

1 IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS
2 IN THE TWENTY-NINTH JUDICIAL DISTRICT
3 CIVIL DEPARTMENT

3 FAITH RIVERA,)
4 DIOSSELYN TOT-)
5 VELASQUEZ,)
6 KIMBERLY WEAVER,)
7 PARIS RAITE,)
8 DONNAVAN DILLON,)
9 AND LOUD LIGHT,)
10)

11 Plaintiffs,)

12 vs.)

Case No. 2022-CV-89

13 SCOTT SCHWAB, Kansas)
14 Secretary of State,)
15 in his official)
16 capacity,)

17 Defendants.)

18 _____)

19 TOM ALONZO,)
20 SHARON AL-UQDAH,)
21 AMY CARTER,)
22 CONNIE BROWN COLLINS,)
23 SHEYVETTE DINKENS,)
24 MELINDA LAVON, ANA)
25 MARCELA MALDONADO)
26 MORALES, LIZ MEITL,)
27 RICHARD NOBLES,)
28 ROSE SCHWAB,)
29 AND ANNA WHITE,)
30)

31 Plaintiffs,)

32 vs.)

Case No. 2022-CV-90
(Consolidated)

33 SCOTT SCHWAB, Kansas)
34 Secretary of State,)
35 in his official)
36 capacity,)
37 AND)

38 MICHAEL ABBOTT,)
39 Wyandotte County)
40 Election Commissioner,)
41 in his official)
42 capacity,)

43 Defendants.)

1 SUSAN FRICK,)
 LAUREN SULLIVAN,)
 2 DARRELL LEA, AND)
 SUSAN SPRING)
 3 SCHIFFELBEIN,)
)
 4 Plaintiffs,)
) Douglas County
 5 vs.) Case No. 2022-CV-71
) (Consolidated)
 6 SCOTT SCHWAB, Kansas)
 Secretary of State,)
 7 in his official)
 capacity,)
 8 AND)
 JAMIE SHEW,)
 9 Douglas County Clerk,)
 in his official)
 10 capacity,)
)
 11 Defendants.)

12 TRANSCRIPT OF BENCH TRIAL

13 VOLUME 1

14 PROCEEDINGS had before the HONORABLE BILL
 15 KLAPPER, Judge of Division 6 of the District Court
 16 of Wyandotte County, Kansas, at Kansas City, Kansas,
 17 on the 4th day of April, 2022.

18 APPEARANCES:

19 The plaintiffs, FAITH RIVERA, ET AL., appeared in
 20 person and by BARRY R. GRISSOM, Attorney at Law,
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10 The plaintiffs, THOMAS ALONZO, et al., appeared
11 in person and by SHARON BRETT, JOSH PIERSON, KAYLA
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16 MARK P. GABER, KEVIN HANCOCK, SAM HORAN,
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9 The defendants, SCOTT SCHWAB AND MICHAEL ABBOTT,
10 appeared in person and by ANTHONY F. RUPP, Attorney
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EXHIBITS

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* Exhibit No. 1048-1049		
Exhibit No. 1050-1065	12	13

*Exhibits objected to by counsel

1 THE COURT: All right. Let's be on the
2 record then in case numbers 22-CV-89, 22-CV-90,
3 22-CV-71, which is transfer case why the numbers are
4 different.

5 They are entitled Faith Rivera, Tom Alonzo,
6 and Susan Frick, respectively, versus Scott Schwab
7 and Michael Abbott, or in the 71 case Jamie Shew.

8 Parties announce their appearances, please.

9 MR. GRISSOM: Good morning, Your Honor.
10 May it please the Court, the Rivera plaintiffs
11 appear through Barry Grissom, local counsel. I'll
12 have counsel who will be more involved in the case
13 introduce themselves.

14 MS. KHANNA: Your Honor, Abha Khanna for
15 Rivera plaintiffs.

16 MR. MADDURI: Your Honor, Lali Madduri for
17 Rivera plaintiffs.

18 MR. BREWSTER: Hal Brewster on behalf of
19 the Rivera plaintiffs.

20 MR. HAWLEY: Jonathan Hawley on behalf of
21 the Rivera plaintiffs.

22 MR. POSIMATO: Joseph Posimato on behalf of
23 the Rivera plaintiffs.

24 MS. BRETT: I think that's it for the
25 Rivera plaintiffs, so I am up. Good morning, Your

1 Honor. Sharon Brett on behalf of the Alonzo
2 plaintiffs, and I will have other members introduce
3 themselves as well starting with Mr. Gaber.

4 MR. GABER: Morning, Your Honor. Mark
5 Gaber, on behalf of Alonzo.

6 MR. HORAN: Good morning, Your Honor. Sam
7 Horan for the Alonzo plaintiffs.

8 MR. NEVERS: Good morning. Orion de Nevers
9 for the Alonzo plaintiffs.

10 MR. FREEDMAN: Good morning. John Freedman
11 for the Alonzo plaintiffs.

12 MR. JONES: Stanton Jones for the Alonzo
13 plaintiffs.

14 MS. THEODORE: Elizabeth Theodore for the
15 Alonzo plaintiffs.

16 MS. MCCABE: Erica McCabe for the Alonzo
17 plaintiffs.

18 THE COURT: Have we run out of Alonzo
19 plaintiffs' attorneys?

20 MR. JOHNSON: May it please the Court, Mark
21 Johnson and Curtis Woods appearing today on behalf
22 of Susan Frick, et al., the Douglas County case.

23 THE COURT: I would note you must be
24 extremely competent attorneys, since the two of you.

25 MR. JOHNSON: We'll do our best, Your

1 Honor.

2 MR. WOODS: We've got a big table. Thank
3 you.

4 THE COURT: Thank you very much, Mark.

5 MR. RUPP: Your Honor, the defendants
6 appear by Michael Abbott, Bryan Caskey on behalf of
7 the Secretary of State's Office, Brant Laue,
8 Solicitor General, Clayton Kaiser, my colleague.

9 And I will tell you that Clayton will
10 probably violate one of your rules, because his wife
11 is expecting any moment and he may dart out; and, if
12 he does dart out, he may need to come back in
13 depending on what the circumstances are.

14 THE COURT: If that is a request for a
15 special exemption, Tony, granted.

16 MR. RUPP: Gary Ayers, Tony Rupp, Kurt
17 Wiard. I think that covers us.

18 THE COURT: All right. Very good. All
19 right. For those of you in attendance, we had a
20 meeting back in chambers. That is Division 6 way of
21 doing business so that the trial runs a little bit
22 smoother.

23 The Court made some rulings back there that
24 all of you should know about. There are no secrets.

25 The defense asked to take an interlocutory

1 appeal. For those of you who do not know what that
2 means it is appealing some of the issues before the
3 entire trial is concluded.

4 The Court has found that they have every
5 right to an interlocutory appeal and has then denied
6 their motion, because of the logic out of that.

7 So, the Court believes that the admonition
8 from the Supreme Court about expeditious litigation
9 obviates the need for an interlocutory appeal, but
10 the Court finds that it would have been appropriate
11 under normal circumstances.

12 We have also discussed -- hopefully being
13 able to expedite things a bit -- we have also
14 discussed the scheduling that the Court would like
15 to -- actually the parties would like to follow as
16 far as resolving this case in the three to four days
17 that we have set aside for it.

18 The Court made some preliminary rulings on
19 some other motions, but those will all be taken up
20 during the due course of the trial.

21 All right. Shall we deal with stipulations
22 or the Daubert issue first?

23 MR. RUPP: We could -- it might make sense
24 to admit the exhibits.

25 MS. KHANNA: Yes, Your Honor, Abha Khanna

1 for Rivera plaintiffs, and I think we have number of
2 exhibits on the plaintiff's list that we can move to
3 admit right now without any objection.

4 THE COURT: Excellent.

5 MS. KHANNA: So, I would move to admit
6 Plaintiff's Exhibits 137 to 148, 153 to 349, 405 to
7 741, and 743.

8 THE COURT: All right.

9 MS. KHANNA: I also have the expert-related
10 exhibits, which would it be helpful subject to the
11 motions?

12 MR. RUPP: Yes. I think that would be
13 fine, and for purposes we have objected to the
14 expert testimony on two grounds. Those are
15 preserved, and we so recognizing that those will
16 come in, because the Court is going to hear
17 everything, we object to those.

18 Probably we'll need to do that again for
19 purposes of preserving the record but recognize that
20 they're going to come in.

21 MS. KHANNA: So, those expert-related
22 exhibits that we're moving for admission subject to
23 the motion and the objections already made would be
24 Plaintiff's Exhibit 1 to 136, 350 to 404, 742, 744,
25 and 745.

1 THE COURT: Is that the complete list?

2 MS. KHANNA: I think that's all of them.

3 THE COURT: All right. What does defense
4 say to that, Tony?

5 MR. RUPP: Subject to the objections we
6 talked about, that's correct.

7 THE COURT: All right then. So, to save us
8 all some time as the record reflects and that those
9 exhibits are admitted without objection. All right.

10 MR. RUPP: Your Honor, and unfortunately, I
11 don't have their late last night e-mail in printed
12 form. So, I'm going to state what you've agreed to
13 by my recollection, but hopefully you'll have it
14 there and, if I state something incorrectly, I
15 believe Exhibit 1,001 through 1,021 -- did I get
16 that right?

