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CASE NUMBER: 2021-CV-000299

IN THE STATE COURT OF KANSAS
DISTRICT COURT OF SHAWNEE COUNTY

LEAGUE OF WOMEN VOTERS OF KANSAS, LOUD LIGHT, KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC., and TOPEKA INDEPENDENT LIVING RESOURCE CENTER,

Plaintiffs,

v.

SCOTT SCHWAB, in his official capacity as Kansas Secretary of State, and DEREK SCHMIDT, in his official capacity as Kansas Attorney General,

Defendants.

Original Action No. 2021-CV-000299

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A PARTIAL TEMPORARY INJUNCTION

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I. INTRODUCTION

The League of Women Voters of Kansas, Loud Light, Kansas Appleseed Center for Law and Justice, Inc., and Topeka Independent Living Resource Center (collectively, "Plaintiffs") respectfully request that this Court temporarily enjoin the implementation and enforcement of subsections (a)(2) and (a)(3) of Section 3 of Kansas House Bill 2183 (2021) (the "Voter Education Restriction" or "Restriction"), which will take effect on July 1, 2021. Plaintiffs seek this narrow temporary injunction so that they can continue educating Kansas voters about the voting process, registering and encouraging them to vote, and assisting them in successfully voting in advance of the August 2021 primary and November 2021 general local elections, without the looming threat of criminal prosecution. Each of these activities are entitled to the strongest possible protections under the Kansas Constitution's free-speech guarantee. But, unless an injunction is issued, the Restriction will prevent or dramatically reduce the activities that Plaintiffs can engage in and the voters they can reach—unless Plaintiffs are willing to risk being charged with a class 7 felony and facing up to 17 months in prison and fines of up to $100,000.

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The Restriction presents an existential threat to Plaintiffs, organizations that have for decades helped Kansans participate in the electoral system. It does so by making it a felony for any person to knowingly engage in conduct that "gives the appearance" or "would cause another person to believe" that the person is employed by the Secretary of State, county election commissioner, or county clerk. H.B. 2183 § 3(a)(2), (a)(3), (c). While the Restriction does this (presumably) to prevent individuals from falsely holding themselves out to be election officials, that type of conduct was *already* a crime under Kansas Law. K.S.A. 21-5917. The Restriction went much further, using broad language and a highly subjective standard (defining the prohibited activity from the vantage of *any person observing* the activity, and does *not* limit it to actors who *specifically intend* to represent themselves falsely) such that it could easily reach the types of voter

education, registration, and engagement activities that Plaintiffs engage in to advance their missions of increasing civic and political participation. In total, the Restriction violates *three* separate free-speech doctrines: (1) it directly restricts political speech without sufficient justification, (2) its regulatory sweep is far too broad, and (3) it is impermissibly vague.

For decades, thousands of Kansans have benefited from and relied on Plaintiffs to help them successfully exercise their right to vote. Unless the Restriction is enjoined immediately, Plaintiffs will be unable to continue their vital political engagement with Kansas voters in advance of the upcoming local elections. This Court should maintain the status quo during this litigation and issue a limited, temporary injunction that will shield Plaintiffs from the irreparable harm of having to scale back on (or even completely shut down) their core political speech by enjoining the enforcement of the Voter Education Restriction prior to its effective date and until a final judgment is reached in this case.

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II. STATEMENT OF FACTS

A. For decades, Plaintiffs' significant efforts to educate, register, and engage Kansas voters have been a core part of their mission and a critical component of successful Kansas elections.

Plaintiffs are four non-partisan, non-profit organizations that spend significant energy and resources trying to increase political participation in Kansas by educating, registering, and engaging voters. These activities seek to engage the electorate in a way that makes all aspects of government more responsive to the needs and interests of their constituents, are an important part of each organization's purpose and strategy, and are critical to ensuring that Kansas voters have access to the ballot and that elections run smoothly. In 2020 alone, despite a global pandemic, Plaintiffs collectively registered at least 11,000 Kansans to vote, knocked on hundreds of doors, and conveyed their message of civic and political participation by interacting with tens of thousands of voters online.

The League. The League of Women Voters of Kansas and the League of Women Voters Education Fund (together, the "League") have long worked to empower voters and promote civic engagement through informed and active participation in government. Aff. of Jacqueline Lightcap, Ex. 1, at ¶¶ 5, 10. Every year, the League undertakes a range of voter-related activities including publicly advocating about the importance of political participation, educating Kansans about the voting process and elections, and holding voter registration events to ensure that voters are engaged not only during the highly publicized statewide elections, but also for local elections. *Id.* ¶¶ 11-13, 18. During its voter registration events, League members and volunteers interact directly with Kansans, communicating the importance not only of political participation and civic engagement but also political reforms and other issues that are important to the League. *Id.* ¶ 10. They also promote Vote411.org, the national League of Women Voter's voter-education website; KSVotes.org, a website that assists voters with registration, advance-ballot requests, and provides voter education; and local and state election-related websites. *Id.* ¶¶ 14, 22, 25.

