

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

MAY 04 2022

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

PETITION OF DEREK SCHMIDT)
Attorney General, TO DETERMINE)
THE VALIDITY OF SUBSTITUTE) No. 125,083
FOR SENATE BILL 563 PROVISIONS)
REAPPORTIONING STATE)
LEGISLATIVE DISTRICTS)



**BRIEF OF SENATOR THOMAS HOLLAND
IN SUPPORT OF REQUEST THAT SUB SB 563 BE FOUND INVALID
WITH RESPECT TO SENATE DISTRICTS 3 AND 9**

DENTONS US LLP

/s/ Mark P. Johnson

Mark P. Johnson Ks. Bar No. 22289
Stephen R. McAllister Ks. Bar No. 15845
4520 Main Street, Suite 1100
Kansas City, MO 64111
Telephone (816) 460-2400
Fax (816) 531-7545
mark.johnson@dentons.com
stephen.mcallister@dentons.com

ATTORNEYS FOR INTERVENOR
SENATOR THOMAS HOLLAND

TABLE OF CONTENTS

	Page
I. THE PROCEDURE FOR ADOPTION OF SUB SB 563 WAS INVALID.....	2
A. Most Fundamentally, the Legislature Ignored its own Guidelines, Repeatedly, Blatantly, and with Impunity.....	2
<i>Rivera, et al. v. Schwab, et al.,</i> Case No. 2022-CV-89.....	4
B. The Listening Tour was a Box-Checking Exercise, A Political Sham	4
<i>In Re Stovall,</i> 44 P.3d 1266 (Kan. 2002).....	5, 6
<i>Rivera, et al. v. Schwab, et al.,</i> Case No. 2022-CV-89.....	6
C. The Liberty 3 Senate Map was Created in Secret	7
SENATE BILL 563	7
D. Sub SB 563 was Adopted with Unseemly Rapidity.....	7
SENATE BILL 563	8
http://www.kslegresearch.org/KLRD- web/Publications/Redistricting/2022- Plans/Senate/Liberty_3.pdf	10
II. THE LINES DRAWN FOR DISTRICTS 3 AND 9 ARE INVALID.	8
SENATE BILL 563	8
A. The Lines for Districts 3 and 9 Ignore the Redistricting Guidelines in All Respects.....	10
1. The Districts are Not Compact and Contiguous	10
2. The Districts Divided Existing Governmental Units	10
3. The Districts Place Incumbents in the Same District.....	11
4. The Districts Violate the Communities of Interest Guideline.....	11

5.	The New Districts Violate the Guideline that Districts Should be Easily Identifiable and Understandable.....	13
	<i>In re House Bill No. 2620,</i> 225 Kan. 827, 595 P. 2d 334	13
B.	The Lines for Districts 3 and 9 Are, Honestly, Politically Motivated	16
	Kansas Constitution Bill of Rights.....	17
	Kansas Constitution Article 10, Section 1(b).....	17
	<i>Rivera et al., v. Schwab,</i> Case No. 125,092.....	17
APPENDIX		
A.	Guidelines and Criteria for 2022 Kansas Congressional and State Legislative Redistricting	App'x 1
B.	Transcript of April 4, 2022 Proceedings in <i>Rivera v. Schwab et al.</i> , Case No. 2022-CV-89, District Court of Wyandotte County.	App'x 3
C.	Declaration of Ethan Corson.	App'x 13
D.	Declaration of Thomas Holland.	App'x 15
E.	Smith Report.....	App'x 19

ARGUMENT AND AUTHORITIES

State Senator Thomas Holland lives in Baldwin City and has represented Senate District 3 in the Kansas Senate since 2009. He was elected by the voters of District 3 in 2008 and was reelected in 2012, 2016, and 2020. He wishes to continue to represent the people in District 3, but the Legislature in in Sub for SB 563 has so radically and unlawfully changed the borders of District 3 that Senator Holland no longer even resides in that District. Instead, he has been placed in a radically different and new District 9, already occupied by an incumbent Republican Senator. These changes made by Sub for SB 563—and the “process” by which they were accomplished—utterly fail the requirements that apply under Article 10, Section 1(b) of the Kansas Constitution.

In his Memorandum to the Court, the Attorney General states that this Court must find valid the “procedure” the Legislature followed in crafting and passing the law and that the reapportionment meets the “substance” of the constitutional requirements. Attorney General’s Memorandum at 8. Respectfully, applying any degree of intellectual honesty, an objective, reasonable, and fair review of the “process” by which the law was adopted and its end results (the substance) readily demonstrates that the Senate map (Liberty 3) Sub SB 563 fails both elements of the test.

The Attorney General’s Memorandum pointedly ignores the secret process that led to the Legislature’s substantively invalid actions. The Attorney General argues that if the Legislatures simply follows the formal procedural steps to a bill’s passage (introduction, committee passage, floor passage, and gubernatorial signature), which it necessarily must to enact ANY legislation, it does not matter that the legislation was written in a secret,

behind-closed-doors process, that Democratic members of the Redistricting Committees were not consulted – at all – in the process, that the Legislature blatantly and with impunity ignored its own very clear and precise Redistricting Guidelines, and that a purported process to seek and obtain citizen-voter input was a complete and undisguised sham. That the Attorney General would with a straight face so attempt to mislead the Court is stunning given that the Legislature’s ludicrous process was exposed in open court less than a month ago, through the introduction of unrebutted evidence that has led to an extensive and detailed set of factual findings against the Legislature—with regard to all respects of the process—by a state District Court after a full trial on the merits.

I. The Procedure for Adoption of Sub SB 563 was Invalid

The Attorney General begins his argument with the following statement:

[t]he Attorney General is unaware of any procedural violations in the enactment of Sub SB 563 and is similarly unaware of any procedural violations that have been alleged.

AG Memorandum at 10. If this statement is true, the Attorney General has apparently not consulted with his lawyers who were present at the trial conducted in Wyandotte County District Court on April 4-6 and 11, 2022, where, according to the District Court, allegations of procedural violations were readily proved. Moreover, the same Attorney General lawyers making these filings participated in those District Court proceedings; they know better.

The Attorney General is asking this Court to, ostrich-like, keep its head in the sand until March 14, 2022, pretending like nothing happened before that date, when the bill was introduced in the Senate Ways and Means Committee. But the truth is that is not the

beginning; that was essentially *the end*. On March 14, 2022, the game was already over. The bill that would be adopted by Republican super-majorities was completely finished at that time, pursuant to a secretive redistricting process that the Republican majority had controlled since the summer of 2021. There was never a transparent, open, democratic, populist, welcome-the-input-of-the-people process. Any such notion is a fantasy.

Indeed, no one outside of perhaps select Republican insiders even knows *who* actually drew the map, much less how decisions were made. There was no transparency about the making of this sausage.

A. Most Fundamentally, the Legislature Ignored its own Guidelines, Repeatedly, Blatantly, and with Impunity

The Senate Redistricting Committee adopted Guidelines for the drawing of new lines for the Senate districts. *See* Guidelines, Appendix A. However, despite repeated requests from the Democratic members of the Redistricting Committee during the fall of 2021, the Republican leadership of the Committee did not adopt the Guidelines until late-December, 2021, *after* completion of the listening tour that supposedly sought the input of Kansas citizen-voters. Thus, any Kansans who took the time to present testimony at the listening tour stops frankly were shooting in the dark; they did not know what principles or guidelines the Legislature was (supposedly) going to use to draw districts, and during these events the Republicans were all on their phones anyway.

The Guidelines set forth rules the Senate purported it would follow in the drawing new Senate districts. For example, the Guidelines provide that the ideal population of a State Senate District should be 73,447 persons, and the actual number in each district

should not exceed plus or minus five percent of the ideal population. Guidelines, App'x A, at 1, Section 2.

However, the end result makes clear that the Republican majority did not follow the Guidelines in numerous respects. As Senator Ethan Corson testified in the recent trial on the congressional lines, Senate President Ty Masterson, who was vice-chair of the Senate Redistricting Committee, “said that he followed the guidelines as he *perceived* them.” Testimony of Ethan Corson, attached as Appendix B, in *Rivera, et al. v. Schwab, et al.*, Case No. 2022-CV-89, District Court of Wyandotte County, April 4, 2022, at 258:1-9 (emphasis added). But more importantly, all one need do is read the Guidelines and compare their directives to the end results. They simply do not square.

B. The Listening Tour was a Box-Checking Exercise, A Political Sham

The Attorney General opens his discussion of the procedure followed in the preparation of the district lines by describing the listening tour that took place in August and November, 2021. The Attorney General provides a detailed listing of the stops on the tour. After describing the joint meetings of the House and Senate Redistricting Committees at which members of the public around the state were allowed to provide input on the redistricting process, the Attorney General concludes that “[m]embers of the public had the opportunity to and did testify both in writing and orally with respect to the maps while they were under consideration in the Legislature.” AG Memorandum at 3.

That summary leaves a decidedly misleading impression. It implies that members of the public commented on the maps after they had been made public and were being reviewed by members of the Legislature. The fact is that *every single* listening tour stop

took place *before* the maps were issued, so no public testimony was taken, much less considered, after the public had the opportunity to review the proposed maps.

