

1 APPEARANCES CONTINUED:

2 AND

3 The plaintiffs, THOMAS ALONZO, et al., appeared
4 in person and by SHARON BRETT, JOSH PIERSON, KAYLA
5 DELOACH, American Civil Liberties Union Foundation
6 of Kansas, 6701 West 64th Street, Suite 210,
7 Overland Park, KS 66202.

8 AND

9 MARK P. GABER, KEVIN HANCOCK, SAM HORAN,
10 CHRISTOPHER LAMAR, AND ORION DE NEVERS, Attorneys at
11 Law, Campaign Legal Center, 1101 14th Street, NW,
12 Suite 400, Washington, D.C. 20005.

13 ELISABETH S. THEODORE, R. STANTON JONES, JOHN A.
14 FREEMAN, Attorneys at Law, Arnold & Porter Kaye
15 Scholer, LLP, 601 Massachusetts Avenue, NW,
16 Washington, D.C., 20001.

17 AND

18 RICK REHORN, Attorney at Law, Tomasic & Rehorn,
19 P.O. Box 171855, Kansas City, KS 66117-0855.

20 The plaintiffs, SUSAN FRICK, et al., appeared in
21 person and by MARK P. JOHNSON, STEPHEN R.
22 MCALLISTER, AND CURTIS E. WOODS, Attorneys at Law,
23 Dentons US LLP, 4520 Main Street, Suite 1100, Kansas
24 City, MO 64111-7700.

25

1 APPEARANCES CONTINUED:

2 The defendants, SCOTT SCHWAB AND MICHAEL ABBOTT,
3 appeared in person and by ANTHONY F. RUPP, Attorney
4 at Law, Foulston Siefkin, LLP, 32 Corporate Woods,
5 9225 Indian Creek Parkway #600, Overland Park, KS
6 66210-2000.

7 AND

8 GARY AYERS AND CLAYTON KAISER, Attorneys at Law,
9 1551 N. Waterfront Parkway, Suite 100, Wichita, KS
10 67206-4466.

11 AND

12 OFFICE OF ATTORNEY GENERAL DEREK SCHMIDT
13 BRANT M. LAUE, SHANNON GRAMMEL, KURTIS WIARD, DWIGHT
14 CARSWELL, Memorial Building, 2nd Floor, 120 SW 10th
15 Avenue, Topeka, KS 66612-1567.

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1 THE COURT: Back on the record in the same
2 case that we have spent the last four days on. We
3 are now ready for closing comments when you're
4 ready.

5 MS. BRETT: Thank you, Your Honor. Sharon
6 Brett from the ACLU of Kansas on behalf of the
7 Alonzo and Rivera plaintiffs.

8 This is a case brought on behalf of Kansas
9 voters, Kansans who want to have their political
10 voices heard, Kansans who care deeply about issues
11 that are legislated at the federal level like
12 healthcare, infrastructure, and economic
13 opportunity.

14 They want to be able to work with their
15 communities to elect the representatives of their
16 choice, and they want to ensure that their
17 Constitutional rights to assemble, instruct their
18 representatives, and exercise their political power
19 are preserved for the next 10 years, but the
20 overwhelming evidence presented over the last week
21 makes clear that the Congressional map rushed
22 through the Legislature this winter Ad Astra 2
23 tramples on those rights.

24 The map intentionally and purposefully
25 silences the voices of the 20 some odd plaintiffs in

1 these three cases who represent over one million
2 voters. It's silences these voices, because they
3 belong to registered democrats and for many of them
4 because they come from minority communities in
5 Wyandotte County.

6 Six separate experts showed by a host of
7 different mathematical and statistical measures that
8 the enacted Congressional map intentionally and
9 effectively discriminates against voters in two
10 independent and invidious ways: One targeting
11 democrats and the other targeting racial minorities.

12 Ad Astra 2 was passed in through a rushed
13 circus like charade that concluded with the
14 gubernatorial override vote that was exclusively
15 supported by republicans.

16 Legislative leadership directed republicans
17 to get in line and vote the map out and they did.
18 As a result the Legislature adopted a map that
19 cracks northern Wyandotte County voters into the
20 Second District and moves Lawrence democratic voters
21 into The Big First. These two moves are
22 interconnected.

23 As noted by Dr. Warshaw one of plaintiffs'
24 experts, moving Lawrence to CD1 was necessary to
25 keep CD2 from becoming more democratic. To move

1 northern Wyandotte County in, you had to move
2 Lawrence out.

3 As a result three things will occur:

4 One, minority and white democratic voters
5 in southern Wyandotte County and northern Johnson
6 County will have their voices drowned out by rural
7 communities to the south and west.

8 Two, northern Wyandotte minority and white
9 democratic voters will have their voices drowned out
10 within the predominantly rural republican CD2.

11 And, three, Lawrence democrats will have
12 their voices drowned out by the vast rural landscape
13 of CD1, which stretches six hours west across a time
14 zone and all the way to the border of Colorado.