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In 2020, the League's work was critical in helping ensure that, during the pandemic, Kansans retained access to the ballot. From January 1 to November 3, 2020, the League coordinated 354 election-related activities in Kansas involving 1,123 individuals volunteering 2,079 hours. *Id.* ¶ 16. In addition to traditional registration activities, the League held parades with signs and banners encouraging citizens to register and vote, and it continued to promote voter-education resources. *Id.* ¶ 14. In all, the League yielded 7,766 unique voter contacts and registered 1,990 Kansans to vote through its website and another 292 in person. *Id.* ¶ 16. League members also assisted voters in obtaining and returning advance ballots, which proved to be crucial given 2020's unprecedented surge in advance-ballot usage. *Id.* ¶ 15. In performing these activities, the League conveys its message of encouraging political and civic participation. *Id.* ¶ 10.

Loud Light. Founded in 2015 in response to Kansas's lowest-turnout election in a decade, Loud Light's mission is to engage, educate, and empower individuals from underrepresented populations—particularly younger individuals—to increase their political participation and ensure that government is more responsive to their needs. Aff. of Davis Hammet, Ex. 2, at ¶¶ 4-7. Loud Light accomplishes this by hosting voter registration drives, distributing educational content about political participation, and actively building community coalitions that advocate for political change. *Id.* ¶ 8-10, 15. In doing so, Loud Light consistently conveys its message of encouraging political and civic participation. *Id.* ¶ 15.

In 2020, Loud Light employed more than two dozen student fellows and engaged even more volunteers to promote political participation. They ran registration tables, phone banked, canvassed, text banked, and assisted voters with curing advance voting ballots. *Id.* ¶¶ 11, 14. In all, Loud Light helped register 9,621 voters, made 12,508 phone calls, sent 466,680 text messages, and distributed 115,775 pieces of mail. *Id.* ¶ 12. It also encouraged and assisted Kansans using advance voting by creating and distributing an educational video about the process, which was viewed over 220,000 times. *Id.* ¶ 13.

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Kansas Appleseed. Kansas Appleseed Center for Law and Justice ("Kansas Appleseed") is dedicated to the belief that, through joint action, Kansans can build a state full of thriving, inclusive, and just communities. Aff. of Caleb Smith, Ex. 3, at ¶ 3. Kansas Appleseed expends significant effort educating and engaging Kansas voters, particularly among traditionally underrepresented populations in Southwest and Southeast Kansas. *Id.* ¶ 7. Through mailers, social media content, text banking, and community-building events, it works to educate these communities about ballot issues and the voting process, and how to engage with candidates, with the aim of increasing civic and political participation so that government will be more responsive

to these populations' needs. *Id.* ¶¶ 8-9. In doing so, Kansas Appleseed's representatives continuously convey the organization's message of political and civic participation. *Id.* ¶ 5.

Kansas Appleseed's voter education engagement efforts were critical during the pandemic, interacting with more than 13,000 Kansas voters. *Id.* ¶ 11. It encouraged voters to use the advance voting option and educated them on how to do so. *Id.* Through these efforts, Kansas Appleseed's target audience increased by 12 percent during the 2020 election cycle, compared to the 2016 cycle. *Id.* ¶¶ 13-14.

The Center. The Topeka Independent Living Resource Center, Inc. (the "Center") is a 40-year-old civil and human rights organization with the mission of advocating for justice, equality, and essential services for a fully integrated and accessible society for all people with disabilities. Aff. of Ami Hyten, Ex. 4, at ¶ 5. The Center invests a significant portion of its budget to assisting those with disabilities in successfully navigating the voting process. *Id.* ¶ 6. Since its inception, the Center has worked to ensure such individuals have access to advance voting and to help alleviate other voting-related obstacles, including by providing official election materials produced by the State. *Id.* ¶¶ 7-8. The Center has a robust voter registration, education, and outreach program; for more than 40 years, every public event hosted by the Center has included voter registration and education activities. *Id.* at 9. During these events, its representatives consistently promote their message of political participation. *Id.*; Aff. of Gabriel Mullen, Ex. 7, at ¶¶ 6, 17.

During the last election cycle, to increase voter registration and participation among voters with disabilities, the Center generated a mailing list of eligible voters in Topeka who were not yet registered, sent them letters with instructions and registration forms, and followed up by phone to offer individualized support. Hyten Aff. ¶¶ 10, 12. In August, September, and October, the Center supported 488 Kansans with disabilities and registered 96 new voters. *Id.* ¶ 11. Due to the Center's

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work, an 85-year-old Kansan registered to vote for the first time in his life. *Id.* In 2020, even as the pandemic raged on, the Center dedicated more than 350 staff hours to voter registration and education. *Id.* ¶¶ 13-14.