The listening tour was arranged and scheduled by the Republican majority without any consultation with the Democrats. *See* Declaration of Ethan Corson, Appendix C. Senator Corson testified that he learned of the listening tour when it was announced, barely a week before the tour began in August. Most of the tour stops were scheduled to take place on weekdays during working hours, so the public had limited opportunity to attend. For example, the tour stop in Overland Park, the largest city in which a meeting occurred, was set by the Republican majority on a weekday afternoon on the first day of the school year, making attendance by parents with children starting school that day particularly difficult. Corson Test., App'x B, at 207:1-12; 207:19-212:2.

In *In Re Stovall*, 44 P.3d 1266 (Kan. 2002), the Supreme Court reviewed the Legislature's 2002 redistricting of State House and Senate districts. In reviewing "the procedure by which the reapportionment legislation was enacted," the Court noted that "[t]here is no evidence that legislative meetings or actions were conducted in secret." *Id.* at 1273. But in the 2022 redistricting, it appears from the start there was secrecy on the part of the majority party, as demonstrated here by the fact that the Democratic members of the Senate Redistricting Committee knew nothing about a listening tour until the majority announced the tour and when and where the stops would take place. Applying the reasoning of the Court in *In Re Stovall* the procedure applied in the redistricting process was suspect from the outset.

And when the listening tour took place, the members of the Committee paid little attention to the public testimony. Here is a photograph of members of the Committee at the Overland Park session, while supposedly receiving input from the public. Senate President and Redistricting Committee vice-chair Ty Masterson is on the left and Senator Beverly Gossage of District 9, the Senator whose district was substantially revised as part of the District 3 – District 9 changes, is at the right. *Rivera, et al. v. Schwab, et al.*, Case No. 2022-CV-89, District Court of Wyandotte County, Plaintiffs’ Exhibit 751. They are clearly focused on the statements of Kansas citizen-voters. And there is also evidence, for example, in the pending congressional redistricting case, that some sitting Kansas legislators who sought to testify during the listening tour were denied that opportunity. It was hardly an open forum with open ears:



C. The Liberty 3 Senate Map was Created in Secret

The Liberty 3 map which contained the Senate district lines incorporated into Sub SB 563 was prepared in secret by the Republican majority. Although he was one of only two Democrats on the Committee, Senator Corson never saw the Liberty 3 map until it was issued on March 14, 2022, nor did he have any idea a map was in development. He was not consulted about the map. Again, the Republican majority acted in complete secret, behind closed doors, on ALL matters relating to the procedures followed in the redistricting process. Only Republican insiders, presumably, even know who participated in drawing the map; Democrats and the public certainly do not. See *In Re Stovall*, 44 P.3d at 1273.

D. Sub SB 563 was Adopted with Unseemly Rapidity

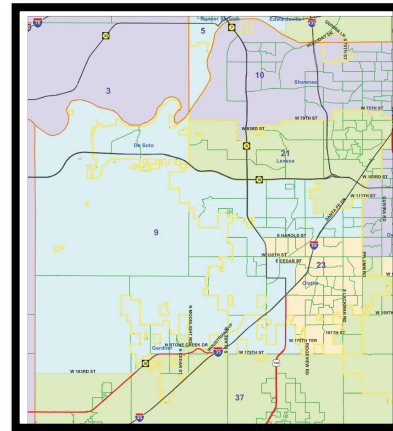
The Attorney General's Memorandum points out how quickly Sub SB 563 moved through the Legislature. Introduced on March 14 in committee, reported favorably by the Senate Redistricting Committee, debated in the Senate floor on March 16, and passed by the Senate on March 17, less than 72 hours after it was introduced in committee. On March 23, the House added Free State 3F, the House district map, to Sub SB 563 and on the same day the bill was deemed an emergency and the House passed the bill. In less than one week after its unveiling in Senate committee, the legislation passed the House. The inconsistencies between the House Bill and the Senate Bill were ironed out in a few days, and both Houses approved the legislation by votes taken on March 30. It took barely more than two weeks for legislation that would govern Kansas Legislature elections for the next ten years to be introduced, amended, and passed.

There is no obvious reason that Sub SB 563 had to move so quickly, other than it already reflected the partisan desires of the majority party when it was introduced and that party had a supermajority to put it into effect.

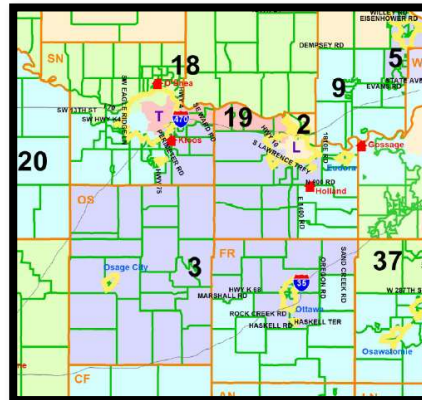
II. The Lines Drawn for Districts 3 and 9 are Invalid.

The extent of the revisions of the borders of Districts 3 and 9 is evident from the maps before and after Sub SB 563.

2012 map – District 3 is entirely in Leavenworth and Douglas Counties, while District 9 is entirely in Johnson County:



2022 map – District 3 is now in four counties: Douglas, Shawnee, Osage, and Franklin, and District 9 is also in four counties: Leavenworth, Wyandotte, Douglas, and Johnson:



Before the Liberty 3 map in Sub SB 563, Senator Holland’s District 3 had consisted principally of the western half of Leavenworth County and the eastern half of Douglas County. With Liberty 3 District 3 was shifted to the west and south, so it no longer includes any portion of Leavenworth County or the eastern part of Douglas County; instead, it is centered in Shawnee and Osage Counties. The core of District 3 has been moved 10 miles to the west and south.

To fill the old portions of District 3 in Leavenworth and Douglas Counties, District 9 was “blown up” from a compact district occupying only the northwestern portion of Johnson County and turned into to a sprawling, shapeless district occupying portions of four counties (Leavenworth, Wyandotte, Johnson, and Douglas).

The extent of the changes is demonstrated by the small portions of the populations of the new districts made up by people living within the district’s boundaries pre-Liberty 3: only 1.9% in District 3 and 39.3% in District 9. http://www.kslegresearch.org/KLRD-web/Publications/Redistricting/2022-Plans/Senate/Liberty_3.pdf, Plan Comparison with Population. As Senator Holland states in his declaration, there was no testimony offered in the listening tour or before the Redistricting Committee seeking such changes in Districts 3 and 9, and he was shocked when he saw what had been done to the districts in Liberty 3. Declaration of Thomas Holland, Appendix D, at paragraph 6.

A. The Lines for Districts 3 and 9 Ignore the Redistricting Guidelines in All Respects

1. *The Districts are Not Compact and Contiguous*

Section 4(a) of the Redistricting Guidelines states that “[d]istricts should be as compact as possible and contiguous.” Liberty 3 violates that principle by taking a compact district (District 9), contained entirely within a single county, and “blowing up” that district to such an extent that it occupies parts of four counties and loses all compactness. The radical changes in District 9 required that radical changes be made in District 3, its neighbor to the north and west.

So in drawing the lines for Districts 3 and 9, the Legislature violated Section 4(a) of the Redistricting Guidelines by making what were compact districts (District 3, a north-south rectangle and District 9, a square) into multi-sided districts of greater geographic size than before the redistricting.

2. *The Districts Divided Existing Governmental Units*

Section 4(b) of the Redistricting Guidelines provides that “[t]he integrity and priority of existing political subdivisions should be preserved to the extent possible.” Again, the Legislature ignored that rule in drawing the District 3 and 9 boundaries.

Section 4(b) of the Redistricting Guidelines provides that “[t]he integrity and priority of existing political subdivisions should be preserved to the extent possible.” Again, the Legislature ignored that rule in drawing the District 3 and 9 boundaries.

Under the 2012 map District 9 was contained within a single county, but with the Liberty 3 map District 9 occupies portions of 4 counties. District 3 entered the

redistricting process as a two-county district, and when the process ended, District 3 was also in four counties. In addition, Liberty 3 places portions of no fewer than the four Senate districts in Douglas County (2, 3, 9, and 19), up from three in the 2012 map (Districts 2, 3, and 19).

3. *The Districts Place Incumbents in the Same District*

Section 4(d) of the Redistricting Guidelines provides that “[c]ontests between incumbent members of the Legislature ... will be avoided whenever possible.” This language is not permissive; the use of “will” means that if possible, placing two incumbents in a single district must be avoided. Liberty 3 violates that rule.

The Liberty 3 map indicates that Senators Holland and Gossage both reside in the newly drawn District 9. They are both incumbents and if they wish to be re-elected, they must run against each other. This is the only redistricting situation in the State that matches two incumbents from different parties. But the Guidelines are absolutely clear that such a result is to be avoided. And it easily could be unless partisan motives are involved. Yet the Legislature chose to ignore this rule in drawing Liberty 3.

4. *The Districts Violate the Communities of Interest Guideline*

Section 4(c) of the Guidelines states that “[t]here should be a recognition of communities of interest” in the legislative maps. Liberty 3 again ignores that mandate in drawing the lines for Districts 3 and 9 by breaking up a district (District 3) that had united rural and small-town portions of Leavenworth and Douglas Counties, and moving the communities in those areas to a new district (District 9) that includes urban portions of Wyandotte and Johnson Counties.

