

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 124,927

Joint Request of the SEVENTH JUDICIAL DISTRICT and the TWENTY-NINTH JUDICIAL DISTRICT to consolidate multidistrict litigation pursuant to K.S.A. 60-242(c),

Petitioners,

SUSAN FRICK, et al.,

v.

SCOTT SCHWAB and JAMIE SHEW

(DOUGLAS COUNTY CASE NO. 2022-CV-71)

FAITH RIVERA, et al.,

v.

SCOTT SCHWAB and MICHAEL ABBOTT

(WYANDOTTE COUNTY CASE 2022-CV-89)

TOM ALONZO et al.,

v.

SCOTT SCHWAB and MICHAEL ABBOTT

(WYANDOTTE COUNTY CASE 2022-CV-90)

Respondents.

**ALONZO PLAINTIFFS' RESPONSE TO THE JOINT REQUEST TO
CONSOLIDATE MULTIDISTRICT LITIGATION
PURSUANT TO K.S.A. 60-242(c)**

Pursuant to this Court’s Order on March 14, 2022, directing all Respondents to respond to the above-captioned joint request to consolidate multidistrict litigation pursuant to K.S.A. 60-242(c), the Plaintiffs in *Alonzo et al. v. Schwab et al.*, Wyandotte County Case No. 2022-CV-90 (“*Alonzo*”), hereby respond as follows:

BACKGROUND

1. The *Alonzo* Plaintiffs filed their lawsuit challenging Substitute Senate Bill 355 (“the Enacted Plan”), which contained the congressional redistricting map known as “Ad Astra 2,” on February 14, 2022. That same day, the *Alonzo* Plaintiffs filed a motion to expedite proceedings. Another action challenging the same plan, *Rivera et al. v. Schwab et al.*, Wyandotte County Case No. 2022-CV-89 (“*Rivera*”), was also filed on February 14, 2022. The *Rivera* Plaintiffs likewise filed a motion to expedite shortly thereafter. Both the *Alonzo* and *Rivera* actions challenge the Enacted Plan on behalf of voters in Wyandotte, Johnson, and Douglas Counties; raise claims of partisan and racial gerrymandering; and focus on gerrymandering that occurred in two areas: (1) Wyandotte County and the greater Kansas City area, and (2) the City of Lawrence and Douglas County.

2. Two weeks later, a third action was filed in Douglas County District Court on behalf of Douglas County residents. *See Frick et al. v. Schwab et al.*, Douglas County Case No. 2022-CV-71 (“*Frick*”). This case does not raise any claims on behalf of Wyandotte or Johnson County voters and instead focuses exclusively on the Enacted Plan’s effects on voters in Douglas County. It also does not include a claim of racial gerrymandering.

3. On March 9, 2022, Wyandotte County District Court Judge Bill Klapper conducted a joint status conference in the *Alonzo* and *Rivera* cases, after which he entered

an order consolidating these two cases and setting an expedited schedule for discovery and trial. *See* Trial Docket, *Alonzo et al. v. Schwab et al.*, Wyandotte District Court Case 2022-CV-90 (Mar. 9, 2022). The *Alonzo/Rivera* case is currently set for trial beginning on April 4, *id.*, consistent with this Court’s admonition that the parties “work with the district courts to expeditiously resolve” the case and present a timely appeal. *Schwab v. Klapper*, ___ Kan. ___, ___ P.3d ___, 2022 WL 627748, at *4 (2022). The parties have already served discovery, Plaintiffs have filed fact witness declarations and expert reports, and expert depositions begin tomorrow, March 19.

4. The *Frick* case in Douglas County is likewise following an expedited timeline. On March 10, Douglas County District Court Judge James R. McCabria held a status conference in the *Frick* litigation and set similar deadlines for discovery and briefing as in the Wyandotte cases. Under Judge McCabria’s schedule, however, the *Frick* trial will not begin until April 18th. *See* Journal Entry, *Frick* (Mar. 10, 2022).

ALONZO PLAINTIFFS’ POSITION

1. The *Alonzo* Plaintiffs recognize that this Court may consolidate multidistrict litigation pursuant to K.S.A. 60-242(c) when two or more actions “arising out of the same transaction or occurrence . . . are pending in different judicial districts” and “a transfer and consolidation will promote the just and efficient conduct of the actions.” K.S.A. 60-242(c). If this Court elects to consolidate, it may order the transfer of the pending actions “to one of the counties in which an action is pending.” *Id.*

2. The *Alonzo* Plaintiffs do not dispute that the *Alonzo*, *Rivera*, and *Frick* actions all contain overlapping issues of law and fact, and that consolidation in a single district

court will likely “promote the just and efficient conduct” of all three cases. *Id.* The *Alonzo* Plaintiffs therefore do not oppose the Joint Request to consolidate the three pending cases for all purposes, including trial.

