

IN THE SUPREME COURT OF KANSAS

SCOTT SCHWAB, Kansas Secretary)
of State, in his official capacity,)

and)

MICHAEL ABBOTT, Wyandotte)
County Election Commissioner,)
in his official capacity,)

Petitioners,)

v.)

Case No. 124849
(Original Action)

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

and)

THE HONORABLE MARK SIMPSON,)
in his official capacity as a District)
Court Judge, Seventh Judicial)
District,)

Respondents.)

FAITH RIVERA, DIOSSELYN TOT-)
VELASQUEZ, KIMBERLY WEAVER,)
PARIS RAITE, DONNAVAN DILLON,)
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),)
)
 and)
)
 SUSAN FRICK, LAUREN SULLIVAN,)
 DARRELL LEA, and SUSAN SPRING)
 SCHIFFELBEIN,)
)
 Plaintiffs in Douglas)
 County District Court Case)
 2022-CV-71 and Respondents)
 under Kansas Supreme Court)
 Rule 9.01(a)(1).)
)
 _____)

MOTION FOR A STAY OF DISTRICT COURT PROCEEDINGS IN DOUGLAS COUNTY DISTRICT COURT CASE NUMBER 22-CV-71

Petitioners Kansas Secretary of State Scott Schwab and Wyandotte County Election Commissioner Michael Abbott respectfully move this Court for an order staying the district court proceedings in *Frick v. Schwab*, 2022-CV-71 (Douglas County D. Ct.). Petitioners have previously moved this Court to stay the district court proceedings in *Rivera v. Schwab*, 2022-CV-89 (Wyandotte County D. Ct.), and *Alonzo v. Schwab*, 2022-CV-90 (Wyandotte County D. Ct.), both of which challenge

the validity of Kansas’s recently enacted congressional redistricting map under the Kansas Constitution. A stay of the *Frick* proceedings is also warranted.

Like the petitions in *Rivera* and *Alonzo*, the petition filed in *Frick v. Schwab*, which is attached to the First Amended Petition in Mandamus and Quo Warranto as Exhibit E, asks the district court to consider the validity of SB 355 under the Kansas Constitution. There is no precedent for Kansas state court review of congressional redistricting. The petition asks the district court to recognize that several provisions of the Kansas Constitution prohibit partisan gerrymandering. The legal foundations of the petition—which have never been established by this Court—are presented in this mandamus and quo warranto action.

This Court should exercise mandamus and quo warranto jurisdiction over this proceeding and stay the district court proceedings because this Court possesses the inherent power to “protect its own jurisdiction, its own process, its own proceedings, its own orders, and its own judgments; and for this purpose it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.” *Chicago, K. & W. Rld. Co. v. Comm’rs of Chase Co.*, 42 Kan. 223, 225, 21 P. 1071 (1889). A stay would prevent the inefficient use of judicial resources that would result from concurrently litigating the same legal issue here and in the district court. It would also ensure that any district court proceedings—if appropriate—are conducted under the proper standard.

The petition in *Frick* raises a novel claim of political gerrymandering under the Kansas Constitution only a few months before the deadline for candidates for national offices to file the necessary paperwork for primary elections. See K.S.A. 25-205(a), (h). The United States Supreme Court has held that partisan gerrymandering claims present political questions beyond the reach of federal courts. *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). As explained in Petitioners’ Memorandum in Support of First Amended Petition in Mandamus and Quo Warranto, this Court’s exercise of its original jurisdiction is the most appropriate and efficient means for resolving this issue of statewide importance. See, e.g., *Harris v. Anderson*, 194 Kan. 302, 400 P.2d 25 (1965). Petitioners also explain in their memorandum why the district court lacks the authority to adjudicate the validity of a congressional redistricting map and why partisan gerrymandering claims are not justiciable under the Kansas Constitution.

Since this Court is the ultimate arbiter of whether the Kansas Constitution permits a claim of political gerrymandering, time spent litigating this important legal issue in the district court would be wasted resolving an issue that should be promptly decided by this Court. The district court should not be tasked to render a legal decision on an important and difficult constitutional issue that will inevitably reach this Court and garner no legal deference. Furthermore, this Court’s guidance on the standard to apply in the district court proceedings is needed if those proceedings are to continue. This Court has never articulated the standard that is to apply to a political gerrymandering claim—if such a claim even exists. Finally,

allowing the district court to entertain the *Frick* petition risks allowing that court to adjudicate a lawsuit it lacks the power to adjudicate. This Court cannot permit unconstitutional litigation to proceed in the district court.

For these reasons, Petitioners respectfully request that this Court stay the district court proceedings in *Frick v. Schwab*, 2022-CV-71 (Douglas County D. Ct.).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 3, 2022, the above document was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants, and copies were mailed and emailed to:

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