No. 22-125092

IN THE SUPREME COURT OF THE STATE OF KANSAS

FAITH RIVERA, et al., TOM ALONZO, et al., SUSAN FRICK, et al.,
Plaintiffs-Appellees

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-Appellants

JAMIE SHEW, in his official capacity as Douglas County Clerk,
Defendant-Appellee

BRIEF OF *AMICUS CURIAE* LEGISLATIVE COORDINATING COUNCIL IN SUPPORT OF DEFENDANTS-APPELLANTS

Appeal from the District Court of Wyandotte County, Kansas
Honorable Bill Klapper, District Judge
District Court Case No. 22-CV-89 (consolidated with 22-CV-90 and Douglas County Case No. 22-CV-71)

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INTRODUCTION

"The Legislature shall enact a remedial plan in conformity with this opinion." J.A. VI, 201. With these words, the judgment below orders a non-party to "expeditiously" comply with a 208-page opinion that proudly refuses to articulate any "bright line" rule or principle for congressional redistricting. J.A. VI 188. The opinion first holds that the Defendants needed to have "disproved" the decade-old findings issued by a panel in a federal "stalemate" case—a position not argued by any party below. J.A. VI, 12. It then pastes virtually unaltered proposed findings and conclusions from each set of Plaintiffs. Regardless of the standard actually adopted by the district court, it has overreached. As shown in Section I, the court simply adopted as its own the intensely partisan content, rhetoric, and tone of the Plaintiffs, Democrat opponents of the Ad Astra 2 map at issue in this case. The court also made serious accusations of malfeasance against legislators without any evidence. Its most grievous error, however, was constitutional: in contravention of the federal Elections Clause, it purported to "fashion" new state substantive law to negate an election law that was passed by the Legislature in the exercise of its federally-granted authority. This cannot stand. This Court should reverse.

ARGUMENTS AND AUTHORITIES

I. The Ad Astra 2 Map is the Result of a Permissible Political Judgment by the Legislature Exercised after a Thorough and Fair Process.

A. Ad Astra 2 Reflects a Rational Political Judgment.

The facts showed that the legislators themselves viewed their work as part of a rational plan meant to maximize Kansas' influence in Congress. To begin, all parties

agreed that Johnson and Wyandotte Counties should be kept together as part of the Kansas City area, but were now too large to occupy the same district. *See, e.g.*, J.A. VI, 201; Tr. Ex. 168, at 46:14-19 (Sen. Sykes); Tr. Ex. 172, at 51:4-6 (Rep. Sutton). Because Johnson County, an engine of growth, persuasively argued that it should not be split, this meant splitting Wyandotte County. Tr. Ex. 168, at 82:11-18 (Sen. Masterson).

Turning west, the Legislature strove to keep Fort Leavenworth, Fort Riley, and Forbes Field Air National Guard Base in the same district. Tr. Ex. 172. at 10:23-26, 11:1-8. It believed that consolidating military interests in one district might well give this district a seat on the upcoming base realignment and closure commission. *Id.* Also, at the request of many, including the Board of Regents in 2010, Lawrence was added to the first district to pair the two major research universities, Kansas University and Kansas State University. Tr. Exs. 168, at 41:24-25; 169, at 42:11-18. 172, at 9:11-19.

These are valid political judgments. When the district court disagreed and demanded, for example, that Wyandotte County be kept intact, it decided an "initial policy determination of a kind clearly for nonjudicial discretion;" and created its own rule of thumb to compensate for the "lack of [a] judicially discoverable . . . standard[]." *Baker v. Carr*, 369 U.S. 186, 214 (1962). For these reasons alone, this Court should reverse.

B. The Legislative Process was Fair and Thorough.

The Legislature made extensive efforts to gather public opinion. Tr. Ex. 172, at 127:8-11 (Rep. Croft: Ad Astra 2 "is based on feedback from a year-long process of attending meetings, listening tours, individual town halls, and many other engagements."). Fourteen listening tours were held across the State in August 2021. *See*

Tr. Ex. 1051; *see generally* Tr. Ex. 737-40. Both in-person and virtual townhalls were conducted in November. *See* Tr. Ex. 1050. The legislature received over five hundred pieces of input from the public. Tr. Ex. 164, at 3:7-8. Both the House and Senate Committees on Redistricting held several hearings during session in January 2022. *See* Tr. Exs. 164-68 & 170. The House Committee on Redistricting held almost three hours of public in person and virtual comments on January 20, 21 and 24, 2022. Tr. Ex. 159, 160. The Senate Committee on Redistricting held one session of in person and virtual comment which lasted over six hours on January 21, 2022. Tr. Ex. 158.

The district court discounted these extensive efforts, simply adopting Plaintiffs' allegations and intensely partisan tone. For example, it viewed Plaintiff's Exhibit 751, showing legislators studying their phones during a listening tour, as evidence of dismissiveness and malfeasance by "Republican Committee members." J.A. VI, 20-21. There was no competent evidence of this fact. Indeed, even a cursory review of the Defense exhibits would have shown that all listening tour attendees were "encouraged" to provide written testimony and other materials, Tr. Ex. 1051, which legislators could access during the live hearing.[1] At the time Plaintiff Exhibit 751, a photo, was taken, Patty Newkirk was giving oral testimony, and other information was posted on a screen behind the committee, which it could not see.[2] Ms. Newkirk had also provided written testimony in the form of a five-page PDF. *See* Appendix 2 (Patty Newkirk written

[1] Over 270 written exhibits were submitted for August 12, 2021, alone. *See* Appendix 1.
[2] *See* 2021 Legislative Listening Tour – Overland Park, http://sg001-harmony.sliq.net/00287/Harmony/en/PowerBrowser/PowerBrowserV2/20210812/-1/11586 (starting at 3:33:25 until 3:35:17).

testimony). The district court could not simply assume Republican legislators had chosen to surf the web instead of reviewing the PDFs of written testimony and materials. Worse, it accepted incompetent testimony from a partisan opponent in the audience, who was in no position to see the Republicans' review of materials on their phones, that Republicans were instead committing "one of the more disrespectful acts [Sen. Corson had] ever seen from elected officials." J.A. VI, 20. The ease with which the court adopted a partisan attack on Republican legislators should trouble this Court.

Next, contrary to the district court's view that the Legislature chose to rush the process to accomplish some malign purpose, J.A. VI, 17, 193, 201, the Legislature simply chose not to hold up the listening tour sessions until delayed Census data could be reported. Tr. Ex. 169. At 13:3-6 (Sen. Wilbron: "the [Bureau of Census] was late in getting the census data out by 90 days. So the timing was about the same, the census data just got here late."). There was no evidence that waiting until after the Census data was reported would have changed public comments; the district court found post-Census testimony "did not meaningfully differ from that submitted in August." J.A. VI, 22. The court similarly contradicted its own complaint that commenters were harmed because the legislature passed guidelines "belatedly." *Id*. The guidelines from past cycles were public, and the new guidelines "substantively very similar to those used in the previous redistricting cycle," and were "a very typical list of traditional redistricting criteria." *Id*.

Additionally, the district court wrongly assumed that the guidelines had been adopted by the Legislature and were binding rules against which courts could judge Ad Astra 2. J.A. VI, 190-92. Yet the guidelines were never adopted; neither the whole House

nor the whole Senate voted on or enacted the Guidelines as law. (Sen. Corson, 4/4/22 Tr. Trans. Vol. 2, at 249:6-7 ("Guidelines are not part of the Kansas statutes.")). And even if the guidelines had been adopted, they were merely "guides" for the Legislature to use to the extent it saw fit; they are not an invitation for judicial involvement in redistricting. *Nixon v. United States*, 506 U.S. 224, 236 (1993) (reviews of internal legislative procedures are nonjusticiable, it involves a political question); *see also Brown v. Hansen*, 973 F.2d 1118, 1122 (3rd Cir. 1992) (*citing Baker*, 369 U.S. at 217; *United States v. Ballin*, 144 U.S. 1, 5 (1892)) (holding under political question doctrine, courts generally refuse to scrutinize legislature's choice or compliance with internal rules and procedures)[3].

