

IN THE SUPREME COURT OF KANSAS

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,

Petitioners,

v.

THE HONORABLE BILL KLAPPER, in his
official capacity as a District Court Judge,
Twenty-Ninth Judicial District,

Respondent.

Case No. 124849 (Original Action)

FAITH RIVERA, DIOSSELYN
TOTVELASQUEZ, KIMBERLY WEAVER,
PARIS RAITE, DONNAVAN DILLION, and
LOUD LIGHT,

Plaintiffs in Wyandotte County
District Court Case 2022-cv-89 and
Respondents under Kansas Supreme
Court Rule 9.01(a)(1),

and

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

Plaintiffs in Wyandotte County District
Court Case 2022-cv-90 and Respondents
under Kansas Supreme Court Rule 9.01(a)(1).

**RIVERA RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR A STAY
OF DISTRICT COURT PROCEEDINGS**

On February 14, 2022, Faith Rivera, Diosselyn Totvelasquez, Kimberly Weaver, Paris Raite, Donnavan Dillion, and Loud Light (the "Rivera Respondents") filed a Petition for Declaratory and Injunctive Relief in the District Court of Wyandotte County challenging SB 355, Kansas's recently enacted congressional redistricting plan. Mandamus Pet., Ex. C ("Rivera Petition"). The Rivera Respondents allege that SB 355 has both the intent and effect of diluting the votes of Democratic and minority voters, in violation of the Kansas Constitution. *Id.*

The serious questions presented in Respondents' lawsuit demand both full factual development and swift resolution. To that end, on February 15, 2022, the Rivera Respondents filed a motion in the Wyandotte District Court seeking an expedited proceeding which would allow for trial to be completed by March 25, 2022. Ex. 1, Feb. 15, 2022, Mot. to Expedite. This timeline would leave sufficient time for resolution of both trial proceedings and any appeals ahead of the June 1, 2022 congressional filing deadline. K.S.A. 25-205.

Petitioners Scott Schwab, in his official capacity as Kansas Secretary of State, and Michael Abbott, in his official capacity as Wyandotte County Election Commissioner, seek to short circuit this process in a manner that will only delay the fair and timely resolution of Respondents' action. On February 18, 2022, Petitioners filed a Petition in Mandamus and Quo Warranto asking this Court to exercise its original jurisdiction over the Respondents' suit. Petr.'s Mem. at 2-4. Petitioners also filed motions to stay the district court proceedings and to expedite this Court's proceeding.

The Rivera Respondents agree that this case presents issues “of great urgency and significant public concern” and that it is “vital that this dispute be resolved quickly.” Pet’r. Pet. at 2. But staying the district court proceedings, as Petitioners’ request—including on racial vote dilution claims that Petitioners concede are justiciable—would only frustrate the swift resolution of this important action by delaying critical fact-finding, inviting piecemeal appeals, and jeopardizing resolution of the matter in time for the primary elections this year.

The Rivera Respondents, therefore, respectfully request that the Court deny Petitioners’ Motion for a Stay of District Court Proceedings and instead remand the case to the district court for expedited proceedings, including an order that the district court enter findings of fact and conclusions of law by April 1, 2022, or shortly thereafter. The Court should further order an expedited schedule for any appeals from the district court’s judgment, including requiring that any notice of appeal be filed within two business days of the district court’s ruling, exclusive of weekends and holidays; that an appeal from the district court’s judgment be immediately transferred by the Court of Appeals to this Court pursuant to K.S.A. § 20-3017; and that any appeal be briefed and heard in this Court on an expedited schedule with a target decision date of May 1, 2022. Whatever schedule this Court adopts, it should allow sufficient time to fully resolve the case and effectuate any remedy in advance of the upcoming election deadlines.

Remanding the proceeding to the district court, as outlined above, avoids delay and disruption and ensures that this Court need only adjudicate one appeal on a full record. The North Carolina Supreme Court recently adopted this exact approach to ensure the timely and full adjudication of novel partisan gerrymandering and racial vote dilution claims. *See* Ex. 2 (Order, *Harper et al. v. Hall*, No. 413P21 (Dec. 8, 2021)).