B. Immediately following the successful 2020 election, the Legislature rushed to enact policies that would depress political participation.

Despite the significant challenges presented by the pandemic, Kansas's 2020 general election was a resounding success. The state saw one of its highest rates of voter participation in its history, with nearly 71 percent of registered voters casting a ballot. Ex. 8, at 2. Over 450,000 voters used the mail-in advance ballot option—the largest number since the state enacted advance voting 25 years ago—and over 350,000 voted advance ballots in person. *Id.* at 3. Crucial to this success was what Secretary Schwab called a "surge in mail ballots," which was facilitated by the efforts of Plaintiffs and other organizations who helped voters navigate this process. Exs. 9, 10. As Kansas's Deputy Assistant Secretary of State confirmed, "Kansas voters just did a tremendous job in exercising their right to vote" in 2020, with Kansas boasting "a record number of ballots cast, a record number of registered voters, [and] a record number of advance by mail ballots—both sent and returned." Ex. 33.

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Kansas's election officials agreed the election was free from fraud and voter interference. The Secretary's office confirmed that "Kansas did not experience any widespread, systemic issues with voter fraud, intimidation, irregularities or voting problems," and that they were "very pleased with how the election has gone up to this point." Ex. 34. Following the statewide post-election audit, the State Board of Canvassers further confirmed that "foul play, of any kind, was not found." Ex. 8, at 4. And roughly a month later, the Secretary told the Legislature he did not "know how

Kansas could do it better" and that the State did not "need any drastic change in our election law." Ex. 38, at 11:48-12:18; Ex. 39, at 16:55-17:18.[1]

Nonetheless, when the 2021 legislative session began, there was a rush to enact laws that would reduce political participation in Kansas. HB 2183 was introduced in the House on January 28, 2021, as a measure to restrict the authority of the executive and judicial branches to modify election procedures. *See* HB 2183 (as introduced), Ex. 11. The bill passed the House by a vote of 84 to 39 and was transmitted to the Senate for consideration. Ex. 12, at 367; Ex. 13. Once there, it quickly became unrecognizable, as the Federal and State Affairs Committee used last-minute amendments and procedural maneuvers to remake it into broadly restrictive omnibus election legislation. The Committee performed a "gut-and-go," stripping the bill of the original House language and inserting entirely different proposals, many of which had previously failed or stalled when the legislation was considered in the House, or when similar legislation was considered in previous sessions. *See* Ex. 21, at 7-8; Ex. 14, at 1; Ex. 15.

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The Voter Education Restriction was inserted into HB 2183 as a Senate floor amendment on March 31, 2021 by Senator Caryn Tyson. Ex. 16; Ex. 17, at 1:6-7:4. It created a new sweeping crime entitled "[f]alse representation of an election official," designated as a level-7 nonperson felony, which carries a fine of up to $100,000 and up to 17 months in prison. HB 2183 New § 3(a), (b); *see* K.S.A. 21-6611, 21-6804. The Restriction defines "false representation of an election official" by listing three forms of conduct, located in sections (a)(1), (a)(2), and (a)(3). Subsection (a)(1), which Plaintiffs do not challenge, states that one engages in false representation of an election official by "[r]epresenting oneself as an election official." Subsections (a)(2) and (a)(3),

[1] Plaintiffs are providing the Court with electronic files for legislative hearing recordings, including Exhibits 38 and 39. The hearings are also available to the public on the Kansas Legislature's website at the links provided in Plaintiffs' Exhibit List.

however, dramatically expand the criminalized conduct by looking to the *subjective perspective* of someone *viewing* a person's conduct. Specifically, subsection (a)(2) adds to the definition of false representation of an election official "engaging in conduct that *gives the appearance of being an election official*," and subsection (a)(3) adds "engaging in conduct that *would cause another person to believe* a person engaging in such conduct is an election official." *Id.* § 3(a)(2), (a)(3) (emphases added).[2]

Because it was added "on the fly on the floor," there was no substantive hearing on the Restriction and no ability to evaluate "the relative [felony] penalty versus other penalties . . . and understand the impact." Ex. 17, at 3:5-17. In fact, when Senator Tyson offered the Restriction, neither she nor anyone else suggested there had been any incident in which Kansans had been misled into believing a private citizen was an election official. *See id.* Nor did anyone explain why the Restriction was necessary given that existing Kansas law already made it a misdemeanor for anyone to falsely impersonate "a public officer" or "public employee" with "knowledge that such representation is false." *See id.*; K.S.A. 21-5917.