Finally, the district court simply accepted as fact Democrat legislators' opinions that legislation was "rushed" because of a partisan purpose. As the rapid pace of this litigation shows, the primary filing deadlines are what forced an expedited process. *See* Kan. Stat. Ann. § 25-205(a); Tr. Ex. 169, at 144:12-15. As the Democrats acknowledged at the time, "There is a rush." Tr. Ex. 169, at 23:16 (Sen. Pittman). The legislature would have had even less time had the first listening tour sessions been delayed until November, as the district court seems to have preferred. In sum, the district court simply adopted — indeed, cut and pasted—every single procedural Democratic objection, with or without

[3]Several states recognize this principle. *See e.g, Progress Mo., Inc. v. Mo. Senate*, 494 S.W.3d 1, 7 (Mo. 2016) (review of internal rules governing legislative proceedings are nonjusticiable political questions); *Hosp. & Health System Ass'n of Pa. v. Commonwealth*, 621 Pa. 260, 276 (Pa. 2013) ("courts 'refuse to scrutinize a legislature's choice of, or compliance with, internal rules and procedures'").

competent evidence. In making itself the judge of the Legislature's internal operations, the district court overstepped. As shown below, its legal errors were even more serious.

II. State Substantive Constitutional Provisions Cannot Override the Power Conferred on Legislatures Under the Elections Clause.

Kansas entered the Union bereft of any power to control the "time, place, and manner" of federal elections. Nor did the U.S. Constitution, Kansas' pact with its new sister states, grant Kansas this power. Instead, the U.S. Constitution granted the power to a *specific body*, the Kansas "Legislature," under the Elections Clause, which states:

> The Times, Places and Manner of holding Elections for Senators and Representatives, **shall be prescribed in each State by the Legislature thereof**; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

See U.S. Const., Art. I, § 4 (emphasis added).[4] When the Legislature exercises that power in redistricting, it wields one of the few federal powers the Framers saw fit to grant to state *legislatures*, rather than to entire states.

A key question for this Court, then, is one of federal law: whether the Kansas legislature's exercise of its special federally-granted redistricting power is subject to *substantive* restrictions arising from the Kansas Constitution (or other non-legislative sources), or, instead, is subject only to *procedural* rules that apply to all lawmaking. The answer is the latter. In redistricting, the legislature is subject only to state-mandated

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[4]The Electors Clause controls presidential elections, and makes the same decision:

> Each State shall appoint, **in such Manner as the Legislature thereof may direct**, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress . . . ."

U.S. Const., Art. II, § 1, clause 2.

procedural provisions that bring legislatures into existence, govern their membership, and govern the process by which laws are made. But states themselves, through their constitutions, courts, or other bodies, cannot enact *substantive* limits on the political discretion the U.S. Constitution gives directly to legislatures. Here, the Plaintiffs ask courts to create substantive rules to negate the Legislature's exercise of federally-delegated power. This flatly violates the Elections Clause. It reneges on the pact Kansas made upon joining the Union. And it requires reversal of the district court.

A. The Elections Clause Prohibits this Court from Enforcing Substantive State Limitations on the Legislature's Discretion.

Under the U.S. Constitution, certain powers are delegated only to the state legislatures, not to the states themselves. Why such a precise delegation? The answer is popular sovereignty: "the animating principle of our Constitution that the people themselves are the originating source of all the powers of government." *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 813 (2015). Among all potential sources of state regulatory power, legislatures are optimal: they are popularly elected; are most responsive to the popular will of the entire state; are most adept at judging questions of electoral politics; and are in the best position to flexibly "regulate" federal elections as conditions change. Other institutions, such as state courts and constitutions, are buffered from the popular will and are counter-majoritarian by design.

It is for this reason that the U.S. Constitution confers certain powers only upon state "Legislatures." These special grants include the Elections and Electors Clauses. Likewise, the Seventeenth Amendment retains power in state legislatures to "direct"

elections for the filling of senatorial vacancies.[5] These provisions show a clear plan from the Founding forward to vest certain powers and duties exclusively in the "Legislature," rather than with the whole state.[6]

United States Supreme Court authority confirms this reading. The absolute independence of the legislature under the Elections and Electors Clauses was so well-established that in 1892, the Court could observe that "from the formation of the government until now the practical construction of the clause has conceded plenary power to the state legislatures in the matter of the appointment of electors." *McPherson v. Blacker*, 146 U.S. 1, 25 (1892). The Court held that Michigan's legislature could decide under the Electors Clause to provide for the appointment of presidential electors by district, since this was "in such manner as the legislature thereof may direct." *Id*. Further, it recognized that the Electors Clause limits the state in any effort to curtail legislative

[5] Other examples abound. Article I, section 3, had called for the Senate to be "composed of two Senators from each State, chosen by the Legislature thereof…". And outside of the elections context, the formation of new states from parts of old states requires the "Consent of the Legislatures of the States concerned…" Article IV, § 3. The United States is to protect "each of [the States]" against domestic violence "on Application of the Legislature, or of the Executive (when the Legislature cannot be convened)…" Article IV, § 4. An "Application of the Legislatures of two thirds of the several States" is one means for calling a convention for proposing amendments, and it is the "Legislatures of three fourths" of the States, or conventions in three-fourths of the States, that can ratify amendments. Article V.

[6] The Framers certainly knew how to vest power with the state itself for other purposes. In those cases, states can exercise federally-granted power through substantive provisions and limitations within their constitutions. These may be self-executing or may work with all three branches of the state government. For example, Article I, Section 2 controls the key question of qualifications of Electors for House of Representatives elections; the "Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." Because the qualifications for state legislative elections could be controlled by state statutes or constitutional provisions, those same provisions—not necessarily the legislature—would control qualifications for federal congressional elections.

power: "Hence the insertion of those words, while operating as a limitation upon the state in respect of any attempt to circumscribe the legislative power, cannot be held to operate as a limitation on that power itself." *Id*. The text was clear: "It recognizes that the people act through their representatives in the legislature, and leaves it to the legislature exclusively to define the method of effecting the object." *Id*. at 27.

In *Hawke v. Smith*, 253 U.S. 221, 227 (1920), the Court considered another of the special powers directly conferred on state legislatures by the U.S. Constitution, the Article V power of ratification of amendments. With Prohibition looming, Ohio voters had passed an amendment extending the referendum power to votes by the state legislature "ratifying any proposed amendment to the Constitution of the United States." *Id.* at 225. The Court held that Ohio's constitution could not limit the legislature's power of ratification, since "legislatures" when used in the Constitution really did mean institutional legislatures:

> …What did the framers of the Constitution mean in requiring ratification by 'legislatures'? That was not a term of uncertain meaning when incorporated into the Constitution. What it meant when adopted it still means for the purpose of interpretation. A Legislature was then the representative body which made the laws of the people.

Id. Accordingly, *Hawke* held, Ohio was not free—even under its state constitution—to constrain the legislature's exercise of a power derived "from the federal Constitution to which the state and its people have alike assented." *Id*. at 230.

The Court reaffirmed and relied on *Hawke* two years later to reject an attack on the ratification of the Nineteenth Amendment, extending suffrage to women. *See Leser v. Garnett*, 258 U.S. 130, 136-37 (1922). The plaintiffs unsuccessfully argued that the

constitutions of several of the ratifying states had substantive limitations that rendered their legislatures' ratifications inoperative. Further, the Court held that even alleged procedural irregularities in two other states were insufficient, as the legislatures of those states "had power to adopt the resolutions of ratification," and that their notice to the Secretary of State that they had done so was "conclusive." *Id*. at 218.

Finally, in *Smiley v. Holm*, 285 U.S. 355 (1932), the Court built on these prior holdings[7] and applied them to redistricting under the Elections Clause. The plaintiff challenged a Minnesota redistricting plan that was passed by its legislature but not signed by the governor, as required by Minnesota's constitutional requirements for lawmaking. The Court held that under the Elections Clause, "legislature" means a distinct body (*id*. at 365); legislatures regulating the "times, places, and manner" of holding elections were lawmaking (*id*. at 367); and the "exercise of the authority must be in accordance with the *method* which the state has prescribed for legislative enactments." *Id*. at 368 (emphasis added). *Smiley* shows that only constitutional provisions for the lawmaking *process* (*e.g.*, gubernatorial veto or the referendum) are consistent with the Elections Clause.

[7] The Court also cited *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569-70 (1916). *Hildebrant* had alternative holdings: either Congress, in exercising its Article IV, §1 power to override state legislative enactments, had the power to recognize the referendum (then, a new innovation) as part of the legislative power of the state; or the question of whether Congress had erred in so recognizing the referendum was non-justiciable under the Guarantee Clause. Contra the district court, nothing in *Hildebrant* even suggests, let alone holds, "that state legislatures may not enact laws under the Elections Clause that are invalid "under the Constitution and laws of the state." J.A. VI, 365.

