IN THE SUPREME COURT OF KANSAS

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

Petitioners,

v.

THE HONORABLE BILL KLAPPER, in his official capacity as a District Court Judge, Twenty-Ninth Judicial District,

Respondent.

Case No. 124849 (Original Action)

FAITH RIVERA, DIOSSELYN TOTVELASQUEZ, KIMBERLY WEAVER, PARIS RAITE, DONNAVAN DILLION, and LOUD LIGHT,

Plaintiffs in Wyandotte County District Court Case 2022-cv-89 and Respondents under Kansas Supreme Court Rule 9.01(a)(1),

and

TOM ALONZO, SHARON AL-UQDAH, AMY CARTER, CONNIE BROWN COLLINS, SHEYVETTE DINKENS, MELINDA LAVON, ANA MARCELA MALDONADO MORALES, LIZ MEITL, RICHARD NOBLES, ROSE SCHWAB, and ANNA WHITE,

Plaintiffs in Wyandotte County District Court Case 2022-cv-90 and Respondents under Kansas Supreme Court Rule 9.01(a)(1).

***ALONZO* PLAINTIFFS/RESPONDENTS' RESPONSE TO PETITIONERS' MOTION FOR A STAY OF DISTRICT COURT PROCEEDINGS**

On February 18, 2022, Petitioners Scott Schwab and Michal Abbott filed their Petition in Mandamus and Quo Warranto, asking this Court to exercise original jurisdiction over a lawsuit filed by the *Alonzo* Respondents/Plaintiffs in Wyandotte County District Court. Petitioners then filed two additional procedural motions, asking this Court to both expedite proceedings and stay the Wyandotte County District Court lawsuit. The *Alonzo* Plaintiffs/Respondents hereby submit the following response *only* to the Motion for a Stay of District Court Proceedings, and will respond to the merits of the underlying Petition if ordered to do so.

The *Alonzo* Respondents/Plaintiffs agree with Petitioners that this case warrants expeditious resolution to ensure that elections proceed under lawful congressional district lines.[1] But staying the district court proceedings, as Petitioners Schwab and Abbott urge, would delay and disrupt the orderly resolution of this case by postponing the district court's fact-finding—including on racial discrimination claims Petitioners concede are

[1] The *Alonzo* Plaintiffs/Respondents filed a Motion to Expedite Proceedings in the District Court on the same day that they filed their Petition. *See* Ex. 1, Mot. to Expedite Proceedings, *Alonzo et al. v. Schwab et a.*, 2022-CV-90.

justiciable and thus must be adjudicated by the district court—and setting this case on a course to have piecemeal appeals. This approach would jeopardize the ability of the District Court and this Court to ensure resolution in time for the primary elections this year. While the courts have the power to alter election calendars as necessary to effectuate relief, there is sufficient time to avoid that outcome if Petitioners' proposed stay is denied.

Moreover, full development of the factual record in the District Court will aid this Court with ultimate adjudication of the merits of Petitioners' legal claims. For example, Petitioners Schwab and Abbott argue that Respondents/Plaintiffs' partisan gerrymandering claim is a nonjusticiable political question, because the Court lacks a "manageable standard" for adjudicating the claim. Pet. Mem. at 21. However, findings of fact after a trial will show that there are, in fact, easily manageable standards for this Court to apply. This Court's ultimate decision on the legal issues in this case would thus benefit from a full record following trial.

Respondents/Plaintiffs therefore respectfully request that the Court deny Petitioner's Motion for a Stay of District Court Proceedings, and instead, set this case for resolution under either of two paths.

First, the Court could remand the entire case to Judge Klapper for an expedited trial to conclude with entry of final judgment, including findings of fact and conclusions of law, on or around April 1, 2022. The Court could enter an expedited schedule for any appeal such that any notice of appeal shall be filed within two business days of the

District Court's ruling, exclusive of weekends and holidays; that an appeal from the District Court's judgment be immediately transferred by the Court of Appeals to this Court pursuant to K.S.A. § 20-3017; and that any appeal be briefed and heard in this Court on an expedited schedule with a target decision date of May 1, 2022. This will allow sufficient time for a remedial process to occur prior to the June 1, 2022 candidate filing deadline, should this Court hold that the challenged congressional districting plan violates the Kansas Constitution. This is the approach that the North Carolina Supreme Court recently adopted to ensure timely adjudication of plaintiffs' partisan and racial gerrymandering claims, *see* Ex. 2, Order, *Harper et al. v. Hall*, No. 413P21 (Dec. 8, 2021), which ultimately led to the Court invalidating the enacted congressional and state legislative redistricting plans as unconstitutional partisan gerrymanders, *see Harper et al. v. Hall,* 2022-NCSC-17 (Feb. 14, 2022).