17 MS. KHANNA: You did.

18 MR. RUPP: From memory -- I'm proud of
19 myself -- are agreed upon and admitted. There are
20 objections, and I think we've agreed to withdraw
21 1,022. There are objections that will be taken up
22 during the course of the trial on 1023 A through F.

23 THE COURT: Give me that again, please,
24 Tony.

25 MR. RUPP: 1023 A through F.

1 THE COURT: Thank you.

2 MR. RUPP: What did you say on that?

3 MS. KHANNA: I have an objection to 1025.

4 MR. RUPP: So, there's an objection to be
5 taken up on 1025. Then I think you've agreed to
6 1026 through -- help me out here.

7 MS. KHANNA: 1035.

8 MR. RUPP: 1035. And then 1036 and 1037
9 will be taken up during the course of the trial.
10 Then I think you've agreed to 1038 through -- help
11 me out again.

12 MS. KHANNA: I think 1047.

13 THE COURT: Through 1047 and then -- help
14 me out again, Abha. I apologize.

15 MS. KHANNA: No problem. And then 1048 and
16 1049. We have objections.

17 MR. RUPP: Okay. And then the rest of
18 them, if you would. I apologize.

19 MS. KHANNA: The rest of them no objection.
20 They are including the expert materials as long as
21 our expert admissions come in, and we have no
22 objection to those as well.

23 MR. RUPP: So, that's 1050 through 1065.
24 All right. We would move for their admission.

25 THE COURT: All right. Since you

1 participated in that colloquy, I will assume you're
2 in agreement with all of those things?

3 MS. KHANNA: Yes, Your Honor.

4 THE COURT: As the record reflects, those
5 defense exhibits are admitted without objections.
6 Have we taken care of exhibits, counsel?

7 MR. RUPP: I believe we have.

8 THE COURT: All right. Yes?

9 MS. KHANNA: I think so.

10 THE COURT: Your cocounsel was talking, and
11 I didn't interrupt her.

12 MS. KHANNA: My apologies, Your Honor.

13 THE COURT: No, that's fine. Consultation
14 is expected. So, have we taken care of all the
15 exhibits?

16 MS. KHANNA: Yes, Your Honor. Thank you.

17 THE COURT: All right then. The Court
18 believes we should move then, Gary, to the Daubert
19 exhibit.

20 MR. AYERS: Thank you, Your Honor.

21 THE COURT: Excuse me, the Daubert
22 objections.

23 MR. AYERS: I think there's a microphone up
24 here, right, for the Zoom?

25 THE COURT: There is and it is right here,

1 and my I.T. fellow is right there, Gary. So, if you
2 have questions about it, please feel free to
3 inquire, but I'm hopeful everything is working as it
4 should.

5 MR. AYERS: I'm totally good. May it
6 please the Court, defendants move to exclude
7 plaintiff's expert testimony under K.S.A. 60-456(b)
8 better known -- our objections are better known as
9 the Daubert objections, because simply put the
10 experts seek to tell the Court what the legal
11 standards are for redistricting in Kansas.

12 They attempt to do this primarily by saying
13 that the Kansas Legislature passed the standard
14 known as the redistricting guidelines, and that's
15 just not true.

16 The Kansas Legislature did not pass the
17 redistricting guidelines.

18 One of the House Committees adopted
19 guidelines. That was the House.

20 The Senate committee did not.

21 The Legislature did not.

22 And certainly the Constitution has nothing
23 in it regarding criteria.

24 And so, all though you will hear
25 plaintiffs' experts talk about things like the

1 legislative criteria or the adopted criteria or the
2 State of Kansas criteria, there is no standard.
3 There is no criteria or there are no criteria to
4 guide the Court. So, they're incorrect about that.

5 At least one of the experts says, well,
6 that really doesn't matter, because these are
7 traditional redistricting guidelines.

8 And so what that expert would do would be
9 to elevate quote traditional redistricting
10 guidelines to a statutory or Constitutional level,
11 but that's not what Chief Justice Roberts said in
12 *Rucho versus Common Cause*.

13 When he said that provisions in State
14 Statutes, the State Constitutions may provide
15 standards and guidance for state courts to apply.

16 He did not say, where this is no standard
17 of care, they can make it up and tell the court.
18 That's a completely different thing.

19 These experts, Your Honor has already
20 mentioned in chambers have testified a lot. They're
21 very smart, very accomplished, have lots of degrees
22 from the best schools in the country. No question
23 about that.

24 They know how to calculate compact scores
25 and efficiency gaps, and they can do simulations.

1 They're are a lot of statistical techniques they
2 know how to do. They present them in papers in the
3 academic setting.

4 Dr. Rodden just presented a paper last
5 year, 2021, called partisan dislocation that he
6 would like to apply in Kansas in your courtroom. It
7 was just presented to academia last year, has not
8 received wide acceptance, is not a standard
9 anywhere.

10 These experts have testified in states that
11 do have standards. Florida has a State
12 Constitutional Provision as does Missouri as does
13 Ohio where they have testified.

14 In fact one of my favorite provisions in
15 the Ohio Constitution is that it says actually in
16 the Constitution that out of the 88 counties, 65
17 shall be contained entirely within a district for
18 redistricting.

19 I mean, they get pretty darn specific, and
20 that's a pretty clear standard, Your Honor, but it's
21 in the Ohio Constitution.

22 It wasn't suggested or made up or
23 speculated to by an expert. They passed it.

24 Michigan, State Constitution.

25 Illinois State Statute.

1 These experts have testified in all of
2 those places.

3 I understand where, if a state Constitution
4 or State Statute has said, we need compactness
5 scores or we need other kinds of measures. We need
6 help understanding how our enacted plans measure up
7 against the standards of the past. We'll take
8 expert testimony.

9 I mean, you would do that in malpractice
10 case. You would have you do that wherever
11 scientific expertise assists the court in
12 understanding what was done, whether or not it did
13 or did not meet the standard, but what is not done,
14 Your Honor, is the experts don't come in and tell
15 the court what the standard is.

16 Especially here when, I mean, we've just
17 begun. I mean, we're at the very beginning of State
18 Court jurisprudence in redistricting and these
19 experts have had a lot to do with it, but, again, a
20 lot to do with it where there were standards.

21 Dr. Rodden has testified in Florida where
22 there was a Constitution, Constitutional Provision
23 on redistricting and Virginia where there was a
24 statute.

25 Arizona, Constitutional Provision.

1 Ohio, again, my favorite, Constitution.

2 Dr. Collingwood has testified in New York
3 where they have a Constitutional Provision, and
4 Illinois, again, where there's a statute.

5 Iowa has a statute.

6 And Dr. Warshaw has testified in Ohio,
7 again, the Constitution.

8 Michigan has the Constitutional Provision.

9 And they have submitted reports that a few
10 other states, two or three other states that like
11 Kansas do not have adopted standards, adopted by
12 either the State Legislature or the Constitution,
13 but with regard to the guidelines themselves, even
14 if you got the guidelines, none of the witnesses
15 have a way to determine or tell the court what the
16 minimums or maximums are.

17 I mean, what's -- and they will, I think,
18 all agree that you cannot quantify social community
19 of interest or cultural community of interest.

20 In fact, Dr. Chen doesn't even, in his
21 algorithm whereby he creates simulations, doesn't
22 even try, because it's not quantifiable, doesn't
23 even put in racial inputs into his algorithm.

24 These are the guidelines that are not
25 measurable. There are no standards. There are no

1 minimums. There are no maximums.

2 You mentioned in chambers the efficiency
3 gap. It's been around for a long time. You are
4 correct, Your Honor, as you said in chambers, but
5 there's no minimum, no maximum, and everyone says
6 it's inappropriate to use it in a state with only
7 four Congressional Districts.

8 In fact, anything less than seven, you
9 should not be using the efficiency gap.

10 I think Dr. Warshaw thinks that by using
11 some other kinds of results that he has somehow
12 programmed his way around that problem, but the
13 statement in the Campaign Legal Center's own website
14 where Dr. Warshaw -- to which Dr. Warshaw
15 contributes and where his picture is and who provide
16 counsel on this case, they, themselves, say it's not
17 to be arrived in districts with under seven
18 districts, because it comes -- it leads to wildly
19 exaggerated results.

20 Not only that, these experts to a person
21 use what the experts call, and I had to learn this
22 word, and I appreciate the experts help on this, and
23 I'll probably get it wrong, but I'll do my best.

24 So, Your Honor, if you're looking at the
25 Third District election and you want to know

1 statistics for the Third District election over the
2 years, and you're focused just on the Third
3 District, those election results, as I understand
4 it, are what they call the endogenous election
5 results for that district.

6 If, on the other hand, you want to predict
7 or defendants say speculate as to what the results
8 might be in the Third District, but you don't want
9 to use actual Third District results, instead you
10 use statewide results, like, for Governor or
11 Attorney General or the treasurer, those are
12 exogenous elections.

13 In other words, they are elections that are
14 not elections having to do with the district that
15 you care about.

16 And there's no widespread or generally held
17 acceptability for using exogenous elections, in
18 other words, Kobak versus Kelly, to predict the
19 Third District Congressional election or Lynn Rogers
20 for secretary of treasurer's office or something
21 like that to use those exogenous elections to
22 predict what's going to happen in the Third
23 District.

