

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,

v.

SCOTT SCHWAB, in his official capacity
as Kansas Secretary of State, and
MICHAEL ABBOTT, in his official
capacity as Election Commissioner of
Wyandotte County, Kansas,

Defendants.

Case No.: 2022-CV-000089
(Consolidated with 2022-CV-
000090 and 2022-CV-000071)

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

Plaintiffs,

v.

SCOTT SCHWAB, Kansas Secretary of State
and Kansas Chief Election Officer, in his
official capacity, and MICHAEL ABBOTT,
Wyandotte County Election Commissioner, in
his official capacity,

Defendants.

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

Plaintiffs,

v.

SCOTT SCHWAB, Kansas Secretary of
State, in his official capacity, and JAMIE
SHEW, Douglas County Clerk, in his official
capacity,

Defendants.

PLAINTIFFS' JOINT PRETRIAL BRIEF

Partisan gerrymandering is fundamentally inconsistent with both democratic principles and the Kansas Constitution, which safeguards each citizen's right to "equal power and influence in the making of laws which govern him." *Harris v Shanahan*, 192 Kan. 183, 204, 387 P.2d 771 (1963). Ad Astra 2, Kansas's new congressional plan, flouts those principles. Passed following a rushed, opaque redistricting process, it distorts the state's congressional districts for partisan and racial ends, depriving Kansans of their fundamental right to equal, undiluted votes.

Ad Astra 2 was vetoed by Governor Laura Kelly, who recognized its discriminatory impacts on the state's urban and minority communities. Over the past decade, Kansas has become more urban, more diverse, and more politically competitive. Democratic candidates have won 40 percent of the vote in recent statewide elections, and a Democrat who is the candidate of choice of the state's minority communities has held one of Kansas's four congressional seats since 2019. But despite this changing political and demographic landscape, the new congressional map is designed to give Democrats *zero* seats in Congress. It achieves this end by subordinating traditional

redistricting principles to partisan advantage, entrenching the party in power and diluting the votes of Democratic and minority Kansans in clear violation of the Kansas Constitution.

Expert evidence at trial will demonstrate, including through a host of mathematical and statistical measures, that Ad Astra 2 was enacted with undeniable partisan intent and will have the effect of depriving Plaintiffs and other Democratic and minority voters of the ability to elect their preferred candidates. But it doesn't take an expert to see the map for what it is. The Legislature's Republican leaders made their partisan ambitions plain from the outset, when former Senate President Susan Wagle pledged to draw a new map with four Republican districts and to eliminate the only minority member of Kansas's congressional delegation. What followed was a process in which legislators ignored clear and compelling public testimony, disregarded nonpartisan alternatives, and made participation in the process as onerous and inaccessible as possible. With surgical precision, the Republican majority crafted a congressional map that would deprive Democratic and minority voters of their opportunity to compete in the political process. The result is a new congressional plan that departs dramatically from past maps, replacing traditional boundaries with sprawling, oddly shaped, noncompact districts. Witnesses will describe how the map tears apart longstanding communities of interest in Wyandotte County and carves Democratic Lawrence out from the Second Congressional District and submerges it in the vast, rural First. Other features of the map are no less destructive: dividing the Kansas City metro area for the first time in 40 years, splitting the state's young voters, and separating Kansas's Native American reservations into two districts. Republican legislators promised to enact a Republican gerrymander; the evidence will prove that they succeeded.

Plaintiffs—ordinary Kansans whose votes will be diluted by Ad Astra 2 and a nonprofit organization dedicated to empowering the state's young voters—initiated these consolidated

lawsuits to vindicate the promise of equal voting power codified in the Kansas Constitution. Defendants' primary response has been to retreat to radical reinterpretations of settled law. But the law and facts are clear: Kansas's new congressional map is an unlawful gerrymander, and this Court can and must remedy it. Plaintiffs respectfully request that this Court invalidate Ad Astra 2 and order a new, nondiscriminatory congressional map ahead of the 2022 midterm elections.

