

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

VOTEAMERICA and
VOTER PARTICIPATION CENTER,

Plaintiffs,

vs.

C.A. NO. 2:21-cv-02253-KHV-GEB

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.

**PLAINTIFF VOTER PARTICIPATION CENTER'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff Voter Participation Center ("VPC") submits this Notice of Supplemental Authority pursuant to Local Rule 7.1(f). VPC refers the Court to the recent decision by the Kansas Court of Appeals in *League of Women Voters of Kansas v. Schwab*, No. 125,084, 2023 Kan. App. LEXIS 10 (Ct. App. Mar. 17, 2023), attached hereto as Exhibit A, which analyzed whether a ballot collection restriction violates the collector's freedom of speech and association under the Kansas Constitution Bill of Rights. *See* Ex. A at 8, 42–46.

The Court of Appeals reversed the trial court's ruling, which granted the defendants' motion to dismiss the plaintiffs' free speech claim. *See id.* at 47. The court agreed with federal courts that have found that advocacy for voting is "inextricably intertwined" with the collection of applications, such that a restriction on collection "allows the government to indirectly burden protected activity." *Id.* at 45–46. The court reasoned that the ballot collection restriction limits communication between the ballot collector and the voter, including the collector's message of

civic participation and engagement, and reduces the number of voters the collector can assist. *See id.* at 46. “Collecting ballots and delivering those ballots to election officials is part of a larger advocacy for voting itself.” *Id.* In so ruling, the court rejected the defendants’ arguments that collecting and returning ballots of another voter does not communicate any particular message and that, notwithstanding the ballot collection restriction, the plaintiffs could still interact with voters and provide them with advance ballot applications. *See id.* at 43.

Here, VPC asserts that sending personalized advance mail ballot applications to voters is core political speech that encourages the recipients to vote by mail; whereas Defendants assert that such activity is non-expressive conduct, not speech. The Personalized Application Prohibition at issue directly burdens VPC’s speech—its ability to personalize advance mail ballot applications. However, as in *League of Women Voters*, the Personalized Application Prohibition also “indirectly burden[s] protected activity”—“the expressive and advocatory aspects” of VPC’s mailers, which is “inextricably intertwined” with its sending of the personalized mailers. *See id.* at 45–46.

Respectfully Submitted,

By: /s/ Mark P. Johnson

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on this 27th day of March, 2023, a copy of the foregoing document was emailed to:

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