24 That is not a widely accepted principle,
25 but that's what all these experts do. They take --

1 primarily they take the 2016 to 2020 elections which
2 like all the Trump years with a Kobak thrown in the
3 middle of it.

4 I mean, these are odd elections by any
5 measure to predict and with school finance by the
6 way bouncing around to speculate as to who's going
7 to get elected in the Third District next time
8 around under the enacted plan.

9 It's just rank sheer speculation, and not
10 reliable, and not the kind of expert testimony
11 that's allowed under 60-456(b).

12 The experts to a person say, you know,
13 there's tension between and among the guidelines.
14 You might want to keep the Congressional District
15 lines drawn where they are, which would be something
16 called core retention, but that may conflict with
17 their perception of what a community of interest
18 might be.

19 So, keeping with the 2012 plan that the
20 three federal judges put in place, to them, might
21 conflict with a community of interest and they might
22 define and have defined and tried to define, for
23 example, a Hispanic population in Wichita, my
24 hometown, with the Hispanic population in Hutchinson
25 and try to bring those two Hispanic populations

1 together, ignoring, because they don't live here
2 that Hutchinson is a completely western town, has
3 the state fair, et cetera.

4 So, what they would say, though, is, look,
5 we could leave Wichita and Hutchinson separated as
6 the 2012 plan did, and that would get you core
7 retention.

8 In other words, that would leave the 2012
9 guidelines where they were, but, look, there's a
10 Hispanic community in Hutchinson that we can put
11 together with the Hispanic community in Wichita.

12 I hereby define that community of interest
13 as a Hispanic community of interest, and I'm going
14 to put those two communities of interest together,
15 and I'm going to draw my lines around those two
16 Hispanic communities, completely ignoring, you know,
17 a dozen other communities of interest that occur
18 between, as you might imagine, because I live there,
19 you know, we could go on for sometime about the
20 differences between Hutchinson and Wichita.

21 But that's why it's pure speculation as to
22 which community of interest you pick. Are we going
23 to take the Catholic community of Hays or are we
24 going to take maybe the Germanic community of Hays.

25 I mean, there are, you know, 1,000

1 different ways to do it.

2 So, there's no quantitative standard.

3 And not even when you get to Dr.

4 Collingwood's testimony, and he tries to talk about
5 racialized, polarized voting, and a number of the
6 witnesses are trying to make this about race, and
7 even though the Democrat Senators say it's not about
8 race.

9 It's about Johnson County and Wyandotte
10 County, but they have witnesses that want to talk
11 about race.

12 Well, they're is no application of race in
13 redistricting any established standards beyond the
14 Voting Rights Act.

15 I mean, we know that we're supposed to have
16 equal population districts, and we have the jingles
17 test that where you have a cohesive minority and you
18 have a cohesive white block trying to block the
19 cohesive minority.

20 I mean, you have specific tests, but those
21 are prerequisites to get to a Voting Rights Act
22 case, and no one in this courtroom believes this is
23 a Voting Rights Act case.

24 Obviously, you don't have majority minority
25 districts. There's no evidence of white people

1 voting as a block to defeat minority preferred
2 candidates. You do have white people voting for
3 democrats. You have white people voting for
4 republicans, but there's no real quantification of
5 that.

6 I mean, sometimes the white folk vote for
7 democrats and sometimes they vote for republicans.
8 I mean, they go back and forth and there's no way to
9 quantify that.

10 And what the experts are really concerned
11 about is not race. I think they will all admit
12 that. And there is no test here. There is no
13 racialized polarized voting test that Dr.
14 Collingwood could come up with, no quantifiable,
15 nothing to guide the Court.

16 What you have is, you know, the plaintiffs
17 don't like the type of white voters they have in the
18 district, and they don't know how to quantify that.
19 And so, if they can't quantify it, how does their
20 expert testimony going to assist the court?

21 You know, Drs. Miller and Professor Smith
22 in the Lawrence case, you know, they talk all over
23 social and culture communities of interest, all
24 kinds of them, nothing quantifiable, nothing that
25 really assists the court.

1 I mean, you can define it really it's in
2 the eye of the beholder, especially Professor Smith,
3 you know, has no way of really telling the court how
4 you're supposed to apply it, even if those were the
5 standards, how you're supposed to apply those
6 guidelines.

7 And we had one Federal District Court in
8 2002 Graham versus Thornburgh on communities of
9 interest who said, It's not the province of the
10 court to judge whether the legislatures's
11 redistricting choice achieves the best possible
12 solution for particular communities of interest.

13 Now, I understand, Your Honor, has
14 indicated that the Federal Courts are not taking
15 this up as nonjusticiable, and that's not what I'm
16 arguing here.

17 What I'm suggesting to, Your Honor, in this
18 Federal Court case is that Federal Court did not
19 understand how it was supposed to deal with
20 communities of interest.

21 There was no quantifiable standard, and,
22 Your Honor, I don't know that you're going to find
23 one here either.

24 So, with no standards, the expert testimony
25 does not assist the court. It's irrelevant.

1 As Rucho said, it's up to the people. The
2 people's house or the Constitution to set those
3 standards for the court.

4 It's not the expert's job, and as you
5 mentioned in chambers, Your Honor, they all come at
6 it from a little different perspective.

7 And, I suppose it's like a stew, and
8 they're going to mix it up, and we're going to have
9 stew at the end of the trial with a whole lot of
10 different opinions and speculation about communities
11 of interest and efficiency gaps and simulations and
12 all the rest of that, but, Your Honor, it's, you
13 know, they've admitted there are no standards.
14 They're not quantifiable. They shouldn't be
15 applied, you know, in this case.

16 So, what I suggested in chambers, Your
17 Honor, which I think is an appropriate thing to do
18 in your circumstances, because the Supreme Court has
19 asked you to try a case, and, if you were to grant
20 our motion, you would have no case -- almost no case
21 to try.

22 So, what we suggested in chambers, Your
23 Honor, was that you take a large proffer of the
24 evidence, so that the evidence can be recorded, can
25 be cross-examined, that you either grant or take

1 under advisement.

2 THE COURT: Sir, don't come into my
3 courtroom during the course of a hearing. There are
4 some other courtrooms that are available. Go ahead,
5 sorry.

6 MR. AYERS: I thought you were talking to
7 me, because, when you said, Your Honor, don't come
8 into my courtroom, I thought I'm had. Okay.

9 THE COURT: Rose, off the record.

10 (Recess.)

11 THE COURT: Back on the record, Rose. Go
12 ahead. I'm sorry for the interruption, Gary.

13 MR. AYERS: Yeah, okay. Appreciate that.
14 I've sat pro-tem before, and I have worn the robe.
15 I have said such things. So I have no judicial
16 temperance or whatever they call it.

17 And just to wrap up, I know this has taken
18 some time, Your Honor, but it's really important
19 that the court know that all these are really smart
20 people and honestly they're very impressive.

21 I'm very impressed by them. I have learned
22 a lot. I appreciate their patience in explaining
23 all of this to me that I didn't know two weeks ago.

24 Now, I know a little bit about what they
25 do, not much, but a little bit, but I think it would

1 be interesting for you to listen to, take it under
2 advisement, take it as a proffer, send it up to the
3 Supreme Court.

4 If they think it's interesting, let them
5 listen to it, but, Your Honor, it is not -- it's
6 just really pure speculation. It's not really
7 relevant to what you have to decide, and it's not
8 generally accepted, not the way they put it on.

9 So, I think it's improper expert testimony.
10 Appreciate it, Your Honor.

11 THE COURT: Stick around, if you would
12 please, Gary. I want to make sure I have this
13 right. So the Senate didn't adopt it. The
14 Legislature didn't adopt it, but the House adopted
15 it?

16 MR. AYERS: The House Subcommittee, the
17 Redistricting Committee, in their minutes, and I
18 have minutes. We have minutes as an exhibit you can
19 see that they're using the guidelines, and the
20 guidelines were brought up in the Senate. They were
21 just never voted on. They talked about them. They
22 just never voted on them.

23 THE COURT: So, did the Legislature use the
24 guidelines in redistricting in Kansas or did they
25 not, if you know?

1 MR. AYERS: I think they were helpful to
2 the committees. I think so one of the witnesses
3 that plaintiffs are objecting to is going to explain
4 all this to you as to what they did, but they have a
5 lot of software. They gave laptops to the ranking
6 members and the committee chairs and their staff.

7 They loaded up the software, and the
8 Redistricting Committees went about their business.
9 And that software through the Kansas Legislative
10 Research Department does produce at least one of the
11 measures. They can -- the software produces the
12 compactness score, for example.

13 Now, in the 2012, in the Essex case, the
14 Second District had a compactness score of .35.
15 Well, the average compactness score of Ad Astra 2 is
16 .388.

17 So, it's higher than, you know, a lot of
18 the compactness scores. I know I'm just picking and
19 choosing just to show, Your Honor, that those aren't
20 -- you can't just take a compactness score and say
21 that's your redistricting.

22 Dr. Chen can get up into the point fives
23 using simulations. He can get really high, you
24 know, compactness scores.

25 So, it's not that they didn't use them.

1 It's not that they didn't -- it's not that they
2 weren't informed by them, but there were just no
3 standards that say, This compactness score is
4 acceptable. This one is not.

