

**IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS  
CIVIL COURT DEPARTMENT**

FAITH RIVERA, DIOSSELYN TOT-  
VELASQUEZ, KIMBERLY WEAVER, PARIS  
RAITE, DONNAVAN DILLON, and LOUD  
LIGHT,

Plaintiffs,

v.

SCOTT SCHWAB, in his official capacity as  
Kansas Secretary of State, and MICHAEL  
ABBOTT, in his official capacity as Election  
Commissioner of Wyandotte County, Kansas,

Defendants.

Case No.:

Division:

Pursuant to K.S.A. Ch. 60

**PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW, Plaintiffs Faith Rivera, Diosselyn Tot-Velasquez, Kimberley Weaver, Paris Raite, Donnavan Dillon, and Loud Light, pursuant to K.S.A. Chapter 60, by and through their undersigned counsel, hereby submit this Petition for Declaratory and Injunctive relief against Defendants Scott Schwab, in his official capacity as Kansas Secretary of State and Michael Abbott, in his official capacity as Election Commissioner of Wyandotte County, Kansas, and state, aver, and allege the following:

**INTRODUCTION**

1. This case is about politicians choosing their voters by manipulating district lines to secure their preferred electoral outcomes—despite the will of Kansas voters and at the expense of the political power of minority communities. Partisan gerrymandering, where partisan mapmakers manipulate district boundaries to maximize their own party's advantage and determine the

outcome of elections before anyone casts a ballot, is incompatible with the democratic guarantees enshrined in Kansas's constitution: the right to vote, the right to equal protection under the law, the right to free speech, and the right to assembly. Racial vote dilution is equally offensive to our democracy and violative of the equal protection guarantee of the Kansas Bill of Rights.

2. From the outset, the Republican caucus's intention for Kansas's congressional plan was plain. In the fall of 2020, then-Kansas Senate President, Republican Senator Susan Wagle, promised during a closed-door speech to Republican donors that the legislature would deliver "a Republican bill that gives us four Republican congressmen, that takes out Sharice Davids in the Third." She went on: "We can do that. I guarantee you. We can draw four Republican congressional [districts]."

3. Following a legislative blitz wrought with backroom partisan deals, the Republican supermajorities in the Kansas legislature delivered on Senator Wagle's promise. They overrode Governor Laura Kelly's veto and enacted a congressional plan along party lines and over sharp objection from Kansans all over the state, including many of the leading lights of Kansas's minority communities. The enacted plan elevates partisan gain over Kansans' constitutional rights at the expense of Democrats, racial minorities, and the state's young voters.

4. The enacted plan, SB 355, dubbed Ad Astra 2, unnecessarily shuffles hundreds of thousands of Kansans between districts, creates non-compact and oddly shaped districts, and splits the two largest Democratic and heavily minority counties in the state: Wyandotte and Douglas. Most egregiously, with total disregard for their own redistricting guidelines and traditional redistricting principles, Republican legislators sliced Wyandotte County, Kansas's most Democratic and populous majority-minority county, in half, splitting the Kansas side of the Kansas

City metro area<sup>1</sup> into two districts, and submerging the city's minority, Democratic, and urban voters in an expansive white, Republican, and rural district.

5. Since at least 1923, Wyandotte has been kept whole within a single congressional district. A three-judge panel of Kansas federal judges ended the brief exception in the 1970s finding that “splitting the large minority population of Wyandotte County between two districts” was “undesirable,” and that the county should be unified so that minority voters could “maintain block voting strength in areas where they live closely together.” *O’Sullivan v. Brier*, 540 F. Supp. 1200, 1204 (D. Kan. 1982). Echoing the *O’Sullivan* court, just ten years ago another federal three-judge panel found that “Wyandotte County should be placed in a single district so that the voting power of its large minority population may not be diluted.” *Essex v. Kobach*, 874 F. Supp. 2d 1069, 1086 (D. Kan. 2012).

6. The halving of Wyandotte also breaks up the core of the Kansas City metro area, which encompasses all of Wyandotte and the northern part of Johnson County. Though Wyandotte and Johnson have also been unified in the same district for most of the last century, because of population growth, they no longer fit within a single congressional district. Instead of preserving the integrity the Kansas City metro area, however, Ad Astra 2 divides the metro area through the middle of Kansas City and Wyandotte, in favor of keeping Johnson whole. But Johnson County has far more disparate geography and encompasses distinct communities of interest, unlike entirely urban Wyandotte. Additionally, the northern sections of Johnson encompass the Democratic and diverse semi-urban and suburban bedroom communities of Kansas City, which have far more in common with Wyandotte than the remainder of Johnson. The southern parts of Johnson County

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<sup>1</sup> The terms “Kansas City” and “Kansas City metro area” is used throughout the petition to refer to only the Kansas sections of the city and its surrounding areas.

are rural and pair naturally with similar counties to the south. It is these sparsely populated rural sections of southern Johnson County, not the northern portions of Wyandotte, which should most logically have been removed from the urban Third District to achieve population equality.

7. Ad Astra 2 also dilutes Democratic and minority votes in other parts of the state. District 1 scoops urban Lawrence and part of Douglas County out of District 2, placing the University of Kansas in the sprawling and very rural First District. District 1 similarly grabs the nearly 25,000 students of Kansas State University in Manhattan and submerges them in the same enormous rural district. Ad Astra 2 also splits Fort Riley and Manhattan from Junction City, where many soldiers from Kansas's famed First Infantry Division and their families reside, and further divides Kansas's significant military population by separating Fort Leavenworth and Fort Riley. Without any justification, Ad Astra 2 also divides up the state's Native American reservations, which were formerly unified in a single district.

8. The egregious and systematic dilution of Democratic and minority votes comes on the heels of both groups' growing political power. Once a deeply red state, Kansas has shifted towards the center of the political spectrum over the past two decades. For example, in the last two congressional elections, the Third District elected a Native American Democrat, Sharice Davids. And in 2018, the state elected a Democratic governor by a margin of five percentage points.

9. Despite promising to deliver four Republican districts, even some Republicans voiced concern over party's tactics. During legislative debate, Representative Randy Garber (R) declared, "I think our party is being bully-ish about this and not considering everybody else."

10. Other Republicans—including one of the chief proponents of the map—openly admitted the true motives of the Legislature: "Gerrymandering, partisan politics, all those different things that are being discussed and talked about right now, are just things that happen,"

Representative Steve Huebert (R) said during the full chambers’ debate. “They always have and they always will [draw maps for partisan advantage],” he concluded, referencing the enacted plan.

11. Ad Astra 2 is a partisan gerrymander and dilutes the votes of minority Kansans in violation of the state’s constitution. Ad Astra 2 thus interferes with and impairs the free exercise of suffrage by Democratic and minority voters in Kansas, including Plaintiffs, by diluting their votes, predetermining election outcomes, and undermining their ability to elect their preferred candidates. Accordingly, this Court should enjoin the enacted plan, SB 355, Ad Astra 2.

### **JURISDICTION AND VENUE**

12. This is an action for declaratory and injunctive relief authorized by K.S.A. 60-1701, 60-1703 (declaratory relief) and K.S.A. 60-901, 60-902 (injunctive relief). This court has jurisdiction pursuant to K.S.A. 20-301.

13. This Court has personal jurisdiction over Defendants, who are sued in their official capacities only. Defendant Michael Abbott, the Election Commissioner of Wyandotte County, Kansas, resides in Wyandotte County. Defendant, the Secretary of State of Kansas, has sufficient personal and business contacts with Wyandotte County, one of the state’s most populous counties, for this Court to have personal jurisdiction over him in his official capacity.

14. Venue is proper before this Court under K.S.A. 60-602(2) because this action seeks an injunction regarding “act[s] done or threatened to be done” by Defendants in this district. Venue is further proper because Plaintiffs Faith Rivera, Diosselyn Tot-Velasquez, and Kimberly Weaver reside in—and the locus of their cognizable injury caused by Ad Astra 2 is within—Wyandotte County.

15. Kansas state court is the appropriate forum for this matter. The claims advanced herein arise exclusively under the Kansas state constitution. Plaintiffs do not seek relief from this court under the United States constitution or any federal statute.

## **PARTIES**

16. Plaintiff Faith Rivera is a lifelong, second-generation Hispanic resident of Wyandotte County, and resides slightly south of I-70. She is a 2011 graduate of Kansas City, Kansas Community College, located in Wyandotte County. Under Ad Astra 2, Ms. Rivera's home falls within the Third District, but her neighbors less than a mile away to the north of the highway are now in the Second District. Ms. Rivera's vote is diluted by Ad Astra 2. Having long been a community activist, particularly on the issue of voting rights, Ms. Rivera has run for public office. For two years, Ms. Rivera served as a Democratic precinct leader for the Rosedale neighborhood. In that capacity, Ms. Rivera would go canvassing door-to-door informing her neighbors about upcoming elections, candidates, issues on the ballot, and helped register some neighbors to vote for the first time. Ms. Rivera is a registered Democrat, and currently a candidate in the Democratic primary for Kansas House District 37, representing the Argentine and Turner neighborhoods of Kansas City. House District 37 is split by the Ad Astra 2 Map. Ms. Rivera is also a member of Dotte Votes, a non-partisan group that teaches people across Wyandotte County about the importance of voting. In her work with Dotte Votes, Ms. Rivera regularly engages with communities and individuals that will now be split between the Second and Third Districts under Ad Astra 2. Ms. Rivera intends to vote in, and organize around, the upcoming primary and general congressional elections.

17. Plaintiff Diosselyn Elizabeth Tot-Velasquez, age 28, has resided in Wyandotte since she was six years old, when she immigrated from Guatemala with her family. Ms. Tot-Velasquez is Hispanic and lives in District 2 under Ad Astra 2. Since middle school, Ms. Tot-Velasquez has been very engaged in her community, joining and even forming various groups focused on improving the lives of other recent immigrants to the area. For three years following her 2017 graduation from the University of Kansas in Lawrence, Ms. Tot-Velasquez served as the

lead community organizer for El Centro, a non-profit welcoming center for community members, particularly those from Spanish speaking countries. In 2008, Ms. Tot-Velasquez and her family began the process of applying for a U Visa. In 2009, she was accepted into the U Visa program and progressed from visa holder for four years, to resident for another five, and finally, in 2021, to becoming a full citizen. Within a month of becoming a U.S. citizen, Ms. Tot-Velasquez registered to vote as a Democrat at her home address in Wyandotte County, located just north of the I-70 Interstate Highway. Under Ad Astra 2, Ms. Tot-Velasquez resides in the Second District, separated from her neighbors and fellow Hispanic community members in the southern half of Wyandotte County. Ms. Tot-Velasquez will now cross from the Second District to the Third District simply by driving to her grocery store. Ad Astra 2 dilutes the power of her vote by placing her in a district with large swaths of rural, white, Republican Kansas communities. Ms. Tot-Velasquez intends to vote in the upcoming primary and general congressional elections and organize others to do the same.

18. Plaintiff Kimberly Weaver is a lifelong resident of Wyandotte County and graduate of Sumner Academy of Arts and Science. Ms. Weaver, age 45, is a Black woman and co-founder of WyCo Mutual Aid, a community organization focused on making Wyandotte County a better version of itself. In that role, Ms. Weaver has organized citizens to lobby their representatives to vote to sustain Governor Kelly's veto of Ad Astra 2. Ms. Weaver is registered to vote in Wyandotte County and intends to vote in the upcoming primary and general congressional elections, as she does all elections. Ms. Weaver, lives in the Second District under Ad Astra 2.

