have made "minimal changes to CD3" that "would have avoided diluting minority voting strength, and in fact would have made CD3 even more diverse than it had previously been." PX 58 at 36 (P. Miller Rep.).

284. Having diluted minority Kansan's voting power in CDs 2 and 3, Ad Astra 2 effectively nullifies the minority vote in congressional elections. Dr. Miller testified that given the significant white majorities in CDs 1 and 4, they are not districts "where minority Kansans have significant voting power," even though CD 4 is now the most diverse district in the state. PX 58 at 62, 67 (P. Miller Rep.).

285. The Court credits Dr. Miller's testimony on the racial consequences of Ad Astra 2 and concludes that it was enacted intentionally and effectively to diminish the electoral influence of minority voters in the state.

E. Additional evidence provided by fact witnesses supports Plaintiffs' experts' analyses that Ad Astra 2 will dilute minority votes.

286. Several fact witnesses for Plaintiffs that live in, work in, or participate in the local government of Wyandotte County offered testimony that supports Plaintiffs' experts' statistical and empirical analyses. For example, Representative Tom Burroughs, a witness for Plaintiffs, is a Democratic member of the Kansas House of Representatives where he has represented the South-Central portion of Wyandotte County for twenty-six years. Hr'g Tr. Day 2 Vol. 1 at 7:22-25 (Burroughs). He is also a Commissioner At-Large for District 2 in Wyandotte County, a position he

has held for over four years. Hr'g Tr. Day 2 Vol. 1 at 7:19-21, 8:1-3 (Burroughs). Rep. Burroughs testified that Ad Astra 2 is a "deliberate action[] taken" by the Legislature "to mute" and "disenfranchise members of [his] community," Hr'g Tr. Day 2 Vol. 1 at 15:5-12 (Burroughs), because the map "split[s] [Wyandotte County] right down a main artery of our community and split[s] heavy minority districts," Hr'g Tr. Day 2 Vol. 1 at 15:2-4 (Burroughs). Rep. Burroughs testified that this would have an "a palling [sic] effect. . . . in the majority minority community, it would be very difficult for a minority member of our community to ever run for state or federal office and [they will] have their voices muted when it comes to having interest[s] of theirs presented on either [the] federal [or] state level." Hr'g Tr. Day 2 Vol. 1 at 23:3-9 (Burroughs).

287. Dr. Mildred Edwards, Ph.D., also testified for Plaintiffs. Dr. Edwards is Chief of Staff to Wyandotte County Unified Government Mayor Tyrone Garner and a lifelong Kansan. Hr'g Tr. Day 2 Vol. 1 at 40:9-12, 40:22-23 (Edwards). Dr. Edwards testified that Ad Astra 2, which "divided [Wyandotte C]ounty" along Highway 70, would have a "tremendous negative impact" on the county's minority communities. Hr'g Tr. Day 2 Vol. 1 at 49:2, 50:24-25 (Edwards). Dr. Edwards testified that Wyandotte County is a majority-minority county, and that diversity is an attribute the county "celebrate[s]" and is "most proud of." Hr'g Tr. Day 2 Vol. 1 at 44:11-45:7 (Edwards). Wyandotte County only expects this diversity to grow, because its school age population is even more diverse than the county as a whole. Hr'g Tr. Day 2 Vol. 1 at 46:23-47:11 (Edwards). Dr. Edwards explained that the plan splits Wyandotte

County along racial lines, keeping the whiter, wealthier southern half of Wyandotte County in CD 3, and moving the northern half—which contains "68 percent of the people of color in Wyandotte," has a median income $15,000 below that of the southern portion of the county, and "has the greatest need identified"—into CD2. Hr'g Tr. Day 2 Vol. 1 at 42:2-43:13, 49:2-7, 51:18-52:2 (Edwards). This division, she testified, would "devastate the northern part of Wyandotte County." Hr'g Tr. Day 2 Vol. 1 at 51:15-19 (Edwards), fracturing the symbiotic relationship northern and southern Wyandotte County currently enjoy, Hr'g Tr. Day 2 Vol. 1 at 42:2-44:10 (Edwards), and jeopardizing $9.5 million in federal funds the county is counting on to serve its minority communities, Hr'g Tr. Day 2 Vol. 1 at 49:8-50:3 (Edwards).

288. The Court credits these fact witnesses' testimony regarding the communities they serve, and finds their testimony to be additional evidence to support Plaintiffs' claims that the Ad Astra 2 map intentionally and effectively dilutes minority votes.

IV. Defendants' experts failed to rebut Plaintiffs' claims.

289. Defendants offered three expert witness to rebut Plaintiffs' partisan gerrymandering and racial vote dilution claims, Dr. Brad Lockerbie, Dr. Alan Miller, and Dr. John Alford. Collectively, they testified that Plaintiffs' experts failed to demonstrate partisan gerrymandering or racial vote dilution in Ad Astra 2. The Court considers their testimony below.

A. Defendants' experts failed to rebut Plaintiffs' partisan gerrymandering claims.

290. Drs. Lockerbie, Miller, and Alford each testified to purported issues with Plaintiffs' experts' partisan gerrymandering analysis. Their central contentions were that Ad Astra 2 contains only a modest level of partisan bias and that Plaintiffs' experts improperly used the efficiency gap as a measure of partisan gerrymandering in Kansas's congressional elections. For the reasons discussed below, the Court agrees that the efficiency gap must be applied with caution in Kansas's congressional elections. It has already concluded, however, that Plaintiffs' experts exercised appropriate care in their use of the efficiency gap, *see supra* FOF § II.C, and it finds that Defendants' experts did not show otherwise. The Court also finds that Defendants' experts did not rebut Plaintiffs' evidence that Ad Astra 2 has an extreme level of partisan bias.

Dr. Brad Lockerbie's conclusions regarding partisan gerrymandering were unpersuasive.

291. Dr. Brad Lockerbie, Ph.D., is a Professor of Political Science at East Carolina University. DX 1059 ¶ 2 (Lockerbie Rep.). The Court admitted Dr. Lockerbie as an expert on partisan and racial gerrymandering, minority vote dilution, and RPV. Hr'g Tr. Day 3 Vol. 2 at 31:7-32:18 (Lockerbie). After reviewing Dr. Lockerbie's report and testimony in this case, the Court finds his opinion unpersuasive.

292. Dr. Lockerbie's most germane testimony was his assertion that Dr. Chen incorrectly concluded that Republicans will win all four congressional districts under Ad Astra 2 and that Ad Astra 2's level of compactness is an extreme outlier. DX 1059 ¶¶ 8-9, 13-17 (Lockerbie Rep.); Hr'g Tr. Day 3 Vol. 2 at 34:21-35:12 (Lockerbie). Although Dr. Lockerbie did not independently analyze the level of partisan bias in Ad Astra 2, he testified that two outside sources, PlanScore and the Princeton Gerrymandering project, anticipate that under Ad Astra 2 CD 3 will have a modest Democratic lean. DX 1059 ¶¶ 13-17 (Lockerbie Rep.); Hr'g Tr. Day 3 Vol. 2 at 38:14-39:8 (Lockerbie). Dr. Lockerbie testified further that although Dr. Chen's compactness analysis was "mathematically correct," Ad Astra 2's compactness scores are higher than the nationwide average, which he "took to be evidence that the state did try to make districts as compact as possible." Hr'g Tr. Day 3 Vol. 2 at 34:25-35:12 (Lockerbie).

293. On cross-examination, Dr. Lockerbie undercut his own conclusions. He suggested that Dr. Chen used a more reliable election composite to project partisanship than does PlanScore or the Princeton Gerrymandering Project, and that Dr. Chen's conclusion may therefore be "better" than the sources Dr. Lockerbie relied upon. Hr'g Tr. Day 3 Vol. 2 at 63:7-64:25 (Lockerbie). He also recognized that comparing compactness scores between states may be inappropriate because a state's shape and political geography limit its potential compactness, a constraint that varies from state to state. Hr'g Tr. Day 3 Vol. 2 at 57:8-59:21 (Lockerbie). Dr. Chen's analysis, he agreed,

showed that Ad Astra 2's compactness, as measured by both Reock and Polsby-Popper scores, was an extreme outlier in the Kansas-specific context. Hr'g Tr. Day 3 Vol. 2 at 59:22-60:20 (Lockerbie). Given this testimony, the Court finds Dr. Lockerbie's opinion that Democrats have an advantage in CD 3 and that Ad Astra 2 is as compact as possible unpersuasive.