Alternatively, the Court could set a normal briefing schedule for the legal issues raised in Petitioners' petition for mandamus/quo warranto, to be heard before this Court, and order Judge Klapper to conduct fact-finding proceedings on Respondents/Plaintiffs' claims with recommended findings of fact to be submitted by April 1, 2022. This would permit this Court to simultaneously consider the recommended findings of fact and the parties' briefing on the legal issue, with a target decision date of May 1, 2022.

Either of these two options would advance the parties' joint interests in efficient and final resolution of the claims in this case. And, under either option, this Court will not be forced to waste judicial resources hearing this case two times in the span of only a

few months. Petitioners' Motion should therefore be denied, and one of the two approaches outlined above ordered to be followed to ensure a speedy and efficient resolution of this matter.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF KANSAS

/s/ Sharon Brett
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February, 2022, I electronically filed the foregoing with the Clerk of the District Court's electronic filing system which will serve all registered participants, and a copy was also served by email to counsel for the Petitioners, Solicitor General Brant Laue (brant.laue@ag..ks.gov).

/s/ Sharon Brett
SHARON BRETT

EXHIBIT 1

ELECTRONICALLY FILED
2022 Feb 14 AM 9:57
CLERK OF THE WYANDOTTE COUNTY DISTRICT COURT
CASE NUMBER: 2022-CV-000090

IN THE TWENTY-NINTH JUDICIAL DISTRICT
WYANDOTTE COUNTY DISTRICT COURT
CIVIL DEPARTMENT

TOM ALONZO, SHARON AL-UQDAH, AMY CARTER, CONNIE BROWN COLLINS, SHEYVETTE DINKENS, MELINDA LAVON, ANA MARCELA MALDONADO MORALES, LIZ MEITL, RICHARD NOBLES, ROSE SCHWAB, and ANNA WHITE,

Plaintiffs,

v.

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

Defendants.

Case No. 2022-CV-000090

PLAINTIFFS' MOTION TO EXPEDITE PROCEEDINGS AND RESOLUTION OF THIS ACTION

Plaintiffs, who are 11 individual Kansas voters, respectfully request that the Court expedite proceedings and resolution of this action, which presents a question of extraordinary public importance: Whether the congressional districting plan recently enacted by the Kansas Legislature, which intentionally and effectively dilutes the voting power of Kansas's Democratic voters and racial and ethnic minority voters, violates the Kansas Constitution. In light of the upcoming June 1, 2022 candidate filing deadline, swift resolution is essential so that, if the Enacted Plan is invalidated, a lawful new plan can be adopted in time to use in the August 2, 2022 primary elections. In support of their motion to expedite, Plaintiffs state as follows:

1. Plaintiffs filed the Petition in this action today, February 14, 2022, challenging the congressional redistricting plan enacted last week by the Kansas Legislature (the "Enacted Plan") as an illegal partisan and racial gerrymander in violation of multiple provisions of the Kansas Constitution. Defendants are the Kansas Secretary of State, who is the State's chief elections officer and responsible for administering the elections, and the Wyandotte County Election Commissioner, who is responsible for organizing and carrying out Wyandotte County elections. Plaintiffs are effectuating service of the Petition and this motion on Defendants immediately.

2. Plaintiffs seek a judgment from this Court (1) declaring the Enacted Plan unconstitutional and invalid solely under the Kansas Constitution; (2) enjoining use of the Enacted Plan in the the 2022 primary and general elections for Congress; and (3) establishing a remedial process to promptly adopt a new plan that complies with the Kansas Constitution, including a court-ordered remedial plan if the Legislature fails to timely enact a lawful new plan.

3. Plaintiffs and the public have a strong interest in resolving this action as expeditiously as possible to ensure that new, lawful districts can be established for the 2022 primary and general elections for Congress. Simply put, Kansans should not be forced to vote in unconstitutional districts that intentionally and effectively dilute the voting power of Democratic voters and maximize the likelihood of an exclusively Repubican congressional delegation.

4. Time is of the essence. Under the current election schedule, the candidate filing deadline for the primary election is June 1, 2022, K.S.A. 25-205; the primary election is on August 2, 2022, *id.* 25-203(a); and the general election is on November 8, 2022, *id.* 25-101(a).

5. While this Court could push back interim election deadlines (including the June 1 candidate filing deadline) as necessary, the Court can avoid that step by proceeding

expeditiously. To promote a timely resolution and establish a remedial plan for use in the August 2022 primaries, Plaintiffs propose the following schedule:

- Opening expert reports and fact-witness affidavits due February 18
- Rebuttal expert reports due February 28
- Reply expert reports due March 4
- Expert depositions conducted March 7-11
- Fact discovery cutoff March 11
- Pretrial briefs, joint stipulation of facts, witness lists, and exhibit lists filed March 16
- Pre-marked exhibits submitted to the Court on March 18
- Trial the week of March 21-25
- Parties' proposed findings of fact and conclusions of law due March 28 at 9 a.m.