After several quiet decades, the Court reaffirmed legislative primacy in *Bush v. Palm Beach County Canvassing Bd.*, 531 U.S. 70 (2000). In vacating a Florida Supreme Court order, the Court favorably cited *McPherson* and expressed concern that the Florida court's application of the "right to vote" in the state constitution "may be read to indicate that it construed the Florida Election Code without regard to the extent to which the Florida Constitution could, consistent with [the Elections Clause], 'circumscribe the legislative power.'" *Id*. at 77. It "therefore" remanded, repeating, "we are unclear as to the extent to which the Florida Supreme Court saw the Florida Constitution as circumscribing the legislature's authority under Art. II, § 1, cl. 2." *Id*.[8]

This Supreme Court Elections Clause jurisprudence remains vibrant in 2022. As the State's brief shows, several justices have cited the Clause in granting or deny stays over the past two years.[9] In each case, the issue has been whether substantive mandates in state constitutions can override legislative election regulations—the question presented here. For that reason (among others), it is irrelevant that the Court narrowly held, 5-4, that Arizona could amend its constitution (by initiative) to move redistricting "lawmaking" to a separate commission. *See Ariz. State Legis.*, 576 U.S. 787. That merely restates the rule that should decide this case: that the Elections Clause allows state

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[8] Shortly thereafter, Chief Justice Rehnquist wrote a concurrence joined by Justices Scalia and Thomas, again citing *McPherson* as "additional grounds" for reversing the Florida court. *Bush v. Gore*, 531 U.S. 98 (2000). He wrote that the state's high court had read state law to negate legislative intent, and "[t]his inquiry does not imply a disrespect for state *courts* but rather a respect for the constitutionally prescribed role of state *legislatures." Id*. at 114.

[9] *See, e.g., Democratic Nat'l Comm. v. Wis. State Legis.*, 141 S. Ct. 28 (2020) (mem.) (Kavanaugh, J., concurring in denial) ("That said, under the U. S. Constitution, the state courts do not have a blank check to rewrite state election laws for federal elections.").

constitutions to impose lawmaking *procedures*, but not *substantive* standards: "In sum, our precedent teaches that redistricting is a legislative function, to be performed in accordance with the State's prescriptions for lawmaking, which may include the referendum and the Governor's veto." *Id*. at 808.[10]

This Court is bound to apply the Elections Clause in step with the controlling holdings of the U.S. Supreme Court. No decision holds that state constitutions can force legislatures to follow specific *substantive* rules other than those imposed by the U.S. Constitution or Congress. Certainly, no authority requires them to implement the partisan-fairness tests or community of interest groupings that were preferred by the district court—a single elected judge. The district court must be reversed.

B. The Elections Clause Leaves Little Role for State Courts, But Allows Myriad Other Checks on State Legislative Power to Regulate Elections.

The district court remarked that "Kansas Courts are asked to enter this arena" because the Legislature acted as though the Elections Clause lets it "redistrict in any manner it sees fit and the courts are powerless to stop its actions." J.A. VI, 1. But that has never been the Legislature's position; in addition to state *procedural* limits, federal legal

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[10] *Ariz. State Legis.'s* slim majority did depart from precedent regarding the identity of the "legislature." The opinion also contains dicta—erroneously cited by the district court as a holding—that in context pertains only to *procedural* constitutional limits—all that was at issue in that case. *Id*., 576 at 817-818 ("Nothing in that Clause instructs, nor has this Court ever held, that a state legislature may prescribe regulations on the time, place, and manner of holding federal elections in defiance of provisions of the State's constitution.") For state constitutional procedures, that has been the law since at least *Smiley*, 285 U.S. at 368. And the Court's passing dicta in *Rucho v. Common Cause*, 139 S.Ct. 2484, 2507 (2019) tells us nothing: it vaguely alludes to "statutes" and "constitutions," does not expressly cite congressional districting, and does not begin to address how the Elections Clause affects all these categories.

restraints on the Legislature are powerful. The Elections Clause itself provides Congress an override: "the Congress may at any time by Law make or alter such Regulations." Art. I, §4. Further, implicit in the Clause is a requirement that legislatures not "dictate electoral outcomes, . . . favor or disfavor a class of candidates, or . . . evade important constitutional restraints." *United States v. Thornton*, 514 U.S. 779, 833-34 (1995). This limitation has teeth. *See, e.g., Cook v. Gralike*, 531 U.S. 510, 523 (2001) (Missouri could not place notation on ballots regarding congressional candidates' support for term limits). The Voter Qualifications Clause and the Seventeenth Amendment allow states (through their constitutions, if they wish) to determine the qualifications of electors for the House and Senate, regardless of state legislatures' desires. *See* art. I, §2, c. 1; amend. XVII. The Fifteenth, Nineteenth, and Twenty-Sixth Amendments bar voting rights discrimination based on race, sex, or age. Fourteenth Amendment equal protection and due process, as well as the Voting Rights Act, also apply. Every single right Plaintiffs try to raise under the Kansas Constitution is either protected, or could be protected, under federal law.

C. The Principles of Popular Sovereignty Underlying the Election Clause are Particularly Important Under this Constitution, in this Court.

The recently-hatched strategy of inviting carefully selected state courts to create "anti-gerrymander" rights from vague constitutional sources—never before used to strike congressional districts—corrodes our constitutional compact. It should stop in Kansas.

The state cases follow a pattern. In both states cited by the district court—North Carolina and Pennsylvania—Republicans held the legislature, and Democrats held

partisan-split supreme courts whose majorities created new rights over sharp dissents.[11] The district court found a pattern in the Democrat-controlled majority opinions: "Like the North Carolina court, Pennsylvania's high court declined to provide an exhaustive framework for evaluating partisan gerrymandering claims, recognizing that future litigation would allow courts to flesh out the doctrine over time." J.A. VI, 172.

Why was "articulating a bright-line standard… neither necessary nor prudent?" *Id.*, 188. As one North Carolina observer saw: "In lieu of readily discernible standards for lawful redistricting, the opinion has produced at least one predictable outcome: The NC Supreme Court has effectively become responsible for redistricting." *Id.* at fn. 11. That is precisely why the district court, forever wary of its state legislature, seeks power to "fashion" tests to stay head of the legislature's plans "as they arise." J.A. VI, 188-89.

This case-by-case approach is a far more severe encroachment on the Legislature's Election Clause authority than a specific, voter-approved, substantive constitutional provision. The Legislature will find itself subject to the unpredictable priorities of one partisan elected judge, or an unelected Supreme Court. Unlike Arizona's shift to a commission, effected by voter approval of a specific *procedural* redistricting proposal as part of the regular lawmaking process, *Ariz. State Legis.*, 576 U.S. at 809, the shift in Kansas would affect substantive standards, and without any voter input, by judicial fiat.

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[11] This provoked a battle between each legislature and state supreme court. *See* https://ncchamber.com/2022/03/01/harper-v-hall-leaves-nc-in-the-lurch-on-certainty-in-redistricting/; https://ballotpedia.org/League_of_Women_Voters_of_Pennsylvania_v._the_Commonwealth_of_Pennsylvania.

There is an additional problem in Kansas. North Carolina and Pennsylvania voters elected the courts that displaced legislative authority. Yet the Kansas Supreme Court is anti-majoritarian by design, neither chosen by nor reflective of the voters. The Elections Clause, on the other hand, is animated by the principle "that the people themselves are the originating source of all the powers of government." *Ariz. State Legis.,* 576 U.S. at 813. Their direct election by "the people themselves," and their electoral expertise, make state legislatures the federal Constitution's chosen body for regulating federal elections. It would be ironic indeed if the *least* responsive organ—this Court—replaced the Legislature with itself.

That is exactly what would happen under a "case by case" method of review. Following the district court's plan, Kansas courts would avoid announcing a bright line standard; wait for the Legislature to pass a bill; and then continually return to the same general constitutional text to "uncover" and "fashion" a series of new standards, each one just sufficient to either invalidate or approve each new map. Under even the weakest view of what the Elections Clause intended, that is no longer lawmaking by the Legislature. If anything, it is for the voters to carefully consider and pass their own procedural changes to the constitution to limit gerrymandering—not for the state courts to create new substantive rights on the fly.

CONCLUSION

For at least the foregoing reasons, the judgment below should be reversed.