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The bill then moved to Conference, where in the Committee on Senate Federal and State Affairs and House Elections, Representative Vic Miller specifically objected to the Restriction, saying it was like "swinging at a baseball with a Wiffle bat." Ex. 18, at 6:6-7. He argued that it was broad enough to encompass registration and education activities by the Kansas League and organizations like it, calling it "vague[]" and noting it created constitutional concerns. *Id.* at 4:21-5:7. He suggested that the Senate's representatives on the Conference Committee agree to remove the language to avoid constitutional problems. *Id.* at 5:8-12. But Senator Alley would not agree,

[2] An "election official" for these purposes is "the secretary of state, or any employee thereof, any county election commissioner or county clerk, or any employee thereof, or any other person employed by any county election office." *Id.* § 3(c).

and HB 2183, with the Voter Education Restriction intact, was reported out of Conference and approved by both chambers on a nearly party line vote the same day, April 8. Ex. 23, at 802-03; Ex. 24, at 695-96. All but four of the present Republican Representatives, and all present Republican Senators voted for the bill. *See id.*

Recognizing the burdens HB 2183 would impose and the lack of any justification, the Governor vetoed the bill on April 23. She explained: "Although Kansans have cast millions of ballots over the last decade, there remains no evidence of significant voter fraud in Kansas. This bill is a solution to a problem that doesn't exist. It is designed to disenfranchise Kansans, making it difficult for them to participate in the democratic process, not to stop voter fraud." Ex. 25. The Legislature overrode the Governor's veto on May 3. Ex. 26, at 1270-71; Ex. 27, at 1103. HB 2183, with its Voter Education Restriction, is scheduled to take effect on July 1, 2021.

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C. The Voter Education Restriction will severely restrict Plaintiffs' ability to engage in political activity.

The Voter Education Restriction, with its threat of felony prosecution, would have an enormous and immediate chilling effect on the Plaintiffs' protected political activities. Plaintiffs are already engaging in robust voter registration, education, and engagement efforts this summer and have plans to continue them in advance of this year's August and November local elections. Hammet Aff. ¶¶ 10, 25 (describing Loud Light's "big plans for its civic advocacy and voter engagement in 2021," including its summer fellowship program, which has already started); Hyten Aff. ¶¶ 21-25 (discussing planned events for July 17 and beyond); Mullen Aff. ¶¶ 8-11 (same); Lightcap Aff. ¶¶ 18-22 (discussing the League's plans to "redoubl[e] its efforts for the 2021 election cycle" due to its emphasis on the importance of local elections and describing voter registration events that are already taking place); Smith Aff. ¶¶ 19, 21 (describing "robust" plans for activities involving voter education and registration and describing voter registration events

that are already taking place). If the Restriction goes into effect, Plaintiffs will largely be unable to continue these activities due to the significant risk that *someone* might think their employees, members, or volunteers are, or appear to be, election officials. *See* Hammet Aff. ¶¶ 16-28 (explaining that the Restriction has thrown Loud Light's plans "into disarray" and may cause Loud Light to "become completely inoperable as of July 1"); Hyten Aff. ¶¶ 17-20 (explaining that "anyone who has worked on voter education activities long enough knows, voters may innocently mistake people who conduct the work we conduct as election officials," and because the Center cannot "know where the cut-off point is for being charged with this crime," it has put its "voter education activities [] effectively on hold"); Lightcap Aff. ¶¶ 23-27 (explaining that the risk of prosecution under the Restriction will likely lead the League's board to "vote to curtail much of this summer and fall's activities"); Smith Aff. ¶¶ 17-18, 20-25 (explaining that, because Kansas Appleseed "has no way of knowing whether a voter may mistakenly presume that its staff and volunteers are elections officials," it is "actively contemplating canceling or postponing events," and the Restriction "would force Kansas Appleseed to greatly curtail, if not completely halt, our efforts to increase civic participation").

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Despite Plaintiffs' best efforts, "voters innocently mistake people who are knowledgeable about voter registration and election procedures as election officials." Hammet Aff. ¶ 19; *see also* Lightcap Aff. ¶ 24-25; Hyten Aff. ¶¶ 19, 26; Smith Aff. ¶ 18. This occurs because there is substantial overlap between Plaintiffs' activities and conduct engaged in by Kansas election officials. Both actively encourage Kansans to vote, educate them about the voting process and issues and candidates on the ballot, and help them through the voting process. *See* Hyten Aff. ¶¶ 19, 26 (the Center's activities are often associated with election officials' activities); Hammet Aff. ¶ 18 ("[A]lmost all of [the] activities [that Loud Light engages in to achieve its mission] could

potentially be mistaken for the kinds of activity that an election official may perform."); Aff. of Jameson Shew, Ex. 5 at ¶ 11 (explaining that the League's volunteers "do work that many might perceive as falling under the purview of my office"); Aff. of Paris Raite, Ex. 6, at ¶ 10 (explaining that the Restriction covers "many of the activities that I have participated in with Loud Light," and "particularly voter education and registration events"); *see also* Lightcap Aff. ¶ 25.