19. Plaintiff Paris Raite, 20, is a junior at the University of Kansas in Lawrence, Kansas. She was located in the Second District under the 2012 Plan and is now in the Big First under Ad Astra 2. Ms. Raite's vote is diluted by Ad Astra 2. Ms. Raite started at KU after having

lived in Manhattan, Kansas with her family since 2015. When she started college, she was not very civically or political engaged. That changed at the beginning of her freshman year when she learned of an organization called Loud Light, which is separately a plaintiff to this lawsuit. After being accepted as a Loud Light fellow, Raite became engrossed in the political activism within her community and across the state of Kansas. A registered Democrat, Raite has engaged with and registered other KU students to vote. She has also published Op-Eds in the *Lawrence Times* about significant bills being debated by the Kansas Legislature and engaged other young voters in these issues. A proud Hispanic woman herself, Raite also worked for social justice causes for Kansas's growing Hispanic community in southwestern Kansas. Under Ad Astra 2, Raite's vote will be unreasonably joined with, and diluted by, those of Kansans hundreds of miles away on the state's western border with Colorado. Raite intends to vote in upcoming primary and general congressional elections and organize others to do the same.

20. Plaintiff Donnavan Dillon has lived in Lawrence, Kansas for all of his life, save for a few-year stint in Leavenworth. Mr. Dillon identifies as Black. Mr. Dillon was in the Second District under the 2012 Plan and is in the First District under Ad Astra 2. Mr. Dillon graduated from Lawrence High School last June and is now a freshman at the University of Kansas in his hometown of Lawrence. Mr. Dillon registered to vote in Lawrence when he turned 18 in 2020 and has voted in every election since. Majoring in political science and sociology, Mr. Dillon is passionate about defending the right to vote and ensuring every person receives fair representation in Topeka and Washington, DC. Given his deep roots in Lawrence, Mr. Dillon is deeply connected to his community, including surrounding Douglas County. In his first semester at the University of Kansas, Mr. Dillon, like Ms. Raite, became a fellow of Loud Light, which is separately a plaintiff to this lawsuit. Mr. Dillon's vote will be diluted by Ad Astra 2 because he'll have to vote



in a sprawling, highly rural district that shares little in common with the burgeoning progressive college town he lives in. Mr. Dillon, a registered Democrat, intends to vote in the upcoming primary and general congressional elections in Kansas.

21. Plaintiff Loud Light is a nonpartisan, nonprofit organization, formed under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, operating in Kansas. Loud Light's mission is to engage, educate, and empower individuals from underrepresented populations, and in particular, young voters, to become active in the political process. Loud Light achieves these goals by hosting events on social media, direct person-to-person contact with potential voters, and presentations in classrooms on college campuses and online, and by sending educational mailers to voters. Loud Light proceeds from the fundamental belief that lower voter turnout means fewer needs are met within the community. As a result, the organization focuses on strategies to increase turnout among Kansas's young voters, who have traditionally suffered lower turnout rates, particularly when placed into politically lopsided districts where their preferred candidates have little chance of winning. To achieve its goals, Loud Light also runs young voter registration drives, creates informative videos and other multi-media content about how to participate in elections, builds coalitions within the community to advocate for positive policy changes for youth, and educates Kansans about how to engage the government. Loud Light brings this suit on its own behalf and on behalf of its constituents across Kansas, many of whom have been placed in districts that are gerrymandered on the basis of party and/or race under Ad Astra 2. Without at least the potential to elect their candidates of choice, Loud Light's fellows, interns, and other constituents are harmed by Ad Astra 2.

22. Defendant Scott Schwab is the Secretary of State of Kansas (the "Secretary"). The Secretary is the chief election official of the state and is responsible for carrying out the state's

election laws. Kan. Stat. Ann. § 25-204 (1935). He has a mandatory duty to train and provide instruction “for complying with federal and state laws and regulations” to county election officers. Kan. Stat. Ann. § 25-124 (2004). He is also charged with designing and accepting nomination petitions for congressional candidates and furnishing ballot forms to county election officials for congressional elections. Kan. Stat. Ann. §§ 25-205 (1968), 25-610 (1973)

23. Defendant Michael Abbott is the Appointed Election Commissioner for Wyandotte County and is sued in his official capacity only. In 2021, Defendant Schwab appointed Abbott to his position for a period of four years. In his role as Election Commissioner, Abbott manages and conducts elections in Wyandotte County and the City of Kansas City, Kansas, City of Bonner Springs, City of Edwardsville, and City of Lake Quivier. Commissioner Abbot “is responsible for executing free, fair, transparent, and secure elections for the voters of Wyandotte County.” Abbott will administer the upcoming primary and general congressional elections in Wyandotte County, which is in both Districts 2 and 3 under Ad Astra 2.

## **STATEMENT OF FACTS**

### **I. Kansas has become more diverse and urban in recent years.**

24. Between the 2010 and 2020 Census, Kansas added 84,762 individuals amounting to about three percent overall growth. The 2020 census data revealed two major themes: racial diversification and urbanization of the Kansas population.

25. Racial Diversification: All of Kansas’s growth over the last ten years has been driven by minorities. Indeed, the white population of Kansas *declined* in the last 10 years, ending the decade down 168,582 individuals, a decrease of 7.1 percent. In contrast, the minority population grew by nearly 30 percent. Kansas’s Hispanic population grew by 27.5 percent, from 300,042 to 382,603. Hispanic Kansans now comprise 13 percent of the state’s total population, up from 10.5 percent in 2010. The same is true for Kansas’s Black population, which now numbers

223,275, up from 202,149 in 2010, an increase of 10.5 percent. A significant portion of minority communities' growth in Kansas occurred in Wyandotte and Douglas Counties, two predominantly Democratic counties in the state.

26. While Wyandotte County as a whole grew nearly 7.5 percent, the percentage of the county identifying as white alone fell by 14.3 percent since 2010, while the minority population grew by 10.5 percent. Indeed, the Hispanic community in Wyandotte County grew by 34.1 percent.

27. The minority population in Douglas County also grew. In 2010, the county was comprised of 20,294 minority residents. As of 2020, that number ballooned to 28,504, constituting nearly one in four Douglas County residents. At the same time, the white population declined. As of the 2020 Census, Douglas County is seven percent Black, seven percent Hispanic, 5.5 percent American Indian, and five percent Asian American Pacific Islander.

28. Kansas elections are heavily racially polarized. For example, in the 2020 election a New York Times exit poll found that white voters in Kansas preferred President Trump by a margin of 59 to 38 percent, while nonwhite voters preferred President Biden by a margin of 62 to 35 percent. *Kansas Voter Surveys, How Different Groups Voted*, N.Y. Times (Nov. 2020), <https://www.nytimes.com/interactive/2020/11/03/us/elections/ap-polls-kansas.html>.

29. Despite racial diversification, few Black or Hispanic Kansans have been elected to public office. Aside from the election of Representative Sharice Davids, a Native American, from the Third Congressional District, the remainder of Kansas's congressional delegation—both its Senators and the three remaining Representatives—is all white. All five of the current statewide office holders, including the governor, attorney general, and secretary of state, are all white. And the First, Second, and Fourth Districts have never been represented by a person of color.

30. Urbanization: Of the state's 105 counties, 80—more than three quarters of all of

the state's counties—lost population over the last decade. Population declines were predominantly concentrated in Kansas's most rural counties in the western part of the state.

31. Meanwhile, Kansas's urban metro areas grew rapidly, including the Kansas City metro area. Wyandotte and Johnson Counties grew by 7.45 percent and 12.07 percent, respectively.

32. As a result of these changes, the rural, western First District (often called the "Big First") is now underpopulated, with 33,697 fewer residents than the target population. At the same time, the more urban Third District to the east is overpopulated, with a population 57,816 above the target population.

33. These population shifts require changes to congressional district lines: the Big First must pick up sufficient population, and the Third District needs to shed population. One notable consequence is that while either Johnson or Wyandotte County can be kept whole within a district, both counties cannot be drawn into a single district.

## **II. Kansas has shifted towards the political center over the last decade.**

34. Kansas was once known to be a ruby red Republican stronghold. As Kansas's population has grown and changed, the state has shifted closer to the middle of the political spectrum over the last two decades.

35. For example, Kansans elected Democratic Governor Laura Kelly in 2018. 2018 brought not only a decisive victory for Governor Kelly, but it also saw healthy competition between the two main political parties in two of the state's four congressional districts.

36. Sharice Davids, an openly LGBTQ Native American, and Democratic candidate, won the Third District by nearly ten percentage points, beating incumbent congressman Kevin Yoder, who had represented the district since 2011. Not only was Representative Davids one of only a handful of openly-LGBTQ members of congress, she was also one of the first two Native

American women ever elected to Congress. Today, Representative Davids, who is a member of the Ho-Chunk (Winnebago) people, is one of only a small handful of Native Americans in Congress.

37. And in a hotly contested race in the Second District in 2018, Democratic nominee Paul Davis came within just over 2,000 votes—less than a single percentage point—of defeating Republican Steve Watkins.

38. Thus, in certain electoral environments, the 2012 Plan had one Democratic and one competitive congressional districts, the Third and the Second District, respectively, reflecting Kansas's actual political composition.

39. By way of further example of Kansas's shifting political composition, in the 2010 gubernatorial election, Republican Sam Brownback won with 63.3 percent of the vote to his Democratic challenger's 32.2 percent. By 2014, Governor Brownback's margin narrowed to less than 4 percent, around 32,000 votes. And in 2018, Democratic nominee Laura Kelly won, besting her Republican opponent by five percentage points.

40. Overall, in 2018, statewide, 43.9 percent of the votes cast for Congress were for Democratic candidates. Republican candidates garnered 54.0 percent.

41. Additionally, some of Kansas's localities, in particular Wyandotte County, Lawrence, and Manhattan, have been trending ever bluer, becoming Democratic strongholds in the state. For example, since the 1997 unification of the governments of Kansas City and Wyandotte County under the Wyandotte Unified Government, the city has elected five progressive mayors. Lawrence has three Democratic County Commissioners and a Democratic Mayor. The last time a Republican was elected mayor of Lawrence, Ronald Reagan was President. While the five city commissioners for Manhattan, Kansas are selected on a non-partisan basis, the city has

enacted numerous progressive policies and the city has been represented in the Kansas Statehouse by Democratic Representative Sydney Carlin since 2003 and Democratic Senator Tom Hawk since 2013.

### **III. The U.S. District Court for the District of Kansas drew the 2012 Congressional Plan.**

42. Following the 2010 census, the Kansas Legislature was unable to reach a consensus on the congressional or state legislative maps.