FACTS AND EVIDENCE

I. Expert Witnesses

Plaintiffs plan to call the following expert witnesses to testify live at trial.

Dr. Jowei Chen. Dr. Chen is an associate professor of political science at the University of Michigan and will testify as an expert in, among other things, congressional districting and political geography. Dr. Chen will testify that, by using computer simulations to produce a large number of nonpartisan redistricting plans that adhere to traditional districting criteria such as compactness and avoiding county splits, and then comparing the partisan results in the simulated plans to the enacted plan, he can assess with statistical certainty whether the Legislature was motivated by partisan goals. He will testify to his conclusion that, based on this methodology, Ad Astra 2 was the product of the intentional pursuit of partisan advantage. Dr. Chen will further testify that Ad Astra 2 is an extreme statistical outlier with respect to its level of pro-Republican bias and its lack of compactness, and that the new plan splits more counties and far more precincts than is necessary. Finally, Dr. Chen will testify that his simulations reveal that Ad Astra 2 dilutes minority voting power in the Third Congressional District, and that it is highly unlikely that a map-drawing process that followed neutral districting principles would result in a Kansas City-based district with so few minority voters.

Dr. Loren Collingwood. Dr. Collingwood is an associate professor of political science at the University of New Mexico and will testify as an expert in redistricting and racially polarized

voting. Dr Collingwood will testify that racially polarized voting is present throughout Kansas, including in both the old and new Second and Third Congressional Districts; that the old Third Congressional District enabled minority voters to elect candidates of their choice; and that Ad Astra 2's cracking of minority voters between these districts has reduced or eliminated their ability to elect their candidates of choice.

Dr. Patrick Miller. Dr. Miller is an associate professor of political science at the University of Kansas and will testify as an expert in political science, including the political history and geography of Kansas and the state's recent political trends. Dr. Miller will testify about the history of racial discrimination in Kansas and how that historic marginalization is exacerbated by Ad Astra 2. Dr. Miller will provide the Court with a district-by-district comparison between the previous congressional plan ordered by a federal court in 2012 and Ad Astra 2, which will demonstrate how the latter fails to comply with several of the enumerated redistricting criteria adopted by the Legislature during its redistricting process—including, in particular, the new map's egregious divisions of communities of interests across the state. Dr. Miller will also testify that Ad Astra 2 produces three safe Republican congressional districts and one Republican-leaning district, despite the average partisan breakdown across recent statewide elections being 40 percent Democratic and 58 percent Republican.

Dr. Jonathan Rodden. Dr. Rodden is a professor of political science at Stanford University and will testify as an expert in political science, including political representation, the geographic location of demographic and partisan groups, and the drawing of electoral districts. Dr. Rodden will testify about Ad Astra 2's significant deviations from the Legislature's adopted criteria—which include compactness, preservation of political subdivisions, respect for communities of interest, and core retention—particularly as compared to two illustrative plans he

prepared and the court-adopted 2012 congressional plan. Dr. Rodden will further testify about how these deviations from the Legislature's adopted criteria dilute Democratic and minority voting strength while strengthening Republican voting power. Finally, Dr. Rodden conducted a racial and partisan dislocation analysis, which examines how Ad Astra 2 divides racial minorities and Democratic voters across district lines. He will testify that the results of this analysis show that Ad Astra 2's divisions of minority and Democratic voters cannot be explained by the state's political or racial geography.

Dr. Michael Smith. Dr. Smith is a professor of political science and chair of social sciences, sociology, and criminology at Emporia State University. He will testify that Ad Astra 2 breaks a multidecade precedent by shifting Lawrence and part of Douglas County from the Third Congressional District to the Second Congressional District; that the new map violates several criteria the Legislature set for itself in the congressional section of its 2022 guidelines on redistricting; that the map involves large and unnecessary movements of counties and populations among the congressional districts; and that the map is likely to suppress voter interest and participation by moving Lawrence from a competitive district into a noncompetitive district.