For example, Johnson County advertises its voting and election-related speaking events, works with students to advance civic engagement, and holds "[f]airs and events to promote the engagement of citizens," Ex. 30, much like Plaintiffs do. Shawnee, Sedgwick, and Douglas Counties also do the same. Exs. 28, 29, 31. In fact, Sedgwick County hosted a voter registration drive at a coffee shop just days ago. Ex. 31. What is more, some Kansas counties *work with* organizations, like Plaintiffs, to engage in voter registration drives and education efforts, making it even more difficult for Plaintiffs to ensure they are never perceived as being affiliated with county officials. *See* Shew Aff. ¶ 6-9; *see also, e.g.*, Ex. 32 (listing various "Outposts," including local advocacy organizations, where Sedgwick County provides registration forms for voter registration activities). Shawnee County, for example, sends official materials and supplies to organizations holding voter registration drives to reassure voters that the organization's activities are legitimate and trustworthy. Hammet Aff. ¶ 22. Douglas County does the same, where the county clerk "work[s] hand-in-hand with the Douglas County chapter of the League" to register and educate voters. Shew Aff. ¶¶ 6-9. In fact, in Douglas County the League is responsible for "the majority of voter registration drives in the county," and the clerk's office often refers voters with questions about registration directly to the League's capable volunteers. *Id.* ¶¶ 6, 9. These partnerships are critical to county efforts to ensure that smooth and secure elections take place. *Id.*

These circumstances create a serious risk that Kansans will mistake Plaintiffs' employees

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and volunteers for election officials even though Plaintiffs and their employees and volunteers have no such intent and are not attempting to represent themselves as such. *Id.*; Lightcap Aff. ¶ 24-25; Hyten Aff. ¶¶ 19, 26; Mullen Aff. ¶ 14; Smith Aff. ¶¶ 17-18. In fact, this has happened to Loud Light's founder while working at an event in Pittsburg in 2018, even though Hammet did nothing to suggest he was a county representative, and even where he clearly represented himself as a private, non-governmental actor. Hammet Aff. ¶¶ 19-20; s*ee also* Smith Aff. ¶ 18 (discussing similar incidents).

Because Plaintiffs cannot ensure they will never be perceived as being an election official (and past experiences indicate that such misapprehensions will happen, no matter what they do), should the Restriction go into effect on July 1, they will be forced to significantly curtail, and in some instances shut down, the extensive voter-registration, education, and engagement operations they have planned for this summer. *See* Hyten Aff. ¶¶ 17-20; Lightcap Aff. ¶¶ 23-27; Smith Aff. ¶¶ 19-25; Hammet Aff. ¶¶ 16-28. And even if they tried to continue operating these activities, the organizations would have access to a much smaller universe of volunteers willing to put themselves in legal jeopardy, significantly reducing the volume and reach of their message promoting political participation. *See* Hammet Aff. ¶ 18 (the Restriction "will dissuade people form working with Loud Light," "significantly reduc[ing] Loud Light's ability to convey its message"); Smith Aff. ¶ 23 (same); Hyten Aff. ¶ 27 (same); Shew ¶ 13 (same); Raite Aff. ¶ 13 (same); *see also* Lightcap Aff. ¶ 26.

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III. ARGUMENT

The Court should issue a temporary injunction against the Restriction because (1) there is a "substantial likelihood" Plaintiffs will prevail on the merits of their challenge; (2) there is a "reasonable probability" Plaintiffs will suffer irreparable injury in the absence of an injunction; (3) Plaintiffs have no other "adequate legal remedy, such as damages"; (4) the injury that the

Restriction threatens to impose on Plaintiffs outweighs any injury an injunction would impose on Defendants; and (5) an injunction "will not be against the public interest." *Hodes v. Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 619, 440 P.3d 461 (2019). These factors are particularly salient here, as "[t]he purpose of a temporary injunction is to preserve the status quo until the court can determine whether it should grant a permanent injunction." *Wing v. City of Edwardsville*, 51 Kan. App. 2d 58, 61, 341 P.3d 607 (2014). Plaintiffs have engaged for decades in the activities that the Restriction will curtail, and a temporary injunction would hold the current circumstances in place and permit Plaintiffs to continue performing these vital activities while the Court fully adjudicates their claims.

