

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

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

Plaintiffs,

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,

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

Plaintiffs,

v.

SCOTT SCHWAB, MICHAEL ABBOTT,
and JAMIE SHEW.

Defendants.

Case No.: 2022-CV-000089

(Consolidated with 2022-CV-000090 and
2022-CV-000071)

Division: 6

ANSWER

Defendants Scott Schwab and Michael Abbott, for their answer to the Petition filed in Wyandotte County case number 2022-cv-000089, deny all allegations except those specifically admitted herein, and further answer and state as follows:

Paragraph 1: The allegations of Paragraph 1 are denied as stated.

Paragraph 2: Answering Paragraph 2, the hearsay statements of a former Senator are irrelevant to any issue. Former Senator Wagle was not a member of the Kansas Senate during the redistricting vote and cannot speak for any other legislator specifically or the intent of the legislature as a whole. Accordingly, the allegations of Paragraph 2 are denied as stated.

Paragraph 3: Answering Paragraph 3, Defendants admit that the Kansas legislature, the elected representatives of the citizens of the State of Kansas, voted to pass the Enacted Plan over Governor Kelly's veto. The remaining allegations of Paragraph 3 are denied as stated.

Paragraph 4: The allegations Paragraph 4 are denied as stated.

Paragraph 5: Defendants admit that Wyandotte County was split between congressional districts for a period in the 1970s. The remaining allegations in Paragraph 5 are legal conclusions, not factual allegations, and therefore do not require a response. To the extent a response may be viewed as required, Defendants state that the cited and quoted case speaks for itself and deny all allegations that can be viewed as commentary on said case.

Paragraph 6: The allegations of Paragraph 6 are denied as stated.

Paragraph 7: The allegations of Paragraph 7 are denied as stated.

Paragraph 8: Answering Paragraph 8, Defendants admit that the Third District elected a Native American Democrat, Sharice Davids, in the 2020 election and that Kansans elected a Democratic governor in 2018. The remaining allegations of Paragraph 8 are denied as stated.

Paragraph 9: Answering Paragraph 9, Defendants state that legislative speech and debate is a valuable and constitutionally protected right and demonstrates why the United States Constitution entrusts to the elected members of the Legislature the right to determine congressional redistricting maps. In further answer, Defendants state that they do not have personal knowledge of the specifics of Representative Garber's comments and therefore the same are denied.

Paragraph 10: Answering Paragraph 10, Defendants state that legislative speech and debate is a valuable and constitutionally protected right and demonstrates why the United States Constitution entrusts to the elected members of the Legislature the right to determine congressional redistricting maps. In further answer, Defendants state that they do not have personal knowledge of the specifics of Representative Huebert's comments and therefore the same are denied.

Paragraph 11: The allegations of Paragraph 11 are denied.

Paragraph 12: Answering Paragraph 12, Defendants deny that Plaintiffs' purported political gerrymandering claims are justiciable. Defendants also deny that this Court has jurisdiction over any of Plaintiffs' claims in light of the Elections Clause of the U.S. Constitution.

Paragraph 13: Answering Paragraph 13, Defendants deny that Defendant Abbott is a proper party to this case, which identifies him as a defendant (to the exclusion of every election commissioner in 104 other counties in the state) for the sole purpose of selecting Wyandotte County as a forum. There is no venue over claims against the Secretary of State, defendant Schwab, in Wyandotte County.

Paragraph 14: The allegations of Paragraph 14 are denied, except it is admitted that the identified plaintiffs reside in Wyandotte County.

Paragraph 15: The allegations of Paragraph 15 are denied.

Paragraph 16: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 16 and therefore the same are denied.

Paragraph 17: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 17 and therefore the same are denied.

Paragraph 18: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 18 and therefore the same are denied.

Paragraph 19: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 19 and therefore the same are denied.

Paragraph 20: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 and therefore the same are denied.

Paragraph 21: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21 and therefore the same are denied.

Paragraph 22: Admitted.