15 The parties have litigated this case
16 expeditiously as the Supreme Court instructed.
17 Still by every metric this litigation has been fair
18 and transparent.

19 The same cannot be said for the Legislative
20 process that led to the map that we're here
21 challenging today.

22 Having spent the last week hearing and
23 digesting the overwhelming evidence presented by the
24 plaintiffs, this Court is now well-equipped to make
25 its ruling.

1 When it comes down to it, all the
2 plaintiffs are asking is for the court to call a
3 spade a spade, to find that the Ad Astra 2 map is a
4 partisan and racial gerrymander in violation of the
5 Kansas Constitution.

6 Now, throughout this case defendants have
7 relied on legal arguments that in their words
8 prevent this Court from exercising review of
9 plaintiffs' claims, that this Court is somehow
10 disempowered to assess whether a piece of
11 legislation enacted by the State Legislature
12 violates specific provisions of the Kansas
13 Constitution, but state courts are frequently called
14 on to define and apply imprecise Constitutional
15 standards.

16 It's a core component of this Court's role
17 in our democracy, and the court is no less capable
18 of doing so here than it is in other cases of first
19 impression that it is regularly called onto
20 adjudicate.

21 Defendant's legal arguments would have this
22 Court turn a blind eye to the overwhelming evidence
23 before it, but as this Court has already held a free
24 range Legislature is inconsistent with our form of
25 government.

1 It should be beyond dispute that our state
2 courts are the back stop of our democracy and that
3 Constitutional rights under the Kansas Constitution
4 means something.

5 All the evidence presented to this Court
6 has shown you why the Legislature cannot have
7 unfettered, unchecked power, to silence the
8 political voices of those with whom it does not
9 agree.

10 To hold otherwise, would be to render our
11 State Constitution meaningless or in the words of
12 the Kansas Supreme Court a "Compilation of
13 glittering generalities." A result that the Supreme
14 Court has rejected time and again.

15 So, let's talk for a moment about the
16 specific Constitutional Provisions that plaintiffs
17 invoked in this case.

18 Again, there are two claims here: One
19 regarding racial -- regarding partisan
20 gerrymandering and another regarding racial vote
21 dilution.

22 I will start with the partisan
23 gerrymandering and then discuss separately our claim
24 of racial vote dilution.

25 Section 1 and 2 of the Kansas Constitution

1 incorporate broad protections for political equality
2 in redistricting and afford voters equal power and
3 influence in the making of the laws that govern
4 them.

5 Beyond a mere requirement for one person,
6 one vote, these provisions explicitly state that all
7 political power is inherent in the people, and that
8 all free governments are founded on the authority of
9 the people instituted for their equal benefit. This
10 language enshrines the concept of a government by
11 the people for the people.

12 In fact, the Kansas Supreme Court has long
13 held that the clause confers equal power in the
14 making of laws and as other state courts
15 interpreting similar equal protection provisions
16 have concluded partisan gerrymandering runs directly
17 counter to that form of government.

18 Diluted votes are not equal votes.
19 Plaintiffs have proven that the enacted map
20 represents an intent plus effect of maximizing
21 republican advantage and denying democrats equal
22 voting power by subordinating neutral, generally
23 accepting redistricting criteria, like those in the
24 redistricting guidelines accepted by the Kansas
25 Legislature.

1 The Legislature laid its intent bear. It
2 desired to maximize republican gains no matter the
3 cost.

4 Section 11 provides Kansas with Kansans
5 with the freedom of speech and political association
6 and, therefore, the right to be free from
7 legislation that targets them based on their
8 political viewpoints, but that is exactly what a
9 partisan gerrymander does.

10 It systematically discriminates against the
11 minority party by diluting their political voices
12 based on the content of those voices.

13 The right to instruct your representatives
14 is the essence of associational freedom and the Ad
15 Astra 2 map makes the exercise of that right all but
16 impossible for many democratic Kansans.

17 Whoever drew this map, and it is still
18 unclear who that person is, clearly knew where
19 democratic voters lived.

20 Democratic voters in Wyandotte County were
21 cracked into CD2 in methodical fashion. Likewise,
22 the democrats of Lawrence were cracked into The Big
23 First.

24 Wyandotte County and Lawrence are two of
25 the most democratic strongholds in this entire

1 state. And all voters in those communities were
2 targeted for district movement, because of their
3 core political beliefs in violation of the Kansas
4 Constitution.

5 Finally Article 5 Section 1 guarantees
6 Kansans the right to vote and prohibits legislation
7 that unnecessarily impedes the exercise of that
8 right.

9 Caselaw makes clear that the right to vote
10 cannot be debased or diluted. Yet ample evidence
11 presented in this case demonstrated the cracking of
12 democratic voters in those two separate geographic
13 areas will severely dilute the political voices of
14 those voters for the next 10 years placing them
15 within new Congressional boundaries where their
16 votes will be meaningless.

17 We started this case by talking about
18 former Senate President Susan Wagle who promised a
19 base of republican donors that the Kansas
20 Legislature could draw four Congressional Districts
21 that would safely elect republicans. In those
22 remarks former President Wagle laid out her clear
23 discriminatory intent.