In the alternative, were the Court inclined to address the legal issues raised in Petitioners’

petition for mandamus/quo warranto in the first instance, it should set those legal issues to be heard through a briefing schedule that allows for careful consideration of the issues, while simultaneously ordering the district court to conduct fact-finding on Respondents' claims and to submit recommended findings of fact and conclusions of law on or around April 1, 2022. This alternative approach would have the case proceed on parallel tracks in separate courts while still allowing for a full resolution of the merits on or around May 1, 2022, sufficiently in advance of summer election deadlines.¹

Respondents' weighty and important claims deserve both careful attention and speedy resolution. The approaches outlined above provide both and do so without requiring this Court to expend judicial resources adjudicating piecemeal proceedings. The Rivera Respondents therefore respectfully request that the Court deny Petitioners' motion to stay and adopt one of Respondents' suggested approaches.

Respectfully submitted,

/s/ Barry R. Grissom
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Counsel for Plaintiffs/Respondents

¹ Notably, while the Court may alter election deadlines as needed, neither of these proposed approaches would require delaying election deadlines.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed this 21st day of February 2022 with the Appellate Clerk via the Court's electronic filing system which will serve all registered participants. A copy was also via email to the Petitioners counsel of record, Solicitor General Brant Laue at brant.laue@ag.ks.gov.

/s/ Barry R. Grissom

Attorney for Plaintiffs/Respondents

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EXHIBIT 1

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**IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS
CIVIL COURT 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 MICAHAEL
ABBOTT, in his official capacity as Election
Commissioner of Wyandotte County, Kansas,

Defendants.

Case No.: 2022-CV-000089

Division: 1

PLAINTIFFS' MOTION TO EXPEDITE PROCEEDINGS

Plaintiffs respectfully request that the Court expedite proceedings and resolution of this case. Plaintiffs challenge Kansas's congressional plan, Senate Bill 355, as unconstitutional and dilutive of Plaintiffs' votes, as explained fully in their Petition for Declaratory and Injunctive Relief filed yesterday morning. Because of the extraordinarily important constitutional rights at issue here, and fast approaching election deadlines, including the candidate qualification deadline on June 1 and the primary election on August 2, Plaintiffs request that the Court expedite proceedings to resolve this matter within the next seven weeks. In support of their motion to expedite, Plaintiffs state as follows:

1. This case challenges the constitutionality of Kansas's congressional plan. The resolution of this issue is, without question, of the highest possible public importance. It falls to this Court to protect the fundamental voting rights of hundreds of thousands of Kansans, who should not be forced to vote in a single election in districts that unconstitutionally dilutes the votes

of Democratic and minority Kansans.

2. Plaintiffs are five individual voters residing in Wyandotte and Lawrence Counties and Loud Light, an organization known across the state for its mobilization of Kansas's youth vote. Defendants are the Secretary of State of Kansas and the Wyandotte County Election Commissioner, both sued in their official capacities only.

3. Plaintiffs seek a judgment (1) declaring SB 355 unconstitutional under the Kansas Constitution, (2) enjoining use of SB 355 in the upcoming primary and general elections for Congress, and (3) establishing a remedial process to ensure a lawful plan is adopted, should the legislature fail to timely enact a constitutional plan.

4. Kansas's congressional elections are fast approaching. As of now, the state is scheduled to hold its congressional primary election on August 2 of this year, K.S.A. 22-203(a), and the deadline for candidates to file to be on a partisan primary ballot is June 1, K.S.A. 25-205.

5. While the Court has the power to postpone these deadlines, doing so is not yet necessary. The Court still has sufficient time to hear Plaintiffs' claims on an expedited basis before those deadlines, as the filing deadline is still nearly four months away. But even if the proceedings run longer than the schedule Plaintiffs propose below, this court has the power to postpone election deadlines several months ahead of time, just as multiple state courts across the country have done in recent weeks when considering similar constitutional challenges. *See, e.g., Order, Harper v. Hall*, No. 413P21 (N.C. Dec. 8, 2021) (postponing 2022 primary filing deadlines five months before primary); *Order, Carter et al. v. Gressman et al.*, No. 7-MM-2022 (Pa. S.C. Feb. 9, 2022) (postponing deadlines for circulation and filing of nomination petitions four months before 2022 election); *Order, In the Matter of 2022 Legislative Districting of the State*, Misc. Nos. 21, 24, 25, 26, 27 (Md. Feb. 11, 2022) (postponing candidate filing and related deadlines four months before

2022 primaries).