Paragraph 23: Answering Paragraph 23, Defendants admit that Abbott is the Election Commissioner of Wyandotte County. The remaining allegations are denied as stated.

Paragraph 24: Answering Paragraph 24, Defendants admit that the population of the state grew by approximately three percent. The remaining allegations are statements of opinion and are therefore denied as stated.

Paragraph 25: Answering Paragraph 25, Defendants state that the census numbers speak for themselves.

Paragraph 26: Answering Paragraph 26, Defendants state that the census numbers speak for themselves

Paragraph 27: Answering Paragraph 27, Defendants state that the census numbers speak for themselves

Paragraph 28: The allegations of Paragraph 28 seek to draw legal conclusions from a hearsay article and are therefore denied.

Paragraph 29: Admitted upon information and belief.

Paragraph 30: Admitted.

Paragraph 31: Admitted.

Paragraph 32: Admitted.

Paragraph 33: Admitted.

Paragraph 34: The allegations of Paragraph 34 are broad statements of opinion and are therefore denied.

Paragraph 35: The allegations of Paragraph 35 are broad statements of opinion and are therefore denied.

Paragraph 36: Admitted.

Paragraph 37: Admitted.

Paragraph 38: Answering Paragraph 38, Defendants admit the results of the 2018 Congressional elections. The remaining allegations of Paragraph 38 are statements of opinion and are therefore denied.

Paragraph 39: Answering Paragraph 39, Defendants admit the results of the elections. The remaining allegations are statements of opinion and are therefore denied.

Paragraph 40: Admitted.

Paragraph 41: The allegations of Paragraph 41 are statements of opinion and are therefore denied.

Paragraph 42: Admitted.

Paragraph 43: It is admitted that the federal court drew the congressional map, noting that “[r]edistricting is primarily a matter for the legislature to consider and determine, but if a legislature fails to redistrict in a timely fashion after having a chance to do so, federal courts are called upon for relief. As judges, we do not tread unreservedly into this political thicket. The Court acts only because it must—as it did in 1982.” *Essex v. Kobach*, 874 F. Supp. 2d 1069, 1075 (D.

Kan. 2012) (citing *White v. Weiser*, 412 U.S. 783, 794–95 (1973); *Colegrove v. Green*, 328 U.S. 549, 556 (1946)) (footnote omitted).

Paragraph 44: Admitted.

Paragraph 45: Admitted.

Paragraph 46: Answering Paragraph 46, Defendants admit that Figure 1 is a map depicting the Prior Plan. The map speaks for itself as to its features.

Paragraph 47: Answering Paragraph 47, Defendants admit that the *Essex* decision speaks for itself. Accordingly, the allegations characterizing it are denied as stated.

Paragraph 48: Answering Paragraph 48, Defendants admit that the *Essex* and *O'Sullivan* decisions speak for themselves. Accordingly, the allegations characterizing them are denied as stated.

Paragraph 49: Answering Paragraph 49, Defendants admit that the *Essex* decision speaks for itself. Accordingly, the allegations characterizing it are denied as stated.

Paragraph 50: The allegations of Paragraph 50 are denied as stated.

Paragraph 51: Defendants admit that the link points to a speech given by a former Kansas Senator who had no vote in 2022 congressional redistricting.

Paragraph 52: The allegations of Paragraph 52 are denied as stated.

Paragraph 53: The allegations of Paragraph 53 are denied as stated.

Paragraph 54: Answering Paragraph 54, Defendants admit that a listening tour occurred and that numerous constituents spoke as to their opinions on congressional redistricting. These named defendants do not have personal knowledge of the comments of Mr. Norlin and Paragraph 54's allegations about the same are denied.

Paragraph 55: Answering Paragraph 55, Defendants admit that a listening tour occurred and that numerous constituents spoke as to their opinions on congressional redistricting. These named defendants do not have personal knowledge of the comments of Plaintiff Rivera and Paragraph 55's allegations about the same are denied.

