

IN THE TWENTY-NINTH JUDICIAL DISTRICT  
WYANDOTTE COUNTY DISTRICT COURT  
CIVIL DEPARTMENT

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

**DEFENDANTS' TRIAL BRIEF REGARDING THE COURT'S LACK OF AUTHORITY  
TO ENTER ITS OWN MAP**

If this Court determines that SB 355 violates the Kansas Constitution, the proper remedy is for the Court to allow the Legislature to adopt a new map—not for this Court to adopt a map itself. Tellingly, the *Rivera* and *Alonzo* Plaintiffs ask this Court to “[e]stablish a new congressional districting plan that complies with the Kansas Constitution” only “if the Kansas

legislature fails to enact a new congressional [plan] comporting with the Kansas Constitution in a timely manner.” *Rivera* Pet. 47; *see also Alonzo* Pet. 34. And the *Frick* Plaintiffs have not asked this Court to adopt a map itself. *Frick* Pet. 13-14. This is for good reason: This Court may not—consistent with the U.S. Constitution or the Kansas Constitution—set the lines of congressional districts outside the legislative process.

A Kansas court’s adoption of district lines that have not been enacted by the Kansas Legislature is a direct affront to the Elections Clause of the U.S. Constitution. The Elections Clause expressly commits to the “Legislature” of each state the power to draw congressional district lines. U.S. Const. art. I, § 4. The drawing of congressional districts is a “legislative function” that is to be “to be performed in accordance with the State’s prescriptions for lawmaking.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 808 (2015). In Kansas, the Legislature makes laws—including the redistricting laws that draw congressional district lines. The judiciary does not.

Like the U.S. Constitution, the Kansas Constitution requires district lines to be drawn by the Kansas Legislature—not Kansas courts. The Kansas Supreme Court has recognized as much since its earliest redistricting cases. In *Harris v. Shanahan*, 191 Kan. 1, 378 P.2d 157, the Kansas Supreme Court entertained a challenge to the validity of state legislative district maps. Initially, the Kansas Supreme Court withheld even ruling on the merits so that the Legislature would have “full opportunity to heed the constitutional mandate to reapportion.” *Id.* at 2. As the Court explained, “the duty to reapportion is legislative in nature and is committed by our constitution to the legislature.” *Id.* After later holding reapportionment laws unconstitutional, the Kansas Supreme Court declined to act further so as to “afford the governor an opportunity to call the legislature into special session, and for it to consider the adoption of apportionment acts” that

were not unconstitutional. *Harris v. Shanahan (Harris II)*, 192 Kan. 183, 215, 387 P.2d 771 (1963). As the Court again explained, “the duty to properly apportion legislative districts is a continuing one, imposed by constitutional mandate upon the legislature, notwithstanding the failure of any previous session to make such a lawful apportionment.” *Id.* at 213. The Kansas Supreme Court did the same thing in *Harris v. Anderson* after holding a reapportionment scheme unconstitutional, declining to act further so as to “afford[] the legislature ample opportunity to undertake the necessary reapportionment.” 194 Kan. 302, 312, 400 P.2d 25 (1965).

This consistently recognized limitation on the Kansas judiciary’s power is now contained in the Kansas Constitution. Under Article 10, Section 1 of the Kansas Constitution, the Kansas Supreme Court must determine the validity of state legislative apportionment laws. If the Kansas Supreme Court determines that such a law is invalid, then “*the legislature shall enact a statute of reapportionment*”—not the courts. Kan. Const. art. 10, § 1(b) (emphasis added). There is no reason to think Kansas courts would have greater authority to draw *federal congressional* districts than they have to draw *state legislative* districts.

The drawing of district lines has been constitutionally committed to the elected branches for good reason. Kansas can be carved into congressional districts in any number of ways based on any number of discretionary considerations. The members of the Legislature are most familiar with the local communities they represent, and are directly accountable to the people they represent. The “location of boundaries, the shape, area, and other relevant factors are proper considerations for the legislature in the enactment” of a redistricting plan. *Harris II*, 192 Kan. at 205. For the Court to pick up the redistricting pen would be to strip power from the elected branches of government—and from the Kansans who elect them.