3. Under K.S.A. 60-242(c), the Court may consolidate the *Frick* and *Alonzo/Rivera* matters in either Douglas County or Wyandotte County District Court. *See id.* (if consolidation is appropriate, Court may order transfer of the various actions to a single court in “one of the counties in which an action is pending.”). If the standard for consolidation is met, the question then becomes which of the two counties in which an action is pending should receive the consolidated cases.

4. The *Alonzo* Plaintiffs respectfully request that the actions be consolidated in Wyandotte County for the purposes of expediency and fairness.

5. The Wyandotte County actions were not only filed first in time, but they are also set for trial two weeks before the Douglas County case. Plaintiffs in all three cases agree that time is of the essence in resolving these cases to ensure that Kansas voters are able to elect congressional representatives under a fair, constitutional map. An earlier trial date is also consistent with this Court’s admonition that the parties “work with the district courts to expeditiously resolve” the case. The need for quick resolution of all factual and legal claims therefore merits consolidation in the court with the earliest set trial date.

6. The *Alonzo* and *Rivera* cases focus on a broader set of issues and include a greater number of plaintiffs than the *Frick* case in Douglas County. Further, the *Alonzo* and *Rivera* cases raise claims of both partisan and racial gerrymandering, while the *Frick* case alleges only partisan gerrymandering. Consolidation in Wyandotte County would allow for a just

and efficient resolution of all claims in a county that is central to the facts and issues in these cases.

7. The *Alonzo* Plaintiffs recognize that Defendants filed a motion to transfer venue in the *Alonzo/Rivera* litigation on March 11, 2022. Plaintiffs further understand that a similar motion was filed in the *Frick* case on March 14, 2022. These motions request that the district courts transfer all three cases to Shawnee County. As detailed in Plaintiffs' opposition to the motion to transfer (attached as Exhibit A), under the circumstances, the Defendants' objections to proceeding in Wyandotte County should be overruled, and these actions do not meet the standard for transfer to Shawnee County.

8. Plaintiffs have, since the inception of their case, pushed for quick and timely resolution of all legal and factual issues raised therein in order to ensure that a constitutional congressional districting map can be enacted in time for the June 1 candidate filing deadline. *See* Mot. to Expedite, *Alonzo*, 2022-CV-90 (filed Feb. 14, 2022); *Alonzo* Pls./Resps.' to Pets.' to Expedite & Mot. for a Stay of Dist. Ct. Proceedings, *Schwab v. Klapper*, No. 124849 (Feb. 22, 2022); Pls. Supp. Br. Regarding Mot. to Expedite, *Alonzo*, 2022-CV-90 (Mar. 4, 2022). Defendants' venue objections were raised for the first time on March 11, after Defendants' motion to dismiss was filed; after the parties' joint scheduling conference—in which this issue was never raised; and after the scheduling order was set and submitted to the court.

9. As explained in the *Alonzo* and *Rivera* Plaintiffs' Joint Opposition to Defendants' motion to transfer venue, Defendants' waived their venue objections under K.S.A. 60-212(h) by failing to timely raise it in their motion to dismiss. And, in any event, venue is

proper in Wyandotte County, because Defendant Abbott (the Election Commissioner for Wyandotte County) is a proper defendant. Transfer to Shawnee County is therefore improper. *See* Ex. A, Pls.’ Jt. Opp. to Mot. to Transfer Venue, *Rivera/Alonzo v. Schwab*, 2022-CV-89 (consolidated cases) (filed Mar. 18, 2022).

10. Defendants’ untimely request to change venue is inconsistent with this Court’s admonition “to expeditiously resolve” the cases, and is little more than a meritless attempt to run out the clock.