6. Accordingly, Plaintiffs propose the following schedule for the parties to fully litigate the merits of this case within the next seven weeks. This schedule will allow sufficient time to ensure a new plan is adopted in time for implementation in advance of the June 1 candidates filing deadline.

| Event | Date |
|---|-------------------|
| Service of Plaintiff expert report(s) and fact witness affidavits | February 23, 2022 |
| Service of Defendant expert report(s) and fact witness affidavits | March 3, 2022 |
| Service of reply expert report(s) | March 7, 2022 |
| Expert witness depositions | March 8-14, 2022 |
| Fact discovery cutoff ¹ | March 14, 2022 |
| Filing of pretrial briefs, joint stipulation of facts, witness lists, and exhibit lists | March 17, 2022 |
| Stamped exhibits filed with the court | March 18, 2022 |
| Trial | March 21-25, 2022 |
| Filing of Proposed Findings of Fact and Conclusions of Law | March 29, 2022 |

7. If helpful to the Court, Plaintiffs request a scheduling conference to be held remotely as soon as the Court's schedule will permit.

¹ The Court may, at its discretion, allow for the shortening of certain discovery deadlines, including the time to respond to written discovery requests. K.S.A. 60-229. Plaintiffs request that the 30-day written discovery response deadlines, K.S.A. 60-233 (interrogatories); 60-234 (requests for production); 60-236 (request for admission), be shortened to 14 days to allow parties to complete fact discovery by March 14, 2022.

WHEREFORE, Plaintiffs request that the Court (1) enter a written order expediting proceedings and resolution of this action on the schedule set out above and (2) hold a remote scheduling conference as soon as the Court's calendar will permit, should doing so aid the Court.

Respectfully submitted, this 15th day of February 2022.

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Counsel for Plaintiffs
**Pro Hac Vice Application Forthcoming*

EXHIBIT 2

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SUPREME COURT OF NORTH CAROLINA

REBECCA HARPER; AMY CLARE)
 OSEROFF; DONALD RUMPH; JOHN)
 ANTHONY BALLA; RICHARD R. CREWS;)
 LILY NICOLE QUICK; GETTYS COHEN,)
 JR.; SHAWN RUSH; JACKSON THOMAS)
 DUNN, JR.; MARK S. PETERS; KATHLEEN)
 BARNES; VIRGINIA WALTERS BRIEN; and)
 DAVID DWIGHT BROWN)

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his)
 official capacity as Chair of the House)
 Standing Committee on Redistricting;)
 SENATOR WARREN DANIEL, in his official)
 capacity as Co-Chair of the Senate Standing)
 Committee on Redistricting and Elections;)
 SENATOR RALPH HISE, in his official)
 capacity as Co-Chair of the Senate Standing)
 Committee on Redistricting and)
 Elections; SENATOR PAUL NEWTON, in his)
 official capacity as Co-Chair of the Senate)
 Standing Committee on Redistricting and)
 Elections; SPEAKER OF THE NORTH)
 CAROLINA HOUSE OF)
 REPRESENTATIVES, TIMOTHY K.)
 MOORE; PRESIDENT PRO TEMPORE OF)
 THE NORTH CAROLINA SENATE, PHILIP)
 E. BERGER; THE NORTH CAROLINA)
 STATE BOARD OF ELECTIONS; and)
 DAMON CIRCOSTA, in his official capacity)

Defendants.

NORTH CAROLINA LEAGUE OF)
CONSERVATION VOTERS, INC.; HENRY)
M. MICHAUX, JR.; DANDRIELLE LEWIS;)
TIMOTHY CHARTIER; TALIA FERNÓS;)
KATHERINE NEWHALL; R. JASON)
PARSLEY ; EDNA SCOTT ; ROBERTA)
SCOTT ; YVETTE ROBERTS; JEREANN)
KING JOHNSON; REVEREND REGINALD)
WELLS; YARBROUGH WILLIAMS, JR.;)
REVEREND DELORIS L. JERMAN; VIOLA)
RYALS FIGUEROA; and COSMOS GEORGE)

Plaintiffs,)

v.)