Paragraph 56: Answering Paragraph 56, Defendants admit that the redistricting committees adopted certain nonbinding guidelines. Defendants deny the conclusory allegations of the remainder of Paragraph 56.

Paragraph 57: Answering Paragraph 57, Defendants admit that there were guidelines for map submissions but deny the conclusory allegations of Paragraph 57.

Paragraph 58: The allegations of Paragraph 58 are denied.

Paragraph 59: Answering Paragraph 59, Defendants admit that the Kansas League of Women Voters created the Bluestem Map that was introduced. Defendants deny the remaining conclusory allegations of Paragraph 59.

Paragraph 60: The allegations of Paragraph 60 are broad statements of opinion and are therefore denied.

Paragraph 61: The allegations of Paragraph 61 are broad statements of opinion and are therefore denied.

Paragraph 62: The allegations of Paragraph 62 are broad statements of opinion and are therefore denied.

Paragraph 63: The allegations of Paragraph 63 are denied as stated.

Paragraph 64: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 64 and therefore the same are denied.

Paragraph 65: The quoted language in Paragraph 65 is a statement of opinion copied from a hearsay article and is therefore denied. Defendants lack knowledge or information sufficient to form a belief about the truth of all other allegations in Paragraph 65 and therefore the same are denied.

Paragraph 66: Defendants admit that the Kansas Senate passed SB 355 by a vote of 26 to 9 on January 21, 2022; the Kansas House of Representatives passed SB 355 by a vote of 79 to 37 on January 26, 2022; no Democrats voted in favor of SB 355; and one Kansas Senate Republican voted against SB 355. The quotation in Paragraph 66 from the cited Kansas City Star article is an allegation of opinion, not fact, and said article speaks for itself, Defendants therefore deny Paragraph 66's allegation about the same.

Paragraph 67: Defendants admit that Governor Kelly vetoed SB 355 on February 3, 2022, but state that the cited press release speaks for itself. Thus, any allegations in Paragraph 67 that can be viewed as commentary on or a characterization of said press release are denied.

Paragraph 68: The press release cited in Paragraph 68 speaks for itself and Defendants therefore deny Paragraph 68's allegations about the same.

Paragraph 69: Defendants admit that Governor Kelly's veto was overridden by the Legislature. The remaining allegations in Paragraph 69 are statements of opinion and Defendants lack knowledge or information sufficient to form a belief about the truth of said allegations; the remaining allegations in Paragraph 69 are therefore denied.

Paragraph 70: Defendants state that the quotations in and articles cited by Paragraph 70 are hearsay statements of opinion and are therefore denied. Even so, Defendants contend that those articles speak for themselves and deny all allegations in Paragraph 70 that can be viewed as commentary on them.

Paragraph 71: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 71 and therefore the same are denied.

Paragraph 72: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 72 and therefore the same are denied.

Paragraph 73: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 73 and therefore the same are denied.

Paragraph 74: Defendants admit that Paragraph 74 accurately states the conclusions of the cited report and reproduces the map included in said cited report. However, Defendants deny any allegations in Paragraph 74 that may be understood as commentary on or a characterization of the cited report.

Paragraph 75: Defendants admit that Representative Davids won re-election by almost 10 percentage points in 2020. Defendants lack knowledge or information sufficient to form a belief about the truth of all other allegations in Paragraph 75 and therefore the same are denied.

Paragraph 76: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 76 and therefore the same are denied.

Paragraph 77: Defendants admit that Wyandotte County has a single, unified government and that Wyandotte County residents are divided into two districts under SB 355. The remaining allegations in Paragraph 77 are denied.

Paragraph 78: Paragraph 78 alleges a broad statement of opinion and Defendants therefore deny its allegations as stated.

Paragraph 79: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 79 and therefore the same are denied.

Paragraph 80: Admitted.

Paragraph 81: Paragraph 81 alleges opinions and legal conclusions to which no response is required; Defendants therefore deny the allegations in Paragraph 81.

Paragraph 82: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 82 and therefore the same are denied.