24 And defendants have gone to great lengths
25 to separate the current Legislature from President

1 Wagle and her remarks, but these efforts fall short.

2 Even if former President Wagle was not in
3 the Legislature when the map passed, her remarks to
4 republican donors laid the foundation for her fellow
5 caucus members to carry through on her plan after
6 she retired. She passed the baton, and her
7 colleagues carried it across the finish line.

8 We can see the Legislature's intent in its
9 complete failure to follow the vast majority of the
10 neutral agreed upon redistricting guidelines that
11 should have governed how the Congressional map would
12 be drawn.

13 As Senator Corson described it, the
14 guidelines were a "public promise," but as our
15 experts showed the legislators cast aside the
16 majority of the guidelines in service of their
17 partisan goals.

18 This is all conclusive evidence that -- of
19 the republican's intent to draw maps in an
20 unconstitutional manner.

21 Let's take two of the redistricting
22 criteria as examples. First, compactness. Three
23 different experts: Dr. Warshaw, Dr. Rodden, and Dr.
24 Chen all testified that the Ad Astra 2 map was drawn
25 in a noncompact way in order to maximize republican

1 advantage.

2 The Ad Astra 2 map also tears apart Kansas
3 communities of interest. We heard from Dr. Mildred
4 Edwards, Senator Corson, and Representative
5 Burroughs that social, cultural, economics,
6 transportation, and other factors combined to create
7 a clear community of interest between Wyandotte
8 County and the K.C. metro area.

9 Likewise Commissioner Portillo explained
10 how Lawrence forms a distinct community of interest
11 with Douglas County and surrounding communities and
12 that it has nothing in common with the big rural
13 First District into which it was placed.

14 Defendants put on no direct evidence to the
15 contrary. Rather than putting on any evidence that
16 the map protects particular communities, defendant
17 spent much of their case refuting the very concept
18 arguing that communities of interest are squishy and
19 beyond definition.

20 Yet multiple experts and fact witnesses for
21 the plaintiffs demonstrated that communities of
22 interest need not have a rigid definition in order
23 to be measurable.

24 Aside from lacking support in the facts
25 defendants arguments that communities of interest

1 are too squishy to be considered is contradicted by
2 the fact that the Legislature itself found this
3 criteria to be important enough to include in its
4 approved guidelines.

5 Moreover expert testimony made clear that
6 the Legislature need not break up these communities
7 in creating their map, but rather they did so
8 intentionally to dilute the voices of those
9 communities.

10 Dr. Rodden presented an alternative plan
11 based only around communities of interest that did
12 not have the affect of diluting minorities or
13 democratic voices and Dr. Patrick Miller clearly
14 demonstrated historical importance of these
15 communities and giving them a unified voice.

16 In addition to circumventing the
17 Legislature own guidelines, the process by which Ad
18 Astra 2 became law also lends itself to an inference
19 of intentional dilution of democratic voices.

20 Senator Corson described the summer
21 listening tours as a box checking exercise completed
22 before the public and the Legislature even had
23 access to census data.

24 Representative Burroughs discussed how
25 legislative leadership deliberately ignored

1 testimony offered at those listening sessions and
2 before the legislative committees.

3 In fact, Representative Burroughs testified
4 that the Ad Astra map was greased to go meaning it
5 was going to be passed no matter what the public or
6 minority party members had to say and that is
7 exactly what happened.

8 The Legislature went from introduction to
9 passage to veto to override in a matter of weeks,
10 pushing Ad Astra 2 through the Legislative process
11 in an atypical way that Senator Corson described as
12 thugish.

13 Each expert that testified for the
14 plaintiffs presented a slightly different analysis
15 of the maps and under each metric our experts found
16 that the Ad Astra 2 map was such an extreme partisan
17 outlier that it could not be explained absent a
18 direct intent by the Legislature to entrench
19 republican dominance in Kansas congressional
20 delegation.

21 For example, Dr. Jowei Chen a respected
22 academic and leader in the field of simulated
23 districting analysis created 1,000 simulated plans
24 based on redistricting criteria adopted by the
25 Legislature.

1 His plans show that the Ad Astra 2 is an
2 extreme partisan outlier by all metrics, and that it
3 could not be explained by neutral principles or
4 criteria.

5 All of this evidence together makes clear
6 that the Ad Astra 2 map violates plaintiffs' State
7 Constitutional Rights to be free from partisan
8 gerrymandering.

9 I now want to discuss our racial vote
10 dilution claim. All though this map is an
11 intentional partisan gerrymander, no one should lose
12 sight of how this map also invidiously discriminates
13 on the basis of race.

14 Plaintiffs, therefore, bring their racial
15 vote dilution claim as a separate and equally
16 important claim.

17 Ad Astra 2 is racially discriminatory. It
18 moves black and Hispanic voters out of CD3, a
19 district where they could and did elect the
20 candidate of their choice and places them into CD2
21 where they have no hope of doing so again.