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I certify that on May 5, 2022, the foregoing 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, and a copy was electronically mailed to:

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Attorney for Amicus Curiae

MINUTES

JOINT MEETINGS OF HOUSE AND SENATE REDISTRICTING COMMITTEES

August 12, 2021
Pittsburg, Overland Park, and Kansas City, Kansas

Members Present

Senator Rick Wilborn, Co-chairperson
Representative Chris Croft, Co-chairperson
Senator Ty Masterson, Vice-chairperson
Representative Bradley Ralph, Vice-chairperson
Senator Dinah Sykes, Ranking Minority Member
Representative Tom Burroughs, Ranking Minority Member
Senator Rick Billinger
Senator Ethan Corson
Senator Renee Erickson
Senator Beverly Gossage
Senator Richard Hilderbrand
Senator Rick Kloos
Representative Barbara Ballard
Representative John Barker
Representative Stephanie Clayton
Representative Charlotte Esau
Representative Kyle Hoffman
Representative Nick Hoheisel
Representative Steve Huebert
Representative Brenda Landwehr
Representative Fred Patton
Representative Jason Probst
Representative Adam Smith
Representative Bill Sutton

Members Absent

Representative Jim Kelly
Representative Vic Miller

Staff Present

Jordan Milholland, Kansas Legislative Research Department (KLRD)
Jessa Farmer, KLRD
Andrew Finzen, KLRD
J.G. Scott, KLRD
Jason Long, Office of Revisor of Statutes
Eileen Ma, Office of Revisor of Statutes (Kansas City)
Connie Burns, Committee Assistant

Others Legislators Attending

Representative Ron Ryckman
Representative Tom Sawyer
Senator Larry Alley (Pittsburg)

Conferees – Pittsburg

James Barone, Private Citizen
Dawn McNay, Private Citizen
Richard Thompson, Private Citizen
Caleb Smith, Kansas Appleseed Center for Law and Justice
Robert J. Roberts, Private Citizen
Mary Kathleen Brown Sakura, Private Citizen
Lynn Grant, Private Citizen

Conferees – Overland Park

Nikki Berry, Private Citizen
Angela Schieferecke, Private Citizen
Janet Milkovich, League of Women Voters of Johnson County
Debbie Cooper, Private Citizen
Leslie Mark, Private Citizen
Mike Swenson, Private Citizen
Stacey Knoell, Kansas African American Affairs Commission
Richard Pund, Private Citizen
Amy Carter, Private Citizen
Matthew Calcara, Private Citizen
Ron Fugate, Private Citizen
Leanna Barclay, Private Citizen
Tracey Osborne Oltjen, Overland Park Chamber of Commerce
Evelyn Craig, Private Citizen
Doug Smith, Private Citizen
Mina Steen, Private Citizen
Keri O'Brien, Private Citizen
Cassie Woolworth, Private Citizen
Paula Schwach, City of Westwood Hills
Thomas Stroud, Private Citizen
Pam Nolan, Private Citizen
Stewart Stein, Private Citizen
Teresa Phillips, Private Citizen
Holly Whitney, Private Citizen
Erin Woods, Private Citizen
Michael Poppa, Mainstream Coalition
Rabbi Moti Rieber, Kansas Interfaith Action
Jennifer Day, Private Citizen
Corliss Jacobs, Private Citizen
Connie Taylor, League of Women Voters of Johnson County
Rachel Sweet, Planned Parenthood Great Plains Votes
Alan Sunkel, Private Citizen
Melissa Gard, Private Citizen
Patty Newkirk, Private Citizen
Patrick Gouger, Private Citizen

Mandy Stark Culbertson, Private Citizen
Anna Jones, Private Citizen
Deborah Jarvis, Private Citizen
Jacob Swisher, Private Citizen
Anne Prichett, Private Citizen
Chris Roesel, Private Citizen

Conferees – Kansas City

Paige Gerson, Private Citizen
Susan Stevens, Private Citizen
Leslie Butsch, Private Citizen
Amber Stenger, League of Women Voters of Johnson County
Alan Bauman, Private Citizen
Jim Schraeder, Private Citizen
Ramon Murguia, Private Citizen
Beryl New, Private Citizen
Anthony Hensley, Private Citizen
Janet Simpson, Private Citizen
Stacey Knoell, Kansas African American Affairs Commission
Connie Brown Collins, Concerned Voters of Wyandotte County
Christina Ostmeyer, Kansas Appleseed
Clarence Brown, President of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America Local 31
Lauren Praetcher, Private Citizen
Susan Dumay Wolfe, Private Citizen
Mark Semet, Private Citizen
Jacques Barber, Private Citizen
Pamela Houston, Private Citizen
Hayley Spellman, Private Citizen
Lillian Gilbert, Private Citizen
Michael Williams, NAACP
Matt Kleinmann, Private Citizen

Others Attending

See attached lists for Pittsburg, Overland Park, and Kansas City.

THURSDAY, AUGUST 12
MORNING SESSION

Pittsburg
Pittsburg Memorial Auditorium
503 North Pine Street
Pittsburg, KS 66762

Welcome

Co-chairperson Croft opened the meeting at 9:12 a.m. with a prayer and the Pledge of Allegiance. Co-chairperson Croft introduced the members of the House Committee on

Redistricting and Co-chairperson Wilborn introduced the members of the Senate Committee on Redistricting. Co-chairperson Croft asked Representative Tom Burroughs to make a brief statement about the process.

Staff Presentation

Jordan Milholland, Senior Research Analyst, Kansas Legislative Research Department (KLRD), presented an overview of the census and redistricting process (Attachment 1). Mr. Milholland stated that some part of the census is constantly happening, and the redistricting process is part of this cycle. Federal law requires states have the opportunity to participate in census preparation, which ensures the state obtains census data for certain small areas of geography. States are required to participate through a non-partisan entity, which in Kansas is KLRD. There are five phases of the federal Census Redistricting Data Program:

- Phase 1 – Block Boundary Suggestion Project;
- Phase 2 – Voting District Project;
- Phase 3 – Delivery of Census data;
- Phase 4 – Confirmation of congressional and legislative district boundaries; and
- Phase 5 – Feedback.

The U.S. Census Bureau recently released preliminary 2020 state population totals for congressional apportionment; Kansas' total population was 2,937,880, which is a gain of 84,762 persons since 2010. Kansas did not gain or lose a congressional seat. The *Kansas Constitution* and state law previously required an adjustment to the population for college students and military members. A constitutional amendment on the November 2019 ballot to remove that adjustment requirement was approved by voters.

Mr. Milholland reviewed the process for redistricting maps, including procedures that are followed if maps are not approved at any stage. He noted the process includes review by all three branches of government, whose roles are as follows:

- The Legislature proposes, votes on, and approves maps for Congress, Kansas House of Representatives, Kansas Senate, and State Board of Education districts;
- The Governor signs, vetoes, or allows maps to become law without signature; and
- The Kansas Supreme Court reviews maps for constitutionality and approves the maps.

Mr. Milholland noted the resources available on the KLRD redistricting webpage and encouraged persons with questions about the process to contact KLRD.

Public Comment

Dawn McNay, private citizen, urged the Committees to follow up the listening tour with accessible opportunities for Kansans to participate in after the data is available and to make Kansas a model for other states with a redistricting process that is transparent, uses objective data, and encourages meaningful input from the communities elected officials serve (Attachment 2).

Richard Thompson, private citizen, asked for the Legislature to appoint a neutral and independent redistricting commission to ensure fairness, faith, and trust of the Kansas voters (Attachment 3).

Caleb Smith, Kansas Appleseed Center for Law and Justice, stated a good redistricting process will require both empathy and understanding of the full range of diverse communities that make up this great state (Attachment 4).

Robert J. Roberts, private citizen, stated democracy is best served when districts are drawn with respect for fairness and the integrity of neighborhoods and when classes of voters are not targeted for suppression (Attachment 5).

Mary Kathleen Brown Sakura, private citizen, asked the Committees to hold additional meetings after the census data is available, hold the meetings when people can attend, establish and publish very clear criteria for drawing maps, exclude party affiliation in the database, and exclude any gerrymandering techniques.

James Barone, private citizen, asked the Committees not to split communities of interest, counties, and cities if it is not necessary.

Lynn Grant, private citizen, stated the Committees should remain impartial in this process.

Written-only testimony was submitted by the following individuals:

- Megan Johnson, private citizen (Attachment 6);
- Sharon Kennedy, private citizen (Attachment 7);
- Carolyn Martin, private citizen (Attachment 8);
- Roxanne Mettenburg, private citizen (Attachment 9);
- Robert George, private citizen (Attachment 10);
- Ellen Goode, private citizen (Attachment 11);
- Rodger Nugent, private citizen (Attachment 12);
- Belinda Andrews-Brumfield, private citizen (Attachment 13); and
- Amy Milakovic, private citizen (Attachment 14).

