

IN THE SUPREME COURT OF KANSAS

IN RE the

**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)**

Case No. 124927

**RIVERA PLAINTIFFS' RESPONSE TO SEVENTH JUDICIAL DISTRICT AND
TWENTY-NINTH JUDICIAL DISTRICT'S REQUEST TO CONSOLIDATE
MULTIDISTRICT LITIGATION**

The plaintiffs in the matter of *Rivera et al. v. Schwab et al.*, No. 2022-CV-000089 (Feb. 14, 2022) (the “*Rivera* Plaintiffs”), the first-filed redistricting case, which is currently proceeding before Judge Bill Klapper in the District Court of Wyandotte County, where it is consolidated with the second-filed redistricting case, *Alonzo et al. v. Schwab et al.*, No. 2022-CV-000090 (Feb. 14, 2022), file this response to the Seventh Judicial District and Twenty-Ninth Judicial District’s request to consolidate multidistrict litigation. In that request, Chief Judge James R. McCabria of the Seventh Judicial District and Chief Judge Robert P. Burns of the Twenty-Ninth Judicial District ask that the Court consolidate the *Rivera* and *Alonzo* cases with a third redistricting case, *Frick et al. v. Schwab et al.*, No. 2022-CV-000071 (Mar. 1, 2022), which was filed two weeks after *Rivera* and *Alonzo* and is presently separately pending in the District Court of Douglas County.

The *Rivera* Plaintiffs agree that consolidation will promote the just and efficient administration of the three actions: each action challenges the same law, SB 355, under

similar theories of relief. Consolidation is therefore proper under K.S.A. 60-252(c)(1). The *Rivera* Plaintiffs respectfully submit that the most appropriate course of action is to transfer the *Frick* case, which is only case that is not currently before Judge Klapper in Wyandotte County, to Wyandotte County, and consolidate it with the *Rivera* and *Alonzo* cases already underway before Judge Klapper, so that all may be adjudicated together in one proceeding. This will best promote the goals of efficiency and convenience under K.S.A. 60-242(c)(1), as well as pay heed to this Court’s recognition earlier this month that the “questions [raised in this case] warrant a speedy resolution” and that the matter should be adjudicated “expeditiously.” *Schwab v. Klapper*, ___ Kan. ___, ___ P.3d ___, No. 124,849, 2022 WL 627748, at *2, *4 (Mar. 4, 2022). In contrast, assigning the *Rivera* and *Alonzo* cases to a different court at this stage in the proceedings would both substantially and prejudicially delay their resolution, as well as impose unnecessary inconvenience for the majority of the parties involved.

PROCEDURAL HISTORY

On February 14, 2022, Faith Rivera, Diosselyn Tot-Velasquez, Kimberly Weaver, Paris Raite, Donnavan Dillion, and Loud Light (the “*Rivera* Plaintiffs”) filed a Petition for Declaratory and Injunctive Relief in the District Court of Wyandotte County challenging SB 355, Kansas’s recently enacted congressional redistricting plan. *See* Joint Request Ex. A. That same day, another set of plaintiffs (the “*Alonzo* Plaintiffs”) filed a suit challenging the same plan and alleging similar claims, also in the District Court of Wyandotte County. *See* Joint Request Ex. B. On March 1, a third set of plaintiffs (the “*Frick* Plaintiffs”) filed suit, also challenging SB 355 and alleging similar claims, this time in the District Court of

Douglas County. *See* Joint Request Ex. C. On March 9, 2022, Judge Klapper, the judge presiding over the two cases filed in Wyandotte County, consolidated the *Rivera* and *Alonzo* cases pursuant to K.S.A. 60-242. On March 15, 2022, Chief Judge McCabria of the Seventh Judicial District and Chief Judge Burns of the Twenty-Ninth Judicial District filed a request in this Court to consolidate the three actions in a single district.

ARGUMENT

K.S.A. 60-242(c)(1) provides that “[w]hen civil actions arising out of the same transaction or occurrence or series of transactions or occurrences are pending in different judicial districts,” this Court may “upon finding that a transfer and consolidation will promote the just and efficient conduct of the actions . . . order transfer of the pending actions to one of the counties in which an action is pending.” The Court must also “designate a judge to hear the consolidated actions.” The relevant cases are currently pending in Wyandotte and Douglas Counties. Wyandotte County is the preferable venue for several reasons.

