

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

VOTEAMERICA and  
VOTER PARTICIPATION CENTER,

*Plaintiffs,*

vs.

SCOTT SCHWAB, in his official capacity as  
Secretary of State of the State of Kansas;  
DEREK SCHMIDT, in his official capacity as  
Attorney General of the State of Kansas; and  
STEPHEN M. HOWE, in his official capacity as  
District Attorney of Johnson County,

*Defendants.*

Case No. 2:21-cv-02253-KHV-GEB

**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants submit this Notice of Supplemental Authority pursuant to Local Rule 7.1(f). Defendants refer the Court to the Third Circuit's recent decision in *Mazo v. New Jersey Secretary of State*, 2022 WL 17172673 (Nov. 23, 2022) (attached), which undertook a comprehensive analysis as to when *Anderson-Burdick* balancing – as opposed to the strict scrutiny test set forth in *Meyer v. Grant* and *Buckley v. American Constitutional Law Foundation, Inc.* – is properly applied to free speech constitutional challenges to election-related statutes.

Although Defendants believe that VPC's actions do not involve expressive conduct and thus do not even implicate the First Amendment, *Mazo* refutes most of VPC's legal theories. *Mazo* involved a state law restricting the slogans that candidates can include beside their name on the ballot without first securing consent from the individuals or entities associated with the slogan. In contrast to our case, the statute there clearly burdened plaintiffs' freedom of expression. Even so, the court determined that the law primarily regulated a mechanic of the electoral process rather

than core political speech, necessitating application of *Anderson-Burdick* balancing. *Id.* at \*11; *see also id.* at \*6-8. The court noted that core political speech generally involves *interactive* communications between the speaker and the target. *Id.* at \*11. A ballot slogan, meanwhile, “is a one-way communication confined to the electoral mechanic of the ballot.” *Id.* If an expressive ballot slogan is not core political speech, it is inconceivable that pre-filling an unsolicited advance ballot application with the target’s name and address on an official state form is properly characterized as such.

The *Mazo* court further held that the ballot slogan restriction was content and viewpoint neutral. *Id.* at \*13-16. The court embraced the interpretation of *City of Austin* that Defendants advanced here. *Id.* at \*14-15. The communicative content, the court next observed, only mattered to determine whether the statute’s consent requirement applies and then ceases to be relevant. *Id.* at \*14. And “a facially neutral law does not become content based simply because it may disproportionately affect speech on certain topics.” *Id.* at \*15. The same is true of Kansas’ Pre-Filled Application Prohibition.

Respectfully Submitted,

By /s/ Bradley J. Schlozman  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of December 2022, I electronically filed the foregoing Defendants' Notice of Supplemental Authority with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

By /s/ Bradley J. Schlozman

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