

county's minority population is concentrated—is an area that historically has been disinvested.” Hr’g Tr. Day 2 Vol. 1 at 42:7-14 (Edwards). The residents in that area “have about a \$15,000 difference in median income,” and “the northeast side of Wyandotte” contains “a lot of poverty” and “a lot of aging in terms of the infrastructure as well as our population.” Hr’g Tr. Day 2 Vol. 1 at 42:14-43:1 (Edwards); *accord* Hr’g Tr. Day 2 Vol. 1 at 49:2-7 (Edwards) (“[A]bove Highway 70, again, that is the community that is the most disinvested[,] that has the \$35,000 median income, that has the highest number of people of color, and it has the greatest need identified.”). The southern area of Wyandotte County, by contrast, features “higher income levels” and better access to healthcare and amenities. Hr’g Tr. Day 2 Vol. 1 at 43:2-13, 44:1-10 (Edwards). Consequently, residents of northern Wyandotte County must rely on the southern part of the county for basic resources like grocery stores. Hr’g Tr. Day 2 Vol. 1 at 47:12-48:3 (Edwards).

491. Defendants contend that the stark racial divide between CDs 2 and 3 in Wyandotte County under Ad Astra 2 is explained by the location of I- 70. But the Court concludes, based upon the totality of the evidence and the testimony, that attempts to justify the stark racial divide in Ad Astra 2 based upon neutral explanations are pretext. Indeed, I-70 has itself long been known as racially divisive—literally and figuratively. The highway “separated the more White southern part of Wyandotte from the less White northern part” and “further divided minority-heavy neighborhoods in northern and southern Wyandotte from each other by running through the center of

eastern Wyandotte” PX 58 at 20. The choice to locate I-70 in this manner built on “decades [of] maintaining residential segregation through violence and discriminatory housing policies [which] forged many hyper-White or hyper-Black neighborhoods, and limited the number of racially mixed neighborhoods” in the area. PX 58 at 20. This was a deliberate choice. The highway could have continued due east from Lawrence, a more logical choice, through Johnson County, which was less developed at the time, or further south in Wyandotte County. PX 58 at 20. Instead, its architects deliberately imposed a racial barrier between white and minority communities.

492. While the motivations behind the location and construction of I-70 does not on its own establish that the Legislature had invidious intent in drawing Ad Astra 2, it is noteworthy because the racial divide along the highway is widely known in Kansas, and would have been an obvious implication to those developing and enacting the plan. Any number of highways—or other natural or manmade features—that do not so closely divide Kansas on the basis of race could have formed a barrier along which to divide a county. In light of all the other direct and circumstantial evidence the Court has weighed, the Court concludes that the proffer of I-70 as the explanation for why Ad Astra 2 splits Wyandotte County starkly along racial lines is a pretextual explanation.

F. Plaintiffs presented other meaningful, circumstantial evidence of racially discriminatory intent.

493. Other experts and lay testimony provide further evidence that the Legislature intended, at least in part, to dilute the voices of minority voters in its drawing of the Ad Astra 2 plan. For example, Dr. Collingwood's analysis showed that voting in Kansas is racially polarized with minority voters favoring Democratic candidates. Dr. Chen's simulations evince a legislative design that intentionally submerges these voters in districts that will not perform for the minority-preferred candidate. Dr. Chen generated a set of 1,000 race-blind plans. His results shows that 94.9% of the neutral plans had a higher minority population share than the most Democratic district in Ad Astra 2. *See supra* FOF § III.C. Dr. Rodden demonstrated that minority voters were moved between districts at a much higher rate than non-minority voters and that Ad Astra 2 cracked minority voters in Wyandotte County, placing them in districts that have much lower minority populations than would have occurred under neutral redistricting criteria. *See supra* FOF §§ II.B, III.A. Dr. Collingwood's minority POC map showing *where* the line separating CDs 2 and 3 was drawn is further compelling evidence of intentional classification on the basis of race, since the map shows that the line surgically targets the most heavily minority areas. *See supra* FOF § III.B. Dr. Miller's race maps demonstrate clear cracking of racially polarized minority groups in Wyandotte County. *See supra* FOF § III.D. In other words, Ad Astra 2 does not dilute minority votes by mistake.