Co-chairperson Croft thanked the conferees for their input and helping the Legislature and these committees achieve unprecedented transparency and public access.

The next meeting is at 1:30 p.m. in Overland Park, Kansas. The meeting was adjourned at 9:51 a.m.

THURSDAY, AUGUST 12
AFTERNOON SESSION

Overland Park
Matt Ross Community Center
8101 Marty Street
Overland Park, KS 66204

Welcome

Co-chairperson Wilborn opened the meeting at 2:00 p.m. with a prayer and the Pledge of Allegiance. Co-chairperson Croft introduced members of the House Committee on Redistricting. Co-chairperson Wilborn introduced the members of the Senate Committee on Redistricting. Co-chairperson Wilborn asked Senator Sykes to make a brief statement on the process.

Staff Presentation

The previously described census and redistricting overview was presented by Jordan Milholland, Senior Research Analyst, KLRD.

Public Comment

Nikki Berry, private citizen, expressed irritation with comments made by a former Senate President and any intention to redraw Congressional District 3 to make it Republican controlled.

Angela Schieferecke, private citizen, described former Senate President's statements as shameful and stated that politicians should not be picking voters, voters should be picking politicians (Attachment 15).

Janet Milkovich, League of Women Voters of Johnson County, urged the Committees to reject the proposed redistricting guidelines. Ms. Milkovich questioned why there was short notice for the listening tour, why the majority of the meetings took place during work hours, and why meetings were held without having census data (Attachment 16).

Debbie Cooper, private citizen, expressed concern to the Committees about scheduling 10 of the 14 meetings during the day when everyone who works a full-time job cannot attend. For public to trust this process, any redistricting should be done in an open, fair, and transparent manner with the entire public having the opportunity for input (Attachment 17).

Leslie Mark, private citizen, stated the Kansas supermajority leadership have taken to making final legislative decisions behind closed doors. For redistricting to be accepted and trusted by all Kansans, legislative leadership must ensure transparency in the final map proposals; any demonstrable flaws must be allowed to be corrected before the Legislature takes a final vote (Attachment 18).

Mike Swenson, private citizen, stated Kansas retained its four congressional districts, so it seems logical the current congressional district map should stay nearly the same. It is vital Wyandotte and Johnson Counties stay whole and connected (Attachment 19).

Stacey Knoell, Executive Director, Kansas African American Affairs Commission, requested the Committees draw fair maps that do not seek to undermine voters. She also discussed prior comments by a previous Senate President (Attachment 20).

Richard Pund, private citizen, stated changing to multi-member districts with proportional representation would greatly improve many of the problems that surround redistricting, which are byproducts of the single-member, winner-takes-all elections. He suggested Kansas enact the Fair Representation Act for its state elections; this bill was first introduced in Congress in 2017 for federal elections (Attachment 21).

Amy Carter, private citizen, asked for an independent commission to be charged with redistricting once census data is available to ensure the process is non-partisan (Attachment 22).

Matthew Calcara, private citizen, asked the Committees why meetings were held the week before the actual data needed to draw the maps was expected to be released (Attachment 23). Mr. Calcara urged the Kansas Supreme Court to stand up for the democratic system of government.

Ronald Fugate, private citizen, testified in support of transparent and fair redistricting (Attachment 24). Mr. Fugate stated Congressional District 3 is 95 percent urban, its residents have shared interests, and should remain unified.

Leanna Barclay, private citizen, thanked the Committees for the opportunity to supply testimony in support of transparent and fair redistricting (Attachment 25). Ms. Barclay requested the Committees provide additional opportunities for more in-person and virtual town hall meetings.

Tracey Osborne Oltjen, President and Chief Executive Officer, Overland Park Chamber of Commerce, asked the Committees to support a redistricting plan that recognizes the population growth that has occurred in Overland Park and Johnson County. Johnson County has grown more than 10 percent in population since 2010 and is likely to gain at least three new state House districts and one new state Senate district based on these growth estimates (Attachment 26).

Evelyn Craig, private citizen, testified in support of transparent and fair redistricting and keeping Congressional District 3 lines intact (Attachment 27).

Doug Smith, private citizen, testified having a transparent process is critical at a time when citizens have been concerned legislative decisions are made only for partisan purposes (Attachment 28).

Mina Steen, private citizen, stated she is in strong support of a transparent and fair redistricting process and believes this process is a fundamental element of democracy (Attachment 29 and Attachment 30).

Keri O'Brien, private citizen, stated the short notice and schedule for this listening tour made it difficult for many people to participate (Attachment 31).

Cassie Woolworth, private citizen, urged the Committees to hold additional town halls after census data is available so that Kansans can review it and offer input. The Kansas City metro is currently wholly within Kansas Congressional District 3 and should remain in a single district as residents have shared interests in representation (Attachment 32).

Paula Schwach, Mayor, City of Westwood Hills, stated the Committees' process and the resulting maps need to be transparent, reasonably bipartisan, and publicly reviewable once the actual census data is known (Attachment 33).

Thomas Stroud, private citizen, stated conservative leadership is on record proclaiming gerrymandering is their intent, drawing political boundaries that promote the creation of a one-party state. Maintaining Congressional District 3 reflects its citizens' moderate approach to government (Attachment 34).

Pam Nolan, private citizen, stated it is anticipated 90 of the 105 counties will show a decrease, while the northeast and Wichita areas will experience increases. Good guidelines and criteria are needed in order to account for this population shift in a fair manner (Attachment 35).

Stewart Stein, private citizen, stated current congressional and legislative maps were created by the courts and should be altered as little as necessary to fulfill reapportionment shifts (Attachment 36).

Teresa Phillips, private citizen, stated the Republicans' desire to silence anyone who disagrees with their agenda by gerrymandering every voting district is unfair, un-American, and disastrous for the people of Kansas (Attachment 37).

Holly Whitney, private citizen, asked the Kansas Legislature to follow the best practice for redistricting by forming contiguous and compact districts. The current Kansas districts conform to that criteria very well and should not be overly manipulated (Attachment 38).

Erin Woods, private citizen, stated she is in support of transparent and fair redistricting and keeping Congressional District 3 lines intact (Attachment 39).

Michael Poppa, Executive Director, Mainstream Coalition, asked the Committees to please listen to the people speaking today and their desire to see a transparent redistricting process that maintains existing congressional and state legislative district borders, especially Congressional District 3 (Attachment 40).

Rabbi Moti Reiber, Kansas Interfaith Action, stated the goal must not be the maximization of the power of one or the other major political parties, but a process that makes sure everyone has an equal voice and equal ability to participate in choosing representative government (Attachment 41).

Jennifer Day, private citizen, stated the concerns and needs of eastern Kansas at the state and federal level varies from those in more rural points to the west, and representation in both cases should be focused on those community-specific concerns and needs. Ms. Day provided a special thanks to KLRD and legislative staff that have worked hard to make this process informative and smooth as possible (Attachment 42).

Corliss Jacobs, private citizen, testified in support of transparent and fair redistricting and keeping Wyandotte and Johnson counties together as Congressional District 3. Ms. Jacobs urged the Committees to hold additional town halls after census data is available, and Kansans can review the data and offer input. Ms. Jacobs encouraged the Committees to make those meetings accessible, available online, and announced with enough time to foster engagement (Attachment 43).

Connie Taylor, League of Women Voters of Johnson County, stated Johnson and Wyandotte counties should remain in Congressional District 3 (Attachment 44).

Rachel Sweet, Regional Director of Public Policy and Organizing, Planned Parenthood Great Plains Votes, stated the organization strongly supports an open and transparent redistricting process and the creation of fair maps that will ensure all Kansans have responsive representation in Congress and the Kansas Legislature (Attachment 45).

Alan Sunkel, private citizen, urged the Committees to keep congressional districts and state legislative districts with the most common interests together and to keep them as geographically compact as possible (Attachment 46).

Melissa Gard, private citizen, stated ensuring accurate representation of voters is the foundation to U.S. democracy, and hearing how the process might impact people, negatively or positively, should be the focus of these committees (Attachment 47).

Patty Newkirk, private citizen, stated Wyandotte and Johnson counties are communities of interest and thrive together economically with The Legends and Village West Shopping Center and the economic district surrounding it. They have common economic and socioeconomic interests. There is concern the boundaries will be redrawn in such a way as to crack Wyandotte County out of Congressional District 3 and put it with more rural Congressional District 1 or Congressional District 2 (Attachment 48).