5 There were no efficiency gap scores that
6 they used, but there's no this is fine. This is
7 not.

8 They talked about communities of interest.
9 They had a lot of testimony, written testimony
10 given.

11 They had -- Mr. Rupp is going to talk about
12 all of the different testimony that was given about
13 the Johnson County community of interest, and the
14 Wyandotte community of interest, and the plaintiffs
15 are going to say that there's the Kansas City
16 community of interest as a whole.

17 They'll talk about racial community of
18 interest, cultural. I mean, they talk about the
19 things that you should think about when you're
20 redistricting, and the committees use those.

21 And I think that's reflected in the
22 testimony and in the -- I think what you're going to
23 hear today, you're going to hear that the League of
24 Women Voters was a huge proponent of some of the
25 other plans, and they submitted a lot of testimony,

1 some conflicting, some consistent about communities
2 of interest, that sort of thing.

3 So, I think they were informed about the
4 things you think about when you're redistricting.
5 Does that make sense?

6 THE COURT: It does. I would have answered
7 the question, yes, but I understand you wanted to
8 provide me with an explanation as to that.

9 So, I'm going to take that, Gary, I'm
10 hopefully not misstating what you're saying that
11 they used them as advisory guidelines.

12 MR. AYERS: That's exactly right.

13 THE COURT: Okay. And I'm a bit concerned
14 about your argument. Let's just take community of
15 interest. So, if the Legislature considered
16 communities of interest, and you're saying the
17 experts don't have any way of doing it, if the
18 courts don't have any way of doing it, how did the
19 Legislature consider communities of interest?

20 MR. AYERS: Well, I think you take the
21 testimony and you make a Legislative decision. And,
22 if the Constitution or the statute hasn't told you
23 what to do, you make your Legislative decision based
24 upon the testimony you received.

25 THE COURT: If the experts reviewed that

1 testimony, would that be qualified?

2 MR. AYERS: No.

3 THE COURT: Explain that to me.

4 MR. AYERS: A community of interest is in
5 the eye of the person who is describing their
6 community of interest.

7 My community of interest is different than
8 your community of interest. And when you're
9 balancing the community of interest of millions of
10 people, 3 million people, you would have 1,000
11 different communities of interest.

12 And so, those have to be balanced, and you
13 you elect your representatives to go to balance
14 those and they make a decision.

15 THE COURT: Thank you, Gary.

16 MR. AYERS: Is that it?

17 THE COURT: It is. I'm sorry. That was
18 it. Thank you. Yes, appreciate it. So --

19 MR. JONES: Good morning, Your Honor.

20 THE COURT: Good morning, Stanton. Let's
21 start with something here that perhaps may save us
22 some time and in no way does the court mean to
23 foreclose argument if you wish to give it.

24 So, the defendants propose that I accept
25 what they call a large proffer, which I'm

1 interpreting as meaning let's let all this stuff on
2 and, if at some point I need to limit things,
3 because it's so far beyond the pale that I can do
4 that. That way it all makes it up to the Supreme
5 Court, and it moves our trial along. Address all
6 that you want to, but start with the large proffer,
7 if you would, please, or finish with the large
8 proffer or cover it at some point in your argument.

9 MR. JONES: Sure, Your Honor. Happy to
10 start with it. We think their motion should just be
11 denied, because, essentially, and I can talk about
12 the details though I don't want to spend a lot of
13 time on it so that we can get to the evidence.

14 All of their arguments go to the weight to
15 be afforded to our expert's testimony and opinions.
16 None of it goes to admissibility.

17 So, I heard Mr. Ayers talk about lots of
18 different issues. All of which may be appropriate
19 subjects for cross-examination of our experts.

20 They have experts who say, you know, for
21 instance, you shouldn't use the efficiency gap if
22 the state has a too small number of districts, and
23 there's people can debate that issue and the experts
24 can offer their differing opinions on it, but it all
25 goes to the weight of the testimony. None of that

1 goes to whether that evidence is admissible under
2 Daubert.

3 So, we would not accept the notion that the
4 court -- I'm not quite sure I followed that sort of
5 large proffer idea exactly, but we just think that
6 they filed a Daubert motion.

7 We filed an opposition. We don't think
8 that there's any basis to exclude to hold
9 inadmissible any of our expert testimony, so we ask
10 that the motion just be denied, be denied out right.

11 Like I said, I'm planning to be very brief.
12 They make two main arguments, one regarding the
13 guidelines and the other regarding the efficiency
14 gap.

15 The guidelines for Congressional
16 redistricting were adopted by the joint
17 redistricting advisory group, which included members
18 from both chambers of the Legislature, so members of
19 the House and Senators.

20 Those guidelines were then accepted and
21 used during the redistricting process in both the
22 House and the Senate.

23 The guidelines were formally adopted by the
24 House, and they were discussed at some length and
25 acknowledged repeatedly on the record during the

1 Senate proceedings.

2 The criteria in the guidelines also many of
3 them are very traditional redistricting criteria
4 that I believe are used in every state in the
5 country, things, like, the district should be
6 compact, so they should look more like a circle and
7 less like a dragon, right?

8 You shouldn't split counties except when
9 necessary to preserve equal population. You should
10 hold precincts, voter tabulation districts, whole to
11 the extent possible.

12 You should respect the State's communities
13 of interest.

14 These are traditional redistricting
15 principles that are in, not only the Kansas
16 guidelines, but that are recognized and used in
17 redistricting, I believe, everywhere. And they were
18 used here.

19 Our experts will -- well, they were pointed
20 to here by people in the Legislature. Our experts
21 will testify that, in fact, the enacted map, the Ad
22 Astra 2 map subordinates the criteria in the
23 guidelines in favor in pursuit of partisan
24 republican advantage.

25 That will be the sort of main thrust of the

1 expert's testimony. And that testimony goes
2 directly to intent to the Legislature's intent in
3 disregarding, discarding the adopted criteria in the
4 guidelines instead to seek partisan republican
5 advantage.

6 And that is testimony that has been offered
7 and admitted and, in fact, adopted by courts around
8 the country including in states that like Kansas
9 don't have the criteria in their Constitution or a
10 statute necessarily, but these criteria are simply
11 adopted by either the Redistricting Committees or,
12 you know, bodies similar to the advisory group.

13 That was the case in Pennsylvania, in North
14 Carolina, states where our experts have testified.
15 And as I say their testimony was admitted and
16 adopted by the courts.

17 And, on the efficiency gap, just very
18 briefly, it's been around for years, seven or eight
19 years. It's the subject of peer reviewed published
20 literature.

21 It's been, again, not only admitted but
22 accepted and adopted and relied upon by courts
23 around the country in other cases raising claims
24 similar to those here.

25 So, the efficiency gap is an established

1 and reliable measure. Any question about the
2 propriety of using the efficiency gap in a state
3 like Kansas has only four districts, again,
4 appropriate topic for cross-examination.

5 The defendants have an expert who will
6 speak to it, but it doesn't go to the admissibility
7 of the opinions of the testimony.

8 And then just very briefly, Mr. Ayers
9 mentioned our experts use statewide elections,
10 recent statewide elections to measure the
11 partisanship of districts.

12 I think Mr. Ayers said that that is not
13 commonly done. In fact, it is. I believe all of
14 the experts including theirs will testify that using
15 the statewide elections to measure the partisanship
16 of districts is the common and accepted practice
17 under both academics, political scientists, who
18 study and teach about this stuff but also by
19 practitioners, actual map drawers.

20 They use recent statewide elections
21 primarily to measure the projected partisanship of
22 the districts.

23 So, I wanted to make sure I correct the
24 record on that. And unless there are any questions,
25 we would ask that their Daubert motion be denied in

1 full.

2 THE COURT: I do not have any questions at
3 this time, Stanton. Thank you.

4 MR. JONES: Thank you, Your Honor.

5 THE COURT: You're welcome. Gary, do you
6 feel the need to follow-up with anything?

7 MR. AYERS: Nothing more, Your Honor.
8 Thank you.

9 THE COURT: All right. Thank you all. So,
10 of course, the court appreciates the large proffer
11 offer and as you-all are well-aware, the majority of
12 the evidence in this case unless it is specifically
13 excludable for a reason will come in, because that
14 is what the Supreme Court has tasked this court with
15 doing, tasked all of us with doing, to provide a
16 record that they can review.

17 I will, however, take the matter of each
18 individual expert's admissibility, testimony and
19 report, under advisement subject to the renewed
20 objection of the defense for each one that is
21 called, if the defense has any; however, so that
22 everyone knows where the court is on this issue, the
23 court finds that as a general rule its review of the
24 expert testimony that has been submitted in written
25 form would lead this court to believe that the

1 defendant's experts as well as the plaintiffs'
2 experts are indeed experts in this field.

3 Their methodologies may be subject to some
4 questioning. At times the experts themselves point
5 out that there could be some legitimate debate about
6 these issues.

7 So, the court, as a general rule, finds
8 that most of the defense arguments go more to the
9 weight to be given to those testimonies than to it's
10 admissibility but will consider each one on an
11 individual basis.

12 And, Mark, please accept the court's
13 apology, because did you join in with everyone as
14 far as your expert was concerned in Stanton's
15 arguments?