294. The Court has considered these and other points raised by Dr. Lockerbie and finds them unpersuasive or insufficient to rebut Plaintiffs' evidence of partisan gerrymandering.

Dr. Alan Miller's conclusions regarding partisan gerrymandering are unpersuasive.

295. Dr. Alan Miller, Ph.D., is an Associate Professor of Law and the Canada Research Chair in Law and Economics at Western University. DX 1061 at 4 (A. Miller Rep.). The Court accepted Dr. Miller as an expert in axiomatic measurement and its application to the efficiency gap. Hr'g Tr. Day 3 Vol. 2 at 92:13-93:5 (A. Miller). For the reasons discussed below, the Court finds that Dr. Miller appropriately suggests the efficiency gap must be used with caution in Kansas congressional elections. The Court finds further, however, that Plaintiffs' experts employed appropriate caution and that Dr. Miller did not suggest otherwise. The Court finds the remainder of Dr. Miller's testimony unpersuasive.

296. Dr. Miller's principal testimony was that, for a variety of reasons, the efficiency gap does not effectively measure partisanship in redistricting

plans.[13] Dr. Miller predicated this testimony on his article, "Flaws in the Efficiency Gap," which he published in a student-edited law review and which has not been peer reviewed. Hr'g Tr. Day 3 Vol. 2 at 153:22-54:20 (A. Miller). That article stands in contrast, however, to "robust" peer reviewed scholarship that has "extensively" validated the measure. Hr'g Tr. Day 2 Vol. 1 at 82:19-84:5 (Warshaw). It is further undercut by Dr. Warshaw's testimony that the efficiency gap is "an excellent metric," Hr'g Tr. Day 2 Vol. 1 at 84:2-5 (Warshaw), and Defendants' expert Dr. Alford's testimony that the efficiency gap is the "best measure" of partisan gerrymandering, Hr'g Tr. Day 4 Vol. 1 at 23:4-10 (Alford). The Court therefore finds Dr. Miller's opinion that the efficiency gap is a poor measure of partisanship unpersuasive.

297. Dr. Miller also testified that even if the efficiency gap were an appropriate measure of partisan symmetry, it could not be used in states with fewer than seven seats. DX 1061 at 13, 17-26; Hr'g Tr. Day 3 Vol. 2 at 129:16-135:15 (A. Miller). The Court finds Dr. Miller's testimony persuasive evidence that the efficiency gap must be applied with caution in Kansas. But Dr. Warshaw addressed this concern, observing that although Dr. Miller appropriately "points out a

---

[13] Dr. Miller also testified that, even accepting the efficiency gap as a measure of partisan bias, Dr. Warshaw used the incorrect formula to calculate it. Hr'g Tr. Day 3 Vol. 2 at 105:110-23 (A. Miller). The Court finds this unpersuasive in light of the extensive peer-reviewed literature validating Dr. Warshaw's formula as the standard in the field. Hr'g Tr. Day 2 Vol. 1 at 82:8-15 (Warshaw).

rule of thumb people have used when looking at observed Congressional election results . . . there's certainly no research that has said definitively any bright line, and I don't think anybody to my knowledge has asserted or found that there's no way to use elections below seven seats." Hr'g Tr. Day 2 Vol. 1 at 107:4-12 (Warshaw). Dr. Warshaw explained that the basis for the seven-seat guideline is that election return variance in smaller states can skew observed results in the short-term. Hr'g Tr. Day 2 Vol. 1 at 107:4-7 (Warshaw). Averaging across multiple elections is necessary to stabilize results. Hr'g Tr. Day 2 Vol. 1 at 107:11-12 (Warshaw). The Court finds that Dr. Warshaw credibly justified his methodology, that his methodology produces an appropriate measure of partisan symmetry in Kansas's congressional elections, and that Dr. Miller did not rebut it.

298. The Court has considered these and other points raised by Dr. Miller and finds them unpersuasive or insufficient to rebut Plaintiffs' evidence of partisan gerrymandering.

Dr. John Alford's conclusions regarding partisan gerrymandering are unpersuasive.

299. Dr. John Alford, Ph.D., is a Professor of Political Science at Rice University. Hr'g Tr. Day 4 Vol. 1 at 12:10-18 (Alford). The Court accepted Dr. Alford as an expert in redistricting, racially polarized voting, and vote dilution. Hr'g Tr. Day 4 Vol. 1 at 26:3-15 (Alford). The Court finds that, like Dr. Miller, Dr. Alford counseled appropriate caution in applying the efficiency gap in Kansas, Hr'g Tr. Day 4 Vol. 1 at 46:18-20 (Alford), but that his testimony does not rebut

Dr. Warshaw's application of the efficiency gap. It finds that the remainder of Dr. Alford's testimony as to Ad Astra 2's partisanship supports Plaintiffs' claims.

300. Dr. Alford's central testimony on partisan gerrymandering was that, although Ad Astra 2 "certainly" reflects "evidence of partisanship," it evinces only a "very modest" amount. Hr'g Tr. Day 4 Vol. 1 at 28:10-21 (Alford). He based this conclusion on a review of Plaintiffs' expert reports, which he characterized as reflecting a modest pro-Republican shift in the partisanship of Ad Astra 2 that merely makes CD 3 more competitive. *See, e.g.*, Hr'g Tr. Day 4 Vol. 1 at 39:20-40:3 (Alford). Dr. Alford's testimony, as a factual matter, corroborates Plaintiffs' experts' findings. He confirmed that Ad Astra 2 has a pro-Republican effect that is "compatible with the notion that the majority party is trying to tilt things in their direction." Hr'g Tr. Day 4 Vol. 1 at 81:5, 82:2-4, 82-20-83:3 (Alford). Dr. Alford diverged from Plaintiffs only as to whether the admittedly partisan effect of Ad Astra 2 is so extreme as to be "impermissible." Hr'g Tr. Day 4 Vol. 1 at 60:14-19 (Alford); *see e.g.*, Hr'g Tr. Day 4 Vol. 1 at 83:18-22 (Alford). That is a legal matter for the Court to resolve. As a factual matter, the Court finds that Dr. Alford's testimony supports the testimony of Plaintiffs' experts that Ad Astra 2 has partisan effects.

301. The Court has considered these and other points raised by Dr. Alford and finds them unpersuasive or insufficient to rebut the evidence of partisan gerrymandering advanced by Plaintiffs.

B. Defendants' experts failed to rebut Plaintiffs' racial vote dilution claims.

302. In addition to their testimony on partisan gerrymandering, Drs. Lockerbie and Alford opined on Plaintiffs' racial vote dilution evidence. Dr. Lockerbie, in his testimony, retracted in full his criticisms of Dr. Collingwood, Hr'g Tr. Day 3 Vol. 2 at 56:14-16 (Lockerbie), and offered no criticism of Dr. Miller that is central to Plaintiffs' claims, *see* Hr'g Tr. Day 3 Vol. 2 at 41:3-47:12 (Lockerbie). The Court therefore limits its discussion to Dr. Alford, whose opinions the Court finds unpersuasive for the reasons discussed below.

303. First, Dr. Alford asserted that Plaintiffs failed to demonstrate RPV exists in Kansas. In essence, Dr. Alford testified that Plaintiffs' evidence of RPV was inconclusive because it failed to distinguish between racial and partisan polarization. Hr'g Tr. Day 4 Vol. 1 at 59:18-60:13, 76:15-20, 77:7-17 (Alford). But that is not what Plaintiffs' evidence purported to show. Dr. Collingwood explained that RPV describes an electoral environment in which "a majority of voters belonging to one racial/ethnic group vote for one candidate and a majority of voters who belong to another racial/ethnic group prefer the other candidate." PX 122 at 3 (Collingwood Rep.); Hr'g Tr. Day 3 Vol. 1 at 68:19-69:8, 138:19-22 (Collingwood). RPV, in other words, is "a fact" about voting patterns—not an assessment of causal basis for those patterns. Hr'g Tr. Day 3 Vol. 1 at 138:23-24 (Collingwood). The Court therefore finds that Dr. Alford's testimony does not rebut Dr. Collingwood's conclusion that RPV exists in Kansas.

304. Second, Dr. Alford testified that Ad Astra 2 does not dilute minority votes in Kansas because it does not alter the overall dispersion of minority voters across congressional districts. DX 1057 at 8 (Alford Rep.); *see* Hr'g Tr. Day 4 Vol. 1 at 53:23-54:3 (Alford). In his view, because the overall "character" of the districts remains the same on a statewide basis, shifting a subset of minority voters between districts could not amount to minority vote dilution. Hr'g Tr. Day 4 Vol. 1 at 55:18-56:7, 59:18-60:13 (Alford).

