

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS
CIVIL COURT DIVISION

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

Plaintiffs,)

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,)

v.)

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

and)

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

Defendants.)

Case No. 2022-CV-89
(Consolidated with
2022-CV-90)

MOTION TO TRANSFER

Defendants, Kansas Secretary of State Scott Schwab and Wyandotte County Election Commissioner Michael Abbott, move to transfer these consolidated cases to Shawnee County District Court where venue is appropriate.

This Court should transfer venue because Defendant Schwab is the only proper defendant. As explained in the Defendants' motion to dismiss, Defendant Schwab is the "Chief state election official," K.S.A. 25-2504, which means he instructs Defendant Abbott how to "comply[] with federal and state laws and regulations" in conducting elections. K.S.A. 25-124. Defendant Abbott is also required to "comply with the . . . rules and regulations and standards and directives that relate to the registration of voters and the conduct of elections" that Defendant Schwab issues. K.S.A. 19-3424. Defendant Schwab—not Defendant Abbott—determines how elections are to proceed in compliance with Kansas law, including any legislatively enacted congressional map. *See Fish v. Kobach*, 2016 WL 6125029, at *2 (D. Kan. Oct. 20, 2016) (finding that election commissioner was an agent of the Secretary of State's Office). As such, Defendant Schwab is the only official actually vested with ensuring that the upcoming elections are administered under SB 355.

Pursuant to K.S.A. 60-602(2), "[a]n action against a public officer for an act done or threatened to be done by such officer by virtue or under color of his or her office, or for neglect of his or her official duties" "must be brought in the county in which the cause, or some part thereof arose." While a plaintiff may generally choose the venue in which to bring an action against multiple defendants, the action must

be “filed in the county of a defendant against whom a substantial claim exists.” *Fredricks v. Foltz*, 221 Kan. 28, 32, 557 P.2d 1252 (1976). As previously explained, no substantial claim exists against Defendant Abbott. *See id.* (“Where, as here, it is found by the trial court, before a trial on the merits of the action, that ‘no cause of action’ was stated against Champlin, the party upon whom venue in Wyandotte County was dependent, the trial court was authorized to transfer venue to a county of proper venue.”).

Instead, “[i]t is well settled that where the action is against state officials, in the absence of a statute to the contrary, the action must be brought in the county where the cause of action arose.” *Freund v. State Comm’n of Revenue & Tax’n*, 156 Kan. 109, 112, 131 P.2d 678 (1942); *Bartell v. State Highway Comm’n*, 191 Kan. 539, 542, 382 P.2d 334 (1963) (holding that “full and exclusive jurisdiction” in action against State Highway Commission was in Shawnee County, even though case was about denial of highway access in Sedgwick County); *Huerter v. Hassig*, 175 Kan. 781, 785, 267 P.2d 532 (1954) (suit against State Forestry, Fish and Game Commission was required to be brought in Pratt County where the Commission was headquartered, even though the obstruction in the river at issue was located in Nemaha County); *Freund*, 156 Kan. at 112-13 (suit against State Commission of Revenue and Taxation was required to be brought in Shawnee County, even though estate at issue was in Sedgwick County); *Provident Mut. Life Ins. Co. of Philadelphia v. State Highway Comm’n*, 155 Kan. 351, 353, 125 P.2d 346 (1942) (holding that, in suit against State Highway Commission, “the proper forum is the

district court of Shawnee [C]ounty”); *Verdigris River Drainage Dist. No. 1 v. City of Coffeyville*, 149 Kan. 191, 192, 200, 86 P.2d 592 (1939) (holding that “proper venue for an action against” the State Highway Commission was Shawnee County, even though the property at issue was in Montgomery County); *City of Coffeyville v. Wells*, 137 Kan. 384, 386, 20 P.2d 477 (1933) (“[T]he venue of actions brought against the state oil inspector to determine rights under the above statutes is in Shawnee [C]ounty.”).

Under K.S.A. 60-602, “the cause of action has been construed to arise in the county where the official acts constituting the basis of the action were performed.” *Freund*, 156 Kan. at 112. In this case, SB 355 was passed into law through a political process that occurred in Shawnee County. And Defendant Schwab directs congressional elections from his office in Shawnee County. In other words, the totality of the official acts that give rise to Plaintiffs’ claims occurred in Shawnee County, so Shawnee County is where venue lies. *Id.* (“The acts for which the appellants seek redress were performed by state officials in Shawnee [C]ounty by virtue of their offices, and the acts and orders necessary for affirmative relief must necessarily be done and performed in the state capitol at Topeka in Shawnee [C]ounty.”).

Accordingly, this Court should transfer these consolidated cases to Shawnee County District Court.

Respectfully submitted,

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*Attorneys for Defendants Scott Schwab and
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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2022, the above Motion to Transfer 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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