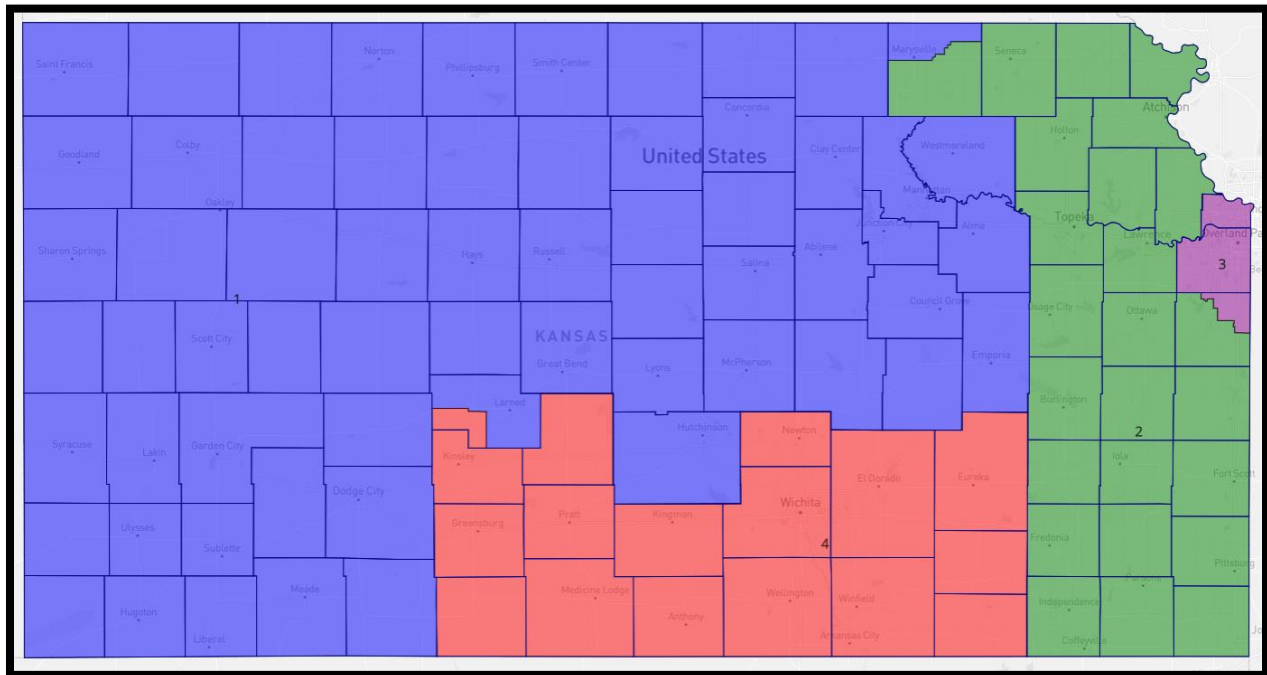
43. As a result of legislative impasse, the task of drawing the congressional and state legislative maps fell to a federal three-judge panel. The court undertook a thorough and non-partisan examination of the changing demographics of Kansas. *See Essex*, 874 F. Supp. 2d at 1069.

44. After hearing a broad array of testimony, examining a voluminous record, and enlisting the help of a cartographer from the Kansas Legislative Research Department, the *Essex* court engaged in “the painstaking task of drawing its own plans.” *Essex*, 874 F. Supp. 2d at 1079.

45. That court-drawn plan (the “2012 Plan”), which was not the subject of any further legal challenge, has been the map used in every Kansas congressional race since the 2012 elections.

46. The 2012 Plan has several notable features. The 2012 Plan preserves the whole of the Kansas City metro area in the Third District. Surrounding that core, the Second District is comprised of a tall, slender column running the state’s full length from south to north, that breaks almost exclusively along existing county lines. The Second District includes all of Douglas County, including the whole of Lawrence, as well as all four of Kansas’s Native American reservations. The Fourth Congressional District is a boxy cluster centered on Wichita and Sedgwick County. The remainder of the state is covered by the sprawling Big First that encompasses rural western Kansas. The 2012 Plan is depicted in Figure 1.

**Figure 1: 2012 Plan**



47. The 2012 Plan keeps Wyandotte and Johnson Counties whole in the Third District, along with the northeastern corner of Miami County. This was a deliberate choice by the *Essex* court: “the entirety of Johnson and Wyandotte Counties should be included in the Third District. Those counties have formed the core of the Third District for decades, and . . . they should be placed in the same district because they represent the Kansas portion of greater Kansas City, a major socio-economic unit, and the counties’ economic, political and cultural ties are significantly greater than their differences.” *Essex*, 874 F. Supp. 2d at 1086 (internal quotation omitted); *see also O’Sullivan*, 540 F. Supp. at 1204.

48. In keeping Wyandotte itself whole, the *Essex* court explained the importance of doing so in order to protect minority voting rights. Specifically, the court found that “Wyandotte County should be placed in a single district so that the voting power of its large minority population may not be diluted.” *Essex*, 874 F. Supp. 2d at 1086. Indeed, Wyandotte has not been divided for

90 of the last 100 years. A federal court ended the brief split in the 1970s finding that “splitting the large minority population of Wyandotte County between two districts” was “undesirable,” and that the county should be unified so that minority voters could “maintain block voting strength in areas where they live closely together,” which would “help[] them make their voices felt.” *O’Sullivan* 540 F. Supp. at 1204 (same).

49. In Douglas County, the *Essex* court rejected a proposed split of Lawrence and Douglas. The *Essex* court held that “Douglas County and the City of Lawrence should not be split between the First and Second Districts . . . [because] they are more appropriately placed entirely within the Second District.” *See Essex*, 874 F. Supp. 2d at 1087.

#### **IV. The Republican caucus passed a partisan gerrymander at the expense of minority voters.**

50. After guaranteeing Republican donors a map gerrymandered in their favor, Republican legislators carried out a rushed, opaque process making good on their promise. In all, only slightly more than a week passed between the introduction of Ad Astra 2—the title given to the enacted map under the Committee’s naming convention—before it arrived at the Governor’s desk. Republican legislators tightly controlled debate and designed the process to severely limit public participation. Following Governor Kelly’s veto, the Republican supermajority resorted to brazen political brinksmanship in the final push to make Ad Astra 2 law.

51. In the fall of 2020, Kansas Senate President Republican Senator Susan Wagle said during a private speech at a Republican fundraiser that the legislature could deliver “a Republican bill that gives us four Republican congressmen, that takes out Sharice Davids in the Third.” She went on: “We can do that. I guarantee you. We can draw four Republican congressional districts.” The video of this speech, discovered and published by Plaintiff Loud Light’s President, Davis



Hammet, is publicly available on Twitter where it has been viewed more than 1.1 million times.<sup>2</sup>

52. Republican legislators began work on their plan in the summer of 2021. Throughout the process that followed, Republican legislators did everything within their power to limit public participation and public insight into the mapping process.

53. During debate of the enacted plan, Republicans often touted the 14 listening sessions held throughout the state the previous summer. But the reality of the listening tour is anything but a model of transparency. The public meetings were frequently announced with less than a day's notice. Meetings were often held during the middle of the business day, making attendance difficult for working individuals. Those who managed to attend despite last-minute announcements had their testimony rushed.

54. Still, the message delivered by members of the public during the listening sessions was clear: keep the Kansas City metro area—Wyandotte and the northern portions of Johnson—whole in the Third District. For example, David Norlin, a Kansan from Salina, testified that: “The Kansas City Metro is currently whole within Kansas’ Third congressional district and should remain in a single district as residents have shared interests in representation.”

55. Plaintiff Rivera also submitted written testimony during the Redistricting Committee’s listening tour. Speaking of the importance of keeping the Kansas metro area unified in the Third District, Rivera explained that “[Johnson County], [Kansas City, Missouri], and [Kansas City, Kansas] have a bond that you can try and break up but we will unite and speak up.” She cautioned that “Your agenda to unravel our community relationship [is] unjust and unwanted. Keep us D3 strong.”

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<sup>2</sup> Davis Hammet (@Davis\_Hammet), Twitter, (Oct. 9, 2020, 10:02 AM), <https://twitter.com/i/status/1314566887230054402> (last visited Feb. 13, 2022).

56. While the Redistricting Committees adopted specific criteria to govern the drawing of the congressional plan, they ultimately did not adhere to them, as described in detail below. In addition to population equality between districts, the Adopted Guidelines require that (1) the plan “will have neither the purpose nor the effect of diluting minority voting strength”; (2) “Districts should be as compact as possible and contiguous”; (3) “There should be recognition of communities of interest”; (4) “The core of existing congressional districts should be preserved when considering the communities of interest to the extent possible”; (5) “Whole counties should be in the same congressional district to the extent possible” because, among other things, “[c]ounty lines are meaningful in Kansas and Kansas counties historically have been significant political units.”<sup>3</sup>

57. To limit map submissions from the public, legislators laid out onerous guidelines for map submissions. The Committee restricted submissions to whole maps only, preventing any regional recommendations, and required all maps to go through a full technical review by the Kansas Legislative Research Department (“KLRD”), limiting submissions to those who had the resources and expertise to utilize mapping technology. And all maps had to be introduced and sponsored by a sitting committee member.

58. Nor did legislative Republicans engage meaningfully with any of the maps that were introduced from the community and other legislators.

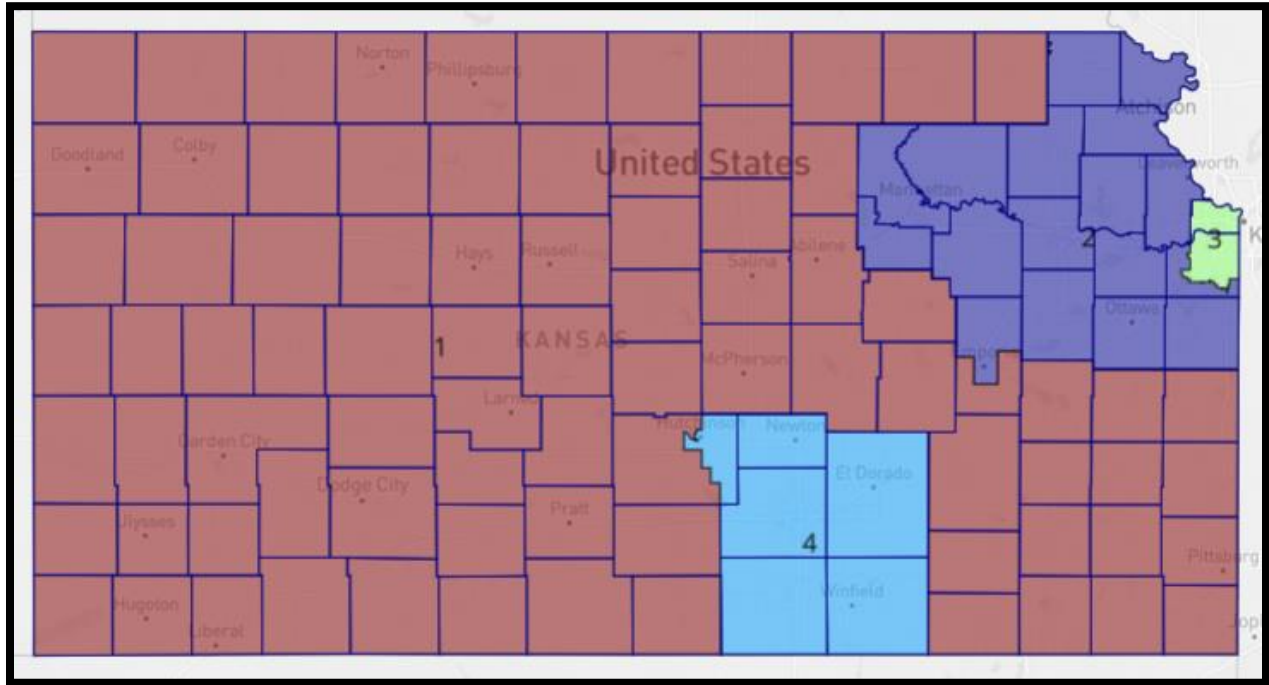
59. The widely respected Kansas League of Women Voters submitted one such compliant map. Dubbed the “Bluestem Plan” under the Committee’s naming convention, the map was introduced in both the house and senate redistricting committees, but it never received more

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<sup>3</sup> Kansas Office of Revisor of Statutes, Proposed Guidelines and Criteria for 2022 Kansas Congressional and State Legislative Redistricting (May 20, 2021), <https://redistricting.ils.edu/wp-content/uploads/KS-Proposed-redistricting-guidelines.pdf>.

than a passing reference in the debate of either chamber. Figure 2 is the Bluestem Plan.