305. Dr. Alford undermined this position on cross-examination. He testified that to break up a performing cross-over district, a legislature might either remove part of the district's minority population or change the district's composition of white voters to reduce crossover voting. Hr'g Tr. Day 4 Vol. 1 at 55:18-56:7 (Alford). Ad Astra 2 does the former by moving nearly 50,000 minority voters, or 7% of CD 3's total VAP, out of the previously performing CD 3 and into CD 2, which will not perform. PX 122 at 7-8, 10 (Collingwood Rep.). It does the latter by replacing CD 3's displaced minority voters with a population that is over 90% white, making CD 3 unlikely to perform for the nearly 125,000 minority voters who remain there. PX 122 at 7-8, 10 (Collingwood Rep.). The Court therefore finds Dr. Alford's testimony that Kansas's disbursement of minority voters obviates Plaintiffs' claim of minority vote dilution unpersuasive.

306. The Court has considered these and other points raised by Dr. Alford and finds them unpersuasive or insufficient to rebut the evidence of RPV and minority vote dilution advanced by Plaintiffs.

V. Defendants' other justifications for Ad Astra 2 fail.

307. Throughout trial, Defendants asserted pretextual justifications for Ad Astra 2 that cannot withstand scrutiny. Indeed, Defendants offered these justifications exclusively through argument by lawyers, which are not evidence and not through evidence from any witness.

A. Ad Astra 2 cannot be justified by the Legislature's purported desire to keep Johnson County whole within a single congressional district.

308. Defendants suggested that Ad Astra 2's division of Wyandotte County was simply a good faith attempt to keep Johnson County whole. Because Johnson and Wyandotte Counties could not be kept in a single district, the argument went, the Legislature was placed in a bind. *See, e.g.*, Hr'g Tr. Day 1 Vol. 2 at 244:12-245:10 (Corson). And having been forced to split one of the two counties, it chose Wyandotte. *See, e.g.*, Hr'g Tr. Day 1 Vol. 2 at 244:12-245:10 (Corson). This is an inaccurate characterization of the Legislature's decision and cannot explain Ad Astra 2's partisan bias.

309. At the outset, a desire to keep Johnson County whole cannot explain the outsized Republican bias in Ad Astra 2. Dr. Chen found that 514 of his simulated plans kept Johnson County whole (out of a total of 1,000 simulations, the remainder of which split Johnson). PX 757; Hr'g Tr. Day 4 Vol. 1 at 92:-5:22 (Chen). Every single one of the Johnson County-preserving plans created a most-Democratic district

that was more favorable to Democrats, and often significantly more favorable, than Ad Astra 2's CD 3. Hr'g Tr. Day 4 Vol. 1 at 94:8-95:1 (Chen).

310. Examining the map further belies the proffered justification. As Senator Corson pointed out, the Legislature responded to population growth within Wyandotte and Johnson Counties by *expanding* the geographical reach of CD 3 by splitting off a large chunk of Wyandotte County and replacing it with three whole rural counties, two of which were not even part of CD 3 in the previous map. Hr'g Tr. Day 1 Vol. 2 at 258:15-259:10 (Corson). That result is not consistent with a simple desire to choose preserving Johnson over Wyandotte.

311. No legislator took the stand to testify that preserving Johnson County while splitting Wyandotte County was a justifiable or even non-pretextual goal. Defendant did not call any witnesses to explain why Ad Astra 2 was drawn in the manner it was. Therefore, providing no evidence justifying it's configuration.

312. Moreover, the single-minded preservation of Johnson County was not what Kansans asked for during the redistricting process. Rather, Senator Corson—who represents part of Johnson County and was present at all but one of the redistricting listening sessions—dismissed the Johnson County-first justification as an "invented post hoc rationale" that does not comport with the "vast, vast majority of the testimony" at the listening tour sessions. Hr'g Tr. Day 1 Vol. 2 at 211:21-212:2 (Corson). Instead, throughout the legislative process, Kansans asked that "the core of the Kansas side of the Kansas City metro area" be kept

whole. Hr'g Tr. Day 1 Vol. 2 at 212:2-9 (Corson); *see also* PX 168 at 4:9-15 (transcript of January 20, 2022 Senate Redistricting Committee hearing) (statement of Mike Taylor); PX 168 at 15:18-25 (statement of Amy Carter); PX 168 at 18:13-20:23 (statement of Connie Brown-Collins).

313. To the extent there was testimony asking that Johnson County be kept whole, almost all of it came at a time when census data was not available and it was not yet clear that Wyandotte and Johnson Counties could not both be kept whole in the same district. Hr'g Tr. Day 1 Vol. 2 at 211:15-212:20 (Corson).

314. Defendants offered no evidence or testimony that a legislature not seeking partisan advantage could or would have concluded that Johnson County is a more important community of interest than the Kansas City metro area.

315. In fact, evidence presented at trial demonstrated that Democratic representative Stephanie Clayton introduced a different map, "Mushroom Rock," that *did* preserve all of Johnson County in a single district. Hr'g Tr. Day 2 Vol. 1 at 18:13-19:11 (Burroughs). Yet Republican leadership still voted against it, Hr'g Tr. Day 2 Vol. 1 at 18:13-19:11 (Burroughs), perhaps because Representative Clayton's plan did not secure the same significant pro-Republican advantage as Ad Astra 2, *see* PX 112 (figure from Dr. Warshaw's report showing that other plans introduced, including Mushroom Rock, had a higher Democratic vote share than Ad Astra 2).

316. Johnson County is demographically and geographically diverse. While northeastern Johnson County is highly urban and suburban, the southern portion is rural. Hr'g Tr. Day 1 Vol. 2 at 229:8-20 (Corson). Unlike residents of the northeastern portion of Johnson County, citizens in the southern portion of the county do not interact with Wyandotte County nearly as much, nor do they share health care, transportation, and other community services to the same degree. Hr'g Tr. Day 1 Vol. 2 at 229:8-20 (Corson). In the absence of any evidence supporting Defendants' argument, the Court concludes that the Legislature did not enact Ad Astra 2 because of a genuine desire to elevate a supposed community of interest constituting the entirety of Johnson County over preserving the Kansas City metro area.

B. Ad Astra 2 cannot be justified by the Legislature's purported desire to reunite Kansas State and the University of Kansas in the same congressional district.

317. Defendants' second purported justification, that Ad Astra 2 unites KU and Kanas State University ("K State") in CD 1, similarly finds no basis in the legislative record. At no point during the listening tour sessions in August, the town halls in November, or the legislative hearings in January was there ever a suggestion that the two universities should be joined in a single district. Hr'g Tr. Day 1 Vol. 2 at 230:9-231:7 (Corson). Indeed, the Kansas Board of Regents—the governing body responsible for overseeing Kansas's public universities—made clear that they had *no*

position on redistricting. Hr'g Tr. Day 1 Vol. 2 at 230:24-231:7 (Corson).

318. No legislator took the stand to testify that combining KU and K State was a justifiable or even non-pretextual goal.

319. Defendants presented no evidence that residents of the two university towns—Lawrence and Manhattan—would have supported their pairing in the same district. Dr. Portillo, a Douglas County resident, County Commissioner, and Associate Dean for Academic Affairs at KU's Edwards Campus and School of Professional Studies, testified that while Manhattan and Lawrence are "both college towns," they are two "unique college towns." Hr'g Tr. Day 2 Vol. 2 at 113:8-10 (Portillo). Lawrence is a city of "about 94,000 people" with a large portion of residents commuting to Kansas City or Topeka on a daily basis. Hr'g Tr. Day 2 Vol. 2 at 113:10-14 (Portillo). Manhattan, on the other hand, is more "isolated as a college community" and "probably dominated a bit more by the university in that space." Hr'g Tr. Day 2 Vol. 2 at 113:15-19 (Portillo).

C. Ad Astra 2 cannot be justified by a desire to retain the cores of prior congressional districts.

320. Nor can Defendants justify Ad Astra 2 as an attempt to preserve the cores of prior districts. Ad Astra 2 upends the prior CD 3. That district has long been recognized as one with the Kansas side of the Kansas City metro area as its core. *See Essex v. Kobach*, 874 F. Supp. 2d 1069, 1086 (D. Kan 2012) (per

curiam) (three-judge court) ("[T]he entirety of Johnson and Wyandotte Counties should be included in the Third District. Those counties have formed the core of the Third District for decades, and as the Court concluded in [an earlier redistricting decision], they should be placed in the same district because they 'represent the Kansas portion of greater Kansas City, a major socio-economic unit,' and the counties' economic, political and culturalties are significantly greater than their differences.") (citation omitted); *O'Sullivan v. Brier*, 540 F. Supp. 1200, 1204 (D. Kan. 1982) (three-judge court) (similar). Ad Astra 2 dramatically reconfigures the district by extracting a large portion of Kansas City and adding two new rural counties, as well as the remainder of Miami County.