REPRESENTATIVE DESTIN HALL, in his)
official capacity as Chair of the House)
Standing Committee on Redistricting;)
SENATOR WARREN DANIEL, in his official)
capacity as Co-Chair of the Senate Standing)
Committee on Redistricting and Elections;)
SENATOR RALPH E. HISE, JR., in his of)
ficial capacity as Co-Chair of the Senate)
Standing Committee on Redistricting and)
Elections; SENATOR PAUL NEWTON, in)
his official capacity as Co-Chair of the Senate)
Standing Committee on Redistricting and)
Elections; REPRESENTATIVE TIMOTHY)
K. MOORE, in his official capacity as Speaker)
of the North Carolina House of)
Representatives; SENATOR PHILIP E.)
BERGER, in his official capacity as President)
Pro Tempore of the North Carolina Senate;)
THE STATE OF NORTH CAROLINA; THE)
NORTH CAROLINA STATE BOARD OF)
ELECTIONS; DAMON CIRCOSTA, in his)
official capacity as Chairman of the North)
Carolina State Board of Elections; STELLA)
ANDERSON, in her official capacity as)
Secretary of the North Carolina State Board)
of Elections; JEFF CARMON III, in his)
official capacity as Member of the North)

Carolina State Board of Elections; STACY)
EGGERS IV , in his official capacity as)
Member of the North Carolina State Board of)
Elections; TOMMY TUCKER, in his of ficial)
capacity as Member of the North Carolina)
State Board of Elections; and KAREN)
BRINSON BELL, in her official capacity as)
Executive Director of the North Carolina)
State Board of Elections)

ORDER

Plaintiffs' Petitions for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules to Expedite a Decision, and Motion to Suspend Appellate Rules and Expedite Schedule, filed in these consolidated cases on 6 December 2021 are allowed as follows:

In light of the great public interest in the subject matter of these cases, the importance of the issues to the constitutional jurisprudence of this State, and the need for urgency in reaching a final resolution on the merits at the earliest possible opportunity, the Court grants a preliminary injunction and temporarily stays the candidate-filing period for the 2022 elections for all offices until such time as a final judgment on the merits of plaintiffs' claims, including any appeals, is entered and a remedy, if any is required, has been ordered.

1. Defendants are hereby enjoined from conducting elections for any public offices in the state on Tuesday, March 8, 2022 and, consistent with the response and affidavit

of the North Carolina State Board of Elections, defendants instead are directed to hold primaries for all offices on Tuesday, May 17, 2022. The trial court is authorized to issue any orders necessary to accomplish the resulting changes in the election schedule, including implementing shortened filing periods and other administrative adjustments.

2. Any individual who has already filed to run for public office in 2022 and whose filing has been accepted by the appropriate board of elections, will be deemed to have filed for the same office under the new election schedule for the May 2022 primary unless they provide timely notice of withdrawal of their candidacy to the board of elections during the newly-established filing period; and except to the extent that a remedy in this matter, if any, impacts a candidate's eligibility to hold the office for which they have currently filed. Any individual who has properly withdrawn their candidacy is free to file for any other office for which they may be eligible during the reopened filing period.

3. The trial court is directed to hold proceedings necessary to reach a ruling on the merits of plaintiffs' claims and to provide a written ruling on or before Tuesday, January 11, 2022.

4. Any party wishing to appeal the trial court's ruling must file a Notice of Appeal within two business days of the trial court's ruling, exclusive of weekends and holidays, in the trial court and with this Court, and should expect that an expedited briefing and hearing schedule in this Court will commence immediately thereafter.

The Petition for Writ of Supersedeas and Motion for Temporary Stay are dismissed as moot.

By order of the Court in Conference, this the 8th day of December, 2021.

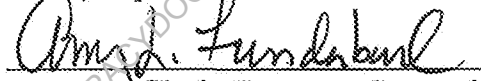


For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of December, 2021.



AMY L. FUNDERBURK
Clerk, Supreme Court of North Carolina



Assistant Clerk, Supreme Court of
North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Narendra K. Ghosh, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Terence Steed, Assistant Attorney General, For State Board of Elections, et al. - (By Email)

Mr. Amar Majmundar, Senior Deputy Attorney General, For State Board of Elections, et al. - (By Email)

Ms. Stephanie A. Brennan, Special Deputy Attorney General, For State Board of Elections, et al. - (By Email)

Mr. Burton Craige, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Paul E. Smith, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Phillip J. Strach, Attorney at Law, For Hall, Destin, et al. - (By Email)

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