**Figure 2: Bluestem Plan**



60. After Ad Astra 2 was introduced, Republican legislators again limited public input. They announced that public hearings would take place just 48 hours later, and both the house and senate redistricting committee hearings would be held simultaneously. As Representative Stephanie Clayton (D-Johnson) remarked, “I’ve found the transparency in this process to be about as fake as my eyelashes.” Advocates who wanted to be heard had to rush between hearing rooms and cope with a restrictive five-minute limit on testimony. Still, concerned Kansans scrambled between the two rooms, and opponents of Ad Astra 2 who testified live outnumbered proponents ten to one.

61. For example, Dr. Mildred Edwards, Chief of Staff to the Wyandotte County Mayor, implored the Senate committee not to split Wyandotte County. Dr. Edwards reminded both committees that Wyandotte County has a unified government which administers the government

functions across the entire county and all of its cities. Splitting the county between two different congressional districts, as Ad Astra 2 does, means dividing that single political subdivision and governmental entity, responsible for all municipal services for the people of Wyandotte County, and a community that had overwhelmingly voted to unify its government.

62. Davis Hammet, President of Loud Light, testified in opposition before the House Committee, and Melissa Stiehler, Loud Light's Advocacy Director, testified in opposition in the Senate's simultaneous proceedings. Both highlighted how Ad Astra 2 submerged Kansas's two largest research universities and the youth vote in the Big First. Ad Astra 2 also separates those universities from their peers at Washburn University in Topeka and Emporia State University in Emporia.

63. Republican legislators also refused to identify who drew Ad Astra 2, instead referring to "we" and "us" as its designers.

64. During the debate on the floor of the Kansas House, even Republicans voiced concern about their party's rushed push to pass Ad Astra 2. Representative Randy Garber, a Republican from Sabetha, declared, "I think our party is being bully-ish about this and not considering everybody else."

65. And Republican Representative Steve Huebert, one of the main proponents of Ad Astra 2, ultimately admitted the true motives of the Legislature: "Gerrymandering, partisan politics, all those different things that are being discussed and talked about right now, are just things that happen," he recounted during the full chambers' debate, referencing the drawing of the enacted plan. "They always have and they always will," he concluded. *Kansas Republican defends gerrymandering and partisan politics as "just things that happen,"* Kansas Reflector (Jan. 25, 2022), <https://kansasreflector.com/2022/01/25/kansas-republican-defends-gerrymandering-and->

partisan-politics-as-just-things-that-happen/.

66. Nonetheless, on January 21, the Senate passed Ad Astra 2 by a 26-9 margin. The House passed Ad Astra 2 by a 79-37 vote five days later. No Democrats voted in favor of the bill. One Senate Republican also voted against Ad Astra 2. According to the *Kansas City Star*, “He criticized party leadership for politicizing the process and failing to draw fair lines. ‘It ought to make every one of us uncomfortable that if we can’t get together and come up with a map with 21 votes we’re going to end up with problems.’” Katie Bernard and Lucy Peterson, *Kansas Senate approves redistricting plan splitting Wyandotte County along I-70*, *The Kansas City Star* (Jan. 23, 2022), <https://www.kansascity.com/news/politics-government/article257586723.html>.

67. On February 3, Governor Kelly vetoed Ad Astra 2, Senate Bill 355. In her veto statement, Governor Kelly highlighted the damage Ad Astra 2 did to Wyandotte’s minority communities. “Wyandotte County is carved into two separate congressional districts. Without explanation, this map shifts 46% of the Black population and 33% of the Hispanic population out of the third congressional district by dividing the Hispanic neighborhoods of Quindaro Bluffs, Bethel-Welborn, Strawberry Hill, Armourdale and others from Argentine, Turner and the rest of Kansas City, Kansas south of I-70.” Press Release, Kansas Office of the Governor, Governor Laura Kelly Vetoes Congressional Redistricting Map, Senate Bill 355 (Feb. 3, 2022), <https://governor.kansas.gov/governor-laura-kelly-vetoes-congressional-redistricting-map-senate-bill-355/>. Kelly continued: “Ad Astra 2 also separates the city of Lawrence from Douglas County and inserts urban precincts of Lawrence into the largely rural Big First Congressional District, reducing the strength of communities of interest in Western Kansas and unnecessarily dividing communities of interest in Eastern Kansas.” *Id.*

68. At the end of her statement, Governor Kelly offered a bipartisan olive branch: “I

am ready to work with the Legislature in a bipartisan fashion to pass a new congressional map that addresses the constitutional issues in Senate Bill 355. Together, we can come to a consensus and pass a compromise that empowers all people of Kansas.” *Id.*

69. Instead of taking the Governor up on her offer, the legislature voted along party lines to override her veto. Importantly, Ad Astra 2 did not receive sufficient votes in either house to override a veto on its initial pass through the legislature. As a result, Republican leadership needed to use all of the tools at its disposal to muster sufficient votes to override the governor’s veto. For example, Michael Houser of Columbus (R), to attended session with an oxygen tank even though he had been absent from the legislature for weeks because of illness. On the Senate side, after initially voting no on the veto, Senator Mark Steffen of Hutchinson had a change of heart and voted to override the veto after a bill on two of his pet projects—off-label prescriptions of ivermectin to treat COVID-19 and philosophical exemptions for *all* childhood vaccines—suddenly advanced in the legislative process.

70. Senator Steffen (R) also openly admitted his motives, noting his concern with the map was based on the partisan makeup of the districts. He complained that the map was “dumping Lawrence liberals” into the First District, which he characterized as “insidious redistricting [that] will kill off the true conservative character of the Big First,” but later admitted to Kansas City radio host Pete Mundo that “I [voted for the map] to make some progress on some other fronts.” Jason Tidd and Andrew Bahl, *Kansas Senate Republicans override redistricting map veto after Mark Steffen, Alicia Straub flip*, Topeka Capital Journal (Feb. 9, 2022), <https://www.cjonline.com/story/news/politics/2022/02/08/redistricting-map-kansas-senate-republicans-override-laura-kelly-veto/6708028001/>; Opinion, Leavenworth Times, (Feb. 12, 2022), <https://www.leavenworthtimes.com/2022/02/12/republicans-went-too-far-to-get-their->

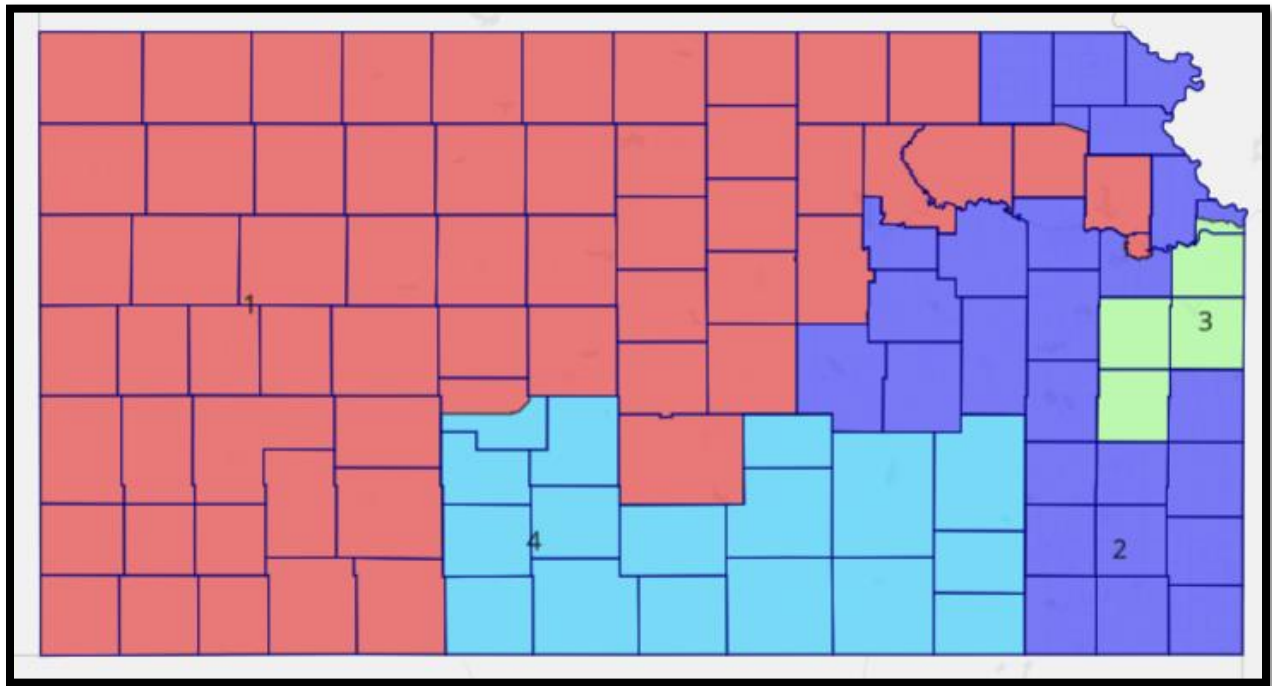
maps/.

71. As a result, the Republican supermajority—using unknown map drawers—enacted three rock-solid Republican districts and one Republican-leaning competitive district, which would be difficult for a Democratic candidate to win.

**V. Ad Astra 2 is a careful and deliberate partisan gerrymander that dilutes minority voting power.**

72. Ad Astra 2 has several telltale signs of a partisan gerrymander. It unnecessarily and inexplicably shifts large numbers of Kansans out of their prior districts, with no population-based need or other legitimate justification, violating the state’s own redistricting criteria. In doing so, it targets the minority party’s most significant strongholds in Wyandotte and Douglas. It cracks longstanding Democratic communities of interest across the state, including the Kansas City metro area, Wyandotte County, and the minority communities living there. It also splits most of the university city of Lawrence from the rest of Douglas County and separates Manhattan and Fort Riley from Junction City, despite close geographical and community ties between the two. This is a textbook case of “cracking:” the deliberate dispersal of voters of a disfavored party across multiple districts in order to minimize the potency of their votes, all at the expense of minority Kansans. It additionally splits the state’s four Native American reservations among two districts. As a result of chopping up longstanding communities of interest, Ad Astra 2 is full of meandering, noncompact districts. Thus, Ad Astra 2 does not adhere to the redistricting guidelines the legislature adopted to govern the drawing of the congressional plan.