Dr. Christopher Warshaw. Dr. Warshaw is an associate professor of political science at George Washington University and will testify as an expert in political science, including political representation, elections, and polarization. Dr. Warshaw will testify about the "efficiency gap," which is a metric used to capture the votes that each party wastes in a legislative election, and will testify that, by this metric, Ad Astra 2 is an extreme outlier in terms of partisanship when compared both to other maps across the country over the last 50 years and to the other plans the Legislature considered this cycle. Dr. Warshaw will also testify about the representational consequences of

partisan gerrymandering and large efficiency gaps, including how large efficiency gaps are correlated with growing polarization in Congress.

II. Fact Witnesses

Plaintiffs plan to call the following fact witnesses to testify live at trial.

Sen. Ethan Corson. Sen. Corson, a member of the Kansas Senate who sits on the Senate Committee on Redistricting, will testify about the rushed, opaque legislative process that led to the enactment of Ad Astra 2. He will further testify about the communities of interest in the Kansas City metro area that he represents and that are divided by Ad Astra 2, including northern Johnson County.

Dr. Mildred Edwards. Dr. Edwards is the chief of staff to the Mayor/CEO of the United Government of Wyandotte County and Kansas City, Kansas. She will testify about the unique governmental structure of Wyandotte County, its diverse communities, and its links with northern Johnson County and the Kansas City metro area. She will further testify about the myriad ways that Ad Astra 2 harms these communities and disrupts the effective and efficient administration of resources in Wyandotte County.

Darrell Lea. Mr. Lea is a longtime resident of Lawrence and a consistent voter. He will testify about his concern that by being moved into the First Congressional District, his vote will no longer be relevant. He will also testify that the ability of Lawrence voters to influence the results of congressional elections will be significantly and negatively affected by Ad Astra 2.

Jacqueline Lightcap. Ms. Lightcap, the co-president of the League of Women Voters of Kansas, will testify about the harms Ad Astra 2 inflicts on residents of Wyandotte County, the greater Kansas City metro area, and the Junction City/Fort Riley area. She will also testify about the harms imposed by Ad Astra 2 due to its division of the state's four major Native American

communities. Finally, Ms. Lightcap will testify about the League's advocacy efforts during the Legislature's redistricting process.

Dr. Shannon Portillo. Dr. Portillo, a Douglas County Commissioner and a professor of public affairs and associate dean at the University of Kansas, will describe the effects of Ad Astra 2 on Douglas County and the City of Lawrence. She will further testify about the harms of placing Lawrence in the "Big First"; the relationship between the University of Kansas, its satellite campuses, and other state universities; and how Ad Astra 2 might impact those relationships.

Lauren Sullivan. Ms. Sullivan is a native and longtime resident of Lawrence. She will testify about her concerns that by moving Lawrence into the First Congressional District, her vote will become irrelevant in regard to the election of members of Congress, and that Lawrence voters as a group will lose the ability to influence congressional elections.

Plaintiffs may call the following additional fact witnesses to testify live at trial, time permitting:

Rep. Tom Burroughs or Rep. Tom Sawyer. Plaintiffs may call either Rep. Burroughs or Rep. Sawyer, both members of the Kansas House of Representatives, to testify about the House's redistricting process this cycle, including the Legislature's disregard of public testimony and input. If called, they may also testify about how the legislative process this redistricting cycle differed from prior cycles and normal legislative procedure.

Diosselyn Tot-Velasquez. Ms. Tot-Velasquez is a community organizer and resident of Wyandotte County. Plaintiffs may call her to testify about the county's Hispanic community of interest and the harms Ad Astra 2 inflicts on it.

