

IN THE SUPREME COURT OF THE STATE OF KANSAS

FAITH RIVERA, et al.,

Plaintiffs-Appellees,

TOM ALONZO, et al.,

Plaintiffs-Appellees,

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.

Case No. 125092

**RESPONSE TO LEGISLATIVE COORDINATING COUNCIL'S
BRIEF OF AMICUS CURIAE**

The Legislative Coordinating Council's (LCC's) brief provides this Court with the unique perspective of the individuals who are constitutionally charged with adopting a congressional map. This Court should seriously consider its position.

The LCC's brief—citing evidence from the legislative record admitted at trial and present in the record on appeal—discusses the valid policy decisions the

Legislature had to make when drawing congressional lines. Most notably, the brief recognizes that both Democratic and Republican lawmakers knew that they had to choose between dividing either Wyandotte County or Johnson County, or both. (Br. at 1-2 (citing J.A. VI, 201; XXIV, 56 (Sen. Sykes); XXV, 157 (Rep. Sutton)).) The brief further explains that the Legislature deemed Johnson County the core of Congressional District 3 given its status as “an engine of economic growth” in Kansas. (Br. at 2 (citing J.A. XXIV, 92 (Sen. Masterson)).) The brief also points out that the Legislature sought to group together Fort Leavenworth, Fort Riley, and Forbes Field Air National Guard Base to increase the chances of preventing any of them from being closed following upcoming federal discussions. (Br. at 2 (citing J.A. XXV, 115-16 (Rep. Croft)).) The brief additionally notes the Kansas Board of Regents’ prior request to reunite the University of Kansas and Kansas State University in the same congressional district. (Br. at 2 (citing J.A. XXIV, 50-51 (Sen. Masterson), 182 (Sen. Wilborn), XXV, 115 (Rep. Croft)).) The LCC’s brief attaches two exhibits, both of which were introduced by Plaintiffs at trial and included in the record on appeal. (J.A. XXX, 66-70, 199-215.)

The LCC’s brief also provides this Court with valuable context on the listening tour sessions held before the Legislature convened to pass a map, especially regarding Plaintiff’s Exhibit 751 (J.A. XXXI, 47). (Br. at 4.) That exhibit is a photograph taken of legislators who were studying their phones while a member of the public—who had provided the committee with written testimony—was giving oral testimony. It was improper for the district court to conclude that

legislators were “not attentive to . . . public feedback” given the pure speculation offered for the charge and the reasonable inference stated in the LCC’s brief. (J.A. VI, 20) *See Bottjer v. Hammond*, 200 Kan. 327, 330, 436 P.2d 882 (1968) (findings cannot be based on speculation and conjecture). Finally, because the United States Constitution grants state legislatures the authority to conduct congressional redistricting (subject to the revision of Congress), the LCC’s understanding of its power should be given significant weight. (Br. 6-13.)

The LCC should be permitted to bring these matters to this Court’s attention even if some members chose to invoke their privilege under Article 2, § 22 of the Kansas Constitution, which provides that legislators shall not be “subject to the service of any civil process during the session” nor be “questioned elsewhere” about any “speech, written document or debate in either house.” One of the many purposes of this privilege is to “prevent intimidation of legislators . . . before a possible hostile judiciary.” *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45, 56, 687 P.2d 622 (1984) (quoting *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 502-03 (1975) (internal quotations omitted)). A court cannot fully honor this deeply-rooted privilege by holding (as the district court did here) the fact of its invocation against those who chose to invoke it. (R. VI, 140, 142.) *See United States v. Helstoski*, 442 U.S. 477, 487 (1979) (explaining the evidentiary protections of the Speech or Debate Clause). Moreover, it is not inconsistent for the LCC to offer to this Court its views as amicus on the

constitutional underpinnings of the case while some of its members chose not to respond to Defendants' subpoenas below.

In sum, the LCC's brief provides this court with a valuable understanding of the legislative record that was admitted into evidence and an important perspective on the Legislature's delegated powers. Moreover, members of the Legislature should not be precluded from participating in this Court's proceedings because they invoked their constitutional privilege.

Respectfully submitted,

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