Efficiency. First, two out of the three cases concerned here are already pending in Wyandotte County and subject to an expedited scheduling order. If the third case is also consolidated with the first two cases, both filed in Wyandotte County, the three cases are likely to reach their conclusions sooner than if consolidated and transferred to Douglas County. The previously consolidated *Rivera/Alonzo* cases are currently proceeding under an expedited March 9 scheduling order, with fact discovery set to close (and briefing on pending motions to dismiss set to be completed) by March 25 and trial set to begin on April 4, with a possible additional trial date of April 11. This schedule was made possible by the

Rivera Plaintiffs and the *Alonzo* Plaintiffs, who filed their actions in Wyandotte County on February 14 along with motions to expedite their proceedings. The *Frick* Plaintiffs in the Douglas County case, by contrast, filed their complaint more than two weeks *after* the Wyandotte County cases began, and trial on their claims is not set to begin until April 18—at least one week after the Wyandotte County trial is scheduled to end. This Court has already noted that the “questions [raised in these cases] warrant a speedy resolution,” and called for the parties to resolve the matters “expeditiously.” *Schwab v. Klapper*, No. 124,849, 2022 WL 627748, at *2, *4 (Kan. Mar. 4, 2022). Consolidation in Wyandotte County is undoubtedly the most efficient way to satisfy this Court’s admonition and resolve these matters as expeditiously as possible.

Convenience. Second, Wyandotte County is also a more convenient venue for the consolidated cases. Most of the parties between the three cases live or work in Wyandotte County or its surrounding areas. *See, e.g., In re Marriage of Yount & Hulse*, 34 Kan. App. 2d 660, 668–69, 122 P.3d 1175 (2005) (recognizing importance of parties’ and witnesses’ locations in assessing most convenient venue). While the four *Frick* Plaintiffs in the Douglas County case reside in that county, most of the 16 combined individual plaintiffs in the Wyandotte County cases live in either Wyandotte County or neighboring Johnson County. Moreover, the common defendant between the three actions, Secretary of State Scott Schwab, lives in Overland Park, just outside of Wyandotte County¹ (his office is in

¹ *About the Secretary*, Kan. Sec’y of State, <https://sos.ks.gov/about-the-office/schwab-biography.html> (last visited Mar. 17, 2022); *Scott Schwab: Trusted Results*, Schwab for Sec’y of State, <https://scottschwab.com> (last visited Mar. 17, 2022).

Shawnee County, in the state capital of Topeka). Wyandotte County is also a more convenient location 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). Almost all of the attorneys in these cases (including counsel for the *Frick* Plaintiffs) practice in the greater Kansas City area. The remaining attorneys are from out of state and will have an easier time accessing Wyandotte County, which is served by a nearby international airport, than Douglas County, which lacks easy access to an airport with direct connections to most major cities.

Despite the advantages of adjudicating these proceedings in Wyandotte County, Defendants filed motions to transfer venue in the *Alonzo/Rivera* litigation on March 11, 2022, and in the *Frick* matter on March 14, 2022, seeking to transfer these proceedings to Shawnee County. For the reasons explained in the *Alonzo/Rivera* Plaintiffs’ opposition to that motion, (attached as Exhibit A), Defendants have not satisfied the standard for transferring these proceedings to Shawnee County.

If the Court agrees that transfer to Wyandotte County is appropriate, this Court should designate Judge Klapper—who is already presiding over the Wyandotte County cases—as the judge for the three consolidated cases. Judge Klapper has presided over the Wyandotte County cases for over a month, has received expert reports and dispositive motions, and is preparing to preside over the upcoming trial scheduled to start on April 4. Judge Klapper also presided over a scheduling hearing on March 9, at which the parties discussed both substantive and procedural issues in the cases. Transferring the three

consolidated cases to a judge who is not familiar with these matters risks wasting judicial resources. As a Kansas appellate court has recognized in the analogous context of a motion to transfer, courts have “an interest in promoting efficiency in the court system” that is served by ensuring that cases stay before a judge already familiar with their facts. *See In re Marriage of Yoakum & Horst*, No. 96,318, 2007 WL 570307, at *2 (Kan Ct. App. 2007) (per curiam) (unpublished). This is especially so where, as here, the claims at issue are highly fact-dependent and in need of prompt resolution.

For the foregoing reasons, the *Rivera* Plaintiffs concur with the Request to Consolidate and encourage this Court to consolidate the three cases before Judge Klapper in the District Court for Wyandotte County.

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 Appellate Clerk of the Kansas Supreme Court's electronic filing system which will serve all registered participants electronically. Additionally, a copy was also deposited in the U.S. Mail pursuant to K.S.A. 60-205 to the below referenced parties:

James R. McCabria
Chief District Court Judge
Seventh Judicial District of Kansas
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Requesting Courts

/s/ Barry R. Grissom
Barry R. Grissom
Attorney for Rivera Plaintiffs

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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