22 This was no accident. It was intentional.
23 The Kansas Constitution's guarantee of equal benefit
24 exceeds the protections of federal law and thus does
25 not require a showing of intentional race

1 discrimination, but this Court need not decide
2 whether discriminatory effects alone violate the
3 Kansas Constitution.

4 Defendants agree that the Kansas
5 Constitution prohibits intentional racial vote
6 dilution, and the evidence presented in this case
7 compels this Court to find as a matter of fact that
8 in passing Ad Astra 2, the Legislature had as at
9 least one purpose diluting the votes of Kansas City
10 minority voters.

11 The evidence conclusively establishes that
12 the Legislature acted with discriminatory intent and
13 produced a map that has a discriminatory effect.

14 For example, based on his racially
15 polarized voting analysis, Dr. Collingwood found
16 that under the Ad Astra 2 map minority voters were
17 systematically extracted from the old CD3 and moved
18 into CD2 where they have no chance of electing their
19 preferred candidates.

20 He explained that partisan gerrymandering
21 and racial vote dilution are not the same thing as
22 defendants have asked this Court to believe.
23 Indeed, minority democrats fair far worse than both
24 white republicans and white democrats under Ad Astra
25 2.

1 Dr. Collingwood characterized the Ad Astra
2 map as one of the most stark racial splits that he
3 has seen in his career. And Dr. Chen simulations
4 demonstrated that the racial polarization in Ad
5 Astra 2 is not the product of chance or randomness.

6 Dr. Patrick Miller described the move of
7 minority Wyandotte County voters into CD2 as a move
8 that would make those voters voices border on
9 "Electoral irrelevance."

10 All of this is powerful evidence that the
11 Legislature intended the racially discriminatory
12 outcomes that they created. In fact, the
13 Legislature knew what it was doing.

14 Senator Corson repeatedly raised the
15 cracking of minority voters on the Senate floor and
16 Senate President Masterson explicitly acknowledged
17 that a large portion of minority voters were moved
18 out of CD3 and into CD2.

19 Senator Masterson didn't think this was a
20 problem, because he claimed that so long as the
21 overall percentage of minority voters increased in
22 CD2, then it was legally fine that it decreased in
23 CD3, but this is a disingenuous argument.

24 It is unlawful to purposely dismantle an
25 existing performing crossover district by submerging

1 minority voters in a district that the Legislature
2 knew would not elect their preferred candidates
3 anymore. Yet that is exactly what Legislative
4 leadership did here.

5 The law permits the Court to infer the
6 obvious from the face of the map, which near exactly
7 draws a boundary along racial lines and from the
8 express awareness of the legislators about the
9 effects of their actions on minority voters.

10 Ad Astra 2 is unlawful, intentional racial
11 vote dilution, and anyone who glances at Dr. Patrick
12 Miller's racial shading maps knows it.

13 This Court should not shy from so ruling
14 based on a thorough analysis of all the available
15 direct and circumstantial evidence.

16 Tellingly, no real defense of the map has
17 been offered. Perhaps because there is none.
18 Defendants offered only pretextual post hoc
19 justifications for the map that are both
20 inconsistent and unsupported by the record.

21 Their experts conducted no independent
22 analysis. They did not complete a detailed review
23 of the past map or any alternatives.

24 Every republican legislator that we
25 subpoenaed invoked their Legislative privilege to

1 avoid having to answer questions about the true
2 motives that led to it's creation and passage.

3 Defendants presented zero fact witnesses
4 and zero evidence to back up their claims that this
5 map reflects communities of interest and was not
6 drawn for partisan gain.

7 For example, defendant 's entire case seems
8 to be based on the idea that Johnson County needed
9 to be kept whole in the Third Congressional
10 District, that Johnson County, itself, was a
11 community of interest.

12 Yet as Senator Corson and Representative
13 Burroughs testified very little testimony from the
14 public advanced to that point.

15 Moreover legislative leadership rejected
16 other maps that were proposed in committee and on
17 the floor that kept Johnson County whole.
18 Presumably because those maps would not have been
19 extreme partisan gerrymanders.

20 Similarly, we saw arguments advance that
21 Lawrence was scooped out of CD2 and moved into The
22 Big First because of K-State and KU needed to be
23 reunited in the same district. Yet there's
24 absolutely no evidence in the Legislative record or
25 presented in this case that supports that idea.

1 Defendants only remaining argument is that
2 this is just what happens when you have a republican
3 super majority in the Legislature, that because a
4 majority of Kansans elected republicans to those
5 seats, the rest of the state has to sit back and
6 watch while the minority party loses its entire
7 political voice in Congress, but might does not make
8 right.

9 Defendants arguments otherwise are not only
10 offensive. They are also on their own
11 circumstantial evidence that the Legislature had
12 every intention of rigging the Congressional map for
13 their partisan advantage.

14 The Ad Astra 2 map is not a mere by-product
15 of an imperfect democracy. It is not the result of
16 benign Legislative decisions. It is the result of a
17 republican Legislative super majority intentionally
18 deciding to entrench their own political power and
19 then executing that idea with clear deliberate
20 precision.

