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No. 22-125092-S

IN THE SUPREME COURT OF THE STATE OF KANSAS

FAITH RIVERA, et al., TOM ALONZO, et al., SUSAN FRICK, et al.
Plaintiffs-Appellees

v.

SCOTT SCHWAB, in his Official Capacity as Kansas Secretary of State, and
MICHAEL ABBOTT, in his Official Capacity of Election Commissioner of
Wyandotte County, Kansas,
Defendants-Appellants

JAMIE SHEW, in his Official Capacity as Douglas County Clerk,
Defendant-Appellee

BRIEF OF AMICUS CURIAE
KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC.
IN SUPPORT OF PLAINTIFFS-APPELLEES

Appeal from the District Court of Wyandotte County, Kansas
The Honorable Bill Klapper, District Judge
District Court Case No. 22-CV-89 (consolidated with 22-CV-90 and
Douglas County Case No. 22-CV-71

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I. INTEREST OF AMICUS CURIAE

Kansas Appleseed Center for Law and Justice, Inc. (“Kansas Appleseed”) is a nonprofit, nonpartisan advocacy organization dedicated, *inter alia*, to ensuring that all Kansans have the opportunity to fully participate in the democratic process. Kansas Appleseed takes a community-oriented approach in its comprehensive efforts to increase voter engagement, including meetings with community members, direct mail campaigns, in-person events, and canvassing. Kansas Appleseed also provides testimony regarding bills and other matters coming before the Kansas Legislature. In 2020, Kansas Appleseed worked to increase participation in the 2020 census, particularly among vulnerable and underrepresented communities, in order to best ensure the accuracy and appropriateness of the 2020 census count in Kansas for use, *inter alia*, in redistricting.

II. STATEMENT OF THE ISSUES

1. Did the District Court Err in Holding that the Congressional Maps Drawn by the Legislature (Ad Astra 2) Violate the Kansas Constitution because they Create an Improper Political Gerrymander?
2. Did the District Court Err in Holding that Ad Astra 2 Violates the Kansas Constitution because the Redistricting Maps Impermissibly Crack the Democrat and Minority Communities, Diluting the Power of the Vote in those Communities?

III. STATEMENT OF FACTS

In August 2021, the House and Senate Redistricting Committees—both controlled by Republican majorities—conducted a “listening tour,” purportedly to collect public input on the redistricting process. J.A. VI 18.

The Committees announced the dates for the tour only a week in advance of its start and without consulting the Committees' Democratic members. Democratic members of the Committees learned of the sessions only when they were announced to the public. The Committees' short notice made it challenging for members of the public who wanted to attend the sessions to obtain time off work, secure childcare, and get up to speed on redistricting. *Id.*

Issues of notice were compounded by the tour's schedule. While the 2012 redistricting listening tour took place over a period of four months, the 2021 tour made fourteen stops in just five days. And while sessions in 2012 were each two-and-a-half hours long, the August 2021 sessions each lasted only 75 minutes, and in densely populated areas like Johnson County individuals were only given two minutes to testify. *Id.*

The sessions were scheduled largely at inconvenient times, with ten of the fourteen sessions taking place during working hours. Many community members were unable to attend the sessions for these reasons. J.A. VI 19.

The tour was scheduled, and most tour stops were completed, *before* the 2020 census data governing the redistricting process became available. This was a serious obstacle to meaningful public input into the state's redistricting process. By contrast, during the 2012 redistricting cycle, the Legislature conducted listening sessions *after* the release of census data. Without the census data it was impossible for the public to provide relevant comments on the decisions the Committees would be called upon to make or to address the data points Republican legislators would later cite as justifications for those decisions once the data was released. For instance, before the census data was released, the public could not have known that the combined populations of Johnson and Wyandotte Counties would be too large to fit in one congressional district. The Republican

leadership never explained its choice not to wait a few weeks for the census data to become available. *Id.*

Unlike the 2012 tour, the 2021 tour also took place before the Committees adopted any guidelines for the redistricting process, which also limited the public’s ability to provide testimony on the topics that would be most helpful to the Committees. This choice has likewise never been explained. J.A. VI 20.