321. Ad Astra 2 also dramatically reconfigures CD 2 by adding the portion of Kansas City removed from CD 3 and by removing Lawrence.

322. Finally, in the overwhelmingly rural CD 1, Ad Astra 2 inexplicably adds urban Lawrence, bypassing a number of rural counties to scoop it from CD 2. The significant population shifts caused by Ad Astra 2 are illustrated by the chart below, which highlights population shifts between districts in the previous 2012 congressional plan and Ad Astra 2:

AD ASTRA 2 MAP:

COUNTIES MOVED TO NEW DISTRICTS

COUNTY	OLD CONGR-ESSIONAL DISTRICT 2012-2022	NEW CONGR-ESSIONAL DISTRICT IN AD ASTRA 2	RESI-DENTS MOVED (2020 CENSUS)
Wyandotte	Third	Second (portion)	112,661
Douglas	Second	First (portion)	94,934
Chase	First	Second	2,572
Geary	First	Second	36,379
Lyon	First	Second	32,179
Marion	First	Second	11,823
Morris	First	Second	5,386
Wabaunsee	First	Second	6,877
Jackson	Second	First	13,249
Jefferson	Second	First	18,974
Marshall	First/Second	First	5,276
Miami	Second/Third	Third	20,495

Franklin	Second	Third	25,643
Anderson	Second	Third	7,877

Exhibit No.

PX 139

323. This significant shift of population between districts was not the necessary result of population changes within the state between 2010 and 2020, nor the result of Kansas's political geography. As part of his report, Dr. Rodden drew an illustrative map with core preservation in mind, managing to keep *97 percent* of the state's population in its prior districts, compared to just 86 percent in Ad Astra 2. PX 1 at 26 (Rodden Rep.); Hr'g Tr. Day 1 Vol 2 at 36:2-11 (Rodden).

324. Dr. Smith's core-retention analysis, discussed above, further refutes Defendants' core-retention argument. *See supra* FOF § II.E.

325. Dr. Chen's core-retention analysis, discussed above, further refutes Defendants' core-retention argument. *See supra* FOF § II.A.

VI. Ad Astra 2's dilution of Democratic voting power will obstruct Plaintiffs' ability to elect and support their candidates of choice.

326. The evidence submitted at trial demonstrates that Ad Astra 2 will make it more difficult for Plaintiffs to elect and support Democratic candidates in Kansas.

327. As explained above, *see supra* FOF § II, the evidence adduced at trial shows that Ad Astra 2 will have the effect of negating Plaintiffs' electoral preferences by placing them in districts where they have a reduced ability to elect their candidates of choice.

Plaintiff	**2012 Congressional District**	**District Under Ad Astra 2**
Faith Rivera	CD 3	CD 2
Diosselyn Tot-Velasquez	CD 3	CD 2
Kimberly Weaver	CD 3	CD 2
Paris Raite	CD 2	CD 1
Donnavan Dillon	CD 2	CD 1
Amy Carter	CD 3	CD 3
Ana Maldonado	CD 3	CD 2
Anna White	CD 3	CD 3
Liz Meitl	CD 3	CD 3
Melinda Lavon	CD 2	CD 1
Richard Nobles	CD 3	CD 3
Rose Schwab	CD 3	CD 2
Sharon Al Uqdah	CD 3	CD 2

Sheyvette Dinkens	CD 3	CD 3
Thomas Alonzo	CD 3	CD 2
Sarah Frick	CD 2	CD 1
Sarah Schiffelbein	CD 2	CD 2
Connie Brown Collins	CD 3	CD 2

328. Dr. Miller explained that because of Lawrence's division from the rest of Douglas County, Ad Astra 2's CD 2 "leans so strongly Republican that the votes of Democratic-leaning and minority residents from Wyandotte are diluted to practical electoral irrelevance." PX 58 a t4 (P. Miller Rep.). Indeed, Dr. Miller explained that the residents in the northern portion of Wyandotte County moved to CD 2 "border on electoral irrelevance in the district," and that CD 2 "is a district where these Democratic-leaning minority voters" in northern Wyandotte County "really don't have much of a credible chance to impact congressional elections." Hr'g Tr. Day 2 Vol. 2 at 31:8-32:9, 38:21-39:13 (P. Miller).

329. Dr. Miller also testified that as a consequence of moving northern Wyandotte County from CD 3 to CD 2, Ad Astra 2 makes the former district much more Republican, "dilut[ing] the influence and voting power of" Democratic voters "who remain in CD3 and mak[ing] the plan unrepresentative of the overall partisan composition of Kansas." PX 58 at 36-41 (P. Miller Rep.). Ad Astra 2 increases the Republican advantage in CD 3 from 1.0% to 6.6% averaged across

elections between 2012 and 2020. PX 58 at 36-37 (P. Miller Rep.). To put this in context, whereas under the prior plan CD 3 voted "Republican seven times in statewide elections and Democratic nine times," under Ad Astra 2 Republicans would have won 11 of 16 elections during the same period. PX 58 at 36-37 (P. Miller Rep.).

330. The evidence also persuasively shows that by splitting Lawrence from Douglas County in CD 2 and placing it instead in CD 1, Ad Astra 2 makes it significantly less likely for Plaintiffs and their fellow Democratic voters who live there to elect candidates of their choice. Dr. Smith testified that under the previous congressional plan, Lawrence's Democratic voters were capable of waging competitive campaigns in CD 2. PX 135 at 12 (Smith Report). The First Congressional District, by contrast, has a much larger Republican population, which will thus make congressional elections far less competitive. PX 135 at 14 (Smith Report); *see also* PX 58 at 4 (P. Miller Rep.). This view was corroborated by Dr. Miller, who testified that "CD 1 is a strongly and safely Republican district." PX 58 at 62 (P. Miller Rep.). In support of this point, Dr. Miller testified that even with the addition of heavily Democratic Lawrence to CD 3, the district has an overwhelming 29% Republican advantage. PX 58 at 62 (P. Miller Rep.).

331. Dr. Smith also testified that by placing Lawrence in the Big First, Ad Astra 2 "disincentive[s]" Democratic "voter mobilization, voter registration, voter turnout, fundraising, all of the activities that build a political base because the election would not be

competitive." Hr'g Tr. Day 3 Vol. 1 at 31:17-32:9 (Smith).

332. Dr. Warshaw's analysis of the partisan effect of Ad Astra 2 reached similar conclusions. Dr. Warshaw analyzed the partisan fairness of Ad Astra 2 using the "efficiency gap," a tool for capturing "the packing and cracking that are at the heart of partisan gerrymanders" by "measur[ing] the extra seats one party wins over and above what would be expected if neither party were advantaged in the translation of votes to seats." PX 105 at 6 (Warshaw Report); *see also* Hr'g Tr. Day 2 Vol. 1 at 65:1-66:8 (Warshaw). Dr. Warshaw set out to measure the efficiency gap of Kansas's congressional districting plan by reviewing the configuration of the state's four congressional districts under Ad Astra 2.

333. Consistent with Plaintiffs' other experts, Dr. Warshaw testified that Republicans are likely to win all four of Kansas's new congressional districts. PX 105 at 7-10 (Warshaw Report). He found "that the Ad Astra 2 plan has a very substantial level of pro-Republican bias" and that "the Ad Astra 2 plan is historically extreme relative to the 10,000 Congressional elections" Dr. Warshaw has reviewed from "the past 48 years" and is "also extreme relative to the other plans that Kansas considered in its redistricting process." Hr'g Tr. Day 2 Vol. 1 at 72:2-13 (Warshaw).

334. In particular, Dr. Warshaw noted that in CDs 1, 2, and 4, Republicans are expected to win above or near 60% of the vote in each district, singling out CD 1 as "overwhelmingly Republican" because "Republicans [there] are likely to win about 66% of the vote in this

district." PX 105 at 7-8 (Warshaw Rep.). Dr. Warshaw further concluded that because Democratic voters are cracked between CDs 2 and 3, Republicans are likely to win about 53% of the vote in CD 3 as well. PX 105 at 8-9 (Warshaw Rep.). This is a significant change; Ad Astra 2 transformed that district "from being a closely contested slightly [D]emocratic leaning district to being a [R]epublican leaning district." Hr'g Tr. Day 2 Vol. 1 at 102:21-103:1 (Warshaw).