21 The evidence proved beyond a shadow of a
22 doubt that the Kansas Legislature enacted Ad Astra 2
23 with the intent of diluting the political voices of
24 democratic and minority Kansans, and that Ad Astra 2
25 has that precise affect.

1 Plaintiffs have more than met their burden.
2 This is not a close call. For these reasons, we ask
3 that you find in favor of the plaintiffs and strike
4 down the Ad Astra 2 map as an impermissible and
5 unconstitutional partisan gerrymander and an
6 impermissible unconstitutional racial vote dilution
7 under the Kansas State Constitution. Thank you.

8 THE COURT: Thank you, Sharon. Curtis,
9 when you're ready.

10 MR. WOODS: Your Honor, may it please the
11 Court, Curtis Woods, Dentons US LLP, on behalf of
12 the Frick plaintiffs.

13 You're going to the hear Tony in a few
14 minutes, and he's going to talk about as he's talked
15 about before what are the standards? What are the
16 principles? How can you rule when there's no
17 standards? Could you put up 1002 for me, please.

18 Beyond the statistics and the math, I just
19 ask you to do the eyeball test and look what they
20 did to accomplish their goal to try their darndest
21 to get four republican Congress people to fulfill
22 the promise that Susan Wagle made that it could be
23 done, and it would be done if a super majority was
24 in the Legislature.

25 The hatchet job they did on Wyandotte is

1 obviously -- it's blatant, but it was drawing a line
2 and sending half of Wyandotte County into the second
3 and keeping half of Wyandotte County in the third,
4 but the machinations, the shell game that they had
5 to do to accomplish their goal with respect to the
6 Second District is also blatant, but it's much more
7 contorted.

8 They reached around, went over the top of
9 Topeka, which had been the natural direct community
10 of interest with Lawrence for the last 10 years. In
11 fact, remember that as long as there's been four
12 districts in Kansas, Lawrence had a direct community
13 of interest connection either through I-70 or the
14 K-10 corridor with either the Kansas City municipal
15 area or Topeka.

16 So here they sever that, and they go over
17 the top of Topeka and grab Lawrence, and then throw
18 it back into the first for those democratic voters
19 of Lawrence to be swallowed up by the super majority
20 First District.

21 And what's even more blatant, and when you
22 examine how it was that they went over the top of
23 Topeka and grabbed Lawrence out of the east, the
24 numbers tell the story.

25 CD1 only needed 33,855 more people to be

1 balanced with the other districts. Yet by going
2 over the top of Topeka and grabbing Lawrence and
3 bringing it back into the first, Ad Astra 2 moves
4 131,129 people into CD1.

5 Now, they have too many people. So they
6 have to move 95,216 people out of CD1 to balance it
7 out. Lawrence, itself, was 94,000 under the 2020
8 census 94,934.

9 In other words, if you leave Lawrence out,
10 and take the other counties that they used to swoop
11 in and scoop up Lawrence, that's 36,000 alone,
12 sufficient to balance out CD1, but that wasn't their
13 goal.

14 Their goal wasn't to balance it out with
15 the fewest number of people. Their object was to
16 get Lawrence, and in so doing, they had to take
17 131,000 people into CD1 and move six counties out of
18 CD1, largely republican rural counties, in order to
19 get back to the balance.

20 Those machinations of moving 130 in, moving
21 95,000 out, shows you the intent that the
22 Legislature had that the republicans had in their
23 quest, their goal to take the democratic votes of
24 Lawrence and throw them into the ocean of republican
25 votes in the First Congressional district.

1 You can't have anymore blatant partisan
2 actions as what they did, all the steps they had to
3 take, to grab Lawrence and throw their votes into
4 the CD1 and make them virtually meaningless.

5 This is a historic moment and not only for
6 Kansas, but really for Congressional redistricting
7 across the country, but focusing on Kansas, this is
8 a moment in history, Your Honor, that is in your
9 hands as a first order of business.

10 What the super majority of the Legislature
11 did, the republicans, was violate the Kansas
12 Constitution in many different ways, and by doing so
13 you must invalidate Ad Astra 2. Thank you.

14 THE COURT: Thank you, Curtis.

15 MR. RUPP: Thank you, Your Honor. On
16 behalf of Gary, Clayton, Jami, and I it is our honor
17 and privilege to represent the defendants here today
18 in this lawsuit. It's also been our honor and
19 privilege to work with the Solicitor General's
20 office in this case.

21 I'm going to take just a moment to indulge
22 in some reminiscence before I talk about the case.
23 This is, in my nearly 40 career, this is the fourth
24 time I've tried a case in the courtroom.

25 I've tried one before Judge Cook, two

1 before Judge Seavey, and now here, and on each
2 occasion we've been treated by the staff and the
3 office with tremendous integrity, and we very much
4 appreciated that.

5 I want to talk a little bit about, as you
6 might anticipate, we might talk about the burden of
7 proof. We might talk about the standards, and the
8 absence, and how this is a case in which there is no
9 guidance as to what the burden of proof is.