6. This proposed schedule would enable the Court to issue its decision on or around March 31, allowing adequate time for the establishment and implementation of a remedial plan for use in the 2022 elections under current deadlines.

7. To put this timing in perspective, the Legislature passed the Enacted Plan only eight days after its introduction in the House and Senate, and the changes necessary to remedy the unconstitutional gerrymandering are straightforward. Indeed, as described in the Petition, alternative plans have already been put forward that preserve the Kansas City Metro Area in a single congressional district, and that do not crack the city of Lawrence from Douglas County. If the Court holds that the Enacted Plan is unconstitutional, the Court can give the Legislature two weeks to enact a new plan that comports with the Kansas Constitution, promptly review the Legislature's remedial plan with the assistance of a court-appointed special master, and in all events approve a new plan roughly six weeks before the current June 1 candidate filing deadline. This will allow Defendants to implement the remedial plan for use in the August 2022 primaries.

8. On the merits, moreover, this is a straightforward case. Republicans pre-announced that they would intentionally gerrymander the congressional districts following the 2020 census to create four Republican seats and eliminate Democratic Congresswoman Sharice

Davids's district, and the Enacted Plan does so with surgical precision. This manipulation of the district boundaries for partisan gain, as well as the racially discriminatory cracking of racial and ethnic minority voters in Wyandotte County, violates voters' fundamental rights under the Kansas Constitution.

9. While sufficient time remains to resolve this action and implement a remedial plan on the current election schedule, the schedule can be adjusted to provide effective relief. In particular, the Court could push back the June 1 candidate filing deadline, which is currently over two months before the August 2 primaries. Courts have often adjusted election schedules to allow additional time for resolving challenges to redistricting plans, including in this cycle. *See, e.g.*, Order, *Harper v. Hall*, No. 413P21 (N.C. Dec. 8, 2021) (postponing 2022 primaries);[1] Order, *In the Matter of 2022 Legislative Districting of the State*, Misc. Nos. 21, 24, 25, 26, 27 (Md. Feb. 11, 2022) (postponing candidate filing and related deadlines for 2022 primaries).[2]

WHEREFORE, Plaintiffs request that the Court enter an order expediting proceedings and resolution of this action on the schedule set out above.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF KANSAS

/s/ Sharon Brett
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Kayla DeLoach* ^
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[1] https://tinyurl.com/ydf9pbaj.

[2] https://tinyurl.com/5erup7vs.

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**Pro Hac Vice Motion forthcoming*

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^^Licensed to practice in NY only; supervised by Mark P. Gaber, member of the D.C. Bar

^^^Licensed to practice in MA only; supervised by Mark P. Gaber, member of the D.C. Bar

^^^^Licensed to practice in CA only; supervised by Mark P. Gaber, member of the D.C. Bar

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2022, I electronically filed the foregoing with the Clerk of the District Court's electronic filing system which will serve all registered participants. A copy was also served by email to counsel for the Kansas Secretary of State, Clay Barker (clay.barker2@ks.gov).

/s/ Sharon Brett
Sharon Brett

EXHIBIT 2

No. 413P21 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

* * * * * * * * * * * * * * * *

REBECCA HARPER; AMY CLARE OSEROFF; DONALD RUMPH; JOHN ANTHONY BALLA; RICHARD R. CREWS; LILY NICOLE QUICK; GETTYS COHEN, JR.; SHAWN RUSH; JACKSON THOMAS DUNN, JR.; MARK S. PETERS; KATHLEEN BARNES; VIRGINIA WALTERS BRIEN; and DAVID DWIGHT BROWN

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his official capacity as Chair of the House Standing Committee on Redistricting; SENATOR WARREN DANIEL, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; SENATOR RALPH HISE, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; SENATOR PAUL NEWTON, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES, TIMOTHY K. MOORE; PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE, PHILIP E. BERGER; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; and DAMON CIRCOSTA, in his official capacity

Defendants.

NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS, INC.; HENRY M. MICHAUX, JR.; DANDRIELLE LEWIS; TIMOTHY CHARTIER; TALIA FERNÓS; KATHERINE NEWHALL; R. JASON PARSLEY ; EDNA SCOTT ; ROBERTA SCOTT ; YVETTE ROBERTS; JEREANN KING JOHNSON; REVEREND REGINALD WELLS; YARBROUGH WILLIAMS, JR.; REVEREND DELORIS L. JERMAN; VIOLA RYALS FIGUEROA; and COSMOS GEORGE)

Plaintiffs,)

v.)