Paragraph 83: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 83 and therefore the same are denied.

Paragraph 84: Answering Paragraph 84, Defendants admit that the voter registration numbers identified for Wyandotte County are accurate. The remaining allegations are denied as stated.

Paragraph 85: Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 85 and therefore the same are denied.

Paragraph 86: Defendants admit that “Wyandotte and Johnson have been unified in a single congressional district for 90 of the last 100 years, [but] because of population growth, their combined population is now too large for them to be in a single congressional district” (Pet. ¶ 86); SB 355 includes a division of Wyandotte County and Kansas City, Kansas; and SB 355 kept Johnson County whole. The remaining allegations are denied.

Paragraph 87: The allegations of Paragraph 87 are broad statements of opinion and are therefore denied.

Paragraph 88: The allegations of Paragraph 88 are denied as stated.

Paragraph 89: The allegations of Paragraph 89 are denied.

Paragraph 90: The allegations of Paragraph 90 are denied.

Paragraph 91: The allegations of Paragraph 91 are broad statements of opinion and are therefore denied.

Paragraph 92: The allegations of paragraph 92 are statements of opinion and law and are therefore denied.

Paragraph 93: Defendants admit that, under SB 355, the First District now includes most of Lawrence, Kansas and grew in geographical size. The remaining allegations are denied as stated.

Paragraph 94: The allegations of Paragraph 94 are denied as stated.

Paragraph 95: The allegations of Paragraph 95 are denied as stated.

Paragraph 96: The allegations of Paragraph 96 are denied as stated.

Paragraph 97: Admitted.

Paragraph 98: Admitted.

Paragraph 99: Defendants admit that SB 355 placed the two largest Native American reservations in Kansas in separate districts, with the Kickapoo reservation being in the Second District and the Prairie Band Potawatomi Nation reservation being in the First District. Defendants deny all other allegations in Paragraph 99.

Paragraph 100: The allegations of Paragraph 100 are broad statements of opinion and are therefore denied.

Paragraph 101: The allegations of Paragraph 101 are denied as stated.

Paragraph 102: The allegations of Paragraph 102 are denied as stated.

Paragraph 103: The allegations of Paragraph 103 are denied as stated.

Paragraph 104: Defendants incorporate their responses to Paragraphs 1–103 as if set forth fully herein.

Paragraph 105: Paragraph 105 alleges law, not facts. As a result, no response is required.

Paragraph 106: Paragraph 106 alleges law, not facts. As a result, no response is required.

Paragraph 107: Paragraph 107 alleges law, not facts. As a result, no response is required.

Paragraph 108: Paragraph 108 alleges law, not facts. As a result, no response is required.

Paragraph 109: Paragraph 109 alleges law, not facts. As a result, no response is required.

Paragraph 110: Paragraph 110 alleges law, not facts. As a result, no response is required.

Paragraph 111: The allegations of Paragraph 111 are denied.

Paragraph 112: The allegations of Paragraph 112 are denied as stated.

Paragraph 113: The allegations of Paragraph 113 are denied as stated.

Paragraph 114: The allegations of Paragraph 114 are denied as stated.

Paragraph 115: The allegations of Paragraph 115 are denied as stated.

Paragraph 116: Paragraph 116 does not allege facts to which a response is required.

Paragraph 117: Defendants incorporate their responses to Paragraphs 1–116 as if set forth fully herein.

Paragraph 118: Paragraph 118 alleges law, not facts. As a result, no response is required.

Paragraph 119: Paragraph 119 alleges law, not facts. As a result, no response is required.

Paragraph 120: Paragraph 120 alleges law, not facts. As a result, no response is required.

To the extent Paragraph 120 may be construed as requiring a response, Defendants state that the cited case speaks for itself and therefore deny Paragraph 120's allegations about the same.

Paragraph 121: Paragraph 121 alleges law, not facts. As a result, no response is required.

Paragraph 122: The allegations of Paragraph 122 are denied.