Respectfully submitted by:

FOULSTON SIEFKIN LLP

By: s/ Anthony F. Rupp

Anthony F. Rupp, KS #11590  
9225 Indian Creek Pkwy., Ste. 600  
Overland Park, KS 66210  
Phone: 913-498-2100  
Fax: 913-498-2101  
Email: [trupp@foulston.com](mailto:trupp@foulston.com)

Gary Ayers, KS #10345  
Clayton Kaiser, KS #24066  
1551 N. Waterfront Pkwy., Ste. 100  
Wichita, KS 67206-4466  
Phone: 316-267-6371  
Fax : 316-267-6345  
Email: [gayers@foulston.com](mailto:gayers@foulston.com)  
Email: [ckaiser@foulston.com](mailto:ckaiser@foulston.com)

OFFICE OF ATTORNEY  
GENERAL DEREK SCHMIDT  
Brant M. Laue, KS #16857

Solicitor General of Kansas  
Dwight Carswell, KS #25111  
Shannon Grammel, KS #29105  
Kurtis Wiard, KS #26373  
Memorial Bldg., 2nd Floor  
120 SW 10th Avenue  
Topeka, Kansas 66612-1597  
Tel: (785) 296-2215  
Fax: (785) 291-3767  
Email: [brant.laue@ag.ks.gov](mailto:brant.laue@ag.ks.gov)  
Email: [dwight.carswell@ag.ks.gov](mailto:dwight.carswell@ag.ks.gov)  
Email: [Shannon.grammel@ag.ks.gov](mailto:Shannon.grammel@ag.ks.gov)  
Email: [Kurtis.Wiard@ag.ks.gov](mailto:Kurtis.Wiard@ag.ks.gov)

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 1<sup>st</sup> day 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:

*Counsel for Plaintiffs Rivera, Tot-Velasquez, Weaver, Raite, Dillon, and Loud Light (Wyandotte Cty. 89):*

Barry Grissom  
Jake Miller  
GRISSOM MILLER LAW FIRM LLC  
1600 Genessee Street  
Suite 460  
Kansas City, Missouri 64102  
Email: barry@grissommiller.com  
Email: jake@grissommiller.com  
(913) 359-0123

ELIAS LAW GROUP, LLP  
Abha Khanna  
1700 Seventh Ave  
Suite 2100  
Seattle, WA 98101  
Email: akhanna@elias.law  
(206) 656-0177

Lalitha D. Madduri  
Henry J. Brewster  
Spencer W. Klein  
Joseph N. Posimato  
10 G Street NE  
Suite 600  
Washington, DC 20002  
Email: lmadduri@elias.law  
Email: hbrewster@elias.law  
Email: sklein@elias.law  
Email: jposimato@elias.law  
(202) 968-4518

*Counsel for Plaintiffs Alonzo, Al-Uqdah, Carter, Brown Collins, Dinkens, Lavon, Maldonado Morales, Meitl, Nobles, Schwab, and White (Wyandotte Cty. 90):*

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF KANSAS

Sharon Brett  
Josh Pierson  
Kayla DeLoach  
6701 W 64<sup>th</sup> St., Suite 210  
Overland Park, KS 66202  
(913) 490-4100  
Email: sbrett@aclukansas.org  
Email: jpierson@aclukansas.org  
Email: kdeloach@aclukansas.org

CAMPAIGN LEGAL CENTER

Mark P. Gaber  
Kevin Hancock  
Sam Horan  
Christopher Lamar  
Orion de Nevers  
1101 14th St. NW, Suite 400  
Washington, DC 20005  
(202) 736-2200  
Email: mgaber@campaignlegalcenter.org  
Email: khancock@campaignlegalcenter.org  
Email: shoran@campaignlegalcenter.org  
Email: clamarc@campaignlegalcenter.org  
Email: odenevers@campaignlegalcenter.org

ARNOLD & PORTER KAYE SCHOLER LLP

Elisabeth S. Theodore  
R. Stanton Jones  
John A. Freedman  
601 Massachusetts Ave,  
NW Washington, DC 20001  
(202) 942-5316  
Email: Elisabeth.theodore@arnoldporter.com  
Email: stanton.jones@arnoldporter.com  
Email: john.freedman.@arnoldporter.com

TOMASIC & REHORN

Rick Reborn  
P.O. Box 171855  
Kansas City, KS 66117-0855  
(P) (913) 371-5750 | (F) (913) 713-0065  
Email: rick@tomasicrehorn.com

*Counsel for Plaintiffs Frick, Sullivan, Lea, and Schiffelbein (Douglas Cty.):*

DENTONS US LLP  
Mark P. Johnson  
Stephen R. McAlister  
Curtis E. Woods  
4520 Main Street, Ste. 110  
Kansas City, MO 64111  
Email: mark.johnson@dentons.com  
Email: Stephen.mcalister@dentons.com  
Email: Curtis.woods@dentons.com

*Counsel for Defendant Shew (Douglas Cty.):*

STEVENS & BRAND  
J. Eric Weslander  
John T. Bullock  
PO Box 189  
Lawrence, KS 66044  
Email: eweslander@stevensbrand.com  
Email: jbullock@stevensbrand.com

*/s/ Anthony F. Rupp*  
\_\_\_\_\_  
Anthony F. Rupp