16 MR. JOHNSON: Yes, we did, Your Honor.
17 Thank you for asking.

18 THE COURT: Thank you, sir. All right
19 then. All right. So, the court says, let's get
20 going with the trial, and I am assuming we are ready
21 for opening statements, but if someone has another
22 issue we need to address, please let the court know.
23 Seeing heads shake.

24 MS. BRETT: So, Ms. Khanna is going to be
25 doing the opening statement for the Alonzo and

1 Rivera plaintiffs, but I did want to introduce some
2 of the plaintiffs that are actually in the courtroom
3 today, if that's all right.

4 THE COURT: I would love to meet them.
5 That's why we're here.

6 MS. BRETT: Yes. So, Connie Brown Collins
7 is a founding member and director of the non-profit
8 of Voter Rights Network of Wyandotte County.

9 THE COURT: Stand up, wave at me, do
10 something. Hello.

11 MS. BRETT: She lives not too far from this
12 courthouse. And so under the enacted map, she's
13 going to be moved from District Three to District
14 Two.

15 Sitting next to her is Liz Meitl. She's an
16 educator, lives in Johnson County but works for the
17 Wyandotte County public school.

18 Melinda Lavon over here, also one of the
19 plaintiffs for the Alonzo case. She's a midwife who
20 lives in Lawrence but delivers babies all over the
21 Congressional District Two. And under the enacted
22 map would be moved out from District Two into The
23 Big First.

24 THE COURT: Pause for a moment. Tony, we
25 may have some resources.

1 MR. KAISER: My wife is in Wichita though.

2 MS. BRETT: Fair enough.

3 THE COURT: Go ahead.

4 MS. BRETT: We have Paris Raite and
5 Donnavan Dillon. They're both here for the Rivera
6 team. They're both college students at K.U. in
7 Lawrence and Loud Light fellows and deeply engaged
8 in civic work in Kansas, and like Melinda, because
9 they live in Lawrence, they will be moved into The
10 Big First.

11 And then Faith Rivera is in the courtroom.
12 Faith Rivera is a candidate for House District 37.
13 She lives and works in Wyandotte County, and her
14 house is in what will be Congressional District
15 Three under the enacted plan, but members of the
16 district that she would hope to represent would be
17 split between District Three and District Two.

18 So, these are just a handful of the named
19 plaintiffs. I think there's over 20 of them in the
20 three consolidated cases, are all Kansas voters
21 impacted by the map, and I just wanted to take the
22 opportunity to introduce them. I'll pass it to my
23 colleagues.

24 THE COURT: Thank you, Sharon, and all you
25 plaintiffs are welcome, glad to have you here.

1 MS. KHANNA: Good morning, Your Honor.
2 Abha Khanna on behalf of the Rivera and the Alonzo
3 plaintiffs.

4 When the state republican leaders undertook
5 the last round of Congressional redistricting, they
6 had one overarching ambition in mind, to draw a map
7 that maximized their partisan gain.

8 We know this is true, because they told us
9 that.

10 THE COURT: Oh, I assume we're going to
11 have a slide show presentation with your opening?

12 MS. KHANNA: A very short one, Your Honor.
13 Republican leaders, Your Honor, did not seek to draw
14 a map that best served the interests of all Kansans.

15 Instead as they saw their state becoming
16 more competitive and more diverse, they used the
17 redistricting process as a power grab to silence
18 democratic and minority voters.

19 The evidence and testimony, Your Honor,
20 will hear this week will prove not only that this
21 was their intent but also that they succeeded.

22 They undertook a rushed political process
23 that made outside participation as costly and
24 onerous as possible.

25 They ignored clear and compelling public

1 testimony, both on the ground in the communities
2 they divided and later during the hearings in
3 Topeka.

4 They resorted to unprecedented and abusive
5 tactics to twist every last arm they needed to
6 override the governor's veto.

7 They unnecessarily and conspicuously
8 departed from the traditional configuration of the
9 State's Congressional map. In particular
10 transforming District Two from a near perfect
11 rectangle into a sprawling district with appendages
12 reaching out in multiple directions.

13 They split Wyandotte County, this county,
14 the most racially diverse county in the state in
15 order to prevent minority voters from electing their
16 preferred candidate, carving up the Kansas City
17 metro area for the first time in four decades.

18 And then to prevent those same minority
19 voters from exercising their voting strength in
20 their new district, they scooped blue Lawrence out
21 of the Second District and buried it in the rural
22 Big First drowning out the democratic voters of
23 Lawrence in a sea of red that extended all the way
24 to the Colorado border.

25 They systematically disregarded and divided

1 the State's Native American voters, it's young
2 voters, it's minority voters, all but ensuring that
3 these groups will not be able to make their voices
4 heard in Congress.

5 And all of these decisions conflicted with
6 the guiding principles that they themselves adopted.

7 As Mr. Jones already mentioned, these
8 guidelines are what the legislators decided would
9 guide the process is what they told us, would
10 explain the map. And the fact that these
11 justifications for the map fall away upon even a
12 cursory examination is very telling of their true
13 intent.

14 The guidelines provide that redistricting
15 plans will have neither the purpose nor the effect
16 of diluting minority voting strength.

17 Ad Astra 2 slices and dices the State's
18 minority voters, including and especially in diverse
19 Wyandotte County.

20 The guidelines provide that districts
21 should be as compact as possible, but even a cursory
22 glance at Ad Astra 2 reveals just how contorted the
23 new districts are.

24 The guidelines provide that there should be
25 recognition of communities of interest. The court

1 will hear from the witnesses who will describe the
2 Legislature's utter disregard for the State's urban
3 and minority communities.

4 And, finally, the guidelines provide that
5 the core of the existing Congressional District
6 should be preserved to the extent possible.

7 Ad Astra 2 represents a dramatic departure
8 from the previous map as the Legislature
9 unnecessarily shifted around hundreds of thousands
10 of Kansans.

11 These are traditional neutral criteria that
12 the Legislature itself time and again purported to
13 follow, and their failure to do so is significant
14 evidence of illicit and discriminatory intent.

15 The end result, as our experts will show,
16 is a map that effectively shuts out 40 percent of
17 the State's voters from equal access to the
18 political process.

19 The new Congressional map is not fair, Your
20 Honor, but that is not why we're here. The fault of
21 this map go well beyond fairness.

22 Ad Astra 2 represents an intentional and
23 successful effort to dilute the votes of the State's
24 democratic and minority voters and deny them equal
25 voting strength, and that violates the Kansas

1 Constitution.

2 The State Constitution guarantees rights
3 that are more robust and more protective than its
4 federal counter-part. This includes, in the words
5 of the Kansas Supreme Court, each citizen's right to
6 equal power and influence in the making of laws
7 which govern him.

8 Partisan gerrymandering is flatly
9 inconsistent with these Constitutional guarantees.
10 The right to equal protection under law and the
11 right to vote, do not permit the dilution of
12 citizen's voting power based on their political
13 affiliations.

14 The rights of free speech and assembly do
15 not permit targeting democratic voters for their
16 political viewpoint and curtailing their ability to
17 ban together to elect their candidates of choice.

18 The Kansas Constitution does not permit the
19 dilution of minority voting strength, intentional or
20 otherwise.

21 The overwhelming evidence will establish
22 that discriminatory intent and disparate impact
23 define Ad Astra 2.

24 It is thus hardly surprising that the
25 defendant's primary argument is to try to convince

1 this court to close its eyes and ears to the facts
2 and data and conclude that the court's hands are
3 tied, that it has no authority to even hear this
4 case, let alone to remedy Plaintiffs' Constitutional
5 injuries, but both the law and the facts are clear.

6 The new Congressional map violates the
7 Kansas Constitution, and that is why we are here.

8 So, the only question remaining, Your
9 Honor, is who will right this wrong?

10 The Legislature had every opportunity to
11 draw a new map that protected Kansas voters and
12 safeguarded their Constitutional rights, but they
13 affirmatively chose not do so.

14 Governor Kelly did her part by vetoing what
15 she recognized as an unlawful map but that wasn't
16 enough.

17 The Federal Courts can't help.

18 The United States Supreme Court has shut
19 the Federal Courthouse doors to partisan
20 gerrymandering claims. Even though it is recognized
21 that partisan gerrymandering is incompatible with
22 democratic principles and that such claims should
23 not be left to echo into a void.

24 And, so it falls to Kansas Courts to this
25 Court to serve as the bulwark that protects ordinary

1 Kansans from the unfair, undemocratic, and unlawful
2 gerrymandering that dilutes their right to vote.

3 And to provide that remedy, plaintiffs ask,
4 Your Honor, to do what judges do every day, listen
5 to witnesses, consider the experts, weigh the
6 evidence, and render a judgment. It is a
7 responsibility this court can and must take on.

8 Thank the court for its time, and we look
9 forward to proving our case.

10 THE COURT: Thank you.

11 MS. KHANNA: Your Honor, I do have hard
12 copies of some of the slides that I showed if you
13 would like a copy of the court or for closing,
14 counsel.

15 THE COURT: The court does not at this
16 time. Tony can speak for himself. Hard copies of
17 any of the slides that Abha has shown?

