

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS  
CIVIL COURT DEPARTMENT

SUSAN FRICK, et al.,	)	
	)	
<i>Plaintiffs,</i>	)	
v.	)	Case No. 2022-CV-71
	)	
SCOTT SCHWAB, et al.,	)	Division 4
	)	
<i>Defendants.</i>	)	K.S.A. Chapter 60

**PLAINTIFFS' RESPONSE TO MOTION TO TRANSFER**

Come now Plaintiffs by their undersigned counsel and provide their response to the Defendant Schwab's Motion to Transfer this case from Douglas County to Shawnee County on venue grounds. Putting aside the inconsistency between Defendant's argument in the Motion that the case must be transferred to Shawnee County and his position in response to this Court's Petition to the Supreme Court that the case should not be moved from Douglas County, there are persuasive grounds that Defendant's Motion should be denied.

**A. WAIVER OF OBJECTION TO VENUE**

Defendant joined issue in this case, and thereby waived venue objections, before filing his Motion to Transfer. Defendant not only participated in proceedings in which the parties discussed with the Court the schedule for the proceeding (Court's Zoom conference with the parties on March 10), he filed a Response to Plaintiffs' Motion to Expedite on March 14 and a Motion to Dismiss on March 10, neither of

which mentioned the venue in this Court is improper. In asking this Court to rule on a motion to dismiss based on the allegations in the Petition, Defendant has waived an objection to venue. *See Akesogenx Corp. v. Zavala*, 55 Kan. App. 2d 22, 37, 407 P.3d 246, 257 (2017) (holding that objections to venue are waived if not raised, citing *State, Bd. of Regents, Univ. of Kansas Med. Ctr. v. Skinner*, 267 Kan. 808, 812, 987 P.2d 1096 (1999) (recognizing “defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived if it is not made by motion or included in a responsive pleading.”)). As such, Defendant has waived his objection to venue in Douglas County.

#### B. VENUE IS PROPER IN DOUGLAS COUNTY

Defendant’s principal argument appears to be that he is the only proper defendant, and that because his office is in Topeka, the only county in which venue is proper is Shawnee County. Defendant relies on a misleading reading of the Kansas election statutes. Defendant notes that K.S.A. 25-2504 describes him as the “chief state election official,” but fails to note that this statute says absolutely nothing about what his duties are. He combines this with a selective – and misleading – quote from K.S.A. 25-124 to imply that he tells the county election officials, such as Defendant Shew, how to comply with federal and state election laws and regulations. The statute does not say that, rather, it states that the Secretary is supposed to determine the instruction (training) the county election officials and their staffs receive concerning their performance of their duties to conduct elections. The Secretary does not instruct the county election officials himself, much less tell them

how to perform their duties. The elections are conducted by the county election officials, not the Secretary, who only helps them perform their duties. Thus, as the official responsible for conducting elections in Douglas County, Defendant Shew is a proper and necessary defendant.

Defendant's second argument is that this case must be transferred to Shawnee County because the actions giving rise to the case took place in Topeka, pointing in particular to the fact that SB 355 was enacted by the Legislature (over Governor Kelly's veto) in the Statehouse. Defendant overlooks all of the Town Halls conducted by the House and Senate Redistricting Committees throughout the State during the fall of 2021. One of those Town Halls was held at the University of Kansas Business School, located on the KU campus in Lawrence, just a short distance from this Court. At that Town Hall dozens of witnesses provided testimony to the Committees concerning redistricting, including the redrawing of the Congressional districts. Defendant can hardly argue that these Town Halls were not part of the actions by the Legislature and its members that led to the adoption of SB 355.

Finally, Defendant also argues that he "directs the congressional elections from his office in Shawnee County." (Defendant's Motion at 4). He provides absolutely no support – evidentiary or otherwise – for that assertion. Defendant Shew is elected by the voters of Douglas County to run all elections, including congressional elections, in Douglas County. In fact, Defendant's assertion is belied by his own words. Defendant fails to inform the Court of his own public statement

concerning what county election officials do. The following is a quote from Secretary's own web site:

Each of the 105 counties in Kansas has a county election officer responsible for conducting all official elections held in the county. In the four largest counties - Johnson, Sedgwick, Shawnee and Wyandotte - the election officer is the election commissioner, appointed by the secretary of state. For the other 101 counties it is the county clerk, elected by the voters in the county.

([https://www.sos.ks.gov/elections/county\\_election\\_officers.aspx](https://www.sos.ks.gov/elections/county_election_officers.aspx); last visited March 20, 2022). Defendant Shew is the elected County Clerk of Douglas County, and per the Secretary's own statement, he – not the Secretary -- is responsible for elections in Douglas County.<sup>1</sup> This statement is echoed by the Secretary's Election Standards, which provide guidance to county election officials: “[w]ith very few exceptions, the county election officer is the person in charge of conducting all official elections in the county. Official elections are those required or authorized by state law.” Kansas Election Standards, 2019, Chap. II-1, found at <https://www.sos.ks.gov/elections/19elec/2019-Kansas->

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<sup>1</sup> Plaintiffs note that in his Response to Joint Request, filed with the Supreme Court on March 18, Defendant Schwab makes the same misleading argument that all of the actions relating to the congressional redistricting took place in Shawnee County and that he directs the congressional elections from his office in Topeka, ignoring his own statements that the county election officers are actually responsible for conducting the elections. Defendant Schwab's Response to Joint Request, at 6-7, Kansas Supreme Court Case No. 124927, March 18, 2022.

[Election-Standards-Chapter-II-Election-Administration.pdf](#), last visited March 20, 2022. Congressional elections do not fall within the “very few exceptions” from those elections conducted by county election officials such as Defendant Shew.

Wherefore, Plaintiffs ask the Court to deny Defendant’s motion.

Respectfully submitted,

**DENTONS US LLP**

*/ss/ Mark P. Johnson*

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of March, 2022, I electronically filed the foregoing with the Clerk of the District Court’s electronic filing system, which will serve all registered participants.

*/ss/ Mark P. Johnson*

Mark P. Johnson

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