11. Indeed, consolidating these cases in any venue other than Wyandotte or Douglas County would create a manifest injustice. All three cases now have scheduling orders with tight timelines for resolution. Expert depositions begin tomorrow. Oral arguments have been set on the motions to dismiss, discovery has been served, and trial preparations are well underway. Consolidation in any venue other than Douglas or Wyandotte County would force Plaintiffs in all three cases to essentially start their cases over with a new judge who is unfamiliar with the proceedings. The scheduling orders entered by Judge McCabria and Judge Klapper would not govern the subsequently assigned judge, and the parties would not be able to expeditiously resolve the issues in this litigation as directed by this Court. Defendants’ transfer motion therefore works to slow down the progress of this case—precisely the opposite of what this Court encouraged the parties to do.

12. The *Alonzo* Plaintiffs urge the Supreme Court to act to ensure there are no further delays by definitively consolidating these cases in Wyandotte County. Rather than allow Defendants to deprive voters of their constitutional rights by delay, this Court can

and should consolidate the cases in Wyandotte County and order that the cases proceed apace on the existing expedited fashion that Judge Klapper has ordered.

CONCLUSION

For these reasons, the *Alonzo* Plaintiffs respectfully request that this Court order the cases be consolidated pursuant to K.S.A. 60-242(c) in Wyandotte County District Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2022, I electronically filed the foregoing with the Clerk of the District Court's electronic filing system which will serve all registered participants.

/s/ Sharon Brett
SHARON BRETT

EXHIBIT A

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

FAITH RIVERA, DIOSSELYN TOT-
VELASQUEZ, KIMBERLY WEAVER,
PARIS RAITE, DONNAVAN DILLON,
and LOUD LIGHT,

Plaintiffs,

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,

v.

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

Defendants.

Case No.: 2022-CV-000089

(consolidated with Case No. 2022-
CV-000090)

RIVERA AND ALONZO PLAINTIFFS' JOINT OPPOSITION TO DEFENDANTS'
MOTION TO TRANSFER

Nearly a month after the *Rivera* Plaintiffs and the *Alonzo* Plaintiffs (together, "Plaintiffs") filed these consolidated cases, and after failing to raise any venue objection in their motions to dismiss or at a scheduling conference with the Court, Defendants belatedly move to transfer this matter to Shawnee County, predicated on an argument that venue in Wyandotte County is

improper. Defendants waived any venue objection under K.S.A. 60-212(h) by failing to timely raise it in their first responsive motions. Venue is, in any event, proper in Wyandotte County, and transfer to Shawnee County would inconvenience the parties, disserve the interests of justice, and be improper under K.S.A. 60-609. Plaintiffs therefore respectfully request that the Court deny Defendants' motion.

PROCEDURAL HISTORY

Plaintiffs filed petitions in these two consolidated cases on February 14, 2022, alleging that the new Kansas congressional map passed by the legislature as Substitute Senate Bill 355 (the "Enacted Plan") is an unconstitutional partisan and racial gerrymander. *See Rivera et al. v. Schwab et al.*, No. 2022-CV-000089 (Feb. 14, 2022) ("*Rivera Pet.*"); *Alonzo et al. v. Schwab et al.*, No. 2022-CV-000090 (Feb. 14, 2022) ("*Alonzo Pet.*"). Within 24 hours, Plaintiffs in both cases filed motions to expedite the proceedings. Mot. to Expedite Proceedings, *Alonzo* (Feb. 14, 2022); Mot. to Expedite Proceedings, *Rivera* (Feb. 15, 2022).

Rather than respond to Plaintiffs' petitions, Defendants filed an original action in the Kansas Supreme Court on February 18, seeking an order requiring this Court to dismiss both lawsuits. *See Schwab v. Klapper*, ___ Kan. ___, ___ P.3d ___, No. 124,849, 2022 WL 627748, at *1 (Mar. 4, 2022). On March 4, the Kansas Supreme Court denied Defendants' request. *See id.* at *4. In so doing, the Supreme Court acknowledged that the issues raised by Plaintiffs "warrant a speedy resolution" and "encourage[d] the parties . . . to work . . . to expeditiously resolve" the matter. *Id.* at *2, *4. Consistent with that admonition, Plaintiffs renewed their motions to expedite later that day. Pls.' Suppl. Br. Regarding Mot. to Expedite, *Alonzo* (Mar. 4, 2022); Pls.' Suppl. Br. Regarding Mot. to Expedite Proceedings & Req. for Scheduling Conference, *Rivera* (Mar. 4, 2022).

On March 7—the statutory deadline to respond to Plaintiffs’ petitions—Defendants filed motions to dismiss both cases. Mot. to Dismiss, *Alonzo* (Mar. 7, 2022); Mot. to Dismiss, *Rivera* (Mar. 7, 2022). The motions made no reference or objection to venue.