18 MR. RUPP: No objection.

19 THE COURT: I think she wanted to know if
20 you need one.

21 MR. RUPP: I don't need one for opening.

22 THE COURT: All right. Thank you. Mark?

23 MR. JOHNSON: Thank you, Your Honor. May
24 it please the Court, I've been teaching a course on
25 the First Amendment to K.U. undergraduates since

1 2008, and by the way, you K.U. undergraduates you
2 are welcome to take my course, journalism 618.

3 I've also served as a member of the board
4 of the university Daily Kansan, the student
5 newspaper. From these experiences I've learned a
6 lot from student journalists.

7 One thing I've learned is that the old saw
8 about what every story should have, the five W's and
9 an H is absolutely true. Who? What? Where? When?
10 Why? And how?

11 I've learned that this is when we lawyers
12 should tell the fact-finder, whether it be a jury or
13 a judge. Tell them the story. That's what the
14 plaintiffs in these three cases are doing, telling
15 you a story.

16 The who, what, where, when, why, and how of
17 the 2022 Congressional redistricting in Kansas.

18 The what is the map. You saw that a moment
19 ago. All you have to do is look at the map to see
20 what was done.

21 Where was it done? Not where it should
22 have been done. Not during the listening tour when
23 the redistricting committee traveled the state
24 supposedly to listen to the voters. Not in the open
25 hearings of the redistricting committee. Not in the

1 testimony offered by witnesses at the redistricting
2 committee.

3 The where was behind close doors out of
4 public view.

5 Who did it? Not the whole redistricting
6 committee. Not any of the democratic members of the
7 committee who first saw the map when it was handed
8 out by the majority a finished product.

9 When was it done? Certainly before it was
10 handed out to the committee in January. Not during
11 or after the subsequent committee hearings, which
12 had no effect on the map, which went unchanged.

13 How was it done? By manipulating the map
14 of Kansas to draw district lines that favored one
15 party over another.

16 But it's the why that really matters. So,
17 why was it done? Listen to and watch the public
18 statement you just saw a moment ago made by the
19 president of the Kansas Senate in September of 2020.

20 Who is the president of the Senate? The
21 leader of the majority of the party. The person who
22 speaks for the party she leads. The person who
23 articulates the goals of the majority party.

24 And the goal President Susan Wagle
25 announced was drawing the Congressional Districts so

1 republicans would win all four seats in Congress to
2 which Kansans send their representatives. That was
3 the goal. All four. That is the why.

4 And the why shows that the district lines
5 were not an accident. They were intentional. The
6 Legislature ignored its own rules, the redistricting
7 guidelines, because to follow them would have meant
8 that the majority could not attain their goal of
9 getting all four seats.

10 The listening tour was going through the
11 motions. Adopting the guidelines was going through
12 the motions. The hearings before the Redistricting
13 Committee were going through the motions.

14 Who? What? Where? When? Why? And how?
15 It's a good story.

16 THE COURT: Thank you, Mark. Now, Tony.

17 MR. RUPP: All right. Thank you, Your
18 Honor. It's my honor and privilege to represent the
19 Secretary of State and Election Commissioner Abbott
20 here today.

21 It didn't take long for a comment of a
22 former member of the Senate to be played. That
23 former member of the Senate was not a member of the
24 Senate when this Senate voted, when this Senate
25 adopted. She was gone. She was a candidate for the

1 United States Senate at the time trying to gather
2 votes in a republican primary against lots of folks.

3 She didn't have anything to do with the Ad
4 Astra 2 plan.

5 We're going hear later today I think from
6 one of the plaintiffs' witnesses Senator Ethan
7 Corson who was on the Senate Redistricting
8 Committee. He's going to say he's never met Senator
9 Wagle. She wasn't involved.

10 So, that's a starting point. Now, in
11 addition, if this concept was -- if the concept of
12 the Legislature was to create four districts that
13 the republicans couldn't win, they did a poor job of
14 it.

15 The votes -- their experts will say that in
16 Kansas Congressional elections, the 55 percent of
17 the votes statewide go to republican candidates.
18 Forty percent of the votes statewide go to
19 democratic candidates.

20 It would be real easy to split up four
21 districts into four republican dominated districts,
22 and that's the concept of a gerrymander is to crack
23 or dilute the votes in one area or pack, overload
24 the votes in another area so as to completely block
25 the minority from having any chance of getting a

1 candidate elected.

2 That is not what happened here. In fact,
3 while the Third District has changed, because the
4 census requires it to do so.

5 According to the website of one of the
6 advocacy groups that's providing plaintiffs' counsel
7 in this lawsuit, the Third District is a democratic
8 lien and 62 percent of the time it anticipates that
9 the democrat will win in the Third District
10 Congressional race.

11 They're not -- there cannot be an illegal
12 gerrymander if the party allegedly being cracked has
13 a 62 percent chance of having its candidate elected;
14 however, it is not the requirement for the Kansas
15 Legislature to guarantee a democratic win in any one
16 district or in all of the districts.

17 In fact, when Abha mentions the 40 percent
18 who are being left behind, if you have 40 percent
19 votes in an election and the other side has 55
20 percent votes, there's a general consequence to
21 that.

22 Now, I'm going to show some slides here. I
23 hope it's not too slow. So, let's go to the first
24 one here. So, these are all census driven
25 decisions, Your Honor.

1 The growth in the state is in the east.
2 There's population decline in rural Kansas.
3 Wyandotte County has grown and Johnson County has
4 become the population and economic hub of Kansas
5 with much of that growth coming in the south part of
6 Johnson County.

7 So, this case calls upon the court to
8 answer two questions. Does the Kansas Constitution
9 prohibit the Kansas Legislature from exercising its
10 Legislative judgment to keep Johnson County whole in
11 one Congressional District, because we're going to
12 show you, Your Honor, that Johnson and Wyandotte
13 County want to be together and mathematically that's
14 not possible under the census.

15 And the second question is does the Kansas
16 Constitution prohibit the Kansas Legislature from
17 exercising its Legislative judgment to include
18 Douglas County in the first district?

19 And the answer to each of those questions
20 is it does not.

21 So, this is not a state with 20
22 Congressional Districts. It is a state with four.

23 Jamie, could you call up the enacted map?
24 And, if I may step over here, in the new Third
25 District, there are Wyandotte County and Johnson

1 County have too many people to be whole in one
2 district. Nobody wanted Wyandotte County to be
3 separated from Johnson county. Across the board in
4 the listening tour in the Senate, otherwise, folks
5 wanted those two districts or those two counties to
6 be together.

7 Lots of folks on the listening tour were
8 really concerned that Wyandotte County would be sent
9 out the First District and to a lesser extent they
10 were concerned that it would go to the Second
11 District.

12 So, you had four choices if you're the
13 Legislature. You could separate Wyandotte County
14 and put it as a whole. You could keep it together
15 as a whole, but you would have to move it either
16 into the first or second district to be contiguous.

17 You could keep Johnson County together and
18 Wyandotte County together as a whole and move
19 Johnson County and Wyandotte County out of the same
20 district but nobody wanted that to happen, nobody in
21 Wyandotte County nobody in Johnson county. People
22 wanted as much of that to be together as they could.
23 The Legislature accommodated that.

24 Or you could keep Johnson County together
25 and split Wyandotte County or you could put

1 Wyandotte County together and split Johnson County,
2 and the Legislature accommodated that. They made
3 the decision to keep Johnson County whole and split
4 Wyandotte County, rather than doing any of the other
5 options.

6 And the question is does that violate this
7 Constitution of the State of Kansas? And the answer
8 is it does not.

9 As Senator Sykes, the democratic Senator
10 from Lenexa, has indicated county splits are
11 unavoidable when drawing a Congressional map. You
12 can't do it.

13 So, how could the Legislature add more
14 population to the underpopulated first, and how
15 could the Legislature divide the overpopulated
16 third?

17 Those were the questions that the
18 Legislature was faced with.

19 So, this is not -- let's go to the next
20 slide. At the end of today this case is not about
21 lay testimony, about map preferences, or communities
22 of interest.

23 Such second-guessing is really a collateral
24 attack on the sound discretion entrusted to the
25 Legislature; and it's not really about political

1 scientists opining on ecological inferences or
2 efficiency gaps.

3 The plaintiffs here would ask the court to
4 pack the republicans in the First District, so they
5 can keep democrats in the second and third and this
6 is a question of Legislative judgment; and by the
7 way, it's inappropriate to pack all the republicans
8 in the first district. That's packing and that's
9 doesn't work either.

10 Let's go back to 2012. In 2012, the
11 Legislature was unable to agree on a map and under
12 the law that placed it in the Federal Court's hands
13 to create both the Senate and House Districts in
14 Kansas and the Congressional District, the four
15 Congressional Districts; and the court noted that it
16 entered that fray reluctantly.

17 It got into that political thicket
18 reluctantly only because the Legislature failed to
19 do its job and pass a map.

20 This Legislature did its job and passed a
21 map, and they did it overwhelmingly with the voice
22 of the voters.

23 There have been five elections in each of
24 those four districts. A total of 20 elections under
25 maps generated by a three judge panel of the Federal

1 Court in Kansas. Nobody is here arguing that those
2 are unfair maps.

3 Of those 20 elections 18 of those have been
4 won by republicans. Two have been won by democrats.
5 Both in the Third Congressional District.

6 The fact is, Your Honor, if 55 percent of
7 the voters in Kansas vote for republican
8 Congressional candidates, that's what you're going
9 to end up with.