A. Plaintiffs are substantially likely to prevail on their free-speech claims.

By threatening arbitrary criminal prosecution against those who seek to effect political change, the Voter Education Restriction is fundamentally inconsistent with the principle of free speech. Through their voter education, registration, and engagement activities, Plaintiffs convey their political message that civic engagement and participation is the most effective way of making federal, state, and local government more responsive to its citizenry. If implemented, the Restriction would put Plaintiffs and others who seek to engage in this political activity in an impossible bind: if they continue their work, they risk criminal prosecution triggered by subjective factors outside of their control (*i.e.*, how others might react to their conduct). Because Plaintiffs are understandably unwilling to risk placing their staff, members, and volunteers in this position, the Restriction's implementation will chill their speech and significantly reduce the amount of political speech that occurs in Kansas.

This result violates Section 11 of the Kansas Constitution Bill of Rights and its command that "all persons may freely speak, write or publish their sentiments on all subjects." Indeed, the Restriction is so fundamentally inconsistent with the basic free-speech principles animating

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Section 11 that it violates *three* separate free-speech doctrines. *First*, it restricts and chills core political speech without sufficient justification. *Second*, its reach is vastly overbroad, sweeping into its prohibitions far too much protected speech. *Third*, because Plaintiffs cannot pre-determine when their activity will happen to cross the line into the Restriction's criminal prohibitions, and because the Restriction's language permits and encourages arbitrary and discriminatory enforcement, the Restriction is impermissibly vague. For these reasons, Plaintiffs are substantially likely to prevail in their challenge to the Voter Education Restriction

1. Plaintiffs are substantially likely to succeed in showing the Voter Education Restriction impermissibly regulates and chills core political speech without sufficient justification.

a. Legal Standard

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When a law impermissibly regulates and chills protected political speech by reducing its overall quantity, it violates Section 11 of the Kansas Constitution Bill of Rights. Though the Kansas Supreme Court has not set a specific standard for evaluating such a law, it has explained that Section 11's free-speech protections are "generally . . . coextensive" with those of the First Amendment. *State v. Russell*, 227 Kan. 897, 899, 610 P.2d 1122 (1980); *see also Lingelbach v. Hy-Vee, Inc.*, No. 88,995, 2004 WL 324120, at *4 (Kan. Ct. App. Feb. 20, 2004). In instances like this one, where "a fundamental right is implicated," the Kansas Constitution may provide *more* protection than its federal counterpart. *See Hodes & Nauer*, 309 Kan. at 663-71 (choosing a more rigorous standard of scrutiny than under federal law "because it is our obligation to protect" the intentions of those who drafted and adopted the Kansas Constitution, as well as "the inalienable natural rights of all Kansans"); *see also e.g.*, *W. Va. St. Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) (describing "free speech" as a "fundamental right"). But even under federal law, when laws regulate or threaten core political speech, like the Restriction does here, constitutional protections are at their "zenith." *Meyer v. Grant*, 486 U.S. 414, 416 (1988).

Accordingly, this Court can and should provide the highest level of scrutiny applied by federal courts, including the U.S. Circuit Court for the Tenth Circuit—strict scrutiny—when evaluating Plaintiffs' claim. *See, e.g.*, *Chandler v. City of Arvada*, 292 F.3d 1236, 1241 (10th Cir. 2002) (applying "strict scrutiny" in challenges to laws that restrict "the overall quantum of speech available to the election or voting process."); *see also Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 207 (2002) (Thomas, J., concurring) ("When a State's election law directly regulates core political speech, we have always subjected the challenged restriction to strict scrutiny . . . . [And e]ven where a State's law does not directly regulate core political speech, we have applied strict scrutiny.").[3]

To survive strict scrutiny, a law must serve a "compelling state interest and be narrowly tailored to further that interest." *Hodes & Nauer*, 309 Kan. at 663. A compelling state interest is "one that is not only extremely weighty, possibly urgent, but also rare—much rarer than merely legitimate interests and rarer too than important interests." *Id.* at 664 (internal quotation marks and citation omitted). "[N]arrowly tailored" means there are "no less restrictive alternatives" that would further the identified issue. *State v. Smith*, 57 Kan. App. 2d 312, 322, 452 P.3d 382 (2019). In other words, the Restriction cannot be "overinclusive" by outlawing speech that does not harm the compelling interest. *See, e.g.*, *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 794 (1978)

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[3] The U.S. Supreme Court has not spoken with clarity on what level of scrutiny the First Amendment applies to a law that reduces the total quantity of political speech. There has been some dispute as to whether to apply "strict scrutiny" in all cases, or "exacting scrutiny," and whether those tests are really different in the end. "Exacting scrutiny," applied by the Court (at least in name) in *Meyer*, and then again in *Buckley*, requires a law (1) to be "substantially related to important government interests" (2) that cannot be solved by "less problematic measures." *Buckley*, 525 U.S. at 202, 204. In both cases, the Court invalidated several restrictions that threatened to chill political speech, such as those restricting who can circulate initiative petitions, requiring such individuals to wear identification badges, requiring disclosure of information about petition circulators, and prohibiting certain payment structures for petition circulators.

