

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

VOTEAMERICA and  
VOTER PARTICIPATION CENTER,

*Plaintiffs,*

vs.

Case 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.*

**DEFENDANTS' RESPONSE TO PLAINTIFF VOTER PARTICIPATION CENTER'S  
NOTICE OF ADDITIONAL AUTHORITY**

Defendants hereby respectfully respond to Plaintiff's Notice of Supplemental Authority, referencing the recent Kansas Court of Appeals decision in *League of Women Voters v. Schwab*, No. 125,084, 2023 WL 2558565 (Kan. Ct. App. Mar. 17, 2023) ("*LWV*"), attached as Exhibit A to Plaintiffs' Notice. (Dkt. 180).

As relevant here, *LWV* involved a state constitutional challenge to statutory restrictions on ballot harvesting. The court's opinion on this issue was internally inconsistent and ultimately a mystery. After noting that voted ballots constitute the speech of the voter, not the ballot collector, the court then held that the "regulation of the handling of [mail] ballots is warranted," and affirmed the dismissal of that free speech claim. Op. at 46. Yet later, in its "summary," the court suggested that the statute restricts the free speech rights of ballot collectors and seemed to remand the claim. *Id.* at 47.

Whatever the court meant (in a case that soon will be appealed to the Kansas Supreme Court anyway), and putting aside the fact that the court disregarded the holdings of nearly every federal and state appellate court in siding with a few outlier federal district court decisions, the opinion is of no utility to Plaintiff here. *LWV* focused on “one-on-one communication between the ballot collector and voter,” *id.* at 45 and somehow found the statute restricted those interactions. *Id.* at 47. In contrast, this case merely concerns sending pre-filled government forms to strangers. There are no one-on-one interactions whatsoever.

Moreover, *LWV* never actually held that collecting voted ballots entails core political speech. To the contrary, the court held that the “regulation of the handling of [mail] ballots [is] warranted” because collecting or delivering them is not “protected speech[.]” *Id.* at 46. While the court elsewhere suggested that collecting ballots and delivering them to election officials is was “part of a larger advocacy for voting itself,” it is almost impossible to know what the court intended since it seemed to be talking out of both sides of its mouth. In short, the case sheds no light on this federal action.

Respectfully Submitted,

By /s/ Bradley J. Schlozman  
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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of April 2023, I electronically filed the foregoing 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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