10 Now, I will say there's a technicality
11 here. There's actually been 19 elections in that
12 time period, because there was a special election in
13 the Fourth District.

14 That really doesn't count in terms of the
15 stats, but 19 times out of 21 the republicans have
16 won under the map created by the Federal Court in
17 Kansas.

18 We're going to talk a lot about in this
19 case about communities of interest. Is Wyandotte
20 County a community of interest? Sure. Nobody would
21 despise that. There's a lot, I mean, within the
22 county, no question. Everybody would love to keep
23 Wyandotte County together as a community of
24 interest.

25 Is Johnson County a community of interest?

1 Undoubtedly. Nobody would despite that Johnson
2 County is a community of interest.

3 Collectively are they a community of
4 interest? Everybody would have loved to have been
5 able to keep Johnson County and Wyandotte County
6 together as they have been for the most part.

7 There are similarities and differences
8 between the two, but this Legislature tried to hold
9 much of Wyandotte County and Johnson County
10 together.

11 So, I want to talk to you a little bit
12 about the role of the Legislature. Per the United
13 States Constitution, the enactment of the map is
14 entrusted to the Legislature. Legislatures are by
15 their nature partisans.

16 The Kansas voters elect the Legislature.
17 They're close to the voters. They're -- with all
18 due respect -- the plaintiffs had a chance to choose
19 which of the 105 counties they wanted to sue in,
20 they chose Wyandotte County.

21 They can sue the election commissioner or
22 the county clerk in each of the 105 counties. They
23 chose to be here.

24 Kansas voters have overwhelmingly elected
25 republicans to the Legislature. This Legislature

1 supported the enacted plan. Checks and balances
2 exist. The law in Kansas allows the Legislature to
3 pass a map. There is a check and a balance in that
4 the Governor can veto that map.

5 And then there's a further check and
6 balance consistent with the democratic process that
7 the elected legislature can override the veto.

8 That's consistent with the role of the
9 Legislature everywhere in this country.

10 So, what do we know about the new enacted
11 map? Just a second. So, what do we know about the
12 newly enacted map?

13 Let's go first to the Campaign Legal
14 Center. Those are the plaintiffs' lawyers in this
15 case or among the plaintiffs' lawyers in this case.
16 That's the wrong one. There we go. Third one down.

17 So, they say that there is a -- in the
18 Third Congressional District, the rest of the state
19 is identified as red. The Third District is
20 identified as blue with a 62 percent chance of a
21 democratic win. That's not cracking. That's not
22 packing.

23 So, the first witness that the plaintiffs
24 are going to call out of the box is Professor
25 Rodden. Let's go to Figure 19 from his report.

1 MR. AYERS: That's a little delayed, Tony.

2 MR. RUPP: I understand. So, let's go down
3 here. What this map shows is various elections and
4 how they would turn out, and Mr. Ayers is going to
5 cross-examine Professor Rodden on this a little bit,
6 but these are various different elections.

7 And it shows by the plaintiffs' experts
8 calculation how various elections would have come
9 out in the First, Second, Third and Fourth
10 Congressional District. And let's take a look, for
11 example, the top one here is the Governor's race in
12 2018.

13 It shows based on the Plaintiffs' own
14 expert that in the Third District the new Third
15 District, this is the enacted plan, in the new Third
16 District, Governor Kelly would have won handily.

17 From the new Second District, Governor
18 Kelly would have won handily.

19 In the new Fourth District, it would have
20 been 50-50.

21 And in the new First District it wouldn't
22 make, I mean, the republican would have won but not
23 by a lot.

24 It all depends on the quality of the
25 candidate, but this is illustrative of the fact that

1 this Third District has certainly not been written
2 off nor has the Second to the possibility or to the
3 reasonable possibility of democrats winning
4 elections based on local issues. And as various
5 witnesses will testify all politics is local.

6 I would also -- let's go the back to the
7 slide and to the Rodden quotation. So, what the
8 plaintiff's expert Rodden, first witness out of the
9 box, will say while the District Three -- while
10 District Three, that's the Third Congressional
11 District -- under the enacted plan is quite
12 competitive, Figure 19 demonstrates that District
13 Three is considerably more democratic in one of the
14 plans that he'd like to propose than it is under the
15 plan that the elected members of the Legislature
16 chose.

17 Your Honor, this is not a 4-0 situation.
18 This is a situation when the plaintiffs own lawyers
19 on their website list a 62 percent chance of a
20 democratic win and when their own experts say this
21 is a highly competitive district.

22 Let's skip ahead two slides now since we've
23 got an objection on that one. So, let's go to the
24 next one. So, what are the benefits of this map?
25 You heard plaintiffs' counsel in opening statement

1 talk about wanting to limit the number of county
2 splits. There are four. This is incredibly good in
3 terms of limiting number of county splits.

4 You've got splits in four counties is all
5 and as a Senator Sykes says it's inevitable to have
6 splits.

7 The First District contains the University
8 of Kansas. Strike that.

9 With regard to Douglas and Wyandotte
10 County, they are divided along natural and
11 geographic barriers such as highways and rivers.
12 That's one thing that everybody in the redistricting
13 world suggest that you do, have, you know, use
14 natural barriers. If you have to split a county,
15 that's the way to do it.

16 The First District contains the State's two
17 major research universities. I think the Court's
18 aware, but the concept of a research university is
19 that they go before the Federal Government.

20 Their Congress people go before the Federal
21 Government and help get federal research dollars
22 sent to those universities.

23 K.U. and K-State are the two major research
24 institutions in the State of Kansas. They used to
25 be together in the Second District. Manhattan

1 wasn't too happy to get separated 10 years ago by
2 the Federal Court, but the fact that you have to
3 keep expanding the First District, because of
4 population loss means that you have to add
5 population there.

6 The Second District includes several
7 military installations including most of Fort Riley,
8 Fort Leavenworth, Forbes Field, and the Kansas
9 National Guard.

10 It makes logical sense for all of those
11 entities to have one Congressman representing them
12 in Congress.

13 The Third District keeps Johnson County
14 together. Now, we're going to talk a little bit
15 more about that in a second, but every decision on
16 this map stems from the Legislative decision in this
17 Catch-22 where you can't keep Johnson and Wyandotte
18 County together in the whole.

19 Every decision on this map really stems
20 from that. The Third District keeps Johnson County
21 together, and that's a reasonable and certainly not
22 an unconstitutional decision.

23 And the Fourth District includes Wichita
24 and the surrounding communities.

25 So, let's talk about Johnson County. Under

1 the Constitution, this is all driven by census, one
2 person one vote. There has to be -- a vote in the
3 Third District needs to count exactly the same as a
4 vote in the Second District and giving one person
5 one vote, this divides four counties to the person,
6 four districts to the person equally. That's
7 perfect.

8 So, Johnson County since the last census 10
9 years ago grew by 78,000 people.

10 The State of Kansas, when you take in the
11 losses in the west and the gains in several cities
12 including Wyandotte County, the State of Kansas grew
13 by 84,000 people.

14 Johnson County ultimately accounted for
15 78,000 of the 84,000 people. It has eight of the 10
16 fastest growing cities in Johnson County or in the
17 state.

18 Eight of the State's 10 fastest growing
19 cities are in Johnson County.

20 Ten years from now when we're before --
21 I'll be 74. I'm going to be on a beach, but 10
22 years from now when the Legislature is facing this
23 situation, if Johnson County continues its growth
24 and the rest of the state continues to shrink,
25 there's going to be a legitimate question should

1 Johnson County be its own Congressional District,
2 and that will be for them to decide, and they'll be
3 allowed to make that decision. That's not an
4 unconstitutional decision.

5 Much of the growth is in south Johnson
6 County. The intermodel facility in south Johnson
7 County is not only a significant intermodel facility
8 within Kansas, it's one of the largest intermodel
9 facilities in North America.

10 The airports in Johnson County are in the
11 south side. There is a strong desire to keep
12 Johnson County together, and that was universally
13 true.

14 Well, that was mostly true among the
15 Johnson County Legislative delegation, and we're
16 going to show you some testimony or some comments by
17 some Johnson County legislators on that point.

18 It was also a point of emphasis for the
19 Johnson County Chambers of Commerce to keep Johnson
20 County together, and so, Jamie, if you could put
21 that up. This is an exhibit that's been admitted
22 into evidence.

23 Could you show what it is. There we go.
24 So, this is the 2023 Johnson County public policy
25 state legislative platform. If we could go to the

1 last page to see who this is page 4. So, the
2 Johnson County Public Policy Council is made up of
3 the Greater Kansas City Chamber of Commerce.

4 There are three chambers that fall in the
5 south part of Johnson County, Gardner, Edgerton,
6 Spring Hill, and, well, maybe it's just those two.
7 You've got the Overland Park Chamber of Commerce,
8 the Olathe Chamber of Commerce, the Leawood Chamber
9 of Commerce, De Soto, Shawnee, et cetera.

10 So, let's go back to page 2. What was the
11 position of the Johnson County Public Policy
12 Council, says the Johnson County Public Policy
13 Council was created to speak as one unified voice on
14 behalf of 10 local chambers and the more than 5,000
15 Johnson County businesses they collectively
16 represent.