(invalidating a speech restriction, under a standard more lenient than strict scrutiny, in part due to its "overinclusiveness"). It is Defendants' burden to prove that the Restriction satisfies this test. *Hodes & Nauer*, 309 Kan. at 669.

But even if this Court were to apply the lesser standard of scrutiny applied by some federal courts—exacting scrutiny—the Restriction would still fail. This is because even to survive exacting scrutiny, a law must be "substantially related to important governmental interests," *and* the state must show it cannot use "less problematic measures" in serving that interest." *League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 725 (M.D. Tenn. 2019) (invalidating similar regulations under this standard). Unless the Court finds that the Restriction does not implicate speech *at all*, this standard is the lowest level of scrutiny that could possibly apply.

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b. The Voter Education Restriction will reduce the quantum of core political speech in Kansas.

The Restriction prevents Plaintiffs from engaging in all voter registration, education, and engagement activities—critical aspects of Plaintiffs' core political speech—squarely violating Section 11's guarantee that "all persons may freely speak." Plaintiffs' efforts to register voters, educate them on the election process, and assist them in navigating the process, are political statements communicating the value they attribute to the democratic process, their belief in the capacity of voters to shape the composition and direction of the government, and their motivation to make all levels of government more responsive to all Kansans by diversifying and expanding the electorate. Such activity "involves the type of interactive communication concerning political change that is appropriately described as 'core political speech.'" *Meyer*, 486 U.S. at 421-22; *see also Buckley*, 525 U.S. at 186. As a result, federal courts overwhelmingly recognize that the sort activities Plaintiffs perform constitute protected First Amendment activity. *See League of Women Voters*, 400 F. Supp. 3d at 720 (finding those who educate the public about election laws and

perform registration drives engage in core political speech); *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1158-59 (N.D. Fla. 2012) ("[E]ncouraging others to register to vote . . . is core First Amendment activity."); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 706 (N.D. Ohio 2006) (finding "participation in voter registration implicate[d] a number of both expressive and associational rights which are protected by the First Amendment"); *see also Hernandez v. Woodard*, 714 F. Supp. 963, 973 (N.D. Ill. 1989) ("[R]egulations preventing [group] members from becoming registrars impair their ability effectively to organize and make their voices heard.").

If the Restriction takes effect, Plaintiffs would be forced to significantly curtail, and even shut down, this constitutionally protected activity. *Supra* Section II.C. Given the Restriction's broad, subjective language, Plaintiffs would consistently run the risk that their activities might overlap with the types of activities that election officials also perform, making them appear as if they are election officials, or causing them to be mistaken (however innocently) for election officials. *Id.* Stopping their registration, education, and engagement activities is the only way to prevent this. Thus, "the inevitable effect" of the Restriction is to "limit political conversation and association," *Chandler v. City of Arvada*, 292 F.3d 1236, 1243 (10th Cir. 2002), and "reduc[e] the total quantum of speech on a public issue," *Meyer*, 486 U.S. at 423. This is perhaps most clearly demonstrated in Douglas County, where the League handles the majority of the county's voter registration drives. Shew Aff. ¶ 6. If the League curtails its activities, citizens of the county will lose out on that information and assistance because county officials do not have the resources to provide it. *Id.* ¶¶ 6, 9.

Because the Restriction will reduce the quantity of political speech in Kansas, it must survive "strict scrutiny" to be found constitutional. *Chandler*, 292 F.3d at 1241-42.

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c. The Restriction is not narrowly tailored to serve a compelling state interest.

The Restriction fails because it is not narrowly tailored to any compelling state interest. The Legislature did not provide *any* justification when it inserted the Restriction in HB 2183, much less a compelling one. In fact, the only floor debate on the bill indicated that more discussion and a full hearing was needed. *Supra* Section II.B. The debate in Conference did not provide a clear justification either; instead, it highlighted the exact constitutional concerns that Plaintiffs raise here.[4] *Id.* Accordingly, there is simply no compelling interest at all for the Restriction, much less a narrowly tailored one.