335. Dr. Warshaw then analyzed how these expected vote shares translated into seats by taking a composite of the state's previous elections from 2012 to 2020. PX 105 at 10 (Warshaw Rep.). He concluded that while Democrats "win 41% of the votes" statewide, under Ad Astra 2 they would receive only 9% of the seats on average across all statewide elections between 2012 and 2020, PX 105 at 11 (Warshaw Report), which "increases the efficiency gap" of Kansas's congressional map "to a historically extreme level of [22.5%]," Hr'g Tr. Day 2 Vol. 1 at 96:19-25 (Warshaw). This is nearly a 50% decrease in Democratic seat share from results under the prior congressional map, when, using the same analysis, Democrats would have won 16% of the seats. Hr'g Tr. Day 2 Vol. 1 at 96:19-25 (Warshaw).

336. Contextualizing Ad Astra 2's efficiency gap, Dr. Warshaw testified that election results under Ad Astra 2 would be "far more extreme than" about 95% of the 10,000 elections he analyzed from last 48 years and 98% more pro-Republican "than . . . previous Congressional elections over the past five decades." Hr'g Tr. Day 2 Vol. 1 at 98:5-25 (Warshaw).

337. As a result of this Republican advantage, Dr. Warshaw explained, Democratic voters in Kansas, including Plaintiffs, will "have little, if any, voice" in Congress "on important issues." PX 105 at 15 (Warshaw Report). Partisan gerrymandering will "bias[] the policymaking process in favor of the advantaged party," "reduce[] the congruence between the public's preferences and state policies," "reduce voter turnout," and even "make[] it less likely voters will visit their congressional office." PX 105 at 20-21 (Warshaw Rep.).

338. Broadly speaking, Dr. Warshaw's research has revealed that "partisan gerrymandering . . . substantially harms our democracy and leads to a substantial bias in the political process and in so doing . . . degrades democracy for everyone." Hr'g Tr. Day 2 Vol. 1 at 72:14-25 (Warshaw).

339. Dr. Rodden agreed with this analysis, adding that by avoiding compliance with its own Guidelines, the Legislature was able to transform CD 3 from a Democratic district into a Republican-leaning district, and turn CD 2 from a competitive district into a solidly Republican district. PX 1 at 32-33 (Rodden Rep.). He testified in summary that under Ad Astra 2, "District 1 ends up being very comfortable a Republican district, District 2 is a comfortable Republican district, and the same thing is true of District 4. District 3 is more competitive but . . . it also is a district which on average has a Republican majority." Hr'g Tr. Day 1 Vol. 2 at 53:1-9 (Rodden).

340. Based on the weight of this overwhelming evidence, the Court concludes that Ad Astra 2 has a

strong bias in favor of Republican candidates and that as a result, Democratic voters, including Plaintiffs, will have a reduced opportunity to elect candidates of their choice.

VII. Ad Astra 2's dilution of minority voting power will obstruct minority Plaintiffs' ability to elect and support their candidates of choice.

341. The Court finds that Ad Astra 2's dilution of minority votes harms those Plaintiffs who identify as Black or Hispanic/Latinx. Six Plaintiffs—Sharon Al-Uqdah, Connie Brown Collins, Donnavan Dillon, Sheyvette Dinkens, Richard Nobles, and Kimberly Weaver—identify as Black. PX 178, 180, 187, 189-90, 758. Five Plaintiffs—Tom Alonzo, Ana Marcela Maldonado Morales, Paris Raite, Faith Rivera, and Diosselyn Tot-Velasquez—identify as Hispanic or Latinx. PX 176-177, 179, 183, 191.

342. Each Plaintiff (1) identifies as Black or Hispanic/Latinx, (2) has voted consistently in Kansas congressional elections and intends to do so in the future, and (3) prefers to elect Democratic congressional candidates. See PX 176-80, 183, 187, 189-91, 758.

343. Under the 2012 congressional plan, Plaintiffs Alonzo, Al-Uqdah, Brown Collins, Dinkens, Maldonado Morales, Nobles, Rivera, Tot-Velasquez, and Weaver reside in CD 3, *see* PX 176-78, 183, 187, 189-91, 758, which, as Dr. Collingwood's expert testimony established, has allowed minority voters, including

Plaintiffs, to elect the congressional candidate of their choice, Representative Davids, *see supra* FOF § III.B.

344. Under Ad Astra 2, those Plaintiffs who lived in CD 3 under the 2012 plan are cracked between the new CDs 2 and 3. Plaintiffs Alonzo, Al-Uqdah, Brown Collins, Maldonado Morales, Tot-Velasquez, and Weaver now reside in CD 2, while Plaintiffs Dinkens, Nobles and Rivera remain in CD 3. *See* PX 176-78, 183, 187, 189-91, 758. Plaintiffs Dillon and Raite, meanwhile, are moved from CD 2 to CD 1.

345. The Court finds that Ad Astra 2 injures each of these Plaintiffs by diluting their votes and making it less likely that they will be able to elect their candidates of choice. Dr. Collingwood's expert testimony established that the cracking of minority voters between CD 2 and CD 3 means that, unlike the CD 3 created by the 2012 plan, both CD 2 and CD 3 in Ad Astra 2 are unlikely to perform for minority voters, including these Plaintiffs. *See supra* FOF § III.B. Plaintiffs Alonzo, Al-Uqdah, Brown Collins, Dinkens, Maldonado Morales, Nobles, Rivera, Tot-Velasquez, and Weaver are therefore injured by the loss of the opportunity to elect the candidates of their choice under Ad Astra 2.

346. The Court finds that this conclusion is reinforced by Dr. Chen's expert testimony, which established that CDs 2 and 3 under Ad Astra 2 are pro-Republican partisan outliers compared to the corresponding districts in simulated maps generated using traditional redistricting criteria, and that the new CDs 1, 2, and 3 are unlikely to elect the Democratic candidates preferred by these Plaintiffs.

See supra FOF § II.A. This conclusion accords with Dr. Collingwood's determination that the districts in Ad Astra 2 are unlikely to perform for minority voters. All Plaintiffs who identify as Black or Hispanic/Latinx are therefore injured by the loss of the opportunity to elect the Democratic candidates of their choice.

347. The Court also finds that these Plaintiffs are injured by the stigmatizing effects of being assigned to districts based on their membership in minority racial groups.

CONCLUSIONS OF LAW

I. Plaintiffs have standing to challenge Ad Astra 2.

348. Plaintiffs live in gerrymandered districts and have sworn through declarations that they prefer Democratic candidates and intend to vote in the upcoming 2022 elections. *See supra* FOF § VI.

349. Plaintiffs have shown through extensive expert testimony and personal declarations that they now live in districts that were drawn with the intent and effect of favoring Republicans to the disadvantage of Democratic candidates. *See* PX 176-193, 758-59 (Plaintiff declarations); *see supra* FOF §§ II, VI. As a result, Plaintiffs have a severely reduced chance of electing Democratic candidates of their choice to Congress.

350. Plaintiffs have also shown that the districts in which they live have been reconfigured with the intent and effect of suppressing their minority voting strength and the minority voting strength of their communities

by cracking minority voters between districts. *See* PX 176-193, 758-59 (Plaintiff declarations); *see supra* FOF §§ III, VII. Plaintiffs Tom Alonzo, Ana Marcela Maldonado Morales, Paris Raite, Faith Rivera, and Diosselyn Tot-Velasquez identify as Hispanic/Latinx and will have reduced opportunities to elect candidates of their choice as a consequence of Ad Astra 2. PX 176-77, 179, 183, 191 (Plaintiff declarations). Plaintiffs Sharon Al-Uqdah, Connie Brown Collins, Donnavan Dillon, Sheyvette Dinkens, Richard Nobles, and Kimberly Weaver identify as Black and will have reduced opportunities to elect candidates of their choice as a consequence of Ad Astra 2. PX 178, 180, 187, 189-90, 758 (Plaintiff declarations).

351. Because of these injuries and because Plaintiffs live in gerrymandered districts, they have standing to challenge Ad Astra 2 as unconstitutional.

352. The Court also concludes that Plaintiff Loud Light has standing to challenge Ad Astra 2. "An association has standing to sue on behalf of its members when '(1) the members have standing to sue individually; (2) the interests the association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested require participation of individual members.'" *Bd. of Cnty. Comm'rs v. Bremby*, 286 Kan. 745, 761, 189 P.3d 494 (2008) (quoting *NEA-Coffeyville v. Unified Sch. Dist. No. 445*, 268 Kan. 384, 387, 996 P.2d 821 (2000) (internal quotation marks omitted)).