The map that became what is now known as Ad Astra 2 was initially introduced in both the House and Senate Redistricting Committees on Tuesday, January 18, 2022. After its introduction, both the Senate and House Redistricting Committees set their preferred map, alongside a small number of other proposed maps, for simultaneous hearings on Thursday, January 20—just two days after the maps’ introduction. J.A. VI 25.

The Senate Redistricting Committee required members of the public who wanted to testify regarding the plan to sign up to testify in person or submit written testimony by 10 a.m. on Wednesday, January 19—the day after the map’s introduction and before the map’s underlying data was made publicly available. The House and Senate Committees scheduled their respective public testimony periods for the same time, forcing potential witnesses to choose between the two proceedings or “bounce[e] between the two.” Several members of the public objected to the rushed nature of the proceedings and difficulty of submitting testimony. J.A. VI 25-26.

Of the members of public who were able to attend one or both hearings, all but one testified in opposition to the Ad Astra map. J.A. VI 26.

During floor debate in both chambers, numerous representatives noted that the process by which Ad Astra 2 came to the floor was highly irregular, rushed, nontransparent, and unfair. Representatives also called attention to the fact that the map split known communities of interest,

ignored public input, diluted minority votes, and constituted “textbook gerrymandering.” J.A. VI 28.

Ad Astra 2 will make it more difficult for Plaintiffs-Appellees to elect and support Democratic candidates in Kansas. Ad Astra 2 will have the effect of negating Plaintiffs-Appellees’ electoral preferences by placing them in districts where they have reduced ability to elect their candidates of choice. J.A. VI 145.

Ad Astra 2 will make it more difficult for Plaintiffs-Appellees in minority communities to elect and support their candidates of choice in Kansas. Ad Astra 2 will have the effect of negating Plaintiffs-Appellees’ electoral preferences by placing them in districts where they have reduced ability to elect their candidates of choice. J.A. VI 150.

Ad Astra 2 disincentivizes Democratic and minority “voter mobilization, voter registration, voter turnout, fundraising, all of the activities that build a political base” because the elections in the districts as drawn by the Kansas Legislature would not be competitive. J.A. VI 100-01. *See also* J.A. VI 146-47, 186.

IV. ARGUMENT AND AUTHORITIES

A. Defendants-Appellants’ Irregular Process and Conduct of Listening Tours Prior to the Release of the Census Data Is Evidence of their Intent to Dilute Democratic and Minority Communities’ Voting Power, in Violation of the Kansas Constitution.

Kansas Appleseed engaged in an extensive campaign to improve the 2020 Census response, especially in areas of Kansas that have been difficult to count in previous years. It focused especially on residents of color and families with young children in the identified hard-to-count communities. This work included community outreach at local events, hosting community

forums, engaging and presenting to local organizations that already serve these communities, communicating through traditional and digital media, directly connecting with and providing engagement opportunities for residents in the communities, and integrating census information with Kansas Appleseed's organizational work state-wide, all in an effort to increase census participation.

Despite significant challenges to completing an accurate Census count, including the COVID pandemic, self-response rates increased in two of our primary target counties by 1% and 3% from the 2010 census. <https://www.census.gov/library/visualizations/interactive/2020-census-self-response-rates-map.html> Statewide, due to the work of Kansas Appleseed and other partner organizations, despite the unusual challenges presented by the pandemic, self-response numbers remained essentially constant with the levels of 2010.