10 And we're at that stage in the case where
11 that is a fatal flaw, I believe, but if we could put
12 up Professor Warshaw, page 74.

13 And what he says on the first full
14 paragraph and the idea of cracking is that you crack
15 your opposing party, the disadvantaged party, across
16 a large number of districts such that they
17 constitute the minorities into each of those
18 districts, and they don't have the ability to win
19 any of those districts.

20 Don't have the ability to win any of those
21 districts. That's the essence of any gerrymandered
22 case.

23 What have we learned here? Even Professor
24 Chen who I would argue draws dots on a map and
25 infers intent, Legislative intent, from -- that

1 seems beyond the pale to me, but, in any case, what
2 he says is that this is in his view barely a
3 republican district.

4 It is 50.5 or 50.6 to 49 percent. That is
5 a competitive district.

6 Dr. Rodden said this is a competitive
7 district.

8 Dr. Warshaw not only said it's a
9 competitive district, but the PlanScore site that he
10 uses and that he is on the cover of deals it a 62
11 percent chance of a democratic victory.

12 Your Honor, the essence of the ideal
13 Congressional District in America is a district that
14 is competitive, that either side can win and that's
15 exactly what this republican Legislature created
16 with this Third District map.

17 This is not a gerrymander. It is a
18 slightly more republican map than it was, but that's
19 not a gerrymander. That's not in any case
20 impermissible.

21 And so this has created an American map
22 where either side can win based on the quality of
23 candidate, the local issues, the national issues,
24 who's at the top of the ticket. And this is in a
25 state, Your Honor, where all of the plaintiffs'

1 experts have agreed. They've disagreed about the
2 number but somewhere between 55 percent republican
3 and 40 and 41 percent democrat.

4 And the concept -- it would be easy in such
5 a circumstance if this Legislature truly wanted to
6 be partisan to make every district kind of reflect
7 those numbers or at least reflect something
8 relatively close to it, and that's not what they've
9 done.

10 They have created a Third District that is
11 competitive by every measure, might favor the
12 democrats by some measures, might favor the
13 republicans by some measures, but one way or the
14 other is extraordinarily competitive.

15 And the idea that you must create -- I
16 mean, the concept of the efficiency gap is to have
17 no wasted votes. Yet they argue that they should
18 have a solid democratic district in the Third
19 District, and that's not the rule.

20 I want to go back to kind of the evidence
21 in the case and, as the Court is aware, part of the
22 evidence in this case is the legislative history,
23 and that appears in the transcript -- or the
24 transcripts in this case run from Exhibit 162 to
25 172, and we will be citing to those.

1 And it's always been our position, Your
2 Honor, that this Court ought to decide based on the
3 rationale gave by the Legislature at the time of the
4 -- that it was considering these matters and ought
5 not be attacked by folks who frankly lost in
6 succeeding on their points in the democratic process
7 in the Legislature.

8 And, in fact, Your Honor, the voices of
9 Kansas voters have asked the Legislature to enact a
10 map. The United States Constitution entrusts that
11 to the Kansas Legislature.

12 This Legislature did what 10 years ago it
13 could not do, and that is to do the first rule of
14 Legislative redistricting, and that is come to an
15 agreement on a map.

16 And they did that, and they did it over a
17 Governor's veto, so you did have the democratic
18 process, the checks and balances in place, and you
19 came to an agreed map.

20 What does that map do? First of all, the
21 paramount objective of any map is to have an equal
22 number of persons in each district and this map does
23 that to a person. There is not even one more person
24 in any district than in any other district. So you
25 have purple -- or perfect equality of all voters.

1 They have absolute equality in the value of their
2 vote.

3 The second thing it does is it preserves
4 communities of interest. Now, there is disagreement
5 about that, and that's the nature of Legislative
6 decision making, but the driving force, as you will
7 see in the legislative history, the driving force is
8 that in Johnson County in the last 10 years, it grew
9 by 78,000 people.

10 The state grew by 84,000 people.

11 Johnson County was deemed to be by this
12 Legislature the core of the map and the desire was
13 to keep Johnson County whole.

14 There is adequate support for that position
15 before the Legislature you have seen and it will be
16 cited to you in the proposed findings.

17 The Legislative agenda of the 10 Chambers
18 of Commerce including the greater Kansas City
19 Chamber of Commerce who asked as part of their
20 Legislative agenda that Johnson County be held
21 together.

22 You will see that in testimony and in the
23 comments of the legislators as well. And even from
24 the minority party, there's no question about it.
25 The testimony or on the Legislative floor and

1 Senator Corson acknowledged that it was or
2 Representative Clayton, leader of the democratic
3 party, testified that the strong desire of both
4 sides of the Johnson County delegation, both sides
5 of the aisle was to keep Johnson County together,
6 and that the Chambers of Commerce in the Johnson
7 County area are emphatic that that should happen.