353. Plaintiff Loud Light meets this standard. Its mission is to mobilize "Kansas's youngest voters, with the goal of engraining in them the importance of

remaining civically engaged throughout their adult lives." PX 181 (Loud Light declaration). And Ad Astra 2 injures Loud Light's members "[b]y cracking the state's youth population in Wyandotte, Douglas, Riley, Shawnee, and Geary Counties." PX 181 (Loud Light declaration).

II. Congressional redistricting plans, like any other legislative action, are subject to judicial review.

D. The U.S. Constitution's Elections Clause does not bar state court review of congressional redistricting plans under state constitutions.

354. The U.S. Constitution's Elections Clause provides that "[t]he Times, Places, and Manner of holding Elections for Senators and Republicans, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations." U.S. Const. art. I, § 4.

355. Defendants have argued that this Clause gives a state legislature free rein to enact congressional redistricting plans in defiance of the state's own constitution, as construed by the state courts. Indeed, according to Defendants, the Elections Clause deprives the state courts of *any role* in evaluating the validity of duly enacted congressional redistricting plans under the state's own constitution.

356. The Court finds this interpretation of the Elections Clause unpersuasive as a matter of constitutional text and history.

357. At the time of the Founding, the term state "Legislature" was well understood to mean an entity created and constrained by the state's constitution. *See* Vikram David Amar & Akhil Reed Amar, *Eradicating* Bush-*League Arguments Root and Branch: The Article II Independent-State- Legislature Notion and Related Rubbish*, 2021 Sup. Ct. Rev. (forthcoming) (manuscript at 24), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3731755. Numerous Founding-era state constitutions explicitly restricted the actions of state legislatures, including with respect to the regulation of federal elections. *See id.* at 27-30.

358. Consistent with this practice, the U.S. Supreme Court has repeatedly rejected attempts to use the Elections Clause to shield legislatures from state constitutional requirements, holding that "[n]othing in that Clause instructs . . . that a state legislature may prescribe regulations on the time, place, and manner of holding federal elections in defiance of provisions of the State's constitution." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S 787, 817-18 (2015). And it has stated that "[i]t is fundamental that state courts be left free and unfettered by [federal courts] in interpreting their state constitutions," *Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 557 (1940).

359. Indeed, Defendants' interpretation of the Elections Clause would dismantle settled principles of federalism and fundamentally upend election administration in Kansas.

360. For all these reasons, the Court concludes that the Elections Clause does not bar state court judicial review of congressional redistricting plans. The Court

reaches this conclusion following careful analysis of each of Defendants' arguments, as described below.

Defendants' Elections Clause theory ignores extensive U.S. Supreme Court precedent that a state legislature's congressional redistricting legislation is subject to state court judicial review under the state constitution.

361. The argument that the Elections Clause bars state courts from reviewing the validity of congressional redistricting legislation under a state's own constitution "is inconsistent with nearly a century of precedent of the Supreme Court of the United States affirmed as recently as 2015." *Harper v. Hall*, 868 S.E.2d 499, 551 (N.C.), *stay denied sub nom. Moore v. Harper*, 142 S. Ct. 1089 (2022). "It is also repugnant to the sovereignty of states, the authority of state constitutions, and the independence of state courts, and would produce absurd and dangerous consequences." *Id.*

362. Most recently, the U.S. Supreme Court declared in *Rucho v. Common Cause*, ___ U.S. ___, 139 S. Ct. 2484 (2019), that "[p]rovisions in . . . *state constitutions* can provide standards and guidance for *state courts* to apply" in partisan gerrymandering challenges to congressional redistricting plans enacted by state legislatures. *Id.* at 2507 (emphasis added). *Rucho* concerned North Carolina's 2016 congressional plan, and as an example of state courts' power in this realm, the U.S. Supreme Court pointed to another state's supreme court's decision striking down the state's legislatively enacted congressional plan under the state's constitution. *Id.* at 2507 (citing *League of*

Women Voters of Fla. v. Detzner, 172 So.3d 363 (Fla. 2015)).

363. The Supreme Court's recognition that state courts can apply state constitutional provisions to rein in partisan gerrymandering was essential to *Rucho*'s holding: it enabled the Supreme Court to foreclose federal partisan gerrymandering claims while promising that "complaints about districting" would not "echo into a void." *Id.*

364. Even before *Rucho*, "a long line of decisions by the Supreme Court of the United States confirm[ed] the view that state courts may review state laws governing federal elections to determine whether they comply with the state constitution." *Harper*, 868 S.E.2d at 552 (citing cases).

365. Over a century ago, the Supreme Court held that state legislatures may not enact laws under the Elections Clause that are invalid "under the Constitution and laws of the state." *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 568 (1916).

366. Reaffirming that principle, the Supreme Court held in *Smiley v. Holm*, 285 U.S. 355 (1932), that the Elections Clause does not "endow the Legislature of the state with power to enact laws in any manner other than that in which the Constitution of the state has provided," which may include the participation of other branches of state government. *Id.* at 368. *Smiley* made clear that congressional redistricting legislation must comport with state constitutional requirements, explaining that the Elections Clause does not "render[] inapplicable the conditions which attach to the making

of state laws," *id.* at 365, including "restriction[s] imposed by state Constitutions upon state Legislatures when exercising the lawmaking power," *id.* at 369.[14]

367. In two companion cases decided the same day as *Smiley*, the Supreme Court reiterated that state courts have authority to strike down legislatively enacted congressional redistricting plans that violate "the requirements of the Constitution of the state in relation to the enactment of laws." *Koenig v. Flynn*, 285 U.S. 375, 379 (1932); *see also Carroll v. Becker*, 285 U.S. 380, 381–82 (1932) (same).

368. The Supreme Court recently reaffirmed this principle, holding that "[n]othing in [the Elections] Clause instructs, nor has [the Supreme] Court ever held, that a state legislature may prescribe regulations on the time, place, and manner of holding federal elections in defiance of provisions of the State's constitution." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 817–18 (2015); *see also id.* at 841 (Roberts, C.J., dissenting) (acknowledging that under the Elections Clause, congressional districting legislation remains subject to the "ordinary lawmaking process").

---

[14] As in *Smiley*, Kansas Governor Laura Kelly vetoed the congressional plan here pursuant to the gubernatorial veto power under the Kansas Constitution, and the Legislature did not challenge her authority to do so. *See supra* FOF § I. The Court finds no justification to explain why "lawmaking prescriptions" would include the referendum and gubernatorial veto but not judicial review.

369. Not only are state courts authorized to evaluate a congressional redistricting plan's compliance with state constitutional provisions, the Supreme Court's decision in *Growe v. Emison*, 507 U.S. 25 (1993), makes clear that state courts have a *greater* role to play than federal courts in adjudicating congressional redistricting claims. *See id.* at 33 ("The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged." (internal quotation marks omitted)).

370. Writing for a unanimous Court, Justice Scalia expressly recognized state courts' role in redistricting—not only to review legislative enactments, but also to craft remedial plans on their own—and held that "[t]he District Court erred in not deferring to the state court's efforts to redraw Minnesota's . . . federal congressional districts." *Id.* at 42. Far from restricting apportionment responsibilities to a state's legislative branch alone, the Supreme Court affirmed that congressional reapportionment may be conducted "though [a state's] legislative *or* judicial branch." *Id.* at 33 (emphasis in original). As a result, the Supreme Court found that the state court's "issuance of its plan (conditioned on the legislature's failure to enact a constitutionally acceptable plan [by a certain date])" was "precisely the sort of state judicial supervision of redistricting [the Court] ha[s] encouraged." *Id.* at 34.

371. In reversing the district court in *Growe*, the Supreme Court explained that the lower court erred by

"ignoring the . . . legitimacy of state *judicial* redistricting." *Id.* (emphasis in original). Defendants make the same error here.

372. Depriving courts of the power to evaluate the validity of congressional plans also directly conflicts with the Supreme Court's seminal decision in *Wesberry v. Sanders*, 376 U.S. 1 (1964). In *Wesberry*, the Supreme Court rejected the plurality opinion in *Colegrove v. Green*, 328 U.S. 549 (1946), which had concluded that the Elections Clause's reference to "Congress" deprives *federal* courts of power to review the validity of congressional plans. *See id.* at 554 (plurality opinion). *Wesberry* explained: "[N]othing in the language of [the Elections Clause] gives support to a construction that would immunize state congressional apportionment laws . . . from the power of courts to protect the constitutional rights of individuals from legislative destruction." 376 U.S. at 6. In other words, the Court refused to allow voters "to be stripped of judicial protection" by Defendants' restrictive "interpretation of Article I." *Id.* at 7.