Carole Cadue-Blackwood. Ms. Blackwood is a member of the Lawrence School Board. Plaintiffs may call her to testify about the state's Native American communities, the distinct issues

they face, and their need for representation. She will further testify about the harms Ad Astra 2 imposes on these communities by dividing them between two congressional districts.

III. Exhibits

Plaintiffs filed their exhibit list concurrently with this brief. Plaintiffs may introduce additional exhibits for purposes of cross-examination, impeachment, or rebuttal.

CLAIMS AND LEGAL FRAMEWORK

I. Partisan Gerrymandering

The evidence outlined above will establish that Ad Astra 2 constitutes a clear and egregious partisan gerrymander. In its effort to maximize the Republican share of the state’s congressional delegation, the Legislature ignored traditional district boundaries and alternatives that better reflected the state’s political geography. Ad Astra 2 represents a dramatically more partisan and polarized map than a fair process would have produced and violates multiple provisions of the Kansas Constitution.

A. Equal Protection

Section 1 of the Kansas Constitution’s Bill of Rights guarantees Kansans “equal and inalienable natural rights,” while Section 2 provides that “[a]ll political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit.” These provisions “afford[] separate, adequate, and greater rights than the federal Constitution,” *Farley v. Engelken*, 241 Kan. 663, 671, 740 P.2d 1058 (1987), with Section 2 providing particular protection for “political privileges,” *Stephens v. Snyder Clinic Ass’n*, 230 Kan. 115, 128, 631 P.2d 222 (1981).

Thus, under the Kansas Constitution, “every qualified elector . . . is given the right to vote for officers . . . [and] is possessed of equal power and influence in the making of laws which govern him.” *Harris*, 192 Kan. at 204. And a “right . . . to substantially equal voting power . . . necessarily

encompasses the opportunity to aggregate one’s vote with likeminded citizens to elect a governing majority of elected officials who reflect those citizens’ views”—a right that is violated by partisan gerrymandering “because those who have been deprived equal voting power lack the same opportunity as those from the favored party to elect a governing majority.” *Harper v. Hall* (*Harper II*), 868 S.E.2d 499, 544 (N.C.) (cleaned up), *stay denied sub nom. Moore v. Harper*, 142 S. Ct. 1089 (2022); *see also League of Women Voters of Pa. v. Commonwealth*, 645 Pa. 1, 116–17, 178 A.3d 737 (2018) (explaining that “partisan gerrymandering dilutes the votes” of the members of a disfavored party and that “[i]t is axiomatic that a diluted vote is not an equal vote”).

Because partisan gerrymandering burdens the fundamental right to vote, strict scrutiny applies. *See Hodes & Nausser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 663, 440 P.3d 461 (2019) (*per curiam*); *see also Harper II*, 868 S.E.2d at 543 (applying strict scrutiny to maps gerrymandered to favor particular political party). Accordingly, to satisfy this level of review, Ad Astra 2 would have to “serve some compelling state interest and be narrowly tailored to further that interest.” *Hodes & Nausser*, 309 Kan. at 663.

Plaintiffs will prove that Ad Astra 2 violates the Kansas Constitution’s equal protection provisions because (1) the new map was created with the intent to deny Plaintiffs and other Democratic voters substantially equal voting power and (2) the new map will have its intended discriminatory effect. Defendants will be unable to demonstrate that Ad Astra 2, which discriminates against voters on the basis of their political beliefs, is narrowly tailored to serve any compelling state interest. Indeed, because there is no legitimate state interest in gerrymandering a map to disfavor a particular political party, the new map cannot satisfy *any* level of scrutiny, strict or otherwise.