Paragraph 123: Paragraph 123 does not allege facts to which a response is required.

Paragraph 124: Paragraph 124 does not contain fact allegations to which a response is required.

Paragraph 125: Paragraph 125 alleges law, not facts. As a result, no response is required.

Paragraph 126: Paragraph 126 alleges law, not facts. As a result, no response is required.

Paragraph 127: Paragraph 127 alleges law, not facts. As a result, no response is required.

Paragraph 128: The allegations of Paragraph 128 are denied.

Paragraph 129: The allegations of Paragraph 129 are denied.

Paragraph 130: The allegations of Paragraph 130 are denied.

Paragraph 131: Paragraph 131 does not allege facts to which a response is required.

Paragraph 132: Defendants incorporate their responses to Paragraphs 1–131 as if set forth fully herein.

Paragraph 133: Paragraph 133 alleges law, not facts. As a result, no response is required.

Paragraph 134: The allegations of Paragraph 134 are denied.

Paragraph 135: Paragraph 135 alleges law, not facts. As a result, no response is required.

Paragraph 136: The allegations of Paragraph 136 are denied as stated.

Paragraph 137: The allegations of Paragraph 137 are denied as stated.

Paragraph 138: Paragraph 138 does not allege facts to which a response is required.

Paragraph 139: Defendants incorporate their responses to Paragraphs 1–138 as if set forth fully herein.

Paragraph 140: Paragraph 140 alleges law, not facts. As a result, no response is required.

Paragraph 141: Paragraph 141 alleges law, not facts. As a result, no response is required.

Paragraph 142: Paragraph 142 alleges law, not facts. As a result, no response is required.

Paragraph 143: Paragraph 143 alleges law, not facts. As a result, no response is required.

Paragraph 144: Paragraph 144 alleges law, not facts. As a result, no response is required.

Paragraph 145: The allegations of Paragraph 145 are denied.

Paragraph 146: The allegations of Paragraph 146 are denied.

Paragraph 147: Paragraph 147 does not allege facts to which a response is required.

Defenses

1. Plaintiffs have failed to state a claim to which relief may be granted. Neither the United States Constitution nor any exercise of the State's lawmaking power, including the Kansas Constitution, authorizes this Court to invalidate federal congressional maps. The U.S. Constitution prohibits it from doing so.
2. There is no established standard under the Kansas Constitution by which this Court can lawfully measure alleged claims of political gerrymandering.
3. There is no established standard under the Kansas Constitution by which this Court can lawfully measure alleged racial gerrymandering.
4. The Court is under a legal obligation to avoid interference with the legislative branch.
5. The United States Constitution commits legislative redistricting to the legislative branch.
6. Plaintiffs' political gerrymandering claims are nonjusticiable.
7. This Court lacks subject matter jurisdiction.
8. To the extent the case is permitted to proceed, venue is improper in Wyandotte County and is only proper in Shawnee County.
9. Plaintiffs fail to allege a racial vote dilution claim.
10. Defendant Abbott must be dismissed because he is not a proper defendant.
11. Defendants are not proper parties because they cannot provide the relief requested by Plaintiffs.
12. Plaintiffs lack standing to bring their claims as they have suffered no injury in fact.
13. The Petition presents non-justiciable political questions.

14. The expedited nature of this case, including suspension of nearly all rules, prejudices Defendants.

15. To the extent that the Court finds in favor of Plaintiffs, this Court does not have authority to draw or adopt a map itself and must return to the matter to the Legislature.

16. Plaintiffs' request for costs, expenses, and attorneys' fees is improper under Kansas law.

17. Both the U.S. and Kansas Constitutions prohibit this Court from drawing or adopting maps itself.

WHEREFORE, Defendants pray for judgment in their favor, for the costs of this action, and for such other and further relief as the Court deems just and equitable.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st of April, 2022, I presented the foregoing to the clerk of the court for filing and uploading to the e-flex electronic court filing system and service by electronic notification to the following counsel of record:

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