The Court held a scheduling conference with the parties on March 9. At that conference, Defendants did not object to venue or raise it as an issue affecting the case schedule, and the Court subsequently read into the record the schedule for the case. *See* Dkt. Entry, *Rivera* (Mar. 9, 2022). The parties also jointly submitted a scheduling order for the Court to formally enter. Again, the proposed order made no objection to venue—even though, at Defendants’ insistence, it *did* reference other objections raised by Defendants. *See* Proposed Scheduling Order, *Rivera* (submitted Mar. 12, 2022). Instead, the proposed order contained an appropriately compact schedule for resolving this case in Wyandotte County, consistent with the Kansas Supreme Court’s urging to resolve the matter expeditiously. *See id.*

On the afternoon of Friday, March 11—nearly a month after Plaintiffs filed their petitions—Defendants submitted this motion to transfer. Mot. to Transfer, *Rivera* (Mar. 11, 2022) (“Mot.”).

ARGUMENT

Defendants’ motion to transfer fails both procedurally and substantively. First, under K.S.A. 60-212(h), Defendants waived any argument that venue is improper in Wyandotte County by failing to timely raise the issue in their first responsive motions. Second, even if Defendants had not waived their argument against venue in Wyandotte County, that argument would fail on its merits. Third, because of this case’s close connections to Wyandotte County and the need for speedy resolution of this matter, the factors set by statute to govern the change-of-venue analysis—the interests of justice and the convenience of the parties—cut strongly in favor of keeping this case in Wyandotte County.

I. Defendants have waived any argument that venue is improper in Wyandotte County.

Defendants waived their objection to venue in Wyandotte County by failing to raise the issue in their motions to dismiss. K.S.A. 60-212 explains that “improper venue” is a defense that is waived if “omitted from its [first responsive] motion.” K.S.A. 60-212(b)(3), (g)–(h); *see also*, *e.g.*, *Pieren-Abbott v. Kan. Dep’t of Revenue*, 279 Kan. 83, 99–100, 106 P.3d 492 (2005) (noting that defenses of lack of jurisdiction, insufficiency of process or service of process, and improper venue are all waived if omitted from motion); *Bohanon v. Werholtz*, 46 Kan. App. 2d 9, 14, 257 P.3d 1239 (2011) (similar). Here, Defendants filed motions to dismiss each case for lack of subject matter jurisdiction and failure to state a claim nearly a week before making the instant motion. Under K.S.A. 60-212(g)(2), Defendants were required to raise all defenses or objections available at the time of their 60-212(b) motions in their motions to dismiss; certainly nothing prevented Defendants from raising their defense that venue in Wyandotte County was improper in these initial motions. Under K.S.A. 60-212(h), Defendants’ failure to do so waives any argument that Wyandotte County is not a proper venue for this case.¹

While the failure to raise their venue objection in their first responsive motions suffices to waive the issue, Defendants compounded the problem through their delay in filing this motion. In addition to the requirement that the venue objection be raised in an initial 60-212(b) motion, a motion to transfer a case based on a venue objection must be “timely.” K.S.A. 60-610; *see also*, *e.g.*, *AT&T Servs., Inc. v. Mulberry*, No. 103,026, 2011 WL 1475777, at *5 (Kan. Ct. App. Apr.

¹ Although K.S.A. 60-610 indicates that an objection to venue “shall not be allowed except on timely motion made and for grounds established before trial,” the Kansas Supreme Court has held that this language does not override K.S.A. 60-212’s more specific requirement that an objection to venue be raised in a party’s first responsive motion or pleading. The Kansas Supreme Court has harmonized these provisions by concluding that a party filing a K.S.A. 60-610 motion must preserve its venue objection in its responsive pleading *and also* “file a timely motion and to establish his grounds” for the defense before trial. *Powers v. State Dep’t of Soc. Welfare*, 208 Kan. 605, 609–10, 493 P.2d 590 (1972); *see also Bohanon*, 46 Kan. App. 2d at 14.