B. Right to Vote

Article 5, Section 1 of the Kansas Constitution guarantees the right to vote, providing that “[e]very citizen of the United States who has attained the age of eighteen years and who resides in the voting area in which he or she seeks to vote shall be deemed a qualified elector.” The Kansas Supreme Court has explained that “the right to vote for the candidate of one’s choice is of the essence of the [representative] form of government,” *Harris v. Anderson*, 194 Kan. 302, 303, 400 P.2d 25 (1965), and that legislation “must not, directly or indirectly, deny or abridge the constitutional right of the citizen to vote or unnecessarily impede the exercise of that right,” *State v. Beggs*, 126 Kan. 811, 816, 271 P. 400 (1928) (cleaned up). Because “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise,” *Anderson*, 194 Kan. at 303 (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)), partisan gerrymandering violates the right to vote, *see, e.g., Harper II*, 868 S.E.2d at 546 (explaining that partisan gerrymandering violates “fundamental right to vote” by “mak[ing] it harder for individuals” to elect their candidates of choice and thus “depriv[ing] . . . a voter of his or her right to equal voting power”). And “[s]ince the right of suffrage is a fundamental matter, any alleged restriction or infringement of that right strikes at the heart of orderly constitutional government, and must be carefully and meticulously scrutinized.” *Moore v. Shanahan*, 207 Kan. 645, 649, 486 P.2d 506 (1971) (per curiam). Indeed, “[t]he most searching of . . . standards—strict scrutiny—applies when a fundamental right is implicated.” *Hodes & Nauser*, 309 Kan. at 663.

Plaintiffs will prove that Ad Astra 2 violates the fundamental right to vote by diluting the weight of their votes and denying them equal voting power. The evidence will establish not only that Ad Astra 2 disadvantages Plaintiffs and other Democratic voters, but also that this was the

intent of the Legislature when it drew the new map. And Defendants will not prove that Ad Astra 2 serves any compelling government interest.

C. Freedom of Speech

Section 11 of the Kansas Constitution's Bill of Rights guarantees that "all persons may freely speak." The right to free speech is "among the most fundamental personal rights and liberties of the people." *Unified Sch. Dist. No. 503 v. McKinney*, 236 Kan. 224, 234, 689 P.2d 860 (1984). Accordingly, "content-based speech restrictions are presumptively invalid." *State v. Smith*, 57 Kan. App. 2d 312, 318, 452 P.3d 382 (2019). Partisan gerrymandering constitutes such an impermissible content-based restriction: "When legislators apportion district lines in a way that dilutes the influence of certain voters based on their prior political expression—their partisan affiliation and their voting history—it imposes a burden on a right or benefit, here the fundamental right to equal voting power on the basis of their views." *Harper II*, 868 S.E.2d at 546. Because "[t]his practice subjects certain voters to disfavored status based on their views," it violates the freedom of speech. *Id.* This "form of viewpoint discrimination and retaliation . . . triggers strict scrutiny." *Id.*; *see also McKinney*, 236 Kan. at 227–28 ("Restrictions on free speech are valid only where necessary to protect compelling public interests and where no less restrictive alternatives are available.").

Plaintiffs will prove that Ad Astra 2 violates their freedom of speech by demonstrating that (1) they and other Democratic voters have engaged in protected political expression and (2) Ad Astra 2 intentionally discriminates against and burdens them on the basis of this protected conduct. The burden then shifts again to Defendants, who will not show that the new congressional map is narrowly tailored to achieve a compelling government interest.

D. Freedom of Assembly

Section 3 of the Kansas Constitution's Bill of Rights protects Kansans' "right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government, or any department thereof, for the redress of grievances." Courts have interpreted the right to free assembly as incorporating a freedom of association that includes the right to form political parties with likeminded citizens and participate freely in those organizations. *See, e.g., Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *120 (N.C. Super. Ct. Sept. 3, 2019) (three-judge court) (citing *Feltman v. City of Wilson*, 238 N.C. App. 246, 253, 767 S.E.2d 615 (2014)); *Shane v. Parish of Jefferson*, 209 So. 3d 726, 741 (La. 2015). Partisan gerrymandering has the effect of "debilitat[ing]" the disfavored party and "weaken[ing] its ability to carry out its core functions and purposes." *Common Cause*, 2019 WL 4569584, at *122 (alterations in original) (citation omitted). For this reason, and because partisan gerrymandering "undermines the role of free speech and association in formation of the common judgment[] and distorts the expression of the people's will and the channeling of the political power derived from them to their representatives in government based on viewpoint," *Harper II*, 868 S.E.2d at 546, it violates the freedom of assembly. Such a burden on the right to free assembly is subject to strict scrutiny. *See id.*

