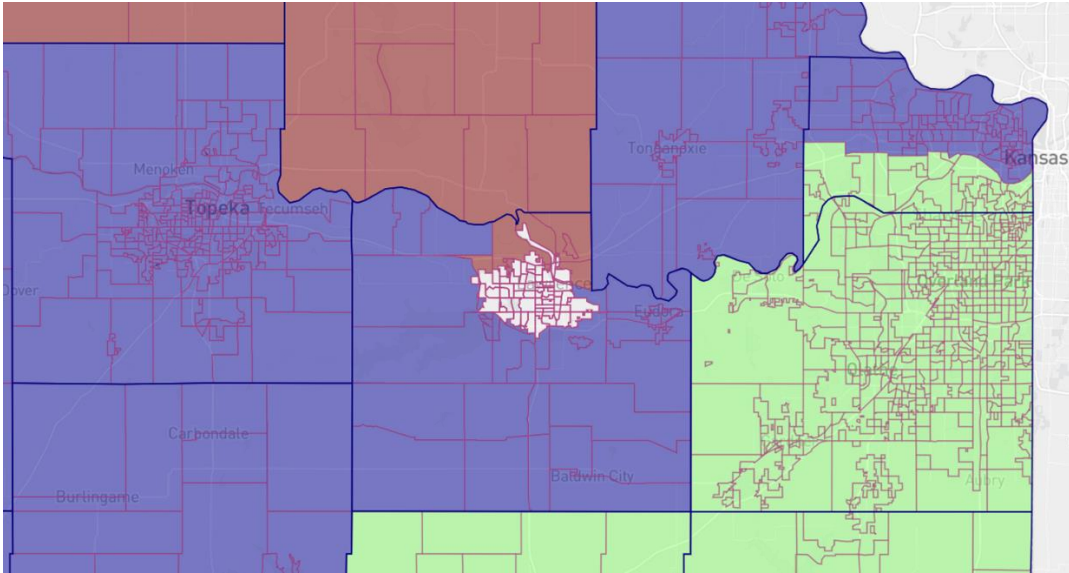
30. Douglas County is the second most Democratic and second least Republican county in the State. As of January 2022, Douglas County has 79,110 registered voters, of whom 36,237 (40 percent) are Democrats, 22,334 (28 percent) are unaffiliated, and only 20,539 (26

percent) are Republicans. Hence, at least 68 percent of voters in Douglas County are potential voters for a candidate other than a Republican. Their political speech and influence is substantial.

31. By the plan's ignoring and reaching around other counties much closer to the First District to draw Lawrence into the First District, those heavily Democratic and unaffiliated city voters now are in the same District as communities 400 miles away on the Colorado border. As shown in the following diagrams, a bowl-shaped line running through the southern part of Lawrence excised Lawrence from the rest of Douglas County, diluting the voting strength of Lawrence Democrats, independent and third-party voters.



<https://davesredistricting.org/maps#viewmap::2f3f3841-2c82-4c03-a57c-6be238a09cc3>



<https://davesredistricting.org/maps#viewmap::275cdb2b-c974-49cb-8798-d19cb0006c50>

32. Between the 2010 and 2020 decennial Census, the State added 84,762 persons to its population, amounting to approximately three percent overall growth in population.

33. The 2020 Census disclosed that the First District lost 33,697 residents and the Third District gained 57,816 residents, necessitating that redistricting even out or equalize the populations of the Congressional Districts.

34. According to the 2020 Census, the population of Douglas County is 118,785, and the population of Lawrence is 94,934.

35. Douglas County has 79,110 registered voters., of which 20,539 are registered Republican, 35, 312 Democratic, 22,434 unaffiliated, and 925 Libertarian.

36. In the last Congressional election , 38,395 Douglas County voters voted for the Republican candidate, and 18,005 voters voted for the Democratic candidate.

37. In a composite of partisan vote share in general elections from 2016 to 2020 (including the 2018 midterm elections) , 9,493 Lawrence voters voted for Republican

candidates, 29,770 voters voted for Democratic candidates, and 1,564 voters voted for other candidates.

CLAIM FOR RELIEF

(Right Against Political Partisan Gerrymandering

Kan. Const. Bill of Rights Sections 1, 2, 3, 11, 20; Article 5, Section 1)

For their claim for relief against Defendants, and each of them, Plaintiffs state as follows:

38. Under the Kansas Constitution, Kansas voters have equal and inalienable natural rights, and all political power inheres in them for their equal protection and benefit. Kansas Constitution Bill of Rights §§ 1, 2. Kansans further have the constitutional rights to consult for the common good and to instruct their representatives. Kansas Constitution Bill of Rights § 3. None of these rights are recognized under the U.S. Constitution, and thus the Kansas Constitution provides greater protection to Kansas voters than does federal law.

39. Further, the Kansas Constitution, like the U.S. Constitution, also guarantees Kansans the right to speak freely on political matters, the right to vote, and reserves all powers not granted to the government of Kansas to the people. Kansas Constitution Bill of Rights §§ 11, 20; Article V, § 1. The Kansas Supreme Court has recognized that the right to vote “is pervasive of other basic civil and political rights, and is the bed-rock of our free political system.” *Moore v. Shanahan*, 207 Kan. 645, 649, 486 P.2d 506, 511 (1971). Thus, “any alleged restriction or infringement of that right strikes at the heart of orderly constitutional government, and must be carefully and meticulously scrutinized.” *Id.*

40. Partisan political gerrymandering strikes at the heart of orderly constitutional government; it undermines the equality of votes, deprives segments of Kansans of their inherent political power under the Kansas Constitution, and denies them equal protection and benefit of

the governmental system, as well as any meaningful opportunity to consult for the common good or to instruct their representatives, given they have no realistic opportunity to elect preferred representatives.

41. The Kansas courts have the power and the constitutional obligation to review the Legislature's actions for compliance with the rights established by the Kansas Constitution: "when legislative action exceeds the bounds of authority limited by our Constitution, and transgresses a sacred right guaranteed or reserved to a citizen, final decision as to the invalidity of such action must rest exclusively with the courts. * * * However delicate that duty may be, we are not at liberty to surrender, or to ignore, or to waive it." *Harris v. Shanahan*, 192 Kan. 183, 207, 387 P.2d 771, 791 (1963).

42. The Legislature's intentional and purposeful partisan political gerrymandering of the First and Second Districts to remove the heavily Democratic and independent City of Lawrence (leaving behind the rest of Douglas County) from what would be a closely divided Second District and instead place Lawrence in the supermajority-Republican First District (a) violates the rights which the Kansas Constitution granted them, (b) presents a cognizable claim properly brought in state court, and (c) warrants relief on the merits as requested below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs and against Defendants as follows:

- a. Declare that the Ad Astra 2 redistricting map is unconstitutional and invalid under the Constitution and laws of the State of Kansas as set forth herein;
- b. Enjoin Defendants and their agents, officers, employees, designees and all persons acting on the behalf or their direction and in concert with any of them from

adopting, enforcing, administering or conducting any future primary or general election utilizing or imposing the districts as configured in the Ad Astra 2 redistricting map;

c. Order the Legislature to adopt a redistricting plan that does not use partisan political gerrymandering to dilute the votes of Douglas County voters, including but not limited to adopting a redistricting plan that places the whole of Douglas County in one congressional district and not the First District;

d. Expedite the proceedings in this case such that a lawful congressional district map can be adopted and implemented prior to the June 1 candidate filing deadline and the August 2022 primary election;

e. Award Plaintiffs their costs, expenses and reasonable attorneys' fees; and

f. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

DENTONS US LLP

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