REPRESENTATIVE DESTIN HALL, in his official capacity as Chair of the House Standing Committee on Redistricting; SENATOR WARREN DANIEL, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; SENATOR RALPH E. HISE, JR., in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; SENATOR PAUL NEWTON, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; REPRESENTATIVE TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; SENATOR PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as Chairman of the North Carolina State Board of Elections; STELLA ANDERSON, in her official capacity as Secretary of the North Carolina State Board of Elections; JEFF CARMON III, in his official capacity as Member of the North)

Carolina State Board of Elections; STACY EGGERS IV , in his official capacity as Member of the North Carolina State Board of Elections; TOMMY TUCKER, in his of ficial capacity as Member of the North Carolina State Board of Elections; and KAREN BRINSON BELL, in her official capacity as Executive Director of the North Carolina State Board of Elections)

* * * * * * * * * * * * * * * *

ORDER

Plaintiffs' Petitions for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules to Expedite a Decision, and Motion to Suspend Appellate Rules and Expedite Schedule, filed in these consolidated cases on 6 December 2021 are allowed as follows:

In light of the great public interest in the subject matter of these cases, the importance of the issues to the constitutional jurisprudence of this State, and the need for urgency in reaching a final resolution on the merits at the earliest possible opportunity, the Court grants a preliminary injunction and temporarily stays the candidate-filing period for the 2022 elections for all offices until such time as a final judgment on the merits of plaintiffs' claims, including any appeals, is entered and a remedy, if any is required, has been ordered.

1. Defendants are hereby enjoined from conducting elections for any public offices in the state on Tuesday, March 8, 2022 and, consistent with the response and affidavit

of the North Carolina State Board of Elections, defendants instead are directed to hold primaries for all offices on Tuesday, May 17, 2022. The trial court is authorized to issue any orders necessary to accomplish the resulting changes in the election schedule, including implementing shortened filing periods and other administrative adjustments.

2. Any individual who has already filed to run for public office in 2022 and whose filing has been accepted by the appropriate board of elections, will be deemed to have filed for the same office under the new election schedule for the May 2022 primary unless they provide timely notice of withdrawal of their candidacy to the board of elections during the newly-established filing period; and except to the extent that a remedy in this matter, if any, impacts a candidate's eligibility to hold the office for which they have currently filed. Any individual who has properly withdrawn their candidacy is free to file for any other office for which they may be eligible during the reopened filing period.

3. The trial court is directed to hold proceedings necessary to reach a ruling on the merits of plaintiffs' claims and to provide a written ruling on or before Tuesday, January 11, 2022.

4. Any party wishing to appeal the trial court's ruling must file a Notice of Appeal within two business days of the trial court's ruling, exclusive of weekends and holidays, in the trial court and with this Court, and should expect that an expedited briefing and hearing schedule in this Court will commence immediately thereafter.

The Petition for Writ of Supersedeas and Motion for Temporary Stay are dismissed as moot.

By order of the Court in Conference, this the 8th day of December, 2021.

For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of December, 2021.

AMY L. FUNDERBURK
Clerk, Supreme Court of North Carolina

Assistant Clerk, Supreme Court of North Carolina

Copy to:
North Carolina Court of Appeals
Mr. Narendra K. Ghosh, Attorney at Law, For Harper, Rebecca, et al. - (By Email)
Mr. Terence Steed, Assistant Attorney General, For State Board of Elections, et al. - (By Email)
Mr. Amar Majmundar, Senior Deputy Attorney General, For State Board of Elections, et al. - (By Email)
Ms. Stephanie A. Brennan, Special Deputy Attorney General, For State Board of Elections, et al. - (By Email)
Mr. Burton Craige, Attorney at Law, For Harper, Rebecca, et al. - (By Email)
Mr. Paul E. Smith, Attorney at Law, For Harper, Rebecca, et al. - (By Email)
Mr. Phillip J. Strach, Attorney at Law, For Hall, Destin, et al. - (By Email)
Ms. Alyssa Riggins, Attorney at Law, For Hall, Destin, et al. - (By Email)
Mr. John E. Branch, III, Attorney at Law, For Hall, Destin, et al. - (By Email)
Mr. Thomas A. Farr, Attorney at law, For Hall, Destin, et al. - (By Email)
Mr. Stephen D. Feldman, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)
Mr. Adam K. Doerr, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)
Mr. Erik R. Zimmerman, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)
Mr. Ryan Y. Park, Solicitor General, For Gov. Cooper and AG Stein - (By Email)
Mr. James W. Doggett, Deputy Solicitor General, For Gov. Cooper and AG Stein - (By Email)
Mr. Zachary W. Ezor, Solicitor General Fellow, For Gov. Cooper and AG Stein - (By Email)

Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)
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