In his Declaration, Senator Holland observes that the constituents he had represented for 13 years in Leavenworth and Douglas Counties are losing the experience he has accumulated in learning about and representing their interests and moving them to representation by a Senator (Senator Gossage) who has previously only represented the interests of residents of Johnson County. *See* Holland Decl., App’x D, ¶4. Senator Holland also observes that the towns of old District 3 form a business and cultural unit: “Tonganoxie, east and south Lawrence, Eudora and Baldwin City form an economic and cultural community; residents of those towns do their business in Lawrence; they do not go to Johnson County to shop or socialize.” Holland Declaration, at paragraph 3. This long-standing community of interest is lost with moving those towns into District 9, which has more residents in Johnson County than any other county. *Cf.* Smith Report, Appendix E.

The Guideline provides that “...the [Redistricting] Committee will attempt to accommodate interests articulated by residents.” Senator Holland states that no resident of “old” District 3 has ever suggested to him or testified before the Committee in the listening tour or hearings concerning the map, that they wished not to be part of that District, or that they wished to be joined with Johnson County. In fact, Senator Holland notes that the residents of the portions of Leavenworth and Douglas Counties that are now part of District 9 identify their interests with Lawrence and Douglas County and consider themselves tied by their rural/suburban communities of interest, not with the urban areas in District 9 in Johnson and Wyandotte Counties. *See* Corson Decl., App’x C, ¶¶ 3, 6.

5. *The New Districts Violate the Guideline that Districts Should be Easily Identifiable and Understandable.*

The final section in the Guidelines, Section 4(e), requires that “[d]istricts should be easily identifiable and understandable by voters.” The new lines for Districts 3 and 9 fail this test. The Legislature has provided no explanation for the radical restructuring of the Districts, blowing District 3 up from a one-county to a four-county district and moving District 3 south and west many miles to cover territory that has never been part of that district. With no explanation from the Legislature, and no request from constituents for redrawn lines, the new lines are neither easy to identify or understand.¹

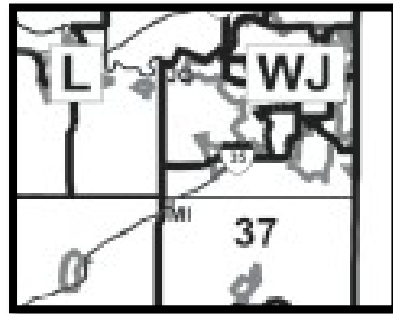
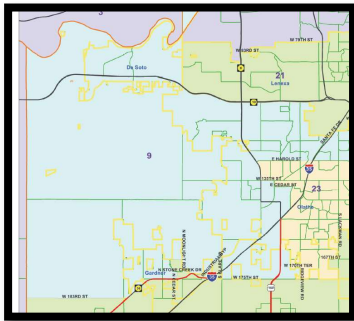
The strongest evidence of the baffling nature of the districts is the set of borders for District 9. From a compact, almost square geography in the northwest section of a single county, District 9 has assumed portions of four counties, and within those counties includes rural, suburban, and urban populations, a far cry from the urban, Johnson County population it previously included. As noted by the Court in *In re House Bill No. 2620*, 225 Kan. 827, 834, 595 P. 2d 334, 341 (Kan. 1979), “all courts generally agree that lack of contiguity or compactness raises immediate questions as to political gerrymandering and possible invidious discrimination which should be satisfactorily

¹ The Legislature provided no explanation for the changes to Districts 3 and 9. In 2002, the last time the Legislature went through the entire redistricting process, it issued a comprehensive report on the process, including all the maps that were considered before a final map was agreed upon. Committee Report to the Kansas Legislature from the Special Committee on Redistricting, January, 2002. The Legislature has prepared no such report for 2022.

explained by some rational state policy or explanation.” But the Legislature has provided no such explanation here.

The change in the configuration of the District 9 itself raises questions. From almost box-like in shape in 2012, the District become a many-armed amoeba in 2022.

Before:

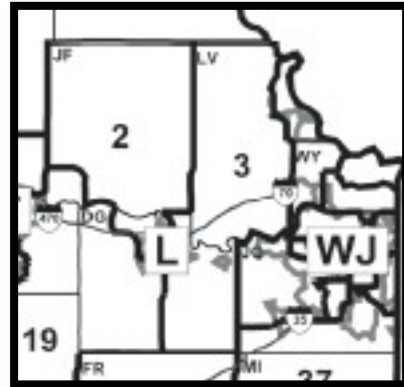


After:

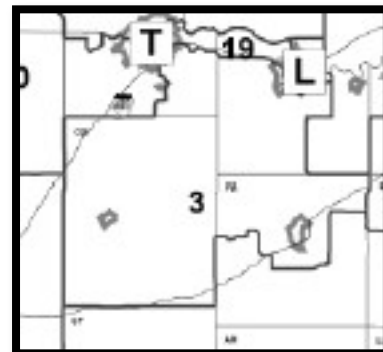
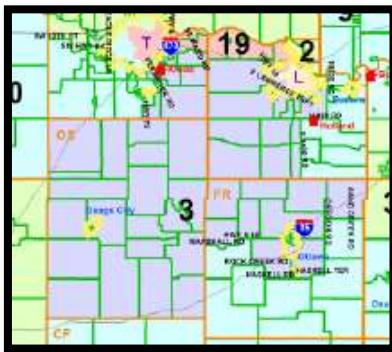


Meanwhile, District 3 is altered from a north-south rectangle to a box-like shape with practically none of the territory it previously included. (As noted above, only 1.9% of the people in old District 3 reside in the boundaries of new District 3). Indeed, District 3 is best described as “a completely new District, one created out of whole cloth.”

Before (2012):



After (2022):



B. The Lines for Districts 3 and 9 Are, Honestly, Politically Motivated

The new boundaries of Districts 3 and 9 cannot be explained by compactness and contiguity, existing governmental units, avoiding placing incumbents in the same district, communities of interest, making sure districts are easily identifiable and understandable, or other traditional notions of redistricting. One is left to conclude the majority party had other motives in making the dramatic changes to State Senate Districts 3 and 9.

The obvious motivation is partisan. Senator Holland is a Democrat, while Senator Gossage is a Republican. District 9 now consists of part of Senator Holland's old district,

which elected him by relatively modest margins, but the balance of the district now consists of heavily Republican portions of Johnson County. And Senator Holland cannot run in Senate District 3 because he has been gerrymandered out of that district altogether.

The cognizability of partisan gerrymandering under the Kansas Constitution is a question before this Court currently, in the appeal of Judge Klapper’s decision in *Rivera et al., v. Schwab*, Case No. 125,092, to be argued the same day as the Court considers the state redistricting plan. This is the euphemistic “elephant in the room.” If partisan gerrymandering is a valid claim under the Kansas Constitution, then it is not limited to maps drawing congressional districts but must also apply to maps drawing state Senate and House districts.

Should the Court hold in the *Frick/Alonzo/Rivera* consolidated cases that a partisan gerrymandering claim is cognizable under the Kansas Constitution, which Senator Holland believes it is, then Senator Holland asks that his challenge to the new District 3 and 9 lines also be treated as a partisan gerrymandering challenge in violation of the Kansas Constitution Bill of Rights Sections 1, 2, 3, 11, and 20, and Article V, Section 1, and be evaluated under the standards the Court may apply in the *Frick/Alonzo/Rivera* consolidated cases. In so arguing, he incorporates by reference the constitutional and legal arguments on partisan gerrymandering those parties will make in their briefs and oral arguments to this Court, noting that his counsel also represent the *Frick* plaintiffs. It makes little sense to burden the Court with redundant argument on this issue, which will be capably provided to the Court by the parties in that case.

CONCLUSION

Senator Holland, who has been personally, significantly, directly, and immediately injured by the redistricting map adopted by the Legislature, respectfully requests that the Court consider and evaluate the arguments made herein, and rule that Sub SB 563 is both procedurally and substantively invalid because it does not comply with the requirements of Article 10 of the Kansas Constitution and also is an effort to engage in unconstitutional partisan gerrymandering.

As relief, Senator Holland asks that this Court direct the Legislature to redraw the map in strict compliance with its own guidelines, which will not place incumbents in the same district, and will not violate its own rules of compactness, contiguity, communities of interest, existing governmental units, making sure districts are easily identifiable and understandable, and other traditional notions of redistricting.