Mandy Stark Culbertson, private citizen, stated when elected officials manipulate voting maps to keep their own political party in power, the result is dysfunction, polarization, mistrust, cynicism, and public policies that do not reflect the will of the people. Creating fair districts starts with an open and transparent process that will help prevent partisan gerrymandering (Attachment 49).

Anna Jones, private citizen, stated the Kansas City metro is currently wholly within Congressional District 3 and should remain in a single district as residents have shared interests in representation (Attachment 50).

Deborah Jarvis, private citizen, stated that gerrymandering gives undue advantage to whichever political party is in power. Ms. Jarvis urged the Committees to use an independent citizen redistricting board.

Jacob Swisher, private citizen, stated that Johnson and Wyandotte counties should remain in Congressional District 3, and the Committees should consider school board lines.

Anne Pritchett, private citizen, stated that Johnson and Wyandotte counties should be kept together.

Chris Roesel, private citizen, stated that proximity is very important in Johnson and Wyandotte counties. The counties make up 26.7 percent of the state's citizens, and they need to stay together. Mr. Roesel also urged the Committees to use an independent commission.

Written-only testimony was provided by:

- Nancy Wagner, private citizen (Attachment 51);
- Marsha Ratzel, private citizen (Attachment 52);
- Peter McVey, private citizen (Attachment 53);
- Pat Daniels, private citizen (Attachment 54);
- Ann Lesser, private citizen (Attachment 55);
- Larry Troshynski, private citizen (Attachment 56);
- Christine Amsden, private citizen (Attachment 57);
- Bill Roush, private citizen (Attachment 58);
- Kenneth Davis, private citizen (Attachment 59);
- Eileen Marshall, private citizen (Attachment 60);
- Colleen Cunningham, private citizen (Attachment 61);
- Linda Stoner, private citizen (Attachment 62);
- David Pack, private citizen (Attachment 63);
- Jill Quigley, private citizen (Attachment 64);
- Jennifer Curtiss, private citizen (Attachment 65);
- Teri Buchanan, private citizen (Attachment 66);
- John and Connie Smith, private citizens (Attachment 67);
- Karen Johnson, private citizen (Attachment 68);
- Mike Scribner, Teamsters Local Union 696 (Attachment 69);
- Ally Johnson, private citizen (Attachment 70);
- Joel Levine, private citizen (Attachment 71);
- Stephen Spain, private citizen (Attachment 72);
- Mike Kane, Tri-County Labor Council of Eastern Kansas AFL-CIO (Attachment 73);
- Gabriella Kusko, private citizen (Attachment 74);
- Brenda Groover, private citizen (Attachment 75);
- Avis Smith, private citizen (Attachment 76);
- Patricia Harrigan, private citizen (Attachment 77);
- Kay Heley, private citizen (Attachment 78);
- Cynthia Blixt, private citizen (Attachment 79);
- Cathy Matlack, private citizen (Attachment 80);
- Susan Norris, private citizen (Attachment 81);
- Tom Mundinger, private citizen (Attachment 82);
- Marilyn York, private citizen (Attachment 83);
- William Wolff, private citizen (Attachment 84);
- Linda Sanchez, private citizen (Attachment 85);
- Nancy Allen, private citizen (Attachment 86);
- Charity Gourley, private citizen (Attachment 87);

- Amy Hinrichs, private citizen (Attachment 88);
- Pat Easton, private citizen (Attachment 89);
- Guy Gregory, private citizen (Attachment 90);
- Kate McLaury, private citizen (Attachment 91);
- Andy Sandler, private citizen (Attachment 92);
- Shaun Battles, private citizen (Attachment 93);
- Jennifer Bryan, Better Together (Attachment 94);
- Annette Becker, private citizen (Attachment 95);
- Eileen Battles, private citizen (Attachment 96 and Attachment 97);
- Sally Stanton, private citizen (Attachment 98);
- James Breneman, private citizen (Attachment 99);
- Courtney Durando, private citizen (Attachment 100);
- Chris McQueeny, private citizen (Attachment 101);
- James Frazier, private citizen (Attachment 102);
- Jan Faidley, City of Roeland Park (Attachment 103);
- Marian Thomas, private citizen (Attachment 104);
- Jared Palan, private citizen (Attachment 105);
- Mark Eisemann, private citizen (Attachment 106);
- Ann Norbury, private citizen (Attachment 107);
- Joy Springfield, private citizen (Attachment 108);
- James Hafner, private citizen (Attachment 109);
- David Leonard, private citizen (Attachment 110);
- Nora Ellen Richard, private citizen (Attachment 111);
- Rosanne Rosen, private citizen (Attachment 112);
- Catherine Wooster, private citizen (Attachment 113);
- Liliane Pintar, private citizen (Attachment 114);
- Laura Guy, private citizen (Attachment 115);
- Laura Kirkpatrick, private citizen (Attachment 116);
- Rob Santel, Cross-Lines Community Outreach (Attachment 117);
- Anita Parsa, private citizen (Attachment 118);
- Ronald Szymankowski, private citizen (Attachment 119);
- Sheila Szymankowski, private citizen (Attachment 120);
- Karen Divelbiss, private citizen (Attachment 121);
- Brenda Sharpe, REACH Healthcare Foundation (Attachment 122);
- Beverly Jaderborg, private citizen (Attachment 123);
- Doug Peel, private citizen (Attachment 124);
- Sarah LaFrenz, American Federation of Teachers – Kansas (Attachment 125);
- Michael Miller, private citizen (Attachment 126);
- Daniel Barbour, private citizen (Attachment 127);
- David Virtue, private citizen (Attachment 128);
- Linda Collier, private citizen (Attachment 129);
- Linda Seiner, private citizen (Attachment 130);
- Ann Lintecum, private citizen (Attachment 131);

- Stephen McLane, private citizen (Attachment 132);
- Lauren Martin, private citizen (Attachment 133);
- Sherri Arnhold, private citizen (Attachment 134);
- Danielle Keller, private citizen (Attachment 135);
- Louise Lloyd, private citizen (Attachment 136);
- Jennifer Ancell, private citizen (Attachment 137);
- Michele Neylon, private citizen (Attachment 138);
- Gail James, private citizen (Attachment 139);
- Jan Stanley, private citizen (Attachment 140);
- Curtis Nelson, private citizen (Attachment 141);
- William Rose-Heim, private citizen (Attachment 142);
- Charity Clifford, private citizen (Attachment 143);
- Becky Fast, private citizen (Attachment 144);
- Scott Schulte, private citizen (Attachment 145);
- Reid Kaufmann, private citizen (Attachment 146);
- Melvin Marsh, private citizen (Attachment 147);
- Harriet Lard, private citizen (Attachment 148);
- Jean Daugherty, private citizen (Attachment 149);
- Lisa Veglahn, private citizen (Attachment 150);
- Nina Fricke, private citizen (Attachment 151);
- Dennis Selznick, private citizen (Attachment 152);
- Mayte Diaz Marquez, El Centro (Attachment 153);
- Judith Zivanovic, private citizen (Attachment 154);
- Elliot Skinner, private citizen (Attachment 155);
- Teresa Wickersham, private citizen (Attachment 156);
- Ellen Miller, private citizen (Attachment 157);
- Sheilah Philip, private citizen (Attachment 158);
- Amy Moore, private citizen (Attachment 159);
- John Jenks, private citizen (Attachment 160);
- Gordon Way, private citizen (Attachment 161);
- Lance Gallagher, private citizen (Attachment 162);
- Patricia Abts, private citizen (Attachment 163);
- Chris Wagner, private citizen (Attachment 164);
- Ward Katz, private citizen (Attachment 165);
- Jeffery Lee, private citizen (Attachment 166);
- Darnell Hunt, private citizen (Attachment 167);
- Lisa Nelson, private citizen (Attachment 168);
- Troy Spain, private citizen (Attachment 169);
- Representative Linda Featherston (Attachment 170);
- Anne Melia, private citizen (Attachment 171);
- Deb Settle, NEJC Chamber of Commerce (Attachment 172);
- Louis Bornman, private citizen (Attachment 173);
- Sue Thompson, private citizen (Attachment 174);