373. Defendants rely heavily on the unremarkable and uncontested proposition that redistricting is primarily the province of state legislatures. *See, e.g.*, *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay)). But when the Kansas Legislature violates the Kansas Constitution, including in its enactment of congressional redistricting legislation, Kansas courts have the power and duty to exercise judicial review and invalidate the Legislature's unconstitutional action.

374. Indeed, this Court does not supplant legislative prerogatives when it enforces state constitutional limits any more than the U.S. Supreme Court supplants congressional prerogatives when it invalidates federal statutes for violating the U.S. Constitution. Federal courts regularly invalidate statutes Congress enacts pursuant to its Article I, section 8 powers, *e.g.*, *Iancu v. Brunetti*, ___ U.S. ___, 139 S. Ct. 2294 (2019), and even statutes Congress enacts pursuant to its Elections Clause powers, *e.g.*, *Citizens United v. FEC*, 558 U.S. 310 (2010). When legislatures legislate, they must do so consistently with constitutional restrictions as interpreted and applied by courts. *See generally Marbury v. Madison*, 5 U.S. 137 (1803).

375. This Court concludes that nothing in the Elections Clause restricts Kansas courts' authority to determine whether Ad Astra 2 is valid *solely* under the Kansas Constitution.

In any event, Congress has independently exercised its Elections Clause power to mandate that congressional redistricting plans enacted by state legislatures comply with substantive state constitutional provisions.

376. Regardless of the meaning of "Legislature" in the first part of the Elections Clause, the second part allows Congress "at any time" to make its own regulations related to congressional redistricting. U.S. Const. art. I, § 4. Pursuant to this authority, Congress has mandated that states' congressional redistricting plans comply with substantive state constitutional

provisions. Accordingly, Defendants' Elections Clause theory, even if accepted, would get them nowhere.

377. Under 2 U.S.C. § 2a(c), states must follow federally prescribed procedures for congressional redistricting unless a state, "after any apportionment," has redistricted "in the manner provided by the law thereof."

378. As the U.S. Supreme Court explained in *Arizona State Legislature*, a predecessor to § 2a(c) had mandated those default procedures "unless 'the legislature' of the State drew district lines." 576 U.S. at 809 (quoting, *inter alia*, Act of Jan. 16, 1901, ch. 93, § 4, 31 Stat. 734). But Congress "eliminated the statutory reference to redistricting by the state 'legislature' and instead directed that" the state must redistrict "in the manner provided by [state] law." *Id.* at 809–11 (emphasis omitted). Congress made that change out of "respect to the rights, to the established methods, and to the laws of the respective States," and "[i]n view of the very serious evils arising from gerrymanders." *Id.* at 810 (alteration in original) (internal quotation marks omitted).

379. And critically, as Justice Scalia explained for the plurality in *Branch v. Smith*, 538 U.S. 254 (2003), the phrase "the manner provided by state law" encompasses substantive restrictions in *state constitutions*: "the word 'manner' refers to the State's substantive 'policies and preferences' for redistricting, as expressed in a State's statutes, constitution, proposed reapportionment plans, or a State's 'traditional districting principles.'" *Id.* at 277-78 (plurality opinion) (citations omitted). Thus, unless a

state's congressional plan complies with the substantive provisions of the state's constitution, § 2a(c)'s default procedures become applicable.

380. In addition to mandating compliance with state constitutions, Congress has authorized state courts to establish remedial congressional districting plans. *Branch* held that 2 U.S.C. § 2c, which requires single-member congressional districts, authorizes both state and federal courts to "remedy[] a failure" by the state legislature "to redistrict constitutionally," and "embraces action by *state and federal courts* when the prescribed legislative action has not been forthcoming." 538 U.S. at 270, 272 (majority opinion) (emphasis added). Section 2c "is as readily enforced by courts as it is by state legislatures, and is just as binding on courts—*federal or state*—as it is on legislatures." *Id.* at 272 (emphasis added).

381. Section 2a(c) also recognizes state courts' power to adopt congressional plans. Its default procedures apply "[u]ntil a State is redistricted in the manner provided by [state] law," and the *Branch* plurality explained that this "can certainly refer to redistricting by courts as well as by legislatures," and "when a court, *state or federal*, redistricts pursuant to § 2c, it necessarily does so 'in the manner provided by [state] law.'" *Id.* at 274 (plurality opinion) (emphasis added).

382. The Supreme Court reaffirmed this interpretation in *Arizona State Legislature*, explaining that, under § 2a(c), "Congress expressly directed that when a State has been 'redistricted in the manner provided by [state] law'—whether by the legislature,

court decree, or a commission established by the people's exercise of the initiative—the resulting districts are the ones that presumptively will be used to elect Representatives." 576 U.S. at 812 (alteration in original) (emphasis added) (citation omitted) (citing *Branch*, 538 U.S. at 274 (plurality opinion)).

383. This Court concludes, therefore, that even if there were doubt whether the Elections Clause permits state courts to review and remedy congressional districting laws under state constitutions it does not matter because Congress has declared that state courts can do so.

Defendants' Elections Clause theory cannot be reconciled with the Fourteenth Amendment's Reduction Clause.

384. The Fourteenth Amendment's Reduction Clause confirms that the U.S. Constitution not only permits but *requires* states' congressional districting plans to comply with state constitutional provisions protecting voting rights.

385. The Reduction Clause provides that "when the right to vote at any election for . . . Representatives in Congress" is "denied . . . or in any way abridged," the state's representation in Congress "shall be reduced" proportionally. U.S. Const. amend. XIV, § 2. In *McPherson v. Blacker*, 146 U.S. 1 (1892), the U.S. Supreme Court held that for purposes of this clause, "[t]he right to vote intended to be protected refers to the right to vote *as established by the laws and constitution of the state*." *Id.* at 39 (emphasis added);

see also id. at 38 ("The right to vote in the states comes from the states . . . .").

386. *McPherson* thus held that "the right to vote" in federal elections—meaning the right to vote *under the state's own constitution*—"cannot be denied or abridged without invoking the penalty" of reducing the state's representation in Congress. *Id.* at 39. These statements were essential to *McPherson*'s holding: the Supreme Court rejected the argument that the Fourteenth Amendment's Reduction Clause guarantees a *federal* constitutional right to vote in federal elections on the ground that the "right to vote" referenced in the clause instead refers to *state* constitutional (and statutory) rights.

387. The Supreme Court therefore has made clear that state constitutional provisions protecting voting rights *do* apply to voting in congressional elections. And if the Kansas courts determine that Ad Astra 2 violates the Kansas Constitution, it cannot be that the federal Elections Clause requires Kansas to conduct its congressional elections in a manner that would trigger a reduction in the state's representation in Congress under the Reduction Clause. Defendants' Election Clause arguments are likewise unpersuasive here.

Defendants' Elections Clause theory would wreak havoc on Kansas elections.

388. In addition to the extensive legal infirmities above, construing the Elections Clause to foreclose state court judicial review of state election legislation under state constitutions, as Defendants urge, would fundamentally upend Kansas's election administration.