Respectfully submitted,

DENTONS US LLP

/s/ Mark P. Johnson

Mark P. Johnson Ks. Bar No. 22289
Stephen R. McAllister Ks. Bar No. 15845
4520 Main Street, Suite 1100
Kansas City, MO 64111
Telephone (816) 460-2400
mark.johnson@dentons.com
stephen.mcallister@dentons.com

ATTORNEYS FOR INTERVENOR
SENATOR THOMAS HOLLAND

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2022, I electronically filed the foregoing with the Clerk of the Supreme Court's electronic filing system, which will serve all registered participants, including the following:

Derek Schmidt
Jeffrey A. Chanay
Brant M. Laue
Dwight R. Carswell
Shannon Grammel
Kurtis K. Wiard

Memorial Building, 2nd Floor
120 SW 10th Avenue
Topeka, KS 66612-1597

/s/ Mark P. Johnson
Mark P. Johnson

GUIDELINES AND CRITERIA FOR 2022 KANSAS CONGRESSIONAL AND STATE LEGISLATIVE REDISTRICTING

State Legislative Redistricting

1. The basis for state legislative redistricting is the 2020 U.S. Decennial Census. The "building blocks" to be used for drawing district boundaries shall be voting districts (VTDs) as described on the official 2020 Redistricting U.S. Census maps.
2. Districts should be numerically as equal in population as practical within the limitations of Census geography and application of the guidelines set forth below. Deviations should not exceed plus or minus 5 percent of the ideal population of 23,504 for each House district and 73,447 for each Senate district, except in unusual circumstances. The range of deviation for House districts could be plus or minus 1,175 persons, which is a population range from 22,329 to 24,679. The overall deviation for House districts could be 2,350 persons. The range of deviation for Senate districts could be plus or minus 3,672 persons, which is a population range from 69,775 to 77,119. The overall deviation for Senate districts could be 7,344 persons.
3. Redistricting plans will have neither the purpose nor the effect of diluting minority voting strength.
4. Subject to guideline No. 2 above:
 - a. Districts should be as compact as possible and contiguous.
 - b. The integrity and priority of existing political subdivisions should be preserved to the extent possible.
 - c. There should be recognition of similarities of interest. Social, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation (generally termed "communities of interest"), should be considered. While some communities of interest may be more readily embodied in legislative districts, the Committee will attempt to accommodate interests articulated by residents.
 - d. Contests between incumbent members of the Legislature or the State Board of Education will be avoided whenever possible.
 - e. Districts should be easily identifiable and understandable by voters.

Congressional Redistricting

1. The basis for congressional redistricting is the 2020 U.S. Decennial Census. The "building blocks" to be used for drawing district boundaries shall be Kansas counties and voting districts (VTDs) as described on the official 2020 Redistricting U.S. Census maps.
2. Districts are to be as nearly equal to 734,470 population as practicable.
3. Redistricting plans will have neither the purpose nor the effect of diluting minority voting strength.
4. Subject to guideline No. 2 above:
 - a. Districts should be as compact as possible and contiguous.
 - b. There should be recognition of communities of interest. Social, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation should be considered.
 - c. The core of existing congressional districts should be preserved when considering the communities of interest to the extent possible.
 - d. Whole counties should be in the same congressional district to the extent possible while still meeting guideline No. 2 above. County lines are meaningful in Kansas and Kansas counties historically have been significant political units. Many officials are elected on a countywide basis, and political parties have been organized in county units. Election of the Kansas members of Congress is a political process requiring political organizations which in Kansas are developed in county units. To a considerable degree most counties in Kansas are economic, social, and cultural units, or parts of a larger socioeconomic unit. These communities of interest should be considered during the creation of congressional districts.

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS
CIVIL DEPARTMENT

FAITH RIVERA, et al,)
TOM ALONZO, et al,)
SUSAN FRICK, et al,)
 Plaintiffs,) Case No. 2022-CV-89
 v.)
SCOTT SCHWAB, et al,)
 Defendants.)

TRANSCRIPT OF PROCEEDINGS

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

Volume II

APPEARANCES:

The Plaintiffs FAITH RIVERA, et al,
appeared by Lalitha Madduri and Spencer Klein,
Attorneys at Law, 10G Street NE, Suite 600,
Washington, DC 20002.

The Plaintiffs TOM ALONZO, et al, appeared
by Elisabeth Theodore, Attorney at Law, 601
Massachusetts Avenue NW, Washington, DC 20001.

The Defendants Scott Schwab and Michael
Abbott appeared by Gary Ayers & Anthony Rupp,
Attorneys at Law, 1551 N. Waterfront Pkwy, Suite
100, Wichita, KS 67206.

INDEX

WITNESSES:

JONATHAN RODDEN	
Direct Examination by Ms. Madduri	10
Cross Examination by Mr. Ayers	56
Redirect Examination by Ms. Madduri	109
JOWEI CHEN	
Direct Examination by Ms. Theodore	114
Cross Examination by Mr. Ayers	155
Redirect Examination by Ms. Theodore	194
Recross Examination by Mr. Ayers	198
ETHAN CORSON	
Direct Examination by Mr. Klein	205
Cross Examination by Mr. Rupp	232
Redirect Examination by Mr. Klein	256
Recross Examination by Mr. Rupp	267
Plaintiff's Exhibit 150 admitted	220

1 communities?

2 A. Well, I grew up in Overland Park, so I got to
3 learn northeast Kansas growing up in Overland
4 Park, and then for college, I went and I played
5 baseball and also got my Associates Degree. My
6 mom would want me to say I got my Associates and
7 played baseball. But at Garden City Community
8 College in southwest Kansas, so traveled
9 extensively throughout western Kansas throughout
10 that period. And then from August 2017 to August
11 2019, I was the Executive Director of the Kansas
12 Democratic Party, during which time I had the
13 privilege of traveling the state extensively.

14 Q. I want to start off by talking a little bit about
15 the -- by talking about the early portions of the
16 redistricting process this year. So can you tell
17 us a little bit about the how the 2021, 2022
18 redistricting process in Kansas got started?

19 A. So I was named a member of the redistricting
20 committee in June. And then nothing really
21 happened for a while. I remember when I first
22 heard about the August listening tour because I
23 was out for a run and I actually got a text
24 message news alert from the Sunflower State
25 Journal. And when I was done with my run, I

1 checked my phone, and then I saw that it had been
2 publicly announced by the redistricting committee
3 that there was, in about a week, starting August
4 9th, going to be this five-day, 14-stop listening
5 tour around the state. And that was the first I
6 had heard about it, even though I was a member of
7 the committee.

8 Q. So just so we're clear, you found out about these
9 listening tour sessions at the same time as the
10 public?

11 A. Exactly at the same time. I found out when it
12 was publicly announced. Correct.

13 Q. And who scheduled these listening tour dates?

14 A. It would have been the Republican members of
15 the redistricting committee.

16 Q. Just for the record, which party do you caucus
17 with?

18 A. I caucus for the Democrat Party.

19 Q. So again, let's just walk through. How many days
20 prior to the first listening tour session did you
21 find out about these sessions?

22 A. It was just over a week.

23 Q. And do you think that was adequate notice for the
24 minority members of the committee?

25 A. I don't. As I mentioned, this was during -- we

1 were on recess as a legislature. So I wasn't
2 consulted. I was doing some work during that
3 time. I wasn't consulted by any members of
4 the Republican Party about whether I would be
5 available, whether I would be able to get off
6 work, secure childcare, make those other
7 arrangements. And I know that many members of
8 the public also understandably had many of
9 the similar challenges that I did. Thankfully, I
10 was able to participate in the listening tour.
11 But I would have thought that if it was a real
12 priority for Republicans to have a meaningful
13 listening tour, if this wasn't going to be a
14 box-checking exercise, that they would have
15 wanted to at least check with the members of
16 the minority party and make sure that we would at
17 least be able to participate. Again, thankfully,
18 I was.

19 Q. So you mentioned members of the public. Aside
20 from the lack of notice, were these listening
21 tour dates scheduled in a manner that allowed for
22 the public to participate in a way that was
23 convenient?

24 A. No, they were not. They actually made it quite
25 difficult for the public to participate in

1 several different ways. So in 2012, the
2 listening tour was conducted over a period of
3 four months. This was 14 stops conducted over a
4 period of five days. The listening tour, as I
5 mentioned, was only announced with a little bit
6 of more than a week notice for the public to get
7 up to speed on redistricting, get childcare, get
8 time off work. It was also -- 10 of the 14
9 listening tour stops were held during the work
10 week. During the day, during the work week.

11 Q. You mentioned the 2012 listening tour. How long
12 were the listening sessions back in 2011 and
13 2012?

14 A. So in 2012, they were held over two and-a-half
15 hours. Each listening tour stop was two
16 and-a-half hours.

17 Q. And how long were the listening tour sessions
18 this cycle?

19 A. They were only 75 minutes.

20 Q. And did you feel that many of the meetings that
21 members of the public had sufficient time to
22 testify at these hearings under this time
23 constraint?

24 A. I did not. Especially in our more densely
25 populated areas. And I'll use Johnson County and

1 Wyandotte County as prime examples of that. When
2 we had our listening tour session at the Matt
3 Ross Community Center in Overland Park, we had
4 over 300 people show up. We had so many people
5 wanting to provide testimony that because of
6 the 75-minute limit, folks were only given two
7 minutes to testify. So that's two minutes to
8 explain your community of interest and what
9 you're hoping to see in the redistricting
10 process, which was not nearly enough time for
11 folks to adequately explain that. And the
12 similar situation in Wyandotte County at our
13 listening tour stop here in Wyandotte County.

14 Q. Going back to 2012 again, so it's my
15 understanding that census data plays a pretty
16 important role in redistricting. Is that right?

17 A. That's correct.

18 Q. And at the time of the 2012 listening tours -- so
19 at the time that they started off, had the census
20 data already been released?

21 A. Yes, it had.

22 Q. And what about in the more recent redistricting
23 listening tours?

24 A. It had not. And that was a frustration that many
25 of the members of the minority party had because

1 we were asking folks to provide input on a
2 process that later, when we would ask Republicans
3 why they made certain decisions, they would say
4 well, it's all math. It's all these census
5 numbers. But we put the public in a position of
6 trying to provide testimony on a redistricting
7 process that is all about numbers, and it is all
8 about math to some degree, and they didn't have
9 the math. They didn't have the numbers. But we
10 were still asking them to provide meaningful
11 testimony. And it has still never been explained
12 to me why we didn't just wait a couple weeks
13 until the census data came out and have the
14 listening tour then.