**Figure 3: Ad Astra 2**

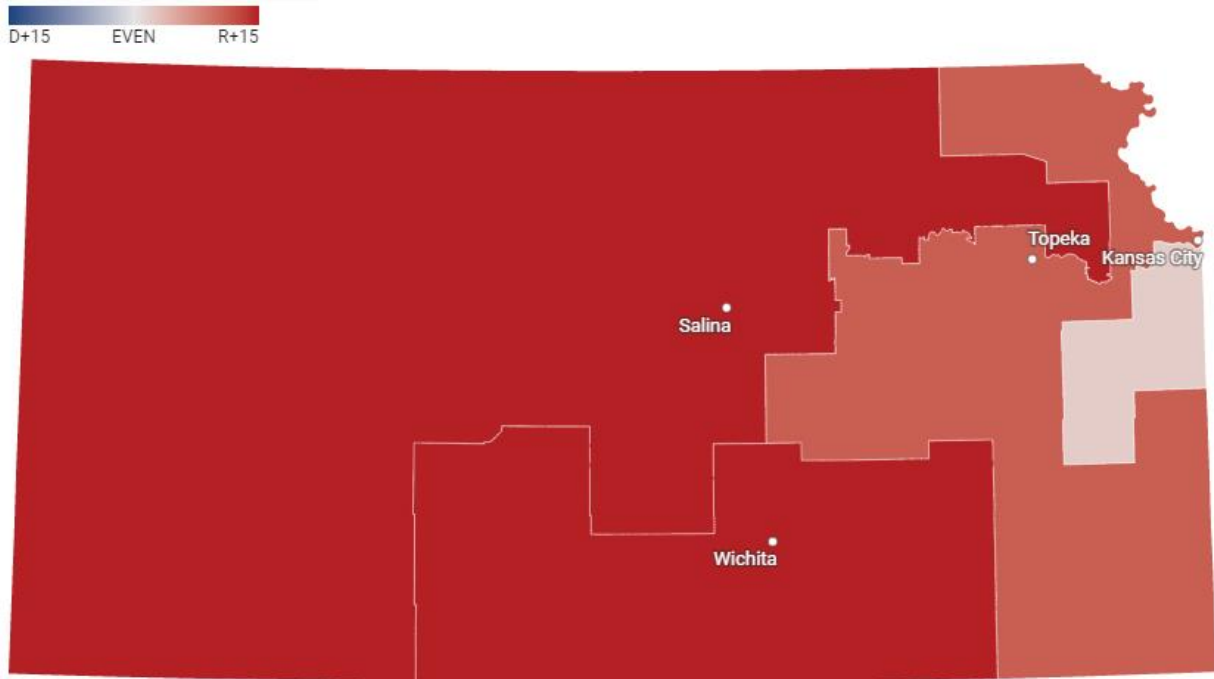


73. Ignoring their own guidelines, Republican legislators achieved their stated goals: Ad Astra 2 creates three very safe Republican districts and one Republican-leaning competitive district. Under many electoral environments, including the 2016 Presidential or Senatorial election results, Davids *loses* the Ad Astra 2 District 3.

74. In its analysis of Ad Astra 2, the Cook Political Report concluded that every district in the map was more favorable to Republicans than not according to Cook Political Report’s partisan index. Wasserman, *New Maps and 2022 Ratings: Connecticut, Kansas, and Washington*, Cook Political Report (Feb. 10, 2022), <https://www.cookpolitical.com/analysis/house/redistricting/new-maps-and-2022-ratings-connecticut-kansas-washington>. A map produced by Cook Political Report showing the likely partisan leanings of each district is reproduced below. According to Cook Political Report’s analysis, Districts 1, 2, and 4 are all “Solid Republican” while District 3 is a “Toss up” with a rating of “R+2.”



**Figure 4: Partisan Lean of Ad Astra 2 (Cook Political Report)**



75. Under Ad Astra 2, Democrats perform worse in every reasonably likely electoral environment in District 3 than under the predecessor district. Under a composite index for all statewide elections from 2016-2020, for example, District 3 is a virtual tie under Ad Astra 2, while the 2012 Plan would have a Democratic candidate winning by over six points. Under the 2018 race for Attorney General, the Democratic candidate would lose District 3 by a percentage point under Ad Astra 2, while winning by over five points under the 2012 Plan. This is consistent with the actual election results for the district: under the 2012 Plan, Representative Davids won re-election in District 3 by almost 10 percentage points in 2020.

76. The likely electoral outcomes of Ad Astra 2 are entirely inconsistent with the statewide preferences of Kansas voters. Between 2016 and 2020 Democrats received, on average, 40 percent of the votes to Republicans' 55 percent (5 percent of voters voted for other candidates). Ad Astra 2 would result in, *at best*, Democrats winning 25 percent of the seats, and creates a high

likelihood that Democrats will receive no seats at all, meaning two out of every five Kansans would have their votes negated by unlawful district lines.

**A. Ad Astra 2 cracks the Kansas City metro area, dividing its minority communities and diluting their votes.**

77. Wyandotte County is undeniably the core of the Kansas City metro area. As mentioned above, Wyandotte County has a single unified government structure across almost the entire county. All but two small municipalities within Wyandotte County—Bonner Springs and Edwardsville—fall under the same governmental structure. The citizens of Wyandotte voted overwhelmingly in favor of this structure 25 years ago. Ad Astra 2 cleaves this unified structure in two, pairing each half with much more rural areas outside the Kansas City metro area.

78. The redistricting guidelines’ explanation for why counties should be kept whole is especially true for Wyandotte and its unified government. Wyandotte and its unified government are “historically” a “significant political unit[,]” and its “officials are elected on a countywide basis.” As federal courts have found, Wyandotte is an “economic, social, and cultural unit” and together with the northern portion of Johnson, “part[] of a larger socioeconomic unit.” Despite the guidelines’ command that “these communities of interest should be considered during the creation of congressional districts,” and “whole counties should be in the same congressional district to the extent possible,” Ad Astra 2 dices up Wyandotte and the greater Kansas City metro area.

79. Andrew Davis, the District 8 commissioner for the Unified Government, explained some of the harms of splitting Wyandotte: “Splitting [Wyandotte County] and saying that our ballots are going to be different means that we can’t consolidate our voting power, which means that we’re unable to advocate for our interests.” Under the 2012 Plan, Davis continued, Wyandotte Unified Government had to lobby only a single member of Congress for their needs. Under Ad Astra 2, the Wyandotte Unified Government would need “to figure out what interests we can align

with the [highly rural] second district” when lobbying their members of Congress.

80. Wyandotte is among the most diverse counties in Kansas. It has a total population of 169,245 people. In Wyandotte County, 32.39 percent of the population is Hispanic, and 22.56 percent is Black. Wyandotte County is one of the few counties in the state that has a majority-minority population.

81. Again, despite the redistricting guidelines’ requirement that the plan shall “have neither the purpose nor effect of diluting minority voting strength,” Ad Astra 2 divides the minority communities of Wyandotte County in half, submerging most of them in sprawling and heavily white and Republican District 2. Of the 55,814 Hispanic residents of Wyandotte County, 39,091 (70.04 percent) are placed in District 2, while 16,723 (29.96 percent) are in District 3. Similarly, Ad Astra 2 places 82.87 percent of the Black population in Wyandotte in District 2 (32,216 Kansans) and 17.13% present in District 3 (6,661 Kansans). The smaller, but significant, residual chunk of urban Hispanic and Black voters in Wyandotte are in District 3 and paired with Johnson County, which is a mix of urban, suburban, and rural areas, and heavily rural Miami, Franklin, and Anderson counties. In doing so, Ad Astra 2 ignores multiple courts’ findings, including the *Essex* court, which explained just ten years ago that “Wyandotte County should be placed in a single district so that the voting power of its large minority population may not be diluted.” *Essex*, 874 F. Supp. 2d at 1086; *see O’Sullivan*, 540 F. Supp. at 1204.

82. Ad Astra 2 also divides minority neighborhoods within Wyandotte nearly along Interstate 70. The Stony Point neighborhood, a quiet semi-urban neighborhood south of I-70 and east of the Kansas speedway, is split right down the middle of some of its residential streets. Robert Medina, a resident of Stony Point, told the Kansas City Star, “I wouldn’t think they would go down the middle of the Street” speaking of Ad Astra 2 map drawers. “I don’t know why they would do

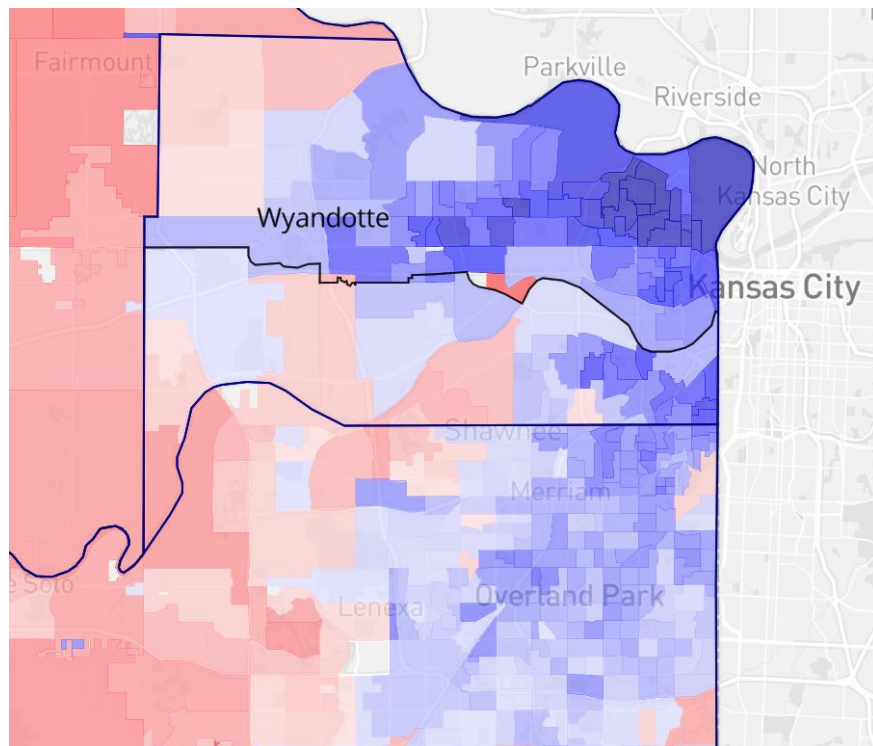
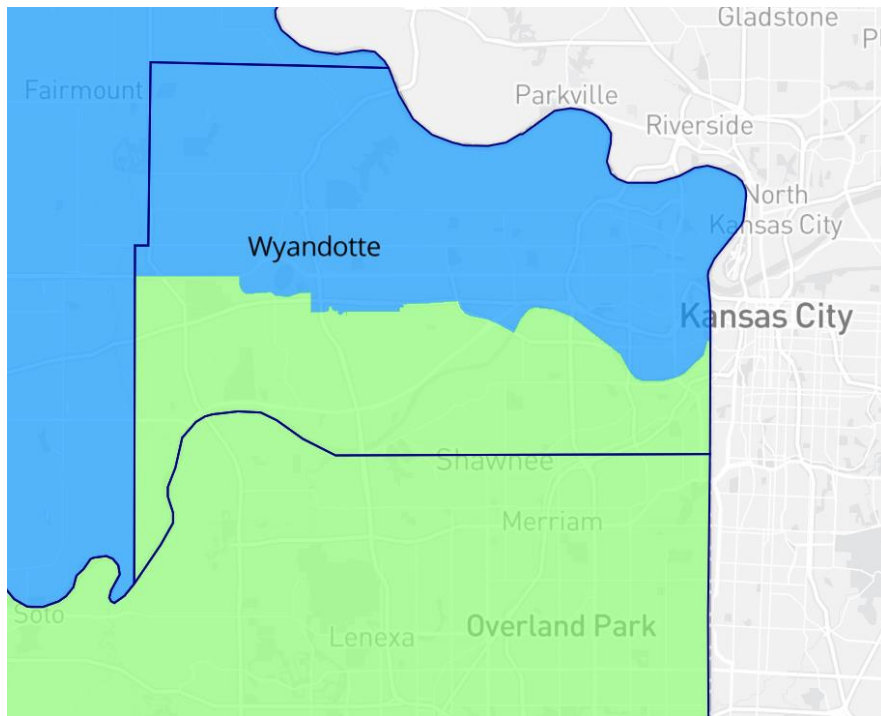
that, why they wouldn't just include the whole neighborhood," Medina continued.

83. Additionally, by using the I-70 interstate as a dividing line, Ad Astra 2 followed a division that already had racial implications for the communities of Wyandotte County. Initially built in the 1950s as part of the Kansas Interstate, U.S. Route 24, the portion of I-70 traversing Wyandotte County, divided up minority communities decades ago. Now the county is again divided along the same line, reinforcing those racial scars.

84. Wyandotte is the most Democratic and least Republican county in Kansas. As of January 2022, Wyandotte County had 89,702 registered voters. Of those, 48 percent (42,965) are Democrats, 33 percent (29,218) are unaffiliated, and just 19 percent (29,218) are Republicans. Though Johnson is more mixed, the northern part of the county is heavily Democratic.