15, 2011) (unpublished decision). *Mulberry* concluded that a venue objection was not timely, despite being made before trial, because the moving party waited to raise the issue until the litigation had progressed to the summary judgment stage. *See id.* Here, the Kansas Supreme Court has explained that the “questions [raised in this case] warrant a speedy resolution” and urged the parties to resolve the matter “expeditiously.” *Klapper*, 2022 WL 627748, at *2, *4. Yet Defendants waited until a month after the cases were filed, nearly a week after their first responsive motions, and several days after a scheduling conference with the Court to make this motion. These delays are particularly prejudicial given the tight timelines under which the entirety of this case will be decided. Under these circumstances, Defendants’ motion is far from “timely.”

In short, by failing to timely object, Defendants waived their ability to argue that venue is currently improper in Wyandotte County.

II. Venue is proper in Wyandotte County.

Even if Defendants had timely asserted and preserved their objection to venue in Wyandotte County, that objection would be meritless. Defendants’ motion does not dispute that, as long as Plaintiffs have substantial claims against both Defendants, they “may elect venue based on” either one. *Cessna Aircraft Co. v. Metro. Topeka Airport Auth.*, 23 Kan. App. 2d 1038, 1057, 940 P.2d 84 (1997); *see also* K.S.A. 60-608.² Nor does Defendants’ motion dispute that if Plaintiffs have a viable claim against Defendant Abbott, then venue is proper in Wyandotte County, where all his official acts under the Enacted Plan would take place. *See* K.S.A. 60-602(2). Instead, Defendants premise their motion entirely on an argument that venue in Wyandotte County is improper because Defendant Abbott acts under the supervision of Defendant Schwab. But the fact

² “The determination of whether a substantial claim exists against a defendant is within the discretion of the trial judge.” *Schmidt v. Shearer*, 26 Kan. App. 2d 760, 766, 995 P.2d 381 (1999).

that Defendant Schwab exercises some supervisory authority over Defendant Abbott does nothing to negate the fact that Defendant Abbott directly supervises and administers elections in Wyandotte County, or that this Court could craft an equitable remedy ordering Defendant Abbott not to implement the Enacted Plan in Wyandotte County in the course of his duties.³ Pursuant to K.S.A. 19-3423(a), Defendant Abbott has “full and complete power and authority over all elections in the county and shall see that such elections are conducted according to law.” And Defendants’ motion cites no authority that prevents Plaintiffs from seeking relief against multiple defendants.⁴ Indeed, given Wyandotte County’s centrality to the facts and issues in this case, and that this lawsuit seeks to enjoin both Secretary Schwab *and* Election Commissioner Abbott from engaging in certain acts “by virtue or under color of” each of their respective offices, K.S.A. 60-602(2), Defendant Abbott is a logical defendant. Venue is therefore proper in Wyandotte County.⁵

³ Defendants cite *Fish v. Kobach*, No. 16-2105-JAR, 2016 WL 6125029 (D. Kan. Oct. 20, 2016), to imply that the agency relationship between the Secretary of State and county election commissioners somehow precludes Plaintiffs’ claims against Defendant Abbott. *See* Mot. 2. But *Fish* concerned a discovery dispute, not venue or potential liability for election commissioners—and certainly does not suggest that constitutional claims against local election officials are nonviable.

⁴ Defendants give a long list of entirely inapposite authorities. *See* Mot. 3–4. None of the cited cases deal with a situation, like here, where a county official is a proper defendant along with a statewide official. (In *Verdigris River Drainage Dist. No. 1 v. City of Coffeyville*, 149 Kan. 191, 200, 86 P.2d 592 (1939), the local defendants were either not proper defendants or severable from the main action against the statewide entity.)

⁵ The entirety of Defendants’ motion to transfer is based on the incorrect argument that Defendant Abbott is an improper defendant. Plaintiffs note that this is also the crux of one of Defendants’ arguments in their motions to dismiss. Those motions are still outstanding and proceeding on a briefing schedule already set by this Court. Nevertheless, Plaintiffs note here, for the purposes of responding to the motion to transfer, that these arguments are incorrect. Election commissioners have frequently been named as defendants in statewide redistricting litigation and other cases challenging aspects of the administration of elections. *See, e.g., Harris v. Anderson*, 196 Kan. 450, 412 P.2d 457 (1966) (redistricting case with both Secretary of State and county election commissioners as defendants); *Harris v. Anderson*, 194 Kan. 302, 400 P.2d 25 (1965) (same); *Harris v. Shanahan*, 192 Kan. 183, 187, 387 P.2d 771 (1963) (successfully seeking injunction barring “various county election officials,” as well as Secretary of State, from administering elections under allegedly unconstitutional state legislative maps); *see also, e.g., Wall v. Harrison*, 201 Kan. 600, 600–02, 443 P.2d 266 (1968) (affirming mandamus relief ordering defendant election commissioner to conduct election as required by Kansas Constitution, not contradictory election statute); *Patterson v. Justus*, 173 Kan. 208, 208–09, 213, 245 P.2d 968 (1952) (granting mandamus relief against defendant county election