17 And what did it say, The council supports a
18 transparent Legislative redistricting process that
19 strives to respect communities of common interest,
20 contiguity, and compactness, including maintaining
21 Johnson County in its entirety within one
22 Congressional District.

23 Your Honor, the decision to keep Johnson
24 County in one Congressional District is a
25 Legislative judgment supported by great reasons and

1 it is not unconstitutional.

2 The next decision or let's talk now
3 Wyandotte County. It has a history of being tied to
4 Johnson County and much of it still is, but in terms
5 of weighing how it is tied to Johnson County, there
6 are economic differences, there are social
7 differences, there are political differences.

8 Johnson County has 185,000 republican
9 voters, 135,000 democratic voters, and 117,000
10 unaffiliated voters.

11 Wyandotte County is mostly democrats.
12 There are vast differences between the social,
13 economic, and political communities of interest in
14 Wyandotte County and Johnson County.

15 This Legislature did what it could faced
16 with the Catch-22 of the fact that you can't keep
17 both and folks in Wyandotte County didn't want to go
18 west, if they could avoid it.

19 Folks in Johnson County wanted to stay
20 together with as much of Wyandotte County as they
21 could.

22 And this Legislature, frankly, accommodated
23 those desires. There is no evidence in this case of
24 racial intent -- going to be lots of testimony of
25 that.

1 So, let's talk about the minority
2 percentages in the new Second. A portion of
3 Wyandotte County was moved to the Second. Nobody is
4 going to disagree that with joining Leavenworth and
5 Topeka, the percentage of minority voters in the new
6 Second is very close statistically to the percentage
7 of minority voters in the old Congressional District
8 Three. The percentages haven't changed.

9 The difference is that the plaintiffs
10 contend that the white voters are different in the
11 Second District than the white voters are in Johnson
12 County.

13 I don't know if that's true or false, and I
14 imagine everybody in this room has an opinion on
15 that, but that is not racial gerrymandering. You
16 don't get to pick your white voters.

17 He hasn't formed an opinion or the
18 plaintiffs' expert on this issue, Loren Collingwood,
19 certainly has not formed an opinion that the
20 differences that cause crossover voting are in any
21 way race based.

22 So, one of the things that he's going to
23 talk about is what's called racially polarized
24 voting. Let's go to that. So, racially polarized
25 voting is terminology that does not come from the

1 Kansas Constitution but rather from a federal or
2 specific Federal Statute, the Voting Rights Act.

3 So, Professor Collingwood has written a lot
4 on this topic, and what a voting right, and he's a
5 democratic voting rights activist. And he's going
6 to testify, and he's written about what you must
7 prove under the Voting Rights Act to prove
8 impermissible racially polarized voting.

9 And, so let's just play the clip.

10 Sorry, a moment.

11 THE COURT: No rush Tony. I also have
12 other I.T. people if your I.T. person wishes any
13 help.

14 MR. RUPP: Hopefully we won't need to do it
15 in the middle of opening.

16 THE PARALEGAL: The sound is not coming on.

17 MR. RUPP: Well, I'll tell you what, we'll
18 move on. So, what he says is that in order to prove
19 impermissible racial block voting or racially
20 polarized voting, he acknowledges, which is the law,
21 that the majority votes as a block to prevent the
22 election of minority preferred candidates.

23 Now, the concept under the Voting Rights
24 Act is that we shouldn't -- that we don't want to be
25 able the prevent particularly in districts where the

1 majority of a population in the whole Congressional
2 District is minority, you don't want somebody to
3 come in and break it up so that the majority
4 minority district, you know, in other words
5 minorities make up the majority of the Congressional
6 District is cracked to prevent the election of
7 candidates that the majority in that district really
8 want to have elected.

9 Because there is not a majority minority
10 district in Kansas, and you can't come close in
11 Kansas, what he acknowledges he means here is that
12 minority preferred candidates, he's talking about
13 democrats.

14 And he agrees there is no quantitative
15 established standard by which this can be measured,
16 and he agrees there's no relevant burden of proof
17 under the Kansas Constitution.

18 Now, this afternoon, let's go to this, one
19 of the witnesses who you'll hear from on the
20 Plaintiffs' side is Senator Ethan Corson, very nice
21 young man, former executive director of the Kansas
22 Democratic Party, very open about the fact that he's
23 worked hard to get Representative Davids elected,
24 used to be a voting rights plaintiffs' lawyer with
25 Arnold & Porter where he was a colleague of Mr.

1 Jones.

2 What he talks about, I mean, he's going to
3 talk about a lot of things, but certainly in answer
4 to my questions, he certainly acknowledges that the
5 people's votes change all the way up and down
6 tickets.

7 There are difference in the Kansas Senate
8 and House races from how people vote in other
9 elections. There are voting behavior changes that
10 occur all the time. The quality of the candidate
11 makes a huge difference.

12 In the Third District, the Third District
13 has twice elected Sharice Davids. In the 2018 race
14 school finance was a gigantic issue for Johnson
15 County voters.

16 And he acknowledges that unlike every other
17 democratic Congressional candidate in the State of
18 Kansas, Representative Davids was endorsed by the
19 United States Chamber of Commerce.

20 If there's anything that would cause
21 crossover voting, that would seem to be a pretty
22 good reason to do it.

23 Your Honor, in America in 2022, there is a
24 partisan divide but nothing in the Constitution says
25 that republicans and democrats have to agree on

1 everything.

2 The nature of a democracy is that the voice
3 of the voters is reflected in their elected
4 representatives. The votes here were party line
5 votes. That doesn't make them unconstitutional or
6 illegal.

7 There are, essentially, two decisions at
8 issue here, doesn't take six experts to figure it
9 out. Is the Legislative judgment to keep Johnson
10 County whole and split Wyandotte County, does that
11 violate the United States Constitution or the
12 Constitution of the State of Kansas under the
13 circumstances where you want to keep them together
14 and you can't keep them together in there
15 completely?

16 And is the decision to, in a situation
17 where the First District has lost population and
18 unquestionably has to move east, is the decision to
19 place liberal, I mean, there is a Liberal, and
20 Lawrence is more liberal, but into the First
21 District and reunite them with Manhattan, put them
22 in the district with the forts, et cetera, is that
23 an unconstitutional decision or a matter of
24 Legislative judgment and the answer is a simple one.

25 It is a legitimate Legislative decision.

1 It ought not be collaterally attacked. Everything
2 flows from those two decisions. It doesn't flow
3 from concentric circles. It doesn't flow from
4 efficiency gaps. It doesn't flow from any invalid
5 intent.

6 It is all based on two very legitimate
7 Legislative decisions.

8 And at the conclusion of this case, Your
9 Honor, we're going to ask you to deny the
10 plaintiffs' motions and to enter judgment in favor
11 of the defendants, stay out of the political
12 thicket, and support -- do not disenfranchise the
13 elected representatives who were elected to the
14 State of Kansas to do what the United States
15 Constitution requires and place into the hands of
16 the State Legislature the decision of the
17 Congressional map. Any questions?

18 THE COURT: I don't have any, Tony. Thank
19 you.

20 MR. RUPP: Thank you, Your Honor. Thank
21 you for the time.

22 THE COURT: You are very welcome. All
23 right, counsel. We're going to take a break for a
24 moment or for everybody who wants the take a break.
25 So you all get back in let's talk about how we

1 proceed from here.

2 So Dr. Rodden is still your first witness?
3 I think it's probably safe to say you need to
4 rearrange his flight, and now let's figure out what
5 we're going to do.

6 We'll take a 15-minute break, and we'll
7 start at 11:30, and then someone give me some
8 guidance about how long the plaintiffs' examination
9 of Dr. Rodden will take.

10 MS. BRETT: We were going to make the
11 suggestion to the Court to actually take the lunch
12 break right now so that when we come back from that
13 we can move straight through Dr. Rodden's testimony.

14 THE COURT: Tony?

15 MR. RUPP: Your discretion, Your Honor.

16 THE COURT: Well, I'm trying to abuse it as
17 much as possible but this is an easy one. All
18 right, everyone. Then let's do this. Let's take an
19 hour for lunch. So, it's -- we'll call it 11:20 at
20 this time. So, this will be non-traditional.

21 Can we start at 12:20? Does that work for
22 everyone? Seeing no lawyers saying no, see you-all
23 back here at 12:20. Remember what I told you,
24 though, please be in here by then if you want to be
25 in here. No one can come in late. Thank, you-all.

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C E R T I F I C A T E

STATE OF KANSAS)
) SS:
COUNTY OF WYANDOTTE)

I, ROSEMARIE A. VIETH, a Certified Court Reporter, and regularly appointed, qualified, and acting official reporter of Division 6 of the 29th Judicial District of the State of Kansas, do hereby certify that as such official reporter I was present at and reported in stenotype shorthand the above and foregoing proceedings FAITH RIVERA, ET AL, VS. SCOTT SCHWAB, CASE NO. 2022-CV-89, heard on April 4, 2022, before the HONORABLE BILL KLAPPER, Judge of said court.

I further certify that a transcript of my shorthand notes was prepared; and that the foregoing transcript, consisting of 76 pages, is a true record of all the proceedings.

SIGNED AND ELECTRONICALLY FILED WITH THE CLERK OF THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS, this 4th day of April, 2022.

/s/Rosemarie A. Vieth
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