Plaintiffs will prove that Ad Astra 2 violates their right to free assembly by demonstrating that the new map burdens their ability to associate with other Democratic voters and weakens their ability to organize effectively to carry out the core functions and purposes of their party. Once again, Defendants will be unable to demonstrate that Ad Astra 2 is narrowly tailored to achieve a compelling state interest.

II. Racial Vote Dilution *

The Kansas Constitution's equal protection provisions safeguard the state's minority citizens from the dilution of their votes on account of race. *See Farley*, 241 Kan. at 671 (Kansas equal protection clause "affords separate, adequate, and greater rights than the federal Constitution"); *Shaw v. Reno*, 509 U.S. 630, 649 (1993) (noting that Fourteenth Amendment prohibits practices that "dilut[e] a racial group's voting strength"). Because the right to vote is fundamental under the Kansas Constitution, *see Moore*, 207 Kan. at 649, strict scrutiny is warranted where state action infringes on that right—whether the disparate treatment on the basis of race "be de facto or de jure in origin." *Collins v. Thurmond*, 41 Cal. App. 5th 879, 896, 258 Cal. Rptr. 3d 830 (2019) (quoting *Crawford v. Bd. of Educ.*, 17 Cal. 3d 280, 290, 17 P.2d 28 (1976)). Under the narrower federal equal protection standard, plaintiffs can establish an equal protection violation by showing that lawmakers intentionally engaged in racial vote dilution, which can be inferred from circumstantial evidence like the impact of the decision, the historical background, the sequence of events leading to the challenged decision, and irregularities in the process. *See State v. Adams*, 269 Kan. 681, 688, 8 P.3d 724 (2000) (discrimination can be inferred "from a sensitive inquiry into such circumstantial and direct evidence of intent as may be available" (cleaned up)).

Plaintiffs will prove that Ad Astra 2 has a particular and disparate impact on minority Kansans by cracking minority communities among multiple congressional districts and diluting their right to equal voting power. In addition, Plaintiffs will prove that the dilution of minority votes was the intention of the Legislature when it enacted Ad Astra 2, as demonstrated by:

* The racial vote-dilution claim is asserted by the *Rivera* and *Alonzo* Plaintiffs only.

- The division of Wyandotte County, which has historically been kept whole in a single congressional district to “maintain [minority] voting strength in areas where they live closely together,” *O’Sullivan v. Brier*, 540 F. Supp. 1200, 1204 (D. Kan. 1982) (three-judge court); *see also Essex v. Kobach*, 874 F. Supp. 2d 1069, 1088 (D. Kan. 2012) (per curiam) (three-judge court) (ordering court-drawn plan that “maintains the voting strength of the minority population in Wyandotte County”);

- The stated intention to defeat the only minority member of the Kansas congressional delegation;

- Procedural irregularities in the redistricting process, including a process designed to limit public input and blatant disregard of public comments and entreaties;

- Substantive departures from prior maps, including the unnecessary shuffling of hundreds of thousands of Kansans—including minority Kansans—between congressional districts; and

- Expert testimony of simulated plans showing the high unlikelihood of achieving Ad Astra 2’s result—the highest concentration of minority voters in a heavily Republican district—without that result being intended.

Under the Kansas equal protection clause, Ad Astra 2 must satisfy strict scrutiny, and Defendants will be unable to demonstrate that a congressional map that denies minority voters the opportunity for equal participation in the political process serves a compelling government interest.