Indeed, Plaintiffs have brought standard equitable claims seeking to ensure the Defendant Abbott executes his responsibilities as Wyandotte County’s election commissioner within constitutional bounds. Defendant Abbott’s duties include managing voter registration, *see, e.g.*, K.S.A. 25-2303; establishing ward and precinct boundaries and polling places, *see* K.S.A. 19-3424(a)(1), 19-3439, 25-2701; arranging for ballot printing, *see* K.S.A. 19-3424(a)(1), 25-604; administering early voting, *see, e.g.*, K.S.A. 25-1120; and overseeing ballot tabulation, *see* K.S.A. 25-1132 to -1133, 25-2801. Seven *Alonzo* Plaintiffs and three *Rivera* Plaintiffs live in Wyandotte County. *See Alonzo* Pet. ¶¶ 16–18, 20, 22, 25–26; *Rivera* Pet. ¶¶ 16–18. Defendant Abbott is therefore the county official responsible for administering the elections in which these individuals vote. Moreover, many of the facts and issues in this case center on Wyandotte County: Plaintiffs allege, for example, that the Enacted Plan cracks the county between districts for partisan and racial reasons, *see, e.g.*, *Alonzo* Pet. ¶¶ 79–80, 88–93; *Rivera* Pet. ¶¶ 4, 77–89, while also dividing a Kansas City-area community of interest that includes Wyandotte County, *see, e.g.*, *Alonzo* Pet. ¶¶ 94–109; *Rivera* Pet. ¶¶ 6, 54, 72, 78. Plaintiffs seek to ensure that Defendant Abbott carries out his obligations in compliance with the Kansas Constitution, and thus *not* in compliance with the Enacted Plan. The remedies sought would prevent Defendant Abbott from, for instance, producing ballots that reflect the Enacted Plan’s gerrymandered district lines or counting such ballots thereafter. In other words, Plaintiffs seek perfectly standard-issue relief against a government official whom they allege will imminently act in a manner forbidden by the Kansas Constitution. Plaintiffs thus have good reason to seek to ensure that Defendant Abbott conducts future

commissioner). Ultimately, Defendant Abbott is a proper defendant, and Plaintiffs will fully respond to this issue in their oppositions to Defendants’ motions to dismiss.

congressional elections in compliance with the Kansas Constitution, rather than under the Enacted Plan.

The fact that Defendant Schwab exercises some supervisory authority over Defendant Abbott does not mean that Plaintiffs have no substantial claim against Defendant Abbott. Defendant Abbott is directly responsible for administering elections in Wyandotte County, and Plaintiffs seek, among other relief, an order requiring him to carry out his duties in compliance with the Kansas Constitution by not implementing the Enacted Plan. The fact that such an order might overlap, as a practical matter, with one directed at Defendant Schwab does not mean that Plaintiffs cannot seek both. By Defendants' logic, a tort plaintiff seeking to recover from multiple tortfeasors under a joint and several liability system would be able to sue only one defendant, since recovery against any one could afford the plaintiff complete recovery. But that simply is not the law, and Defendants cite no case requiring Plaintiffs to choose only one defendant in this way.

A comparison of this case to decisions that found no substantial claim for purposes of K.S.A. 60-608 demonstrates the weakness of Defendants' argument. Such decisions have generally involved defendants that had effectively left the litigation. *Fredricks v. Foltz*, for instance, concluded that a trial court had not abused its discretion in concluding that no substantial claim existed against a defendant that had successfully obtained summary judgment against the plaintiff—and even then the court noted that the matter was within the trial court's discretion, since the summary judgment order was in theory subject to revision. *See* 221 Kan. 28, 32–33, 557 P.2d 1252 (1976). Here, by contrast, Defendant Abbott remains a party to this litigation, and Plaintiffs maintain several standard—and substantial—equitable claims against him, making venue proper in Wyandotte County.

III. Proceeding in Wyandotte County better serves the convenience of the parties and witnesses and the interests of justice.