15 Q. On this issue of census data, the mathematical
16 components of redistricting, are there any
17 specific issues that come to mind that the public
18 might not have been in a great position to
19 discuss because of the lack of census data at
20 this time?

21 A. Well, one of the things that comes to mind is
22 there was -- after the math was introduced in the
23 redistricting committee on the Senate side, there
24 was this sort of invented post hoc rationale that
25 what people said in the redistricting tour was

1 they wanted all of Johnson and all of Wyandotte
2 to stay together. I can tell you that is not
3 what the vast, vast majority of the testimony
4 was. What the testimony was was that they wanted
5 the core of the Kansas side of the Kansas City
6 metro to stay together. The urban suburban part
7 of Wyandotte County, and the urban suburban part
8 of Johnson County. That's what the testimony
9 was. But it was later stated that oh, some
10 people said that they wanted to keep all of
11 Wyandotte together and all of Johnson together,
12 and we just can't do that. Well, to the extent
13 that was ever said, that would only have been
14 said because folks did not yet have the census
15 data to understand that that was not possible.
16 That's why that would have been said, because we
17 deprived them of the ability to provide
18 meaningful testimony by giving them time to
19 understand how their community had been affected
20 by the census.

21 Q. Changing gears a little in 2012, another
22 component I understand was these redistricting
23 guidelines that were used by the committees to
24 guide redistricting decisions. At the time the
25 listening tours got started in 2011, 2012, had the

1 A. No, they did not. When we debated the map,
2 especially in committee on that Thursday when we
3 passed it out, we had a lengthy discussion about
4 my view that Adastra 2 map violated, I think, the
5 plain reading of most of the guidelines, and they
6 responded that they disagreed, and they believed
7 that it was. At one point, President Masterson
8 said that he followed the guidelines as he
9 perceived them.

10 Q. And Senator, you were asked some questions about
11 the fact that it's impossible to keep 100% of
12 both Wyandotte and Johnson Counties in the same
13 district. Do you recall that?

14 A. Yes, I do.

15 Q. Now, in redistricting in your experience, when
16 you have an existing district that's
17 overpopulated like the former District 3 was, how
18 would you expect legislators to address that?
19 would it be by adding new counties, or would it
20 be through some other map drawing
21 (unintelligible)?

22 A. I think we have a district that's overpopulated,
23 you have a guideline that tells you two things:
24 One, respect the core of existing congressional
25 districts, and two, that districts should be as

DECLARATION OF ETHAN CORSON

Now comes Ethan Corson, being of lawful age, who swears and affirms as follows:

1. My name is Ethan Corson, and I reside at 4601 W. 62nd Terrace, Fairway, Kansas. I am a member of the Kansas State Senate. I was elected in 2020 to represent Senate District 7. I assumed office in January, 2021.

2. In the summer of 2021 I was appointed to be a Democratic member of the Senate Redistricting Committee. I was one of two Democrats appointed to the Committee.

3. I was a member of the Committee when the redistricting map for the State Senate, known as Liberty, was introduced and made public on March 10, 2022. Prior to the issuance of the map on that date, I had not been involved in any discussions with the Republican majority of the Committee with respect to the content of that map.

4. I attended all but one of the stops on the listening tour conducted by the House and Senate Redistricting Committees during 2021. At none of those meetings did any person testifying before the Committee mention anything with respect to State Senate Districts 3 or 9, and did not ask that the lines of those districts be redrawn.

5. When I saw the Liberty map, I was surprised to see the changes in the boundaries of Districts 3 and 9.

I have read the foregoing and it is true and correct to the best of my knowledge and belief.



Ethan Corson

Date: April 29, 2022

DECLARATION OF GEORGE THOMAS HOLLAND II

Now comes George Thomas (“Tom”) Holland II, being of lawful age, who swears and affirms as follows:

1. My name is George Thomas (“Tom”) Holland II. I reside at 961 East 1600 Road, Baldwin City, KS 66006. I am a State Senator in Kansas, representing State Senate District 3.

2. I have held elective office in Kansas since 2003. I was elected to the Kansas House of Representatives in 2002 from House District 10, and I was re-elected to that position in 2004 and 2006. I served in the Kansas House of Representatives from January 2003 to January 2009. In 2008 I was elected to the Kansas Senate from District 3, and I was re-elected to that position in 2012, 2016, and 2020. I have been a member of the Kansas Senate since January 2009, and have represented District 3 throughout my tenure in the Senate.

3. As a result of my representation of Senate District 3 for more than thirteen years, I have become familiar with the concerns and interests of my constituents in District 3. I am deeply concerned that the redrawing of the borders of District 3 as part of the Liberty 3 map in Sub SB 563 will adversely impact their interests in the following manner: Separation of communities of

interest (for example, Tonganoxie, east and south Lawrence, Eudora and Baldwin City form an economic and cultural community; residents of those towns do their business in Lawrence; they do not go to Johnson County to shop or socialize) as currently defined within the boundaries of the existing KS State Third Senate District, and they will lose representation of their particular rural/suburban interests as they become part of a largely urban district represented by a Senator who has experience representing urban Johnson County residents.

4. The combination of my constituents in Leavenworth and Douglas Counties with populations in Wyandotte and Johnson Counties, as contemplated by the expansion of Senate District 9 by the Liberty 3 map, would affect my constituents in the following manner: Separation of communities of interest (as noted above, Tonganoxie, east and south Lawrence, Eudora and Baldwin City for a business and cultural community) as currently defined within the boundaries of the existing KS State Third Senate District, and I am concerned that my former constituents will be losing the experience and knowledge I have accumulated as their Senator, and they will be represented by a Senator who does not know them and the particular interests and concerns they have.

5. When I spoke on the Senate floor when Sub SB 563 was under consideration and about to be voted on, I stated as reasons for opposing the adoption of that bill that it would separate traditional communities of interest (such as Tonganoxie, east and south Lawrence, Eudora and Baldwin City) as currently defined within the boundaries of the existing KS State Third Senate District.

6. I am not aware of any person, whether office-holder, voter, or concerned citizen, who requested or suggested during the redistricting process of 2021-2022 that the boundaries of Districts 3 and 9 needed redrawing at all, much less a redrawing of the scope contemplated in the Liberty 3 map and Sub SB 563. Had I had any inkling that a revision of the scope contained in Liberty 3 was under consideration, I would have immediately spoken out vehemently in opposition to such consideration. 7. I believe that Senate Districts 3 and 9 could be redrawn in a proper and fair manner without substantially affecting adjacent Senate districts, and thus the revisions could be accomplished by the Legislature expeditiously upon the Court's order that it do so.

I have read the foregoing and it is true and correct to the best of my knowledge and belief.

G. Thomas Holland II

G. Thomas Holland II

Date: April 28th, 2022

Expert Witness Report by Michael A. Smith

Introduction

This report concerns the Ninth District on the *Liberty 3* map of Kansas Senate districts, drafted by the Kansas Legislative Research Department (KLRD) and passed into law by the Kansas Legislature in 2022. This district lies in Douglas, Johnson, Leavenworth, and Wyandotte Counties. It replaces the former Third District, which has been represented by Senator Tom Holland. An analysis of the district as reproduced in the online tool *Dave's Redistricting* is the basis of the conclusions. This analysis concludes finds no plausible reason for the re-drawing of this district to include the home of Senator Beverly Gossage and a portion of Olathe, other than an apparent attempt to force incumbents to run against one another. This is a blatant violation of one of the guidelines the Kansas Legislature set for itself regarding redistricting.

1. *Liberty 3* unnecessarily places a substantial portion of the city of Olathe, a community of interest, into the new Ninth District, with which Olathe has little in common.

The resulting new Ninth District sprawls across four counties and is predominantly rural. The old Third District which it replaces contained no portion of Olathe or Johnson County and was a rural and small-town district located outside the core of the Kansas City metropolitan area. The movement of portions of Olathe into the Ninth (formerly Third) district unnecessarily divides two interconnected communities of interest—a large suburban city and the Kansas City area's largest school district—and places the people in that portion of Olathe into a district where they have little in common with the rest of the district.

Olathe is the fourth-largest city in Kansas and one of its fastest-growing. It is also the seat of the state's largest county and the location of its second-largest school district, the largest in the Kansas City area.

- a. This violates Criterion 4b of the *Guidelines and Criteria for 2022 Kansas Congressional and State Legislative Redistricting* (“Guidelines”), which reads, “The integrity and priority of existing political subdivisions should be preserved to the extent possible.”
 - b. This also violates Criterion 4c of the *Guidelines*, which reads, “There should be recognition of communities of interest. Social, cultural, racial, ethnic and economic interests common to the population of the area, which are probable subjects of legislation (generally termed “communities of interest”), should be considered. While some communities of interest may be more readily embodied in legislative districts, the Committee will attempt to accommodate interests articulated by residents.”
 - c. Furthermore, this violates Criterion 4e of the *Guidelines*, which reads, “Districts should be easily identifiable and understandable by voters.”
2. *Liberty 3* appears to have been drawn to force two incumbents to run against each other.