494. Remarks during the legislative debate on the map also demonstrate that the Legislature was keenly aware of how the map affected minority voters, yet decided to enact it anyway. *See, e.g., supra* FOF § I. In fact, Senator Corson prompted an extensive discussion of how the map would dilute minority votes while pushing back against Ad Astra 2 on the Senate floor, and members of the majority party acknowledged the effects on minority voters that Senator Corson described. *See, e.g.,* PX 168 at 65:25-81:17.

495. These factors together all point to the conclusion that the Legislature intended the result it achieved—districts drawn sharply along racial lines. All of this evidence—the serious and unique negative treatment of minority Democrats versus white Democrats and white Republicans, the stark racial divide evident in the map, the procedural and substantive deviations in the adoption of the plan, the Legislature’s awareness of the map’s effect on minority voters, and the statistical unlikelihood that Ad Astra 2’s distribution of minority voters would have occurred absent intent—persuade the Court that the totality of the testimony and evidence, as well as the inferences fairly drawn therefrom, establish that Ad Astra 2 was motivated at least in part by an intent to dilute minority voting strength.

496. The Court therefore concludes that Ad Astra 2 intentionally and effectively dilutes minority votes in violation of the Kansas Constitution’s guarantee of equal protection. Kan. Const. Bill of Rights, §§ 1, 2.

In conclusion, let us return to where we began. The future of Kansas democracy rests securely in the wise,

competent, strong hands of the citizens. It is not the province of the court to tell Kansans what their choice should be. Choose wisely and always remember the words of one of our greatest judges. Judge Learned Hand said:

“Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, no court to save it. And what is this liberty which must lie in the hearts of men and women? It is not the ruthless, the unbridled will; it is not freedom to do as one likes. That is the denial of liberty, and leads straight to its overthrow. A society in which men recognize no check upon their freedom soon becomes a society where freedom is the possession of only a ... few...”²³

The court finds and orders as follows:

1. Ad Astra 2 unconstitutionally violates Plaintiffs’ rights as protected by Sections 1, 2, 3, and 11 of the Kansas Bill of Rights and Article V, Section 1 of the Kansas Constitution.
2. Defendants and their respective agents, officers, and employees are permanently enjoined from preparing for or administering any primary or general congressional election under Ad Astra 2.

²³ The “Spirit of Liberty” Speech – Judge Learned Hand – Presented in 1944 during “I AM an American Day”

3. The Legislature shall enact a remedial plan in conformity with this opinion as expeditiously as possible considering the time necessary for the Secretary of State and local election officers to prepare appropriate ballots and related documents. The remedial plan must be prepared in time for all Kansas voters to know in which congressional district they reside.
4. The Court shall retain jurisdiction over the matter to ensure compliance with this order.
5. This Order shall remain in effect until completed or modified by the Kansas Supreme Court.

s/ _____
Bill Klapper
District Court Judge

April 25, 2022

Date

(Certificate of Service omitted in this appendix)

APPENDIX C

[Seal]

Court: Supreme Court

Case Number: 125092

Case Title: FAITH RIVERA, ET AL.,
TOM ALONZO, ET AL.,
SUSAN FRICK, ET AL.,
APPELLEES,

V.

SCOTT SCHWAB, KANSAS
SECRETARY OF STATE, IN HIS
OFFICIAL CAPACITY, AND
MICHAEL ABBOTT,
WYANDOTTE COUNTY
ELECTION COMMISSIONER,
IN HIS OFFICIAL CAPACITY,
APPELLANTS,

AND

JAMIE SHEW, DOUGLAS
COUNTY CLERK, IN HIS
OFFICIAL CAPACITY,
APPELLEE.

Type: Alonzo and Rivera Plaintiffs-
Appellees' Motion for Rehearing

Considered by the Court and denied.

App. 394

SO ORDERED.

/s/ Marla J. Luckert, Chief Justice

Electronically signed on 2022-08-26 11:10:39