Even if Defendants had preserved their venue objections to Wyandotte County, their motion still lacks merit. K.S.A. 60-609(a) provides that “[u]pon the motion of a party, a district court may transfer any civil action to any county where it might have been brought upon a finding that a transfer would better serve the convenience of the parties and witnesses and the interests of justice.” But “the burden of proof on a motion to transfer or change the venue is upon the movant,” and “venue should not be transferred to another county unless there is some *compelling reason* for doing so.” *Lambertz v. Abilene Flour Mills Co.*, 209 Kan. 93, 96–97, 495 P.2d 914 (1972) (emphasis added); *accord Schmidt v. Shearer*, 26 Kan. App. 2d 760, 766, 995 P.2d 381 (1999). Moreover, if venue is proper in more than one county, “the district court should give due consideration to the plaintiff’s right to choose the place of the action,” and “should not . . . transfer[] venue without . . . giv[ing] weight to the plaintiff’s choice of venue.” *Rhodenbaugh v. Kan. Emp. Sec. Bd. of Rev.*, 52 Kan. App. 2d 621, 628, 372 P.3d 1252 (2016).

As an initial matter, Defendants have not met their burden of providing a “compelling,” or even persuasive, reason to transfer this case. *Lambertz*, 209 Kan. at 97. Their motion does not argue or otherwise address the considerations governing change of venue under K.S.A. 60-609—Defendants make no argument about convenience to the parties or witnesses, or why transferring the case would advance the “interests of justice”—and instead rely entirely on the waived and meritless argument that venue is improper in Wyandotte County. This lack of justification for transferring the case, especially in light of the “weight” owed Plaintiffs’ choice to file in this Court, *Rhodenbaugh*, 52 Kan. App. 2d at 628, offers more than a sufficient basis to deny the motion.

Analyzing the relevant factors under K.S.A. 60-609—the convenience of the parties and the witnesses and the interests of justice—only affirms this conclusion, as both weigh decisively against transfer to Shawnee County.

A. Proceeding in Wyandotte County better serves the convenience of the parties and witnesses.

Because almost all the parties in these consolidated cases live in or near Wyandotte County, and because Wyandotte County is more readily accessible than Shawnee County to travelers from out of state, including multiple expert witnesses who will testify at trial, this Court offers the most convenient venue for resolving this matter. *See, e.g., In re Marriage of Yount*, 34 Kan. App. 2d 660, 668–69, 122 P.3d 1175 (2005) (recognizing importance of parties’ and witnesses’ locations in assessing most convenient venue).

Wyandotte County is the most convenient venue for the parties. Almost all individual Plaintiffs live in the county (seven of eleven *Alonzo* Plaintiffs and three of five individual *Rivera* Plaintiffs) or in neighboring Johnson County (three *Alonzo* Plaintiffs); no individual Plaintiffs live in Shawnee County. *See Alonzo* Pet. ¶¶ 16–26; *Rivera* Pet. ¶¶ 16–20.⁶ Naturally, these parties would find it much more convenient to travel locally to proceedings in Wyandotte County than to make repeated trips to Shawnee County. Defendants have not argued that litigating this matter in Wyandotte County would inconvenience them, nor does it appear likely to do so: Defendant Abbott works and, according to the county’s website, lives in Wyandotte County.⁷ And while Defendant Schwab’s office is in Topeka, his campaign and office websites both indicate that he

⁶ Plaintiffs have also filed declarations confirming these residences.

⁷ *Michael Abbott*, Unified Gov’t of Wyandotte Cnty. & Kan. City, <https://www.wycokck.org/Government/Elected-Officials/Election-Commissioner-Biography> (last visited Mar. 15, 2012).

lives in Overland Park, just outside Wyandotte County.⁸ This Court thus offers a more convenient forum for the parties.

Wyandotte County is also more convenient for witnesses than is Shawnee County. Many potential witnesses either live in or represent Wyandotte County. Moreover, out-of-town witnesses, such as Plaintiffs' experts, will have an easier time reaching and staying in Wyandotte County—part of a major metropolitan area with an international airport—than the relatively less accessible Shawnee County. The convenience of witnesses thus cuts against transfer to Shawnee County as well.