While this outcome is common and perhaps even inevitable sometimes in communities which have experienced population loss, the two incumbents in question, Senators Tom Holland and Beverly Gossage, live in Douglas and Johnson Counties, respectively. Both counties have shown double digit population *growth* between 2010 and 2020. Leavenworth County, portions of which also lie in the former district represented by Holland, has also shown population growth during this time.

- a. This violates Criterion 4e of the *Guidelines*, which reads, “Contests between incumbent members of the State Board of Education or the Legislature should be avoided whenever possible.”

Background of Expert Witness

I am a Professor of Political Science and Chair of Social Sciences, Sociology, and Criminology at Emporia State University, where I have taught since 2005 and served as a Chair since 2014. I have also taught at Kansas State University, the University of Kansas, Millikin, and Iowa State Universities.

I have published four books. One of them is solo-authored, *Bringing Representation Home: State Legislators Among Their Constituencies* (Missouri 2003). Two are co-authored: *State Voting Laws in America: Historical Statutes and Contemporary Interpretations* (w/Chapman Rackaway and Kevin Anderson, Palgrave 2015) and *Low Taxes and Small Government: Sam Brownback's Great Experiment in Kansas* (w/Robert J. Grover and Rob Catlett, Lexington 2019). The Smith, Rackaway and Anderson book is about election laws, as is my latest book, for which I am editor and contributor: *Much Sound and Fury or the New Jim Crow: The Twenty-First Century's Restrictive New Voting Laws in the States* (SUNY 2022). I have also assumed the editorship of another book from the late Burdett Loomis, the long-time and recently-deceased KU expert on Kansas politics, *Reform and Reaction: The Arc of Kansas Politics* (Kansas, forthcoming 2022-3), to which I am also a contributor.

In 2020, I created *Securing Our Elections*, a unique new class on election security which I have taught online at the undergraduate and graduate levels for both Emporia State and Fort Hays State Universities. I also teach courses in state and local government, campaigns and elections, nonprofit management, and political philosophy. I received my PhD in Political Science from the University of Missouri-Columbia in 2000. As part of my degree program, I completed summer research training in quantitative methods at the Inter University Consortium for Political and Social Research at the University of Michigan. My complete *curriculum vita* is attached.

Methodology

Dave's Redistricting is a well-established, public domain, online tool developed by former Microsoft engineer Dave Bradlee with input from the Princeton Gerrymandering Project. It is used by some state redistricting authorities including the bipartisan Missouri (state) House Redistricting Committee. *Dave's Redistricting* was first created for the 2010-12 redistricting cycle and its credibility and reliability are well-established. It should be noted that the districts as redrawn in *Dave's Redistricting* are very close approximations, however, the Kansas Legislative Redistricting process uses voter turnout districts (VTDs) as the base unit in drawing districts, while *Dave's Redistricting* uses precincts. In most cases, these produce similar results, but the author is aware of one precinct in Leavenworth County, Fairmount Township, south of Basehor, in which the voter turnout districts utilized by the Kansas Legislative Research Department are not identical to the precincts used in *Dave's Redistricting*. This and any other discrepancies between the author's reproduction in *Dave's Redistricting* and the KLRD map produced using Arc-GIS are minor and do not affect the conclusions of the report.

Dave's Redistricting utilizes 2020 data from the United States Census, along with a composite voting index based upon the 2016, 2018, and 2020 elections. The index measures a district's percentage of Democrats, Republicans, and Other voters, while the Census data measures population and race/ethnicity.

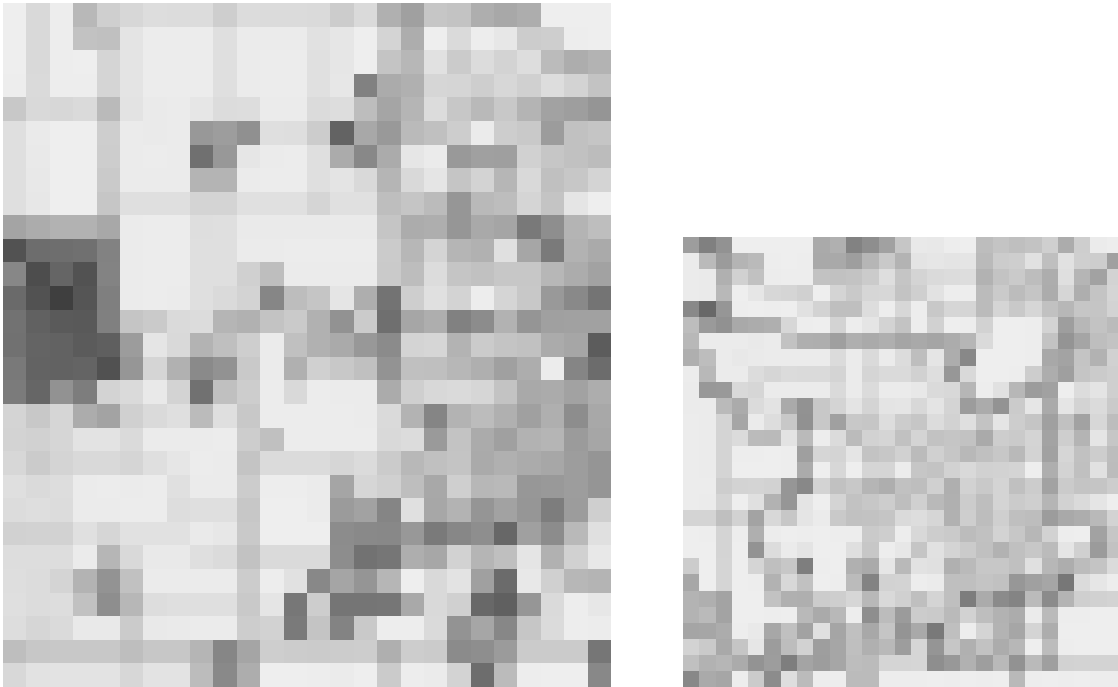
1. *Liberty 3* unnecessarily places a substantial portion of the city of Olathe, a community of interest, into a district with which it has little in common.

The Ninth District of *Liberty 3* winds its way thorough Douglas, Leavenworth, Wyandotte, and Johnson Counties. Much of it consists of rural areas or small towns located near the edge of the Kansas City area, but still rural in character and located outside of the metro’s core counties. Commonly referred to in urban politics as *exurban* or *edge cities*, these communities include Baldwin City and Eudora (Douglas County), and Tonganoxie (Leavenworth County). However, the Ninth District also features two eastward extensions into Johnson and Wyandotte Counties, the two core counties on the Kansas side of the Kansas City metropolitan area. On the map, these extensions resemble claws. The northernmost “claw” reaches into Wyandotte County to collect Bonner Springs and Edwardsville. As two of the only three incorporated cities in Wyandotte County that lie outside of Kansas City, KS, these communities are somewhat distinct from the rest of the county and lie at its westernmost edge. As semi-rural towns at the edge of a larger metropolitan area, Bonner Springs and Edwardsville could plausibly be seen as belonging with the rest of the Ninth District.

By contrast, the southern “claw” of the new Ninth District has far less in common with the rest of the district than does its counterpart to the north. This portion of the district reaches deeply into the city of Olathe. With a population of approximately 130,000, Olathe is the fifth largest city in Kansas and the fourth largest in the bistate Kansas City metropolitan area. The Olathe school district has the second-highest enrollment in the state, and features five high schools, two of which have opened in the past twenty years. This is due to rapid population growth in Olathe, over 12% between 2010 and 2020. Olathe is also diverse, with a population that is 10.6% Hispanic, 6.8% Black, 5.4% Asian, and 2.5% Native American.¹

¹ Demographic data for this section of the report comes from the 2020 U.S. Census, as reported by *Dave’s Redistricting*.

Figures 1 and 2: The Ninth District in *Liberty 3* and Olathe Detail



As discussed in the next section, this newly-drawn Ninth District includes the homes of two incumbents, Senator Tom Holland of Baldwin City and Senator Beverly Gossage, whose mailing address is in Eudora (Douglas County) but whose home is located in unincorporated, western Johnson County according to information supplied by the KLRD. Neither of these senators lives in Olathe or any other urbanized portion of the Kansas City area. Senator Gossage does live at the western edge of rural Johnson County, and she is accustomed to representing a western Johnson County district. However, the new district moves Senator Gossage into a substantially different district, very different from the one she is accustomed to representing and much more like the one current represented by Senator Holland. It should also be noted that Senator Gossage has only been in office since 2021.

Of course, no elected official “owns” any district, nor are they entitled to be re-elected. Who represents a district is to be determined anew by the voters in each election cycle. Yet with that caveat, one might explain this situation colloquially by saying the following: essentially, *Liberty 3* moves Senator

Gossage's home and parts of Olathe into Senator Holland's district. This forces the incumbents to run against one another (see next section) and changes the character of the district. It creates a district very different from the ones that each senator is accustomed to representing, and very different from the ones to which the voters of that new district are accustomed. The people of the old Third District (represented by Senator Holland) are not accustomed to sharing a district with portions of a large, suburban municipality, and the people of the old Ninth District (represented by Senator Gossage) are not accustomed to sharing a district with rural and small town communities in other counties.