85. The first map, Figure 5, below shows Ad Astra 2's division of Wyandotte county, with different districts as different colors. District 2 is green and District 3 is blue. The lines on the map are county lines. On the second map below, Figure 6, both district and county lines can be seen (district lines are black, county lines are blue), and the district colors are replaced by each precincts' election results according to a composite of statewide elections from 2016 to 2020. Blue precincts lean Democratic, and the darker the shade of blue for each precinct, the more Democratic the precinct. The same is true of Republican precincts, represented in red.

**Figures 5 and 6: Ad Astra 2's Split of Wyandotte County**



Source: *Kansas, 2022 US House Districts, Ad Astra 2, Dave's Redistricting*, <https://davesredistricting.org/maps#viewmap::b4bc74fe-43ca-47d7-9358-b5ece7ccc839> (last visited Feb. 13, 2022)

86. Though Wyandotte and Johnson have been unified in a single congressional district for 90 of the last 100 years, because of population growth, their combined population is now too large for them to be in a single congressional district. But instead of preserving the integrity of the Kansas City metro area, which includes all of Wyandotte and the northern parts of Johnson, Ad Astra 2 divides the metro area through the middle of Kansas City and Wyandotte. While Johnson County is kept whole under this configuration, it has far more disparate geography and encompasses distinct communities of interest, unlike the entirely urban Wyandotte.

87. Additionally, the northern sections of Johnson encompass the Democratic and diverse semi-urban and suburban bedroom communities of Kansas City. If a Johnson County voter were to drive farther south, away from Kansas City, she will find herself in increasingly Republican and rural portions of Johnson County. It is these sparsely populated rural sections of southern Johnson County—not the northern portions of Wyandotte—that should most logically be excluded from the urban Third District to achieve population equality. Instead, Ad Astra 2 pairs the other half of Wyandotte’s urban, diverse, and heavily Democratic voters, as well as similar voters in the northern portions of Johnson County, with rural, white, and heavily Republican parts of Johnson and other similarly rural counties to the south and west.

88. The numbers confirm the illogical and unnecessary population shifts between districts. Despite being overpopulated by just 57,816 people, Ad Astra 2 unnecessarily shifts 112,661 people out of District 3 and into District 2 (all from Wyandotte). And Ad Astra 2 adds 54,845 people to District 3 from District 2 (Franklin County, Anderson County and the rest of Miami County). In all, 109,690 additional people were moved beyond what was required for adjusting for population changes, contravening the redistricting guidelines’ command to preserve the cores of former districts. As Governor Kelly explained in her veto statement, those shifted out

of District 3 are primarily minority communities: 46 percent of the Black population and 33 percent of the Hispanic population were moved out of the Third District by dividing minority neighborhoods.

89. The division of Wyandotte and the Kansas City metro area thus results in the dilution of Democratic, Black, and Hispanic votes in violation of the redistricting guidelines. Under any reasonable arrangement of the Kansas City metro area, Wyandotte would be kept whole in a district with urban and suburban portions of Johnson County. This district would preserve the voting strength of Democratic voters and Black and Hispanic voters.

**B. Ad Astra 2 splits Douglas County and the greater Fort Riley community.**

90. Ad Astra 2 similarly dilutes minority and Democratic voting strength in Douglas County. Under the 2012 Plan, Douglas County is wholly within the formerly competitive Second District. Ad Astra 2 inexplicably grabs most of the city of Lawrence, the county seat of Douglas, home to the University of Kansas, and long a Democratic stronghold, and throws it into the Big First—a vast rural, Republican expanse that stretches from Lawrence to the Colorado border.

91. After Wyandotte, Douglas is the second most Democratic and second least Republican county in Kansas. As of January 2022, Douglas County had 79,110 registered voters. Of those, 45 percent (20,539) are Democrats, 28 percent (22,334) are unaffiliated, and just 26 percent (20,539) are Republicans. Douglas is also one of the more diverse counties in Kansas, with around one in four residents identifying as a member of a minority community.

92. Lawrence has historically been a pawn in the state’s redistricting game. From the 1970s until 2002, the city flipped between the Second and Third Districts every 10 years. But as the *Essex* court explained in 2012, in joining Lawrence with the rest of Douglas County, “Douglas County and the City of Lawrence should not be split between the First and Second Districts . . . . [T]hey are more appropriately placed entirely within the Second District.” *Essex*, 874 F. Supp. 2d

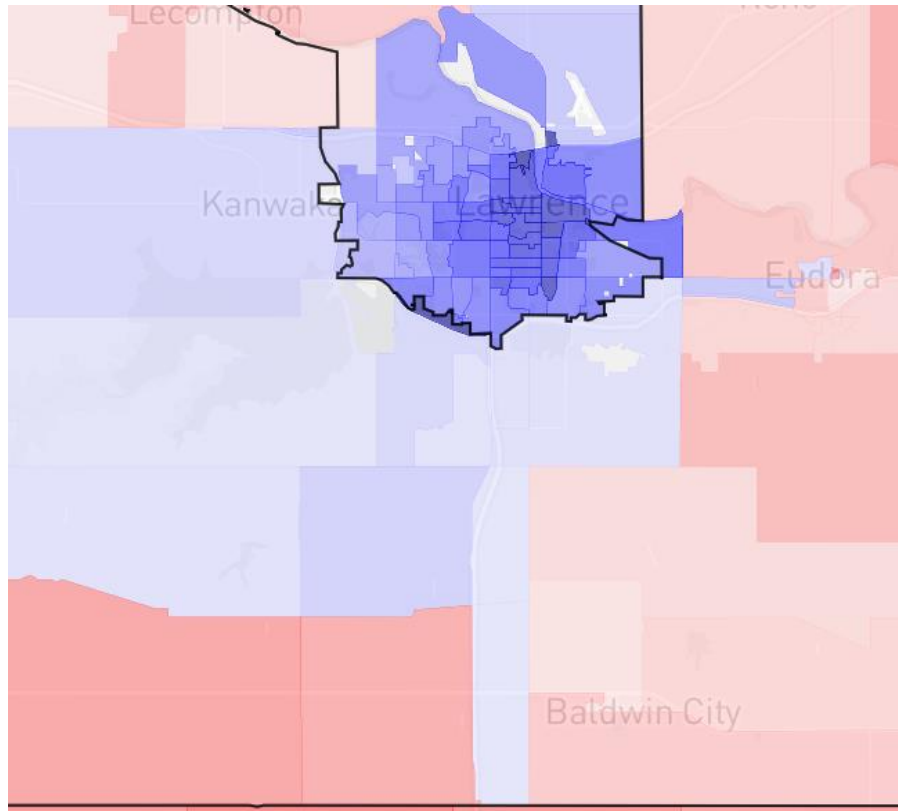
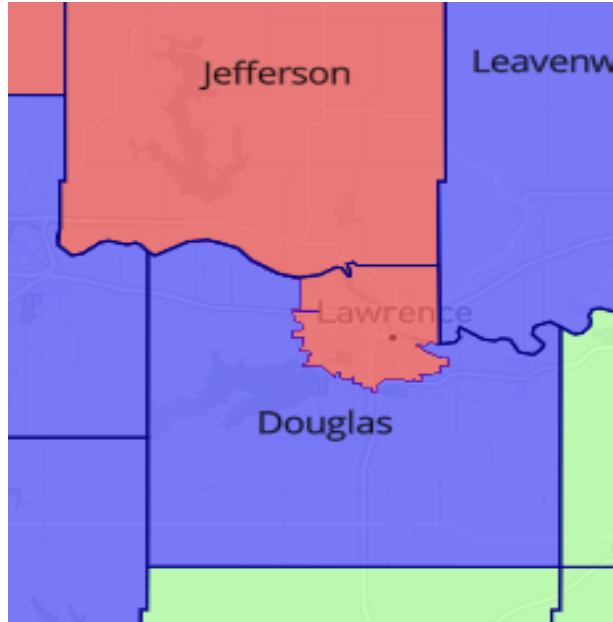
at 1087.

93. Instead of keeping urban Lawrence and Douglas in the Second District, Ad Astra 2's First District sprawls eastward from the Colorado border through Jackson and Jefferson to scoop up most of heavily Democratic Lawrence, along with most of its 95,000 residents. The Big First is now even bigger, spanning about 400 miles.

94. The odd result is a bowl-shaped line running through the southern part of Lawrence. Figures 7 and 8 show how Ad Astra 2 excised Lawrence from the rest of Douglas County, diluting the voting strength of Lawrence Democrats and minorities, including Plaintiffs Dillon and Raite. Under Ad Astra 2, Plaintiff Dillon, who is Black, and Plaintiff Raite, who is Hispanic, both politically active members of Generation Z, will have to vote for their congressional representative alongside rural Kansans hundreds of miles away with whom they share little in common. Figure 7 shows Ad Astra 2's butchering of Douglas County, with the District 1 colored red and District 2 colored blue. Figure 8 zooms in on the separation of Lawrence from the rest of Douglas County, together with precinct-level partisan leanings based on a composite index of statewide elections from 2016 to 2020. Blue shading indicates Democratic-leaning precincts, the darker the more heavily Democratic. The same is true for Republican-leaning precincts and red.



**Figures 7 and 8: Ad Astra 2 Split of Douglas County**

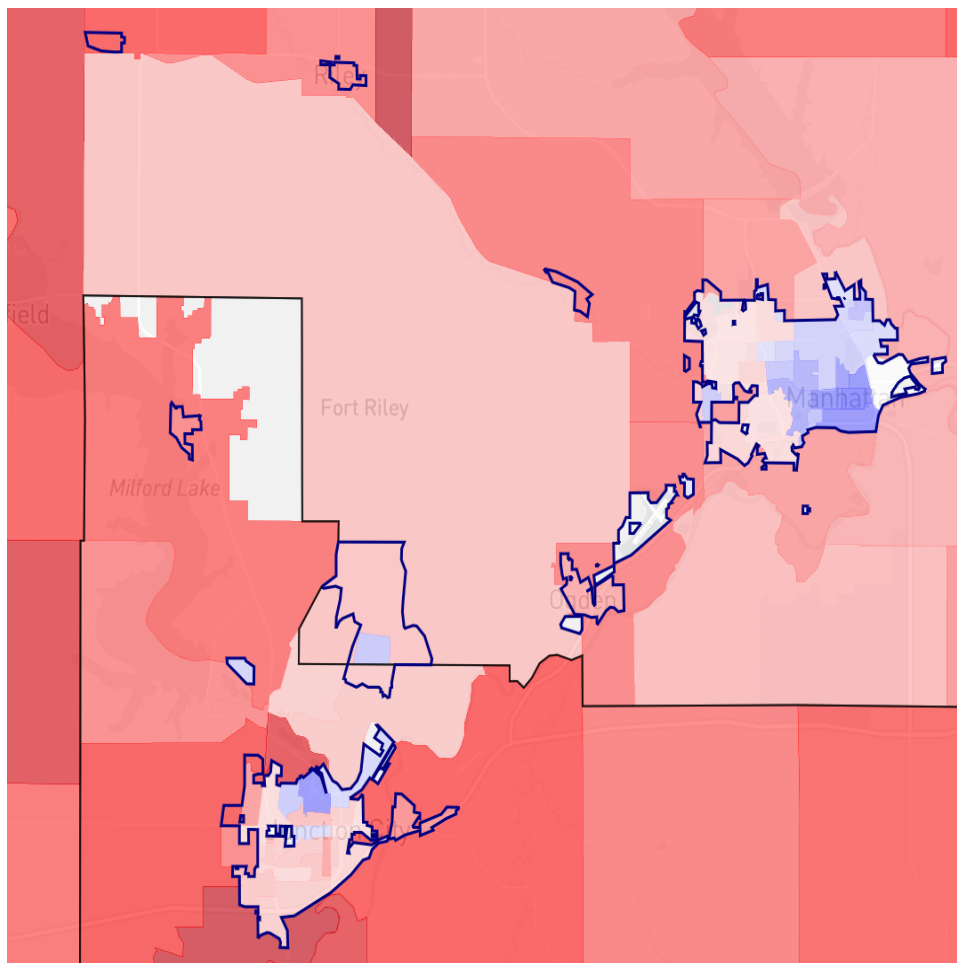


Source: *Kansas, 2022 US House Districts, Ad Astra 2, Dave's Redistricting*, <https://davesredistricting.org/maps#viewmap::b4bc74fe-43ca-47d7-9358-b5ece7ccc839> (last visited Feb. 13, 2022)

95. Ad Astra 2 also splits minority communities in Douglas. About 25 percent of Douglas County residents are minorities. Of the total minority population in Douglas County, almost 91% of it is placed in District 1. In contrast, only 78% of the total white population of Douglas County is in District 1.