8 Now, the question unfortunately, because
9 this is a census driven decision is that you only
10 have a few choices if you're going -- you only have
11 a few choices, if you're going to have in the Third
12 District, because of the growth of the Third
13 District, and that is you either have to split
14 Johnson County, which is not a great idea, nobody
15 wants to do it. You have to split Wyandotte County,
16 not a great idea, nobody wants to do it; or you have
17 to separate Wyandotte and Johnson County, which is
18 not a great idea, nobody wants to do it.

19 So, the tension that is created is not a
20 racial one, not a partisan one, but is rather the
21 extraordinary challenge of Legislative judgment,
22 when you want to do the best that you can do,
23 recognizing that you want to keep the core of
24 Johnson County and Wyandotte County together, but
25 you've made the decision that you're going to keep

1 Johnson County together.

2 And so rather than sending all of Wyandotte
3 County into the second or First District, it made
4 the decision to keep Johnson County together, and to
5 divide Wyandotte County at a natural barrier or a
6 natural boundary the I-70 and the river, and those
7 are traditional criteria.

8 Those are considered -- that's the logical
9 place to do it. It's not a racial decision. It's
10 not a partisan decision. In fact, as you see, the
11 percentages are -- make this a very competitive
12 race.

13 Recognizing that 10 years ago, a three
14 judge panel of the Federal Court drew the map and 18
15 of those 20 races went to the republicans, and
16 that's, you know, whether it's unfortunate,
17 fortunate, whatever it is, that's the function in a
18 democracy of having 60 percent of the voters voting
19 for one party and only 40 percent of the voters
20 voting for the other party.

21 There are several snippets of testimony
22 that I want to talk about that came out from the
23 testimony.

24 Dr. Corson agreed that one of the great
25 benefits in a democracy is that if voters are angry

1 with thugs, and we heard the word thugs again in the
2 plaintiffs closing.

3 If voters think that their representatives
4 are thugs, they can vote them out of office, and
5 that's the way a democracy works.

6 Certainly Representative Corson was not in
7 favor of this map, either in the Legislature or in
8 his testimony here, but that can't be unexpected.
9 He is a former executive director of the democratic
10 party. He is a leader of the democratic party.
11 He's very -- he worked as a democratic voter rights
12 lawyer bringing these types of cases.

13 So, it is not to be unexpected that he
14 might be of a different view than the elected
15 representatives of the majority of Kansas voters.

16 In this country, we do not, in most states
17 at least, delegate the decisions of Congressional
18 redistricting to political scientists and consistent
19 with the United States Constitution that authority
20 rests with the Kansas Legislature.

21 Representative Burroughs testified that the
22 guidelines are not part of the Constitution and that
23 there is legislative decision-making involved.

24 So, I want to talk about a couple other
25 things here. In opening, we have talked about these

1 being census driven decisions, and they clearly are,
2 not a single witness has disputed that the math does
3 not work. You can't keep Johnson and Wyandotte
4 County together.

5 This creates tension with the guidelines
6 for Legislative redistricting. Section 4(d)
7 suggests that you keep counties together, but this
8 Legislature was faced with a challenge of either
9 having to split off Johnson and Wyandotte County or
10 splitting one of the other.

11 The guidelines are helpful for what they
12 are and this Legislature attempted to follow them,
13 but those guidelines by their very nature, a
14 guideline is a suggestion, none of those guidelines
15 give any scoring criteria.

16 The guidelines allow one person to have a
17 different view of the best community of interest
18 than the next person. That's the nature of a
19 guideline. It's a suggestion but it doesn't replace
20 Legislative judgment.

21 The plaintiffs have argued that the
22 legislative process was rushed. Your Honor, the
23 evidence is that the census was delayed. That
24 caused a huge problem for the Legislature.

25 It had to get it's listening tour gone or

1 undertaken, even before it had all the census
2 information, and that wasn't perfect, but that was
3 the best it could do.

4 They've argued that the legislative process
5 was rushed, but then they come here to this Court
6 and it has been an extraordinarily rushed judicial
7 process following none of the normal rules.

8 As the Court may recall on the day that I
9 was assigned or the day after I entered my
10 appearance, we had a hearing in this Court, and I
11 was presented with six expert witnesses that day on
12 behalf of the plaintiff.

13 We had something on the order of two weeks
14 to not only take those six people's depositions, but
15 to identify our own experts, and have them ready to
16 testify, and this system does not create the best
17 situation for getting to the bottom of the evidence.

18 They argued that the Legislature scooped
19 out big blue Lawrence out of the Second District and
20 buried it in the rural First District, but the First
21 District needed population. Douglas County and
22 Lawrence have been separated before.

23 Dr. Miller, their own expert, testified
24 that he could take certainly make an argument in
25 favor or against Douglas County and Lawrence being a

1 community of interest. They are different.

2 This -- and you'll see this in the
3 legislative history -- this new First District 10
4 years ago, when the Federal Court put Manhattan
5 against its wishes in the First District, they
6 complained about being separated from Lawrence.