The precincts in Olathe included in this district are not part of a community of interest with the rest of the district and appear to have been incorporated into a rural, small town, and exurban district for the sole purpose of forcing two incumbents to run against one another (see below). Because of its population, Olathe must be divided between several state senate districts, but the incorporation a substantial portion of it into a small-town and rural district unnecessarily separates this part of Olathe from the rest of its community of interest, which includes the largest school district (by enrollment) in the entire, bistate Kansas City metropolitan area, which is also the second-largest one in Kansas.² It also denies fair representation to the voters of the new district who reside outside Olathe, because while these Olathe precincts contain only a small fraction of the new district's land area, they do include a substantial portion of its voters. The Olathe precincts of the new Ninth District include 22,514 voters, nearly a third of the new district's population. Their inclusion in the former Third District dilutes the representation not only of the Olathe voters, who are submerged into a predominantly rural and small-town district, but also of the voters in the rest of the district, who are not accustomed to sharing the district with this large, suburban population center.

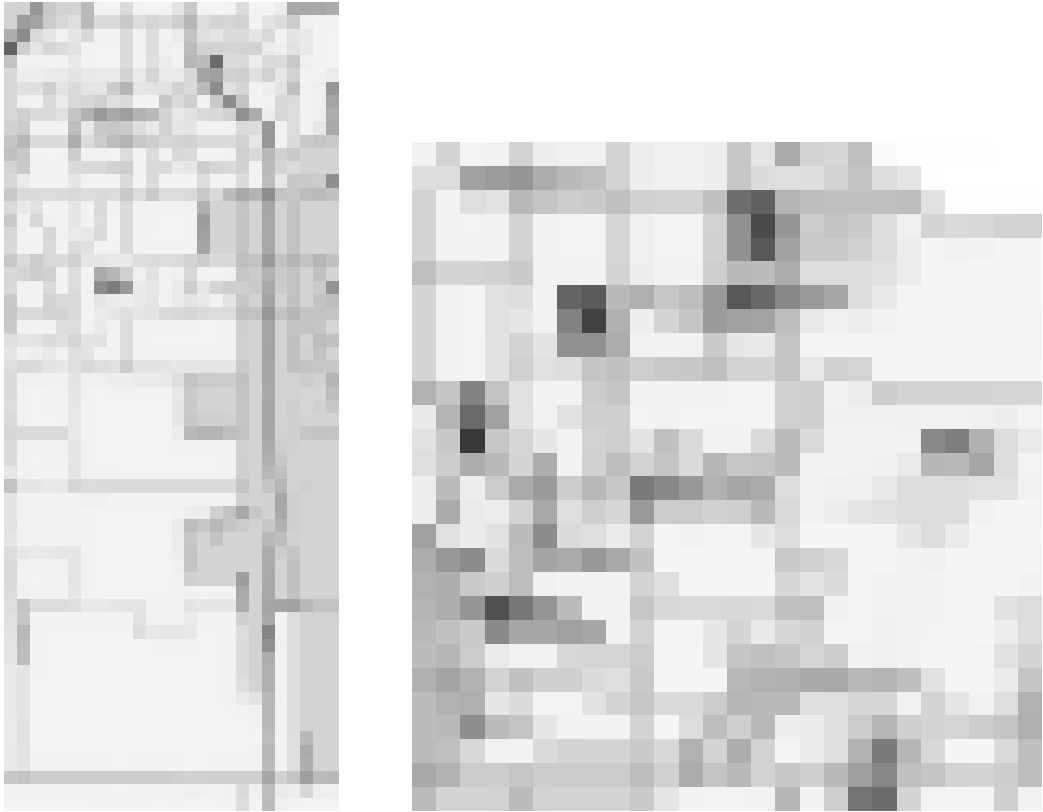
² School enrollment data comes from Niche.com <https://www.niche.com/k12/search/largest-school-districts/s/kansas/> and <https://www.niche.com/k12/search/largest-school-districts/s/missouri/>

2. ***Liberty 3* appears to have been drawn to intentionally force two incumbents to run against each other.**

As mentioned earlier in this report, *Liberty 3* places the homes of two incumbents, Senators Tom Holland and Beverly Gossage, in the same district. This is a particularly blatant violation of Criterion 4e of the *Guidelines*, “Contests between incumbent members of the State Board of Education or the Legislature should be avoided whenever possible.”

It should be noted that the cores of prior districts sometimes need to be merged when a community experiences population loss. This can lead to incumbents being placed in the same district together and forced to retire, hope the other retires, or run against each other. However, Senator Holland lives in Douglas County. As mentioned earlier, Douglas County experienced population growth of approximately 10% between 2010 and 2020. Holland’s current district also incorporates portions of Leavenworth County, which has grown by nearly 8% during this same time period. Senator Gossage lives in Johnson County near the Douglas County line. Johnson County grew by more than 12% from 2010 to 2020. It is unusual to observe the merging together of two incumbents’ homes in a district when it is located in an area of the state experiencing population growth. Typically, growth results in existing districts being subdivided into smaller ones, creating new districts with no incumbent, such as the 35th district in Johnson County on the *Liberty 3* map. Why, then, were Senators Holland and Gossage, also representing growing counties, placed together into a single district, in clear violation of Criterion 4e?

Figures 3 and 4: The New 35th District (no incumbent) and Senators Holland and Gossage's Homes in the 9th District



Figures 4 and 5: 2012-2022 Districts (left side) and Liberty 3 Districts, Eastern Kansas detail



Conclusion

Prior to considering and approving this year's redistricting maps, the Kansas Legislature set a number of criteria to use. These criteria are all standard and widely-accepted guidelines for restricting in the states.³ Unfortunately, the *Liberty 3* map they ultimately approved violates several of these criteria. *Liberty 3* puts a substantial portion of Olathe into a district with which it has little in common, unnecessarily subdividing a community of interest and diluting the influence of one of the state's largest and fastest-growing cities, as well as the Kansas City area's largest school district. It also dilutes representation for the constituents in the rest of the district, who are not accustomed to sharing a district with this large, suburban municipality. Finally, *Liberty 3* features a particularly egregious violation of the criterion which prohibits the Legislature from forcing incumbents to run against one another whenever possible. Though it was certainly possible, even probable to draw districts in the fastest-growing parts of the state that would avoid pitting incumbents against one another, *Liberty 3* fails to do this.

³ National Conference of State Legislatures, *Redistricting Criteria*
<https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx>

Michael A. Smith

Professor of Political Science and Chair
Department of Social Sciences, Sociology, and Criminology
Box 4032
Emporia State University
Emporia, KS 66801
Phone: 620-341-5566
E-mail: msmith3@emporia.edu

Curriculum Vitae

Experience

2020-: *Chair of Social Sciences, Sociology, and Criminology*, Emporia State University

2015-2020: *Chair of Social Sciences*, Emporia State University

2014-15: *Interim Chair of Social Sciences*, Emporia State University

2007-2014: *Associate Chair of Political Science*: Emporia State University

2016-: *Professor of Political Science*: Emporia State University

2010-2016: *Associate Professor*: Emporia State University

2005- 2010: *Assistant Professor*: Emporia State University

Fall, 2004: *Lecturer*: The University of Kansas, Political Science

2001-2004: *Visiting Professor*: Kansas State University, Political Science

2000-2001: *Visiting Assistant Professor*: Millikin University, Political Science

Winter, 2000: *Temporary Instructor*: Iowa State University, Political Science

Education

2000 Ph.D. Political Science University of Missouri- Columbia
Fields: American Politics, Political Theory, Public Policy & Public Administration
Dissertation title: "Closer to Home: Districts, Ambitions, and Home Styles of State House Members in a U.S. Metropolitan Area"
Committee Chair: Richard Hardy

1999 Summer program, Inter-University Consortium for Political and Social Research (ICPSR), University of Michigan

1994 M.A. Political Science The Ohio State University
Major: Policy Process *Minor*: Political Theory

1992 B.A. Political Science Reed College (Portland, Oregon)

Thesis Title: “God’s Revolution: The Role Of the Roman Catholic Church in the Transformation Of Poland, 1945-1989”

Courses Taught

Introduction to Political Science
State and Local Government
Development of Political Theory
Modern Political Theory
Contemporary Political Theory
American Political Thought
Urban Politics
American Political Parties and Elections
Legislative Politics
Introduction to Public Administration
Constitutional Law
Political Behavior
Nonprofit Management
Budgeting
Introduction to American History
Political Science Through Satire and Humor
Political Science in the Movies
Religion and Secularism in Society
Election Security

Publications: Books

2022 (forthcoming): Reform and Reaction: The Arc of Kansas Politics (w/Burdett Loomis, Mark Peterson, Ed Flentje, Patrick Miller, and Chapman Rackaway) Contract approved by the University Press of Kansas Press Board of Directors on October 30, 2015.

2022: Much Sound and Fury or the New Jim Crow: The Twenty-First Century’s Restrictive New Voting Laws in the States (editor, contributor) State University of New York (SUNY) Press

2019 Low Taxes and Small Government: Sam Brownback’s Great Experiment in Kansas (w/Bob Grover and Rob Catlett) Lexington.

2014 State Voting Laws in America: Historical Statutes and Their Modern Implications (w/Chapman Rackaway and Kevin Anderson) Palgrave Pivot.