96. Ad Astra 2 also separates Fort Riley and Manhattan, Kansas (home of Kansas State University) from Junction City, thereby breaking apart one of Kansas's most important military communities of interest, a noticeable change from the 2012 Plan. Despite being just a couple of miles apart, Fort Riley and Manhattan are in the Big First, while Junction City is in the Second District. A soldier leaving post in the First District and exiting Grant or Trooper Gates into Junction City will suddenly find herself in the Second District. And this region of the state is extremely diverse. Fort Riley and Junction City have Hispanic populations of 53.9 percent and 55.7 percent, respectively. There is no need to split these closely-knit communities. This split is depicted in Figure 9 below. City borders in the figure below are blue and district borders are black. Fort Riley can be seen north of Junction City and southwest of Manhattan, with the district splitting off the southernmost portion of the base. Partisan leanings are also overlaid, with precinct-level results based on a composite of statewide elections from 2016 to 2020.

**Figure 9: Junction City / Fort Riley Split**



Source: *Kansas, 2022 US House Districts, Ad Astra 2, Dave’s Redistricting*, <https://davesredistricting.org/maps#viewmap::b4bc74fe-43ca-47d7-9358-b5ece7ccc839> (last visited Feb. 13, 2022)

**C. Ad Astra 2 divides Kansas’s Native American populations into separate districts.**

97. When the Court drew the 2012 Plan, it placed all four of Kansas’s major Native populations in the highly compact former Second District.

98. Ad Astra 2, on the other hand, splits the state’s major reservations between the Second District and the Big First, with three of the four in the former and one in the latter.

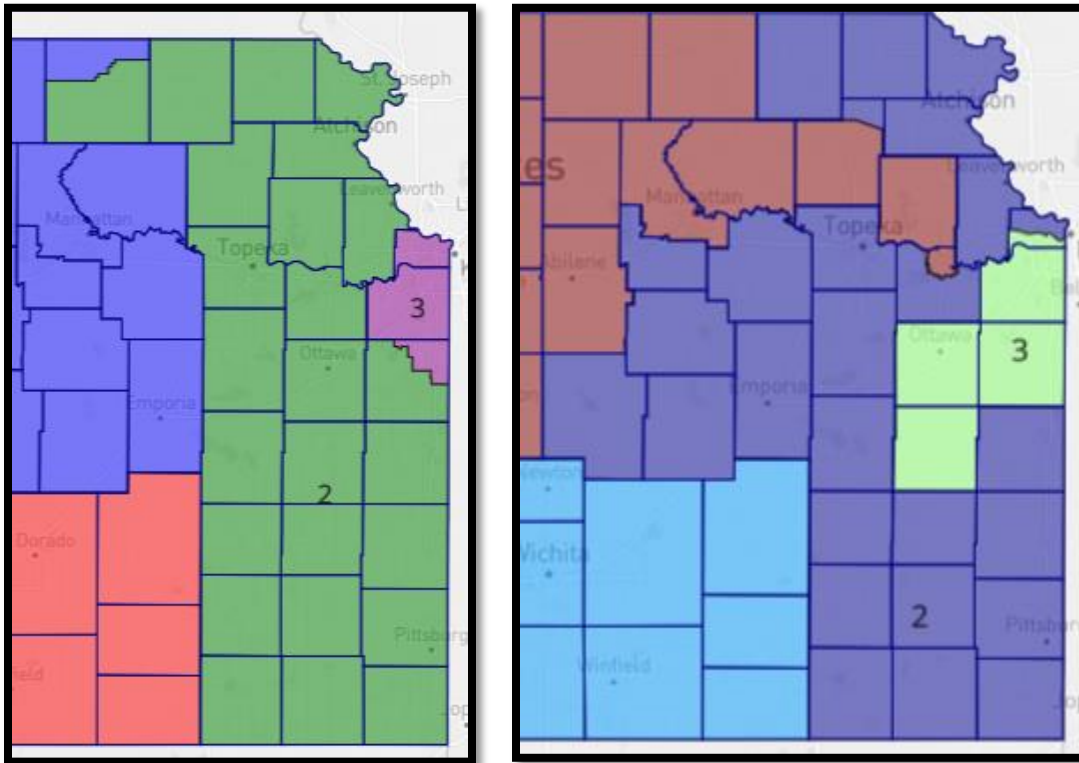
99. The two largest reservations are split from one another, despite being just a few miles apart. The Kickapoo reservation lands in the Second District. Meanwhile, the Prairie Band

Potawatomi Nation falls in the Big First. There is no legitimate reason for splitting the reservations.

**D. District 2 is unnecessarily non-compact and oddly shaped.**

100. Under the court-drawn 2012 Plan, the Second District was a compact, regularly shaped district that fell along county lines almost entirely. Figure 10 depicts the Second District in the 2012 Plan in green and in Ad Astra 2 in purple.

**Figure 10: District 2, 2012 Plan (Left), Ad Astra 2 (Right)**



101. Ad Astra 2 mutates the 2012 Second District. Commentators have observed that the backward “S” shape of Ad Astra 2’s Second District is reminiscent of the original infamous salamander-shaped district drawn by Massachusetts Governor Elbridge Gerry, from which the term gerrymander was coined.

102. Widely used compactness metrics confirm the irregularity of the snaking Second District. The 2012 District 2 had a Polsby-Popper score of .35. Ad Astra 2’s District 2 is

significantly less compact and has a Polsby-Popper score of just .15. In fact, Ad Astra 2's Second District was the *least compact* district of all the districts in all the maps submitted to the House and Senate redistricting committees. No legitimate reason explains District 2's configuration.

103. Again, the numbers reveal there was no reason to dramatically reconfigure District 2. Despite the former Second District being *underpopulated* by 21,463 people, 186,774 people were moved out of District 2 and into Districts 1 and 3. Separately, 208,237 people were moved into District 2 from Districts 1 and 3. A total of 395,011 people were moved, 373,548 people beyond the population deviation of 21,436—again in violation of the Redistricting Guidelines' requirement to preserve the cores of former districts.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### *Right to Vote*

(Kan. Const. Art. 5, § 1; Kan. Const. Bill of Rights §§ 1-2)

104. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Petition and the paragraphs below as though fully set forth herein.

105. Article 5, Section 1 of the Kansas Constitution guarantees all Kansans a right to vote in the state's elections: "Every citizen of the United States who has attained the age of eighteen years and who resides in the voting area in which he or she seeks to vote shall be deemed a qualified elector." Kan. Const. Art. 5, § 1.

106. Section 1 of the Bill of Rights to the Constitution provides that "[a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." Kan. Const. Bill of Rts. § 1.

107. Section 2 of the 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. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.” Kan. Const. Bill of Rts. § 2.

108. The Kansas Supreme Court has recognized that the right to vote is fundamental: “It is every elector’s portion of sovereign power to vote on questions submitted. Since the right of suffrage is a fundamental matter, any alleged restriction or infringement of that right strikes at the heart of orderly constitutional government, and must be carefully and meticulously scrutinized.” *Moore v. Shanahan*, 486 P.2d 506, 511 (Kan. 1971).

109. The Court has also interpreted Section 1 to secure natural rights distinct from and broader than those protected by the United States Constitution. *Hodes & Nauser, MDs v. Schmidt*, 440 P.3d 461, 472 (Kan. 2019).

110. Numerous courts have also recognized that the right to vote includes the right to equal voting power. Order at ¶ 4, *Harper v. Hall*, No. 413PA21 (N.C. Feb. 4, 2022) (opinion forthcoming) (“The fundamental right to vote includes the right to enjoy ‘substantially equal voting power and substantially equal legislative representation’” (quoting *Stephenson v. Bartlett*, 562 S.E.2d 377, 382 (N.C. 2002))); *State ex rel. Skaggs v. Brunner*, 900 N.E.2d 982, 992 (Ohio 2008) (“[t]he right to vote includes the right to have one’s vote counted on equal terms with others.” (internal citation omitted)). Partisan gerrymandering violates this right by diluting the votes of members of one party to benefit members of another. Order at ¶ 4, *Harper*, No. 413PA21.

111. *Ad Astra 2* unlawfully seeks to predetermine election outcomes in individual districts and across the state as a whole. Plaintiffs’ right to vote is violated because they do not possess substantially equal voting power with voters who prefer other candidates. *Ad Astra 2* creates this inequality by placing Plaintiffs in districts in which their votes are diluted, and they

have no chance to elect their candidate of choice. By cracking apart Democratic votes in Wyandotte County and in Douglas, Johnson, Riley, and Geary, Ad Astra 2 creates three safe Republican districts and one Republican-leaning competitive district. This deprives Democrats in the state of any semblance of equal political power in Congress, and thereby deprives them of the right to vote on equal terms.

112. The map's partisan breakdown is entirely out of line with the statewide preferences of Kansans, which over recent years have begun to swing in the direction of Democrats. Between 2016 and 2020, statewide Democratic candidates received, on average, 40 percent of the vote to Republicans' 55 percent (Independents received 5 percent). Indeed, in 2018, Governor Kelly won the statewide race for the office she now holds by a margin of 5 percent. Seeking to thwart growing Democratic power, Ad Astra 2 creates a strong likelihood that Republicans will win 100 percent of the congressional seats, just as Senate President Wagle promised back in 2020.

113. Ad Astra 2's division of Wyandotte County's heavily Democratic population is not justifiable by any neutral redistricting criteria, including the legislature's own guidelines: it results in several highly noncompact districts, it fails to preserve political subdivisions, it fails to retain the cores of former districts, and it tears apart communities of interest, most notably the Kansas City metro area, which has twice been recognized by federal courts as a single unit deserving of preservation. *See Essex*, 874 F. Supp. 2d at 1086; *O'Sullivan*, 540 F. Supp. at 1204. Democratic strongholds are similarly divided, with Lawrence separated from the remainder of Douglas County, and Manhattan and Fort Riley separated from Junction City, despite their close ties. These unnecessary divisions indicate the legislature's intent to subjugate the state's neutral redistricting criteria to partisan considerations in contravention of voters' rights under the Kansas Constitution.

114. Because the plan infringes on the fundamental right to vote, it must survive strict

scrutiny in order to stand. *See Hodes & Nauser*, 440 P.3d at 500-01 (violations of natural rights subject to strict scrutiny). But the enacted plan is not narrowly tailored to a compelling state interest.

115. But even if some less exacting level of scrutiny applies (and it does not), since no governmental interest, much less a compelling one, can justify *Ad Astra 2*, it must be struck down as violative of Article 5, Section 1 of the Kansas Constitution and Sections 1 and 2 of the Bill of Rights.

