

IN THE SUPREME COURT OF KANSAS

SCOTT SCHWAB, Kansas Secretary)
of State, in his official capacity,)

and)

MICHAEL ABBOTT, Wyandotte)
County Election Commissioner,)
in his official capacity,)

Petitioners,)

v.)

Case No. 124849
(Original Action)

THE HONORABLE BILL KLAPPER,)
in his official capacity as a District)
Court Judge, Twenty-Ninth Judicial)
District,)

Respondent.)

-----)
FAITH RIVERA, DIOSSELYN TOT-)
VELASQUEZ, KIMBERLY WEAVER,)
PARIS RAITE, DONNAVAN DILLON,)
and LOUD LIGHT,)

Plaintiffs in Wyandotte)
County District Court Case)
2022-CV-89 and Respondents)
under Kansas Supreme Court)
Rule 9.01(a)(1),)

and)

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

Plaintiffs in Wyandotte)
County District Court Case)
2022-CV-90 and Respondents)
under Kansas Supreme Court)
Rule 9.01(a)(1).)
_____)

**REPLY TO RESPONDENTS’ RESPONSE AND OPPOSITION TO MOTION
FOR A STAY OF DISTRICT COURT PROCEEDINGS**

Respondents ask this Court to allow the litigation in the district court to proceed as it considers Petitioners’ challenge. But simultaneous litigation in this Court and the district court would be improper and imprudent for three primary reasons.

First, allowing the litigation of political and racial gerrymandering claims in the district court to continue is inappropriate because that court lacks jurisdiction to entertain both claims under the Elections Clause and the Kansas Constitution. There is no precedent for a Kansas court to review political or racial gerrymandering claims lodged against a congressional redistricting map adopted by the Kansas Legislature. Under the Elections Clause of the U.S. Constitution, Kansas courts—including the district court in Wyandotte County—lack the authority to adjudicate such claims. And the fact that the Kansas Constitution provides a specific procedure for judicial review of state *legislative* maps, but not *congressional* maps, demonstrates that the Kansas Constitution does not contemplate state court judicial review of congressional redistricting. This Court cannot permit unconstitutional litigation to proceed in the district court.

Second, even if jurisdiction exists, simultaneous litigation remains imprudent. While no court has recognized that political gerrymandering claims are justiciable under the Kansas Constitution, Respondents ask the district court—in a condensed timeline—to discern a cognizable standard by which a court can judge whether a congressional map adopted by a political branch of government is too political to pass constitutional muster. Despite “considerable efforts” over decades, the U.S. Supreme Court could find no such standard even under a normal briefing schedule. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2497-98 (2019) (quoting *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018)). The district court should not be tasked to render a legal decision that will inevitably reach this Court and garner no legal deference. *E.g. Tillman v. Goodpasture*, 313 Kan. 278, 282, 485 P.3d 656 (2021) (the interpretation of the Kansas Constitution is an issue of law subject to unlimited appellate review). Time and resources would be better spent in this Court.

Third, it would also be imprudent to allow district court litigation because—to the extent Respondents allege cognizable claims—the contours of those claims are unknown. Respondents suggest in the alternative that this Court could address the legal issues raised in the Petition but order the district court to conduct fact-finding on Respondents’ political and racial gerrymandering claims. But this Court has not before provided guidance on those types of claims. As a result, the type and scope of discovery, if any is warranted, remains uncertain. *See Food & Water Watch, Inc. v. EPA*, 302 F. Supp. 3d 1058, 1070 (N.D. Cal. 2018) (explaining that the type and scope of discovery depends on “the elements of the claim”); *cf. Bell Atl. Corp. v.*

Twombly, 550 U.S. 544, 558 (2007) (“[A] district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.” (citation omitted)). And, as Petitioners argue, it is highly uncertain that any discovery would be warranted when this Court has historically limited the record in reapportionment cases to the record before the Legislature at the time of enactment. Memo. at 25.

For these reasons, Petitioners respectfully request that this Court stay the district court proceedings in *Rivera v. Schwab*, No. 22-CV-89 (Wyandotte County D. Ct.), and *Alonzo v. Schwab*, No. 22-CV-90 (Wyandotte County D. Ct.).

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 23, 2022, a true and correct copy of the above and foregoing was served as per Kan. Sup. Ct. R. 1.11(a) and K.S.A. 60-205(b)(2)(C) by depositing a copy in the U.S. mail to the following mailing addresses, and electronic copies were also sent to the following email addresses:

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