2003 Bringing Representation Home: State Legislators Among Their Constituencies University of Missouri Press.

Publications: Articles

June, 2016: “Contested Rights: The Pedagogy and Logistics of Hosting Constitution Day” (w/Amanda Miracle, Kevin Anderson, and Rob Catlett) *The Social Studies* v. 107, no. 5 pp. 153-159

August, 2014 “Should We Teach Civics or Active Citizenship? A New Approach to Teaching” (w/The Honorable Bob Graham) *PS: Political Science and Politics* Volume 47, No. 3.

March, 2004: “One Piece At a Time: The Role of Time and Sequencing in Pivotal Politics” *Perspectives on Politics*. Volume 2, No 1.

October/November, 2003: “Kansas: The Three Party State” *Campaigns and Elections* Volume 24, No. 10.*

*Not peer-reviewed.

March, 2002: “A Dynamic Model of Agenda-Building: A Research Design for Public Policy” *Politics and Policy* (formerly the *Southeastern Political Review*) Volume 30, No. 1.

June, 2001: “Minority Representation from the States after *Shaw v. Reno*: Legal Challenges, Empirical Evidence, and Alternative Approaches” *Politics and Policy* Volume 29, No. 2.

Publications: Book Chapters

2011: “V is for Values” in Inside Politics eds. James Bowers and Stephen Daniels Lynne Rienner Publishers

2010: “The Eulogy Effect: The Impact of a Candidate’s Death On Media Coverage During Campaigns” (w/Chapman Rackaway, Kevin Anderson, and Ryan Sisson) in Politics and Popular Culture ed. Leah Murray Cambridge Scholars Press

2010: “From the Gut: How Real-World Political Actors Make Predictions” in Development of a Methodology for Prediction of Winners in American Elections, ed. Chandra Putcha The Edwin Mellen Press

2007: “It’s All About the Turnover: Term Limits in Citizen Legislatures” Legislating Without Experience: Case Studies in State Legislative Term Limits ed. Rick Farmer, Christopher Z. Mooney, Richard J. Powell, and John C. Green Lexington Books

2007: “Constituent Attention and Interest Representation” (w/ Lynda W. Powell and Richard G. Niemi) in Institutional Change in American Politics: The Case of Term Limits University of Michigan Press

Publications: Working Papers

2015: “Edmund Burke: Politician, What Burke Teaches Us About Defining Representation” in *Emporia State Research Studies* v. 50, no. 1

Expert Witness

Bednasek v Kobach U.S. District Court for the District of Kansas Filed as *Keener v Kobach*
09/30/2015 Court date: March, 2018

Conference Presentations (last 10 years)

October, 2021: Redistricting and More: 2020 Census Meets 2020 Election Data. Great Plains Political Science Association Annual Meetings (virtual)

October, 2020: Finding Time for Research at a Teaching-Centered University (Roundtable organizer, participant) Great Plains Political Science Association Annual Meetings (virtual)

October, 2020: Kansas Politics Roundtable (Roundtable organizer, participant) Great Plains Political Science Association Annual Meetings (virtual)

April, 2019: Grow Your Enrollments! Political Science Surviving and Thriving in a Pre-Professional Academic World Midwest Political Science Association Annual Meetings

October, 2018: “Everything You Always Wanted to Know About Growing Your Major but were Afraid to Ask” Great Plains Political Science Association Annual Meetings

April, 2018: “Using Synthetic Controls and Border Effects to Identify the Impact of Restrictive Voting Laws” (w/Bekah Selby) Midwest Political Science Association Annual Meetings

April, 2018: “Too Liberal or Too Funny: Processing Election Defeats with Conventional Wisdom and Satire” (w/Chapman Rackaway and Kevin Anderson) Midwest Political Science Association Annual Meetings

October, 2017: Roundtable: “Post-Mortem on the Brownback Experiment” (organizer and participant) Great Plains Political Science Association Annual Meetings

April, 2017: Roundtable: “Did it Matter in the End: Assessing the Impact of Restrictive Voting Laws on the 2018 Election (organizer and participant) Midwest Political Science Association Annual Meetings

October, 2016: Roundtable: Kansas Politics in the Age of Brownback (participant) Great Plains Political Science Association Annual Meetings

April, 2016: “Do Undocumented Immigrants Vote in U.S. Elections?: Reassessing the Evidence” Midwest Political Science Association Annual Meetings

November, 2015: Invited Panelist, American Political Science Association Panel on Public Engagement Northeastern Political Science Annual Meetings.

November, 2015: “Who are Suspense Voters? The Impact of Proof-of-Citizenship Laws” Northeastern Political Science Annual Meetings.

October, 2015: Participation in *Insight Kansas* Roundtable on Kansas Politics (w/Burdett Loomis, Ed Flentje, and Mark Peterson) Great Plains Political Science Association Annual Meetings.

October, 2015: “The Constitution and Constitution Day: Innovative Sessions to Engage Middle and High School Students on a University Campus” (w/Amanda Miracle, Kevin Anderson, and Rob Catlett). Presented at the National Social Sciences Association Annual Meetings.

April, 2015: “Do Proof-of-Citizenship and Photo ID Laws Suppress Turnout? Early, Direct Evidence.” (w/Kevin Anderson and Chapman Rackaway) Presented at the Midwest Political Science Association Annual Meetings

April, 2015: “Backlash! Do Restrictive Voting Laws Mobilize Their Opponents?” (w/Kevin Anderson and Chapman Rackaway) Presented at the Midwest Political Science Association Annual Meetings

April, 2014: "Look Away from the Battleground: The Impact of Restrictive New Voting Laws on Turnout Change, 2008-2012." (w/ Kevin Anderson and Chapman Rackaway) Presented at the Midwest Political Science Association Annual Meetings

April, 2014: “Kansas: The Three Party State: A Test of Evidence” (w/Chapman Rackaway) Presented at the Midwest Political Science Association Annual Meetings

March, 2014: “Voter Fraud or Fraudulent Voters? A Brief History of Voting Laws in the States” (w/Chapman Rackaway and Kevin Anderson) Presented to the 2014 Kansas Association of Historians Conference

February, 2014: “Breakdown, Take Me Through the Day: Teaching Constitution Day to Middle- and High-School Students With Short Breakout Sessions” (w/Amanda Miracle and Kevin Anderson) Presented to the 2014 American Political Science Association Teaching and Learning Conference

April, 2013: “Whoops!: The Unintended Impact on Republican Votes by Voter Suppression Laws in 2012” (w/ Kevin Anderson and Chapman Rackaway) Presented at the Midwest Political Science Association Annual Meetings

February, 2013: “Should We Teach Civics or Active Citizenship? A New Approach to Teaching” (w/The Honorable Bob Graham) Presented to the 2014 American Political Science Association Teaching and Learning Conference

Additional Research

2008 Collaborator “Government Alive!” a curriculum for high-school adaptation *Teachers Curriculum Institute*

Campus Service

2020-: Chair, Social Sciences, Sociology, and Criminology, Emporia State University

2015-2020: Chair, Social Sciences, , Emporia State University

2014-15: Interim Chair of Social Sciences, Emporia State University

2008-2014: Associate Chair, Political Science, Emporia State University

2013-present: Member, Kansas Leadership Center/Emporia State “Trailblazers”

2007-present: Campus Advisor, Harry S. Truman Scholarship, Emporia State University

2007, 2012: Member, Faculty Retention Committee, Emporia State University (served as Chair in 2012).

Service to Discipline

2015-: Policy Fellow, Docking Institute for Public Affairs

2015-: Reviewer, University Press of Kansas

2015-: Reviewer, *Emporia State Research Studies*

2015-: Board Member, *Emporia State Research Studies*

2015-16: Member, conference planning committee, Great Plains Political Science Association

2015: Reviewer, *Journal of Political Science*

2014-15: Board Member, University Press of Kansas

Media Appearances

2019- Occasional Appearances on KPTS's *Kansas Week* (television)

2017-: Occasional Appearances on KTWU's *I've Got Issues* (television)

2012-2017: Regular appearances on KAKE's *This Week in Kansas* (television)

2011-present: Part of the *Insight Kansas* group, authoring regular newspaper columns appearing in the *Wichita Eagle*, *Topeka Journal World*, *Emporia Gazette*, *Lawrence Journal-World*, and other publications

2011- present: quoted in *New York Times*, *The New Republic*, *CBS News Online*, *Wichita Eagle*, *Kansas City Star*, *Topeka Capital-Journal*, *Lawrence Journal-World*, *Emporia Gazette*, Kansas Public Radio, Kansas City University Radio, and other media.

Nominations

2013: Nominated for the CQ Press Award for Teaching Innovation at the American Political Science Association Teaching & Learning Conference (nominated by The Honorable Bob Graham)

Training

2013-14: Kansas Leadership Center (w/colleagues from Emporia State University)

2008: Gamaliel Foundation, Advanced Leadership Training

2006: Gamaliel Foundation, Weeklong National Leadership Training

Memberships

2015-present: Great Plains Political Science Association

2012- present: Midwest Political Science Association

References

Brent Thomas
Dean of Liberal Arts and Sciences
Emporia State University
1 Kellogg Cir.
Emporia, KS 66801
Rthomas2@emporia.edu

Ed Flentje
Professor Emeritus of Public Administration
Wichita State University
Ed.flentje@wichita.edu

Joseph Aistrup, Professor and Dean of the College of Liberal Arts
College of Arts and Sciences
Auburn University
7080 Haley Center
Auburn University, AL 36849
334-844-5370
jaa0025@auburn.edu