The redistricting data results of the Census Bureau were not released until August 12, 2021. This August 12th release date was announced on July 29, 2021. <https://www.census.gov/newsroom/press-releases/2021/key-dates.html> The Kansas legislature nevertheless rushed to hold their redistricting listening tour on August 9-13, 2021, right before the Census results were released. Because all testimony delivered at those listening tour meetings were required to be submitted the day before the meeting, those delivering testimony, including Kansas Appleseed, did not yet have access to the redistricting data from the census. As such, they were unable to fully understand and address the potential issues with redistricting necessities.

For instance, none of the testifying stakeholders were aware at the time of their testimony that the data from the 2020 census would show that the population in Johnson and Wyandotte counties had grown to the extent that it would no longer be possible to keep them, intact, in the same district. They had no opportunity to weigh in on whether the Kansas City, Kansas/Overland

Park metro area should be kept intact as a community of interest. There was no testimony, at any of these hearings, that it was necessary to keep the entirety of Johnson County intact, or that it would be appropriate to divide Wyandotte County in half. J.A. VI 140-41.

The Kansas Legislatures failures to follow its former procedures, its failure to allow meaningful comment after the census data was released, and its utter failure to take into account the views of its constituents are ample evidence of its intention to dilute the voting power of Democratic and minority communities, in violation of the Kansas Constitution. *Infra* at 9.

B. The Ad Astra 2 Map, Should It Stand, Would Have the Anti-Democratic Effect of Reducing Kansas Voter Engagement and Participation.

Kansas Appleseed runs a robust voter turnout operation as part of its larger statewide civic engagement campaign across Kansas. This voter turnout operation focuses on encouraging voters, often those from underserved communities with increased likelihood of experiencing hunger and other indicators of poverty, to become engaged in the electoral process, both locally and statewide, as a part of Kansas Appleseed's broader mission of alleviating injustice. Since 2017, Kansas Appleseed has been very effective in increasing civic engagement through these efforts, increasing voter turnout in 2020 overall by 4.4% in its targeted Kansas counties and by an absolute change of 48% on its targeted lists of Kansas residents in those counties likely to experience hunger and poverty, as compared to previous election cycles.

Kansas Appleseed has achieved these results not only through traditional voter engagement techniques such as sending reminder mailings, text messages, and phone calls to vote, etc., but also through building up a culture of civic awareness in these communities to encourage civic engagement more broadly - including through community civic engagement trainings, awareness building, and civic education.

The redistricting process, or lack thereof, taken by the Kansas State Legislature, as well as the final partisan and disenfranchising results of gerrymandered districts, threaten this civic engagement. As pointed out by the evidence introduced by the experts in the trial court, *see e.g.*, J.A. VI 145-47, 186, such partisan results also discourage voter education, participation, and turnout, because competitive elections are vital to encourage turnout. Gerrymandered districts leading to preordained results discourage voter participation, due to the belief that under those circumstances, “voting doesn’t matter”; a result that the Ad Astra 2 map seems designed to accomplish.

Such disenfranchisement violates the Kansas Constitution. Section 2 of the Kansas Bill of Rights guarantees that “[a]ll political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their *equal protection and benefit.*” Kan. Const. Bill of Rights, §2 (emphasis added). The Kansas Supreme Court has long held that Sections 1 and 2 of the Kansas Bill of Rights incorporate broad protections for political equality in redistricting, stating that under the Kansas Constitution, “every qualified elector . . . is given the right to vote for officers . . . [and] is possessed of equal power and influence in the making of laws which govern him,” and “[i]nsofar as he is accorded less representation than is his due under the Constitution, to that extent the governmental processes fail to record the full weight of his judgment and the force of his will.” *Harris v. Shanahan*, 192 Kan. 183, 204 (1963). Partisan gerrymandering, as appears in Ad Astra 2, violates the equal protections enshrined in the Kansas Constitution, and should be rejected by this Court.

V. CONCLUSION

Pursuant to the evidence presented at the trial court, and that Court's sound and well-supported findings of fact and conclusions of law, Amicus Curiae Kansas Appleseed respectfully requests that this Court affirm the District Court's judgment.

Respectfully submitted,

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