389. Presently, Kansas election laws regarding voter registration, ballots, voting, vote-counting, and deadlines, among other things, apply to both state and federal elections. But under Defendants' Elections Clause theory, Kansas's election system would be forced to adopt a chaotic two-track system in which state constitutional provisions constrain the operation of state statutes for state and local elections, but not for federal elections on the same ballot. Not only would this result severely disrupt and confuse the ability for Kansans to participate in the electoral process, "[a]s a practical matter, it would be very burdensome for a State to maintain separate federal and state . . . processes." *Arizona v. Inter Tribal Council of Ariz.*, 570 U.S. 1, 41 (2013) (Alito, J., dissenting).[15]

---

[15] More still, if adopted nationally, Defendants' interpretation of the U.S. Constitution's Elections Clause would threaten to nullify dozens of state constitutional provisions across the country. Nearly every state's constitution contains provisions affording citizens the affirmative right to vote if they meet specified qualifications. Indeed, at least 24 state constitutions guarantee that "all elections"—including the state's congressional elections—shall be "free," "free and open," or "free and equal." *See, e.g.*, Colo. Const. art. II, § 5; Mo. Const. art. I, § 25; Mont. Const. art. II, § 13; Neb. Const. art. I, § 22; N.C. Const. art. I, § 10; Okla. Const. art. III, § 5; Pa. Const. art. I, § 5. Other states have more recently adopted state constitutional provisions guaranteeing voting rights in all elections, in reliance on the settled principle that state constitutions can provide broader or more specific protections for voting rights than the U.S. Constitution. *See, e.g.*, Cal. Const. art. II, § 5(a); Mich. Const. art. II, § 4. At least 12 state constitutions have provisions that *explicitly* restrict the drawing of congressional districts by providing criteria with which state legislatures must comply in drawing districts. *See, e.g.*, Mo. Const. art. III, § 45. Until now, nobody had even thought to suggest that the state legislatures could enact statutes countermanding these state

390. And what about where state legislatures fail to redistrict at all as occurred in Kansas in 2012? *Growe* ordered deference to state courts on matters of state constitutional compliance in the course of impasse litigation, where the judiciary is called upon to adopt new district maps in the wake of a breakdown in the legislative process. 507 U.S. at 27-29, 42. The U.S. Supreme Court has long endorsed non-legislative map-drawing in this context, *see, e.g.*, *Gaffney v. Cummings*, 412 U.S. 735 (1973) (affirming map adopted by a bipartisan commission after legislative impasse). Furthermore, in other cases in the redistricting context, the U.S. Supreme Court has indicated that settled practice carries substantial weight. *See, e.g.*, *Evenwel v. Abbott*, 578 U.S. 54, 73 (2016) ("What constitutional history and our prior decisions strongly suggest, settled practice confirms."). Defendants' theory would upend this long-standing practice and again threaten the ability for voters across the country to vote under constitutional districting schemes.

391. The practical consequences of Defendants' arguments further support Plaintiffs' reading of the

---

constitutional provisions on the theory that they are null and void in congressional elections. But this Court finds that Defendants' Elections Clause theory would take us there and raise similar questions about the consequences for procedural requirements in state constitutions. May state legislatures ignore constitutional provisions that require a gubernatorial signature or veto override for legislation to be enacted, like in Kansas? May they ignore quorum requirements? Completely freed of the ordinary checks and balances that are essential to liberty, the state legislature would wield unfathomable power. The Court finds it hard to imagine a more direct affront to federalism.

Election Clause: state legislatures maintain *primary* redistricting authority while acknowledging that the map-drawing pen is not without constitutional limits, and that state courts must retain power to order a state legislature to re-draw the map when their first attempt violates the state's own constitution.

The cases cited by Defendants do not support their theory.

392. As support for their interpretation of the Elections Clause, Defendants rely on inapplicable cases, several dissenting opinions, and Article 10, Section 1, of the Kansas Constitution.[16] But these authorities do not support the proposition that the Elections Clause frees the Legislature from constitutional restrictions.

393. Every lower court to have considered the issue since *Smiley* has concluded that the Elections Clause does not bar state courts from invalidating a congressional map under the state's constitution. *See,*

---

[16] For example, Defendants' Motion to Dismiss relied on *Parsons v. Ryan*, 144 Kan. 370, 60 P.2d 910 (1936). However, *Parsons* did not involve the Elections Clause, or congressional elections, or a claim that a state law violated the state constitution. Instead, *Parsons* merely enforced a straightforward state-law deadline to submit party nominations for presidential electors. *Id.* at 912 ("Because the nomination papers were offered for filing at too late a date, the secretary of state properly refused to receive and file them."). Another cited case, *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020), likewise involved presidential elections and did not involve a state court's invalidation of a state election law under the state constitution. Of the cited cases that actually involved the Elections Clause, many pre-date *Smiley*. *See* Defs.' Mot. 12 (citing state court decisions from 1864, 1873, and 1887).

e.g., *Detzner*, 172 So. 3d at 370 & n.2; *Harper*, 868 S.E.2d at 551-52. And this case would hardly be the first time a state court has applied a state constitutional provision to invalidate a congressional plan. *E.g.*, *Harper*, 868 S.E.2d at 553-55, 559 (invalidating 2021 congressional plan under the state constitution); *Moran v. Bowley*, 347 Ill. 148, 162-65, 179 N.E. 526 (1932) (citing cases and applying the Illinois Constitution's free and equal elections clause, pre-*Wesberry*, to require one-person one-vote).

394. Finally, this Court finds that Defendants' reliance on Article 10, Section 1, of the Kansas Constitution is misplaced. That section of the Kansas Constitution provides for the Kansas Supreme Court's automatic review state legislative plans. But that special provision has nothing to say about the Kansas's Supreme Court's jurisdiction over congressional plans. It also has no bearing on whether the *federal* Constitution prohibits state court judicial review of newly enacted congressional plans under other provisions of the state constitution.

E. Partisan gerrymandering claims are justiciable under the Kansas Constitution.[17]

395. The Kansas Supreme Court has long recognized Kansas courts' duty to enforce constitutional protections in the redistricting process. "It is axiomatic that an apportionment act, as any other act of the legislature, is subject to the limitations

---

[17] Defendants do not challenge the justiciability of racial vote dilution claims under the Kansas Constitution.

contained in the [Kansas] Constitution, and where such act . . . violates the limitations of the Constitution, it is null and void and it is the duty of courts to so declare." *Harris v. Shanahan*, 192 Kan. 183, 207, 387 P.2d 771 (1963). Accordingly, "[e]very citizen and qualified elector in Kansas has an undoubted right to have [redistricting plans] created in accordance with the Kansas Constitution, and has a further right to invoke the power of the courts to protect such constitutional right." *Id.*

396. Notwithstanding the Court's "duty" to apply the Kansas Constitution in the redistricting context, Defendants argue that partisan gerrymandering claims present nonjusticiable political questions. The Court disagrees. The political question doctrine is a narrow exception to the judiciary's general responsibility to adjudicate parties' claims. *See Kan. Bldg. Indus.*, 302 Kan. at 668 (noting that overbroad application of political question doctrine would undermine constitutional protections). Under Kansas law, for a claim to raise a political question, one or more of the following factors, derived from *Baker v. Carr*, 369 U.S. 186 (1962),[18] must exist:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or

[18] The Court notes that in adjudicating Plaintiffs' claims, which arise solely under the Kansas Constitution, it cites federal precedents only for the purpose of guidance and does not consider itself bound by those decisions. *See Michigan v. Long*, 463 U.S. 1032, 1041 (1983).

> [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Kan. Bldg. Indus., 302 Kan. at 668 (alterations in original) (quoting *Baker*, 369 U.S. at 217). The Court concludes that none of these factors preclude judicial review in this case.

397. As an initial matter, the Court notes that throughout this litigation, Defendants have relied heavily on case law holding that partisan gerrymandering claims cannot be heard in federal court. But justiciability in Kansas state courts is a question of Kansas law, and federal justiciability requirements do not apply. *Gannon*, 298 Kan. at 1119; *see also, e.g.*, *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 893, 179 P.3d 366 (2008) ("State courts are not bound by . . . federal justiciability requirements."). And while the U.S. Supreme Court has held that partisan gerrymandering claims cannot be heard in *federal* court, it has also acknowledged that "*state* constitutions can provide standards and guidance for *state* courts to apply." *See Rucho*, 139 S. Ct. at 2506-07 (emphasis added). The Court therefore examines whether partisan gerrymandering claims present a

political question under the Kansas Constitution and concludes that they do not. As a result, the Court concludes that partisan gerrymandering claims are justiciable under the Kansas Constitution.

There are judicially discoverable and manageable standards for resolving Plaintiffs' partisan gerrymandering claims.

398. The Court first addresses the second *Baker* factor, on which most of Defendants' arguments in this case have focused. The Court concludes that the Kansas Constitution offers judicially manageable standards for adjudicating partisan gerrymandering claims. Kansas courts routinely determine manageable standards to enforce broad constitutional language—including in the redistricting context. And other states' supreme courts have successfully adjudicated similar claims under their state constitutions, offering a model for this Court to apply. Indeed, the ample evidence of Ad Astra 2's extreme, intentional partisan bias makes this an easy case.

399. Kansas courts routinely develop manageable standards to enforce provisions of the state Constitution, including in the redistricting context. Developing manageable standards to enforce state constitutional protections is the ordinary business of Kansas courts, including in the redistricting context. In *Harris*, for example, the Kansas Supreme Court considered claims brought under since-amended Kansas constitutional provisions governing state legislative redistricting that did not provide for judicial review or articulate explicit standards for it. *See* 192 Kan. at 201-02. Nonetheless, *Harris* recognized that a