In addition, Wyandotte County offers a more convenient venue for counsel. *Cf. Hernandez v. Pistotnik*, 58 Kan. App. 2d 501, 518, 472 P.3d 110 (2020) (noting that “it would be more economical for [one party] to travel to Wichita rather than for all the attorneys to travel to Cowley County” as factor supporting transfer to Wichita). All the attorneys for Plaintiffs in these consolidated cases work from offices either in the immediate Kansas City area or out of state. The private law firm retained by Defendants to assist with the litigation is also located in Kansas City. For the same reasons Wyandotte County is the more convenient forum for the parties and witnesses, it is also more convenient for counsel.

B. Proceeding in Wyandotte County better serves the interests of justice.

Transfer of this case to Shawnee County would disserve the interests of justice in at least three ways.

First, a change of venue would unduly delay consideration of Plaintiffs' claims. The Kansas Supreme Court noted that the “questions [raised in this case] warrant a speedy resolution,” and

⁸ *About the Secretary*, Kan. Sec'y of State, <https://sos.ks.gov/about-the-office/schwab-biography.html> (last visited Mar. 15, 2022); *Scott Schwab: Trusted Results*, Schwab for Sec'y of State, <https://scottschwab.com> (last visited Mar. 15, 2022).

called for the parties to resolve the matter “expeditiously.” *Klapper*, 2022 WL 627748, at *2, *4. But “[a] change of venue works delay” that would prevent that speedy resolution. *State v. Parmenter*, 70 Kan. 513, 79 P. 123, 124 (1905); *see also In re Marriage of Yoakum*, No. 96,318, 2007 WL 570307, at *2 (Kan. Ct. App. Feb. 23, 2007) (unpublished opinion) (upholding denial of motion to transfer in part because of potential delay). This Court has already set a schedule for an expedited proceeding that would, as the Supreme Court directed, allow for timely resolution of this case, and briefing and discovery are already underway. In contrast, a court in Shawnee County would need to begin from scratch. Such delay would disserve the interests of justice—particularly in light of Defendants’ delay in bringing this motion.⁹

Second, and relatedly, this Court has already familiarized itself with the facts and issues in this case, and transfer would therefore waste judicial resources. The judiciary’s “interest in promoting efficiency in the court system by preventing duplication among the courts” weighs against transfer when a court is “already familiar with [a] case.” *Yoakum*, 2007 WL 570307, at *2. Here, the Court has already familiarized itself with the issues, and held a two-hour long status conference with counsel for all parties during which it discussed both procedural and substantive issues that will arise in the case. Responsive briefing on the legal issues is due next week, with oral argument set for the following Monday; Plaintiffs served their expert reports; and expert depositions begin tomorrow. *See* Expert Reports of Jonathan Rodden and Patrick Miller, *Rivera* (Mar. 9, 2022); Expert Reports of Jowei Chen, Christopher Warshaw, and Loren Collingswood, *Alonzo* (Mar. 9, 2022). Transfer would waste the Court’s work on this matter and require a court

⁹ Delay would also prejudice Plaintiffs, who, in keeping with the Kansas Supreme Court’s admonition, have consistently sought a speedy resolution to this case, as evidenced by their filing motions to expedite proceedings on the same day as their petitions and supplementing those motions hours after the Kansas Supreme Court issued its opinion in *Klapper*.

in Shawnee County to redo it. This needless duplication of efforts would disserve the interests of justice.

Third, the close factual connections between this case and Wyandotte County make this Court the appropriate forum for resolving Plaintiffs' claims. Connections between the facts of a case and a particular county weigh in favor of hearing the matter in that county. *See Hernandez*, 58 Kan. App. 2d at 518 (approving transfer of fraud lawsuit to county where underlying contract had been formed and relevant work performed). As discussed above, this case centers in large part on facts about Wyandotte County—its demographics; its cracking between districts under the Enacted Plan; and its status, with parts of Johnson County, as a community of interest. *See, e.g., Alonzo Pet.* ¶¶ 79–80, 88–109; *Rivera Pet.* ¶¶ 4, 6, 54, 72, 77–89. In contrast, this case has no factual connections to Shawnee County beyond the fact that the state capital happens to be located there; the Enacted Plan does not split or move Shawnee County between districts. Wyandotte County's closer connections with the facts of this case make it the superior venue.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' motion to transfer.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2022, I electronically filed the foregoing with the Clerk of the District Court's electronic filing system, which will serve all registered participants, and a copy was also served by email to counsel for the Defendants, Solicitor General Brant Laue (brant.laue@ag.ks.gov) and Tony Rupp (TRupp@foulston.com).

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