- Kathleen McGinley, private citizen (Attachment 175);
- Alan Barkema, private citizen (Attachment 176);
- Andrea Klingner, private citizen (Attachment 177);
- Paul Heiman, private citizen (Attachment 178);
- Nancy Waters, private citizen (Attachment 179);
- Loretta Nemechek, private citizen (Attachment 180);
- Stephanie Bogush, private citizen (Attachment 181);
- Thomas Witt, Equality Kansas (Attachment 182);
- Dawn Olney, private citizen (Attachment 183);
- Nancy Morgan, private citizen (Attachment 184);
- James Norbury, private citizen (Attachment 185);
- Carol Fields, private citizen (Attachment 186);
- Collin Clifford, private citizen (Attachment 187);
- Becky Gunn, private citizen (Attachment 188);
- Marilyn Hammond, private citizen (Attachment 189);
- Kathleen Outlaw, private citizen (Attachment 190);
- Michael Poppa, private citizen (Attachment 191);
- Judith Hyde, private citizen (Attachment 192);
- Ed Eilert, private citizen (Attachment 193);
- Melissa Ragland, private citizen (Attachment 194);
- Richard Nobles, private citizen (Attachment 195);
- Oliver Becker, private citizen (Attachment 196);
- Carol Peltzie, private citizen (Attachment 197);
- Representative Susan Ruiz (Attachment 198);
- Rebecca Gutzmann (Attachment 199);
- McClain Bryant Macklin, Health Forward Foundation (Attachment 200);
- Kathryn Bigelow, private citizen (Attachment 201);
- Nicole Novak, private citizen (Attachment 202);
- Magali Rojas, El Centro (Attachment 203);
- Julia Young, private citizen (Attachment 204);
- Scott Roby, private citizen (Attachment 205);
- Timothy Norris, private citizen (Attachment 206);
- Cynthia Lukas, private citizen (Attachment 207);
- Amy Milakovic, private citizen (Attachment 208);
- Joel Zitron, private citizen (Attachment 209);
- Linda Gollub, private citizen (Attachment 210);
- Brian Pener, private citizen (Attachment 211);
- Vicki Kohl, private citizen (Attachment 212);
- Sara Deubner, private citizen (Attachment 213);
- EJ Whitney Wilson, private citizen (Attachment 214);
- Nancy Wingfield, private citizen (Attachment 215);
- Wandra Minor, private citizen (Attachment 216);
- Elizabeth Benditt, private citizen (Attachment 217);

- Patrick Gouger, private citizen (Attachment 218);
- Coco Johnston, private citizen (Attachment 219);
- Jenny Lillis, private citizen (Attachment 220);
- Bruce Carter, private citizen (Attachment 221);
- Mary Catherine Rack, private citizen (Attachment 222);
- Adrienne Simmons, private citizen (Attachment 223);
- David Grummon, private citizen (Attachment 224);
- JoeAnne Miller, private citizen (Attachment 225);
- Mary Sinclair, private citizen (Attachment 226);
- Sarah Winston, private citizen (Attachment 227);
- Mary Jo Talbot, private citizen (Attachment 228);
- Ryan Dickey, private citizen (Attachment 229);
- Pamela Cote, private citizen (Attachment 230);
- Susan Horst, private citizen (Attachment 231);
- Virginia Davis, private citizen (Attachment 232);
- Michael Hansen, private citizen (Attachment 233);
- Ray Schumacher, private citizen (Attachment 234);
- Michael Kraft, private citizen (Attachment 235); and
- Debbie Hansen, private citizen (Attachment 236).

Co-chairperson Wilborn thanked the greater Overland Park community for hosting this meeting and all the people that participated.

The next scheduled meeting is at 6:00 p.m. in Kansas City, Kansas. The meeting was adjourned at 4:10 p.m.

THURSDAY, AUGUST 12
EVENING SESSION

Kansas City
Kansas City Kansas Community College
Upper Level Jewell Hall
7250 State Avenue
Kansas City, KS 66112

Welcome

Co-chairperson Croft opened the meeting at 6:01 p.m. with a prayer and the Pledge of Allegiance. Co-chairperson Wilborn introduced the members of the Senate Committee on Redistricting. Co-chairperson Croft introduced the members of the House Committee on Redistricting. Co-chairperson Croft asked Representative Tom Burroughs to say a few words about the process.

Staff Presentation

The previously described census and redistricting overview was presented by Jordan Milholland, KLRD.

Public Comment

Anthony Hensley, private citizen, provided a PowerPoint presentation on congressional redistricting. He asked the Committees to adopt fair, bipartisan, and reasonable guidelines; adhere to those guidelines; avoid partisan politics; and put the people of Kansas first (Attachment 237).

Paige Gerson, private citizen, stated she would like to see Wyandotte and Johnson counties remain together due to their economic and other shared interests.

Susan Stevens, private citizen, stated keeping Johnson and Wyandotte counties together gives them a voice; democracy is not about squashing the minority, it is about letting everybody having a voice to allow the conversation to continue.

Leslie Butsch, private citizen, stated she saw a video of a former Senate President about redistricting and the former Senate President does not speak for her or most the people in the room, and asked the Committees draw fair maps.

Amber Stenger, League of Women Votes of Johnson County, asked the Committees to reject the proposed redistricting guidelines, to end the practice of including election results and voter registration information in the redistricting database, to expand the listening tours, and to keep the Kansas City metro wholly within Kansas' Congressional District 3 (Attachment 238).

Jim Schraeder, private citizen, stated it is of utmost importance Kansas create at least one of its four congressional districts centered around its largest metropolitan areas, Kansas City (Attachment 239).

Ramon Murguia, private citizen, asked the Committees to listen to residents, follow fair rules, and avoid gerrymandering. Mr. Murguia also urged the Committees to maintain important communities of interest, including the growing Latino communities in Johnson and Wyandotte Counties (Attachment 240).

Beryl New, private citizen, asked the Committees to consider each Kansan with voting power in the redistricting process and to legislate with inclusion in mind (Attachment 241).

Janet Simpson, private citizen, stated Congressional District 3 should remain contiguous and as close as possible to its current configuration; it should include the entirety of Wyandotte County as it has historically (Attachment 242).

Stacey Knoell, Executive Director, Kansas African American Affairs Commission, stated the Kansas City metro should be kept together as a community of interest; Johnson and Wyandotte counties have been included in Congressional District 3 as a voting block because of shared economic interest. Ms. Knoell expressed disappointment with having 14 hearings in one calendar week, each hearing only 75 minutes long (Attachment 243).

Connie Brown Collins, Concerned Voters of Wyandotte County, stated Wyandotte and Johnson counties should remain in Congressional District 3 due to their shared community interest and urban and regional overlap, which includes population, critical services, healthcare, employment, infrastructure, environmental and educational demographics, and concerns (Attachment 244).

Christina Ostmeyer, Communications Director, Kansas Appleseed Center for Law and Justice, stated the Committees should make the Kansas redistricting process equitable and transparent and make sure Kansans are accurately represented in their districts. In addition to protecting the maps in Kansas, Ms. Ostmeyer asked for the public engagement process to become broader, more intentional, and more accessible (Attachment 245).

Clarence Brown, President, UAW 31, Kansas City, Kansas, stated he would like to see Johnson and Wyandotte counties remain together in Congressional District 3.

Lauren Praetcher, private citizen, stated she would prefer a nonpartisan entity to prepare redistricting plans for approval by the Kansas Legislature, only using data provided under the federal law by the U.S. Census Bureau, and the plans presented at statewide public hearings before consideration by the Kansas House of Representatives and Kansas Senate.

Susan Dumay Wolfe, private citizen, stated she would like the Committees to respect and adopt the guidelines and criteria used in 2012.

Mark Semet, private citizen, stated the most important things in redistricting are to be fair, honest, and nonpartisan.

Jacques Barber, private citizen, stated gerrymandering has become the process of democracy; it is very unfortunate and only benefits political favor or to maintain power. Mr. Barber stated he would like to see an objective party draw the lines so voters would not be plagued with the issue of political partisanship.

Pamela Houston, private citizen, stated she would like the Committees to consider and respect social justice, environmental justice, systemic racism, and the evolution of the State of Kansas.

Hayley Spellman, private citizen, stated, as an educator, she tries to get her students to be engaged citizens and to get involved in the community. Ms. Spellman encourages the students to get out and vote. The students feel their votes do not count and the same people get elected. Ms. Spellman would like the Committees to keep current voters and her students in mind when making decisions on redistricting.

Lillian Gilbert, private citizen, stated she would prefer a nonpartisan entity to prepare redistricting plans for approval by the Kansas Legislature, only using data provided under the federal law by the U.S. Census Bureau and the plans presented at statewide public hearings before consideration by the Kansas House of Representatives and Kansas Senate.

Michael Williams, NAACP, asked the Committees how they can make a decision without going to these neighborhoods and talking to people in those communities.