116. Plaintiffs advance this claim under the Kansas state constitution only. Plaintiffs do not seek relief under the United States constitution or any federal statute.

**SECOND CLAIM FOR RELIEF**  
*Equal Protection*  
(Kan. Const. Bill of Rights §§ 1-2)

117. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Petition and the paragraphs below as though fully set forth herein.

118. Section 1 of the Bill of Rights guarantees that “[a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.” Kan. Const. Bill of Rts. § 1.

119. Section 2 of the 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. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.” Kan. Const. Bill of Rts. § 2.

120. The Supreme Court of Kansas has interpreted Sections 1 and 2 to collectively protect rights similar to those protected under the Due Process and Equal Protection Clauses of the



Fourteenth Amendment to the United States Constitution, with Section 1 focused on “individual personal or property rights” and Section 2 focused on “political rights.” *Farley v. Engelken*, 740 P.2d 1058, 1061 (Kan. 1987). In the same opinion, the Court also recognized that the state constitution supplies broader and more robust protection for equal-protection rights than its federal counterpart. *See id.* at 1063 (applying heightened scrutiny to a Section 1 equal protection claim by victim of medical malpractice alleging he was deprived of a remedy against person who wronged him, and holding that “the Kansas Constitution affords separate, adequate, and greater rights than the federal Constitution”).

121. As a North Carolina court recognized in interpreting an analogous provision of that state’s constitution, the right to equal protection encompasses a right to “substantially equal voting power.” *Common Cause v. Lewis*, 2019 WL 4569584, at \*113 (Super. Ct. N.C. Sep. 3, 2019) (quoting *Stephenson*, 562 S.E.2d at 393-96 & n.2). Partisan gerrymandering runs afoul of this protection: “by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” *Lewis*, 2019 WL 4569584, at \*113, *accord* Order at ¶ 5, *Harper*, No. 413PA21 (“The General Assembly violates the North Carolina Constitution when it deprives a voter of his or her right to substantially equal voting power on the basis of partisan affiliation.”); *see also League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Opinion No. 2022-Ohio-65 ¶ 157 (Brunner, J, concurring) (“when legislative maps are adopted in a manner that manipulates electoral constituencies to favor and entrench the legislative control of one party and disfavor another, creating unequal classes of voters, this affects the weight and power of each person’s vote and violates [Ohio’s Equal Protection clause]”).

122. By cracking Democratic voters across the state, the Republican supermajority deprived Democrats in Kansas of the fundamental right to equal voting power. It is therefore subject to strict scrutiny. But even if some less exacting level of scrutiny applies (and it does not), since no interest, much less a compelling one, can justify Ad Astra 2’s dilution of Democratic votes, the plan fails strict scrutiny. Ad Astra 2 therefore violates Plaintiffs’ equal protection rights guaranteed by Sections 1 and 2 of the Kansas Bill of Rights.

123. Plaintiffs advance this claim under the Kansas state constitution only. Plaintiffs do not seek relief under the United States constitution or any federal statute.

**THIRD CLAIM FOR RELIEF**  
*Freedom of Speech*  
(Kan. Const. Bill of Rights § 11)

124. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Petition and the paragraphs below as though fully set forth herein.

125. Section 11 of the Bill of Rights guarantees that “all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights . . . .” Kan. Const. Bill of Rts. § 11.

126. As the Kansas Supreme Court has said, “Freedom of speech and of the press are secured against abridgment by the federal and state Constitutions. They are among the most fundamental personal rights and liberties of the people.” *Unified Sch. Dist. No. 503 v. McKinney*, 236 Kan. 224, 234, 689 P.2d 860, 869 (1984).

127. As courts in other states have recognized, partisan gerrymandering violates this guarantee of the right to freedom of speech. *Lewis*, 2019 WL 4569584, at \*121-22, *accord* Order at ¶ 3, *Harper*, No. 413PA21 (concluding North Carolina’s drawing of a partisan gerrymander following the 2020 census was “unconstitutional beyond a reasonable doubt under the . . . free

speech” clause of the North Carolina Constitution). This is because partisan gerrymandering favors one party over another, and therefore amounts to unconstitutional viewpoint discrimination. *Lewis*, 2019 WL 4569584, at \*121-22.

128. As discussed above, the Republican supermajorities passed Ad Astra 2 to dilute Democratic votes. This “packing and cracking” of Democrats in Kansas “make[s] it harder for them to translate votes into [congressional] seats” and therefore “single[] out a subset of messages for disfavor based on the views expressed . . . This is the essence of viewpoint discrimination.” *Id.* (quoting in second part *Matal v. Tam*, 137 S. Ct. 1744, 1766 (2017) (Kennedy, J., concurring)). Ad Astra 2 thereby privileges Republican viewpoints while singling out Democratic viewpoints for disapproval.

129. As a viewpoint-discriminatory measure, Ad Astra 2 is subject to strict scrutiny. *Id.* at \*123; *see also McKinney*, 236 Kan. at 227–28 (“Restrictions on free speech are valid only where necessary to protect compelling public interests and where no less restrictive alternatives are available.”).

130. But even if some less exacting level of scrutiny applies (and it does not), since no interest, much less a compelling one, can justify Ad Astra 2’s discrimination against Democratic viewpoints, Ad Astra 2 violates Section 11’s guarantee of freedom of speech.

131. Plaintiffs advance this claim under the Kansas state constitution only. Plaintiffs do not seek relief under the United States constitution or any federal statute.

#### **FOURTH CLAIM FOR RELIEF**

*Freedom of Assembly*  
(Kan. Const. Bill of Rights § 3)

132. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Petition and the paragraphs below as though fully set forth herein.

133. Section 3 of the Bill of Rights guarantees the people “the right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government, or any department thereof, for the redress of grievances.” Kan. Const. Bill of Rts. § 3.

134. For purposes of congressional representation, Ad Astra 2 “severely burden[s]—if not outright preclude[s]—the ability of [plaintiffs] ‘to instruct their representatives, and to apply to the General Assembly for redress of grievances.’” *Lewis*, 2019 WL 4569584, at \*120 (quoting N.C. Const. Art. I § 2). Under Ad Astra 2, every Democrat in the state will live in a district where it is unlikely a candidate of their choice will be elected. For Democrats in the three safe Republican districts, they will have no ability to meaningfully petition their member of Congress, who in turn will feel no sense of accountability to Democratic voters, since such votes will play no role in determining whether or not the incumbent in the district is reelected.

135. In interpreting substantially identical language, other state courts have also read this type of language to incorporate a freedom to associate. *See id.* (citing *Libertarian Party of N.C. v. State*, 707 S.E.2d 199, 204-05 (N.C. 2011)). This freedom of assembly protects the right to form political parties with likeminded citizens and participate in those organizations. *See id.*; *Shane v. Parish of Jefferson*, 209 So. 3d 726, 741 (La. 2015).

136. Ad Astra 2’s elimination of a Democratic congressional district in Kansas burdens Plaintiffs’ associational rights. By placing every district in the state further out of reach for Democratic congressional candidates, Ad Astra 2 will likely “debilitate[] the [Democratic] party” and “weaken[] its ability to carry out its core functions and purposes.” *Lewis*, 2019 WL 4569584, at \*122 (cleaned up). This creates difficulties in fundraising, registering voters, and attracting volunteers. *Id.* These harms are not limited to the party itself. Plaintiffs, who wish to organize in

favor of their candidates of choice, will face similar problems. If potential Democratic voters do not believe there is any point to electoral organizing, they will be unlikely to volunteer or donate to organizations that Plaintiffs either belong to or wish to form.

137. Because Ad Astra 2 severely burdens Plaintiffs' right to freedom of assembly and to instruct their representatives, it is subject to strict scrutiny. *Id.* at \*123. But even if some less exacting level of scrutiny applies (and it does not), because no interest can justify Ad Astra 2's burden on Plaintiffs' rights, it violates Section 3 of the Kansas Bill of Rights.

138. Plaintiffs advance this claim under the Kansas state constitution only. Plaintiffs do not seek relief under the United States constitution or any federal statute.

#### **FIFTH CLAIM FOR RELIEF**

##### *Racial Vote Dilution*

(Kan. Const. art. 5 § 1; Kan. Const. Bill of Rights §§ 1-2)

139. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Petition and the paragraphs below as though fully set forth herein.

140. Article 5, Section 1 of the Kansas Constitution guarantees all Kansans a right to vote in the state's elections: "Every citizen of the United States who has attained the age of eighteen years and who resides in the voting area in which he or she seeks to vote shall be deemed a qualified elector." Kan. Const. Art. 5, § 1.

141. Section 1 of the Bill of Rights guarantees that "[a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." Kan. Const. Bill of Rts. § 1.

142. Section 2 of the 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. No special privileges or immunities shall ever be granted by the

legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.” Kan. Const. Bill of Rts. § 2.

143. As discussed, the Kansas Supreme Court has recognized that Sections 1 and 2 are the state analogue to the federal Equal Protection Clause but have also held that the state constitution supplies broader and more robust protection for equal-protection rights than its federal counterpart. *See Farley*, 740 P.2d at 1063 (applying heightened scrutiny to a Section 1 equal protection claim by victim of medical malpractice alleging he was deprived of a remedy against person who wronged him, and holding that “the Kansas Constitution affords separate, adequate, and greater rights than the federal Constitution”).

144. As discussed under Claim 2 above, Sections 1 and 2 protect a right to equal voting power. As a corollary to this principle, when government action dilutes the votes of one or several racial minorities, it denies to those communities the equal protection of the laws that Sections 1 and 2 guarantee.

145. *Ad Astra 2* dilutes the voting power of Black and Hispanic residents. There is significant racially polarized voting throughout the state. Against this backdrop, the Republican supermajority cracked the Black and Hispanic communities of the Kansas City metro area into two separate districts, thereby submerging them with votes that were overwhelmingly white and Republican. The same is true in Douglas County. Because minority voters in Kansas prefer Democrats (as do the overwhelming majority of voters in Wyandotte County and Douglas County), this strategy deprived minority voters of their ability to elect their candidates of choice.

146. As a result, for *Ad Astra 2* to stand, it must survive strict scrutiny. However, the legislature cannot show any interest, let alone a compelling one, that supports diluting minority votes or consciously dividing the minority communities of Wyandotte County into two separate

districts. Ad Astra 2 therefore violates the equal-protection rights recognized under Sections 1 and 2 of the Bill of Rights.

147. Plaintiffs advance this claim under the Kansas state constitution only. Plaintiffs do not seek relief under the United States constitution or any federal statute.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, and

a. Declare that the enacted plan is unconstitutional and invalid because it violates the rights of Plaintiffs, along with other Democratic and minority voters in Kansas, under the Sections 1, 2, 3, and 11 of the Kansas Bill of Rights and Article 5, Section 1 of the Kansas Constitution;

b. Enjoin Defendants, their agents, officers, and employees from administering, preparing for, or moving forward with the 2022 primary and general elections for Congress using the enacted plan;

c. Establish a new congressional districting plan that complies with the Kansas Constitution, if the Kansas legislature fails to enact a new congressional comports with the Kansas Constitution in a timely manner;

d. Enjoin Defendants, their agents, officers, and employees from otherwise diluting the voting power of citizens or groups of citizens in any future redistricting of Kansas's congressional map based on their race, political beliefs, party affiliation, or past votes;

e. Expedite the proceedings in this case such that a lawful congressional map can be adopted and implemented prior to the 2022 August primary election;

- f. Award Plaintiffs their costs, expenses, and reasonable attorneys' fees; and
- g. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

Respectfully submitted, this 14th day of February, 2022.

/s/ Barry R. Grissom  
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