REMEDY

The evidence described above will establish that Plaintiffs are entitled to appropriate relief: a new, nondiscriminatory map, consistent with the requirements of the Kansas Constitution, for use in the 2022 primary and general elections and beyond.

In the first instance, the Court may give the Legislature the opportunity to draw a new congressional map. Consistent with the practices of other courts in recent partisan gerrymandering cases, the Court would need to give the Legislature only a brief period to craft a remedial plan. *See, e.g., Harper v. Hall (Harper I)*, 867 S.E.2d 554, 558 (N.C. 2022) (providing 14 days for legislature to adopt new congressional *and* state legislative plans); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, Nos. 2021-1193, 2021-1198, 2021-1210, 2022 WL 110261, at *28 (Ohio Jan. 12, 2022) (providing 10 days for redistricting body to adopt new state legislative plans). Given that Kansas contains only four congressional districts, the availability of alternative maps introduced by various groups during the legislative process and by Plaintiffs in this litigation, and the rapid pace with which the Legislature initially approved Ad Astra 2, the Legislature should be allowed at most two weeks to approve a remedial congressional map. Any remedial plan adopted by the Legislature should be submitted to the Court for review. *See Harper I*, 867 S.E.2d at 558.

In the event the Legislature does not or cannot timely adopt a remedial congressional plan, this Court must adopt a new map. *See, e.g., Grove v. Emison*, 507 U.S. 25, 33 (1993) (“The power of the judiciary of a State . . . to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.” (quoting *Scott v. Germano*, 381 U.S. 407, 409 (1965) (per curiam))); *Harper I*, 867 S.E.2d at 558 (“Should the [legislature] choose not to submit new congressional and state legislative districting plans on or before th[e] deadline, the trial court will select a plan which comports with constitutional requirements[.]”). To ensure that a remedial congressional plan is adopted well in advance of the upcoming filing deadline, *see* K.S.A. 25-205, the Court could undertake its own contingent redistricting process concurrently with the Legislature’s. *See, e.g., Essex*, 874 F. Supp.

2d at 1079 (describing plan for court adoption of Kansas congressional map); Order on Submission of Remedial Plans for Court Review at 2, *N.C. League of Conservation Voters v. Hall*, Nos. 21 CVS 015426, 21 CVS 500085 (N.C. Super. Ct. Feb. 8, 2022) (three-judge court) (describing plan for court adoption of remedial congressional and state legislative maps).

Regardless of who ultimately draws a remedial map, there is more than sufficient time for a lawful remedy to be enacted. Notably, this is not the first time Kansas has needed a new congressional map on a short timeline. During the post-2010 redistricting cycle, the political branches deadlocked on their redistricting obligations, including enactment of a new congressional plan. *See Essex*, 874 F. Supp. 2d at 1074–78. Impasse proceedings followed, and a three-judge court accepted party submissions and ultimately drew a series of new maps, including a new congressional plan—in little more than one week. *See id.* at 1079 (court “heard testimony, received evidence and entertained arguments” on May 29 and 30, 2012, and issued order with new congressional, Senate, House, and State Board of Education maps on June 7, 2012, ahead of filing deadline on June 11, 2012). Accordingly, whether the Legislature or this Court ultimately wields the remedial pen, new congressional lines can be drawn expeditiously—and well in advance of the upcoming elections and their accompanying deadlines.

CONCLUSION

In adopting Ad Astra 2, the Legislature impermissibly prioritized partisan gain over the preservation of Plaintiffs’ and other Kansans’ fundamental rights. Plaintiffs respectfully ask this Court to redress these violations of the Kansas Constitution and ensure the adoption of a lawful congressional map.

**AMERICAN CIVIL LIBERTIES UNION
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing document was filed this 1st day of April, 2022, in accordance with K.S.A. 60-205 and Kansas Supreme Court Rule 122 via the Wyandotte County District Court Electronic Filing System, which shall send electronic notice of the same to all required parties.

/s/ Barry R. Grissom
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