Matt Kleinmann, private citizen, expressed concern that the citizens of Wyandotte County will be unfairly targeted in the redistricting process. Any attempt to split Congressional

District 3 for partisan gerrymandering is an attack on the First Amendment and invites the Kansas Supreme Court to apply strict scrutiny. These Committees should recognize the will of the people and not engage in partisan gerrymandering.

Written-only testimony was provided by:

- Claudia Patrick, private citizen (Attachment 246);
- Mike Scribner, Teamsters Local Union 696 (Attachment 247);
- Mike Kane, Tri-County Labor Council of Eastern Kansas AFL-CIO (Attachment 248)
- Roy Robinson, private citizen (Attachment 249);
- Sarah LaFrenz, American Federation of Teachers – Kansas (Attachment 250);
- Marge Gasnick, private citizen (Attachment 251);
- Ethel Edwards, private citizen (Attachment 252);
- John Jenks, The Greater Kansas City Chamber of Commerce (Attachment 253);
- Dedric Moore, private citizen (Attachment 254);
- Thomas Witt, Equality Kansas (Attachment 255);
- Carol Fields, private citizen (Attachment 256);
- Andy Sanchez and John Nave, Kansas AFL-CIO (Attachment 257);
- Michael Poppa, Mainstream Coalition (Attachment 258);
- Patricia Quaas, private citizen (Attachment 259);
- Rick Behrens, private citizen (Attachment 260);
- Irene Caudillo, El Centro (Attachment 261);
- Donna Young, Community Health Council of Wyandotte County (Attachment 262);
- Faith Rivera, private citizen (Attachment 263);
- Judith Ancel, private citizen (Attachment 264);
- Amy Milakovic, private citizen (Attachment 265);
- Wandra Minor, private citizen (Attachment 266);
- Alan Bauman, private citizen (Attachment 267);
- Representative Tom Burroughs (Attachment 268);
- Linda Brown, private citizen (Attachment 269); and
- Matt Kleinmann, private citizen (Attachment 270).

The next scheduled meeting is Friday, August 13, 2021, at 9:00 a.m. in Leavenworth, Kansas. The meeting was adjourned at 7:18 p.m.

Prepared by Connie Burns

Edited by Jordan Milholland

Approved by the Committee on:

March 14, 2022
(Date)

(Opening)

Dear KLRD

Good afternoon, Mr. Chair, members of the committee and legislature, (The legislative Joint Special Committee on Redistricting.)

My name is Patty Newkirk.

I am a registered voter living in Merriam, and have lived in the Merriam/Shawnee area of Johnson County since 2004.

My contact email is patty,newkirk1@gmail.com

And phone is 913-209-9718

I am submitting testimony for the redistricting committee hearing helod on Theursday, August 12th at Matt Ross Community Center.

This testimony is Oral with written testimony.

Please let me know if you need additional information. Thank you.

Sincerely,

Patty Newkirk

Thank you for this opportunity to speak to you today about an issue that is vital to all Kansans.

I recognize the limited time, so I will be brief.

I'm passionate about where I live, and I believe it is important to be involved with government at the local level.

To take my duty as a citizen seriously.

Therefore, I want to be closely involved with the process of making sure the lines are fairly drawn in the process of the new districts.

One of the redistricting criteria that I would like to emphasize in this process for District Three is the criteria of "Preserving Communities of Interest."

A Community of Interest is defined as "a community, neighborhood or group of people who have common concerns and traits and would benefit from staying together in a single district."

Additionally, the Kansas 2012 Congressional Redistricting Guidelines state "To a considerable degree most counties in Kansas are economic, social, and cultural units, or parts of a larger socioeconomic unit.

These interests, common to the population of the area, generally termed “community of interests” should be considered during the creation of congressional districts.”

Moreover, members of the community are likely to know more about the effect of certain district shapes or boundaries on the local area than legislators or commissioners who may be concentrating on the redistricting plan as a whole.

I can tell you about our community, and why districts make a difference.

In Merriam, I live not far from where Johnson County and Wyandotte County meet.

Our two counties are definitely “Communities of interest” and they definitely have common economic and socioeconomic interests.

My focus is the relationship between Johnson County and The Legends/Village West Shopping complex and commerce sector in Wyandotte County situated here at the intersection of highway 435 both at State Avenue and Parallel Parkway.

For this meeting, I decided to focus on the fact that Wyandotte and Johnson County are "Communities of Interest" and thrive together economically regarding the Legends/Village West shopping Center and the economic district surrounding it.

The Legends/Village West Shopping Center was built with STAR Bonds (Sales Tax Anticipation Revenue.)
In a nutshell, a large portion of the sales tax that went to pay off the STAR Bonds to pay for Legends/Village West came from Johnson County.

The project went so well that the STAR Bonds paid off early, and then the windfall of money after that was used for improvement in Wyandotte County, including rebuilding and improving the inner core close to interstate 635
That, in turn, lead to more growth, housing. and the area offering even more amenities for Johnson County.
My own orthopedic doctor used to be in Providence Medical Center, an older hospital in the area.
He moved to a new, beautiful medical building that grew up in the development across I-435 from Legends/Village West called Village East, which includes the new Philips 66 gas station and Freddy's Frozen Custard
The new medical office is called - of all things - **Overland Park** Surgical Specialists!

There is a NEW STAR Bond project proposal being considered for the area by that medical office.

It is all a symbiotic relationship between Wyandotte and Johnson County.
The New STAR Bond project is called “The Home Field Project.”
It is all a symbiotic relationship between Wyandotte and Johnson County.

It looks to be a big, beautiful commercial project with more shopping and growth, but it is to be financed with more STAR Bonds.

And if the redistricting process creates a new district that takes Wyandotte out of our urban Congressional District Three with Johnson County and puts it with rural District One or Two, it will disrupt the balance of the ecosystem between Johnson and Wyandotte's "Communities of Interest."

And it would dislodge the sales tax base and revenue that comes from Johnson County that is the funding, which is the essence of a STAR Bond - Sales Tax Anticipation Revenue.

To yank Wyandotte away from Johnsons County, and even further from Missouri, which the studies also find comprise a large part of the shopping tax base for the existing "Legends" shopping district, is to take it away from practically a major root system from which it draws lifeblood.

There is concern that the boundaries will be redrawn in such a way as to “Crack” Wyandotte County out of District Three and put it in with more rural District Two or District One.

There would be many dire consequences locally if that were to occur

This “Cracking” would dilute the voting power of Wyandotte as separate piece that would be absorbed by the new, dissimilar district.

And the voting interests of Wyandotte County are tightly tied in with the voting interests of the rest of us in Johnson County.

“STAR Bonds – which stands for Sales Tax Anticipation Revenue - provide Kansas Municipalities the chance to issues bonds to finance the development of major commercial, entertainment and tourism areas and to use the sales tax revenue generated by the development to pay off the bonds.” (http//kanview.ks.gov)

This following example illustrates how the benefits of STAR Bonds worked with The Legends/Village West project -

https://klcjournal.com/unified-government-sales-tax/

"Regardless of what happens, (Kansas City Kansas Mayor) Alvey says he will not back down from plans to invest in the urban core.

Before STAR Bonds helped finance Kansas Speedway and The Legends shopping center, Wyandotte County was perceived as a place to avoid. It has since become one of the state's top tourist attractions with the addition of Cabela's, Great Wolf Lodge and Children's Mercy Park, where Sporting Kansas City plays.

Activity was so strong in Village West that the STAR Bonds paid off in 2016, which was five years earlier than projected. It generated $12 million in local sales taxes, which had been deferred and $42 million in state sales tax, says Mike Taylor, spokesman for the Unified Government...It's... allowed the city to spend nearly $2 million a year in blight reduction, (Kansas City Kansas Mayor) Alvey says. Much of that has happened east of Interstate 635 in the older areas of the city.

The city is cutting the grass faster at many unkempt properties. It's boarding up homes that need it. And it's actively working to get abandoned homes into the hands of rehab professionals. If they can't be fixed, those houses are torn down. But that isn't cheap. Alvey estimates the city spends up to $20,000 to tear down a home in some cases."

The same sorts of benefits would be expected with the proposed "Home Field Project" created with STAR bonds.

According to the Kansas Department of Revenue "For 2018, the total retail market supported a 3.0 percent increase in taxable sales to 32.65 billion. Johnson County Kansas and Jackson County accounted for two thirds of the Kansas City MSA total taxable sales."

Please consider the importance oof keeping these communities of Interest together considering their reliance on one another in such important economic ways.

Sincerely,

Patty Newkirk