7 This new First District combines Manhattan
8 and Lawrence and it creates an education corridor
9 along I-70. Those are the two major research
10 institutions in the State of Kansas, and, if you go
11 just a little farther down I-70, just a little
12 farther from my perspective as an old guy from Hays,
13 but it might be longer from somebody from Lawrence.
14 We used to come east. They didn't go west.

15 So, it created -- it puts three of the
16 State's Regents Universities on I-70 going across
17 Kansas with Fort Hays State as well.

18 The odds of a democratic victory or
19 republican victory in each of these four
20 Congressional Districts is more or less the same as
21 it was under the map created by the Federal Court in
22 Kansas 10 years ago, and it was -- it said
23 specifically we are addressing these issues today,
24 because the Legislature has failed in its job to
25 create a map, and we step into this political

1 thicket reluctantly, because this belongs to the
2 political branch.

3 Your Honor, I point your attention to
4 Dr. John Alford who testified this morning about the
5 modest nature of the change in CD3. Each of these
6 districts have changed a little bit.

7 The Fourth District changes not much at
8 all.

9 The First District becomes a little bit
10 more democratic, and that can't be a bad thing.

11 The Third District becomes just modestly
12 more republican but not overwhelmingly so.

13 Your Honor, this is a fair map. It is a
14 map that you should uphold. It is a map that is
15 part of our representative democracy enacted
16 overwhelmingly by the voices of the voters of the
17 State of Kansas, and it does not disenfranchise
18 anyone.

19 One could make a pretty good argument that
20 what the plaintiffs are asking the Court to do is to
21 disenfranchise those voters who have elected their
22 Legislature, entrusted them with enacting a map, and
23 they have enacted a map that does not change the
24 landscape.

25 The current map three of the districts did

1 not elect a democrat. One of the districts enacted
2 a map that elected a democrat two out of five times.
3 This map is not partisan.

4 It is not -- certainly is not, you know,
5 when Dr. Chen talks about an extreme partisan
6 outlier, his definition is different than mine,
7 because it is -- cannot be an extreme partisan
8 outlier if it is a 50-50 Third District.

9 May I check with Mr. Laue just one moment?

10 THE COURT: Absolutely you may, Tony.

11 MR. RUPP: The other thing, Your Honor,
12 that I will say is that throughout the legislative
13 history, one other point is made that I think is
14 important here, and that is this Congressional map
15 consciously does not pair up any two current members
16 of Congress.

17 Representative Davids is not paired up in a
18 district with representative LaTurner or with any
19 other representative. They did not attempt to
20 gerrymander her out of a place.

21 And this Legislative map, and it's replete
22 in the legislative history was designed that on the
23 basis of the 2020 election, it was the belief of the
24 Legislature based on the numbers they had before
25 them that each member of this Congressional

1 delegation would be reelected based on the 2020
2 numbers. That is hardly a gerrymander.

3 And, Your Honor, with that, I have nothing
4 further. We've enjoyed the opportunity to be before
5 you in this trial, and we would ask that you not
6 step into the political thicket and not overrule
7 this map.

8 There are no -- there is no established
9 burden of proof, no standards by which any of this
10 can be measured, and, Your Honor, for those reasons
11 we would ask you to uphold the map. Thank you,
12 Your Honor.

13 THE COURT: Thank you, Tony. Tradition for
14 the plaintiff to have the last word.

15 MS. BRETT: No rebuttal. One housekeeping
16 matter that should be on the record whenever Your
17 Honor is ready.

18 THE COURT: Chomping at the bit.

19 MS. BRETT: We had on Plaintiffs' exhibit
20 list the various transcripts of the different
21 Legislative sessions, which defendants stipulated,
22 and we've moved into evidence.

23 We just got the transcript for the Senate
24 veto override session, which we did not have at the
25 time the exhibit list was made. And so we'd like to

1 move that into evidence as Plaintiffs' Exhibit 760,
2 and we will file it on E-flex and make sure everyone
3 gets a copy.

4 MR. RUPP: We agree.

5 THE COURT: All right. 760 is admitted
6 without objection. All right. Counsel, as I
7 requested before we started this hearing that you
8 all conduct yourselves in a manner that would
9 reflect well upon the attorneys in general and the
10 judicial branch.

11 You have far exceeded my expectations. The
12 level of cooperation that has been apparent
13 throughout this entire trial has been exemplary.
14 It has been this Court's pleasure to get to work
15 with the attorneys of such wonderful and outstanding
16 caliber and knowledge.

17 I am hopeful that your journey to the
18 Supreme Court goes as smoothly as the journey
19 through District Court has been. Good luck to both
20 sides and that concludes this hearing.

21 (Court was adjourned.)

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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, ET AL., CASE NO. 2022-CV-89, heard on April 11, 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 42 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 11th day of April, 2022.

/s/Rosemarie A. Vieth
Rosemarie A. Vieth, CCR
KS CCR NO. 1094
Official Court Reporter
29th Judicial District, Division 6
Wyandotte County Courthouse
710 North 7th Street
Kansas City, Kansas 66101
Phone: (913) 573-8218
Email: rvieth@wycokck.org

Rosemarie A. Vieth, Official Court Reporter