Barring an actual justification, the only conceivable interest motivating the Restriction is the prevention of intentional election-official impersonation. Even assuming that this is a compelling interest, the Restriction is not even close to narrowly tailored to that end. *First*, before passing the Restriction, Kansas *already* criminalized intentional impersonation of an election official, K.S.A. 21-5917, and has done so since 2011. There was no evidence that the additional, broader Restriction was necessary to prohibit that already-criminalized conduct. *Second*, subsection (a)(1) of the Restriction expressly prohibits intentional impersonation of an election official. Given that, there is no reason to *also* criminalize conduct based entirely on the subjective perspectives of others, without regard to the intent of the persons engaged in the activities themselves. As discussed, when Plaintiffs are operating their constitutionally protected voter

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[4] In Conference, Senator Alley did cite a concern about voter confusion resulting from absentee mail ballots sent by third parties to voters in Kansas from out of state as justifying the Voter Education Restriction. *See* Ex. 18, at 7:5-8:11. However, Senator Alley seemed to be confused about which piece of legislation did what. The concern about voter confusion due to third party mailers was specifically addressed in *HB 2332*, which was simultaneously enacted and adds new disclosure requirements for third party mailers (and is not at issue in this Motion). *See* HB 2332, § 3(k). As the full discussion in Conference confirms, there were no justifications raised for the Restriction itself. *See id.*

education, registration, and engagement programs, they are commonly mistaken for governmental employees, despite that Plaintiffs are *not* intending to give that impression. *Supra* Section II.C. The Restriction now risks that this innocent and unavoidable misapprehension by someone else could subject Plaintiffs' members, employees, and volunteers to felony prosecution.

The Restriction is also not narrowly tailored. By shifting the law's focus away from the impersonator's intent and placing it entirely in the subjective perceptions of others, the Restriction effectively prohibits a large amount of political activity *beyond* intentional election-official impersonation. This renders the Restriction "significantly overinclusive" of the goal of preventing intentional election-official impersonation, requiring the conclusion that subsections (a)(2) and (a)(3) of the Restriction are "not narrowly tailored to achieve the State's objective." *Simon & Schuster, Inc. v. Members of the N.Y. St. Crime Victims Bd.*, 502 U.S. 105, 121 (1991). If the state "is concerned that [registration] drives are being done fraudulently . . . it can punish the *fraud* rather than subjecting everyone else to an intrusive prophylactic scheme." *League of Women Voters*, 400 F. Supp. 3d at 732 (emphasis added). Representative Miller explicitly raised this issue during Conference Committee, when he explained that "subsections (2) and (3) . . . get[] pretty murky" and he could "certainly see" where this would cover the types activities that the League and other organizations engage in, Ex. 18, at 2:15-4:5, asking Senator Alley to remove those subsections. *Id.* at 5:8-12. But Senator Alley declined to do so.

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To the extent Defendants might claim an interest in preventing a private actor from *unintentionally* giving the impression of governmental authority, that interest is certainly not compelling. There is nothing inherently concerning about a situation in which someone incorrectly perceives another to have governmental authority. The danger from impersonation lies only when the person being perceived as having governmental authority seeks to leverage his perceived

authority to use a power he does not otherwise have. But where perceived authority is unintentional, there is simply no risk that that the individual will attempt to leverage such authority.

Indeed, that is precisely why Kansas law requires that a police imposter, who could, for example, attempt to gain access to places he otherwise cannot enter, or force others to follow directions they would otherwise ignore, *intentionally* misrepresent himself as having governmental authority to be prosecuted for a *misdemeanor* offense. K.S.A. 21-5917. If the Restriction were to go into effect, however, a person who unintentionally appears to be an election official—wielding far less perceived authority than an intentional police imposter—would now be committing a *felony*. Put simply, when a person *unintentionally* gives another the impression he has governmental authority, there is no concern he will misuse that apparent authority because he does not know he has it.[5]

Finally, even if this Court were to apply the slightly less demanding standard of exacting scrutiny, the Restriction still fails because the Restriction is not "substantially related to important governmental interests" and the state can solve any such interest using "less problematic measures." *Buckley*, 525 U.S. at 202, 204. Other than increasing the criminal penalty, the Restriction adds nothing to existing Kansas law that prevents intentional public-officer impersonation, and it is not substantially related to that end. Whatever interest the government has in preventing the benign scenario of someone *unintentionally* giving an impression of

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[5] To the extent Defendants might argue Kansas has a compelling interest in protecting voters who are more susceptible to accepting incorrect advice from someone if they incorrectly think the person is an election official, Defendants would have to offer actual evidence of this risk. Otherwise, the Restriction's justification would be impermissibly premised on nothing more than a "purely hypothetical" scenario. *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2377 (2018). Moreover, the Restriction is not narrowly tailored to that interest because there are less restrictive ways to serve this concern. *See League of Women Voters*, 400 F. Supp. 3d at 732 ("If Tennessee is concerned [that organizations are misleading voters], it can engage in public educational efforts without relying on a complex and punitive regulatory scheme.").

governmental authority, that interest is not an "important" one. *Id.* And even if it were, there are far "less problematic measures" that Kansas can enact to further this interest. *Id*. at 204.

In sum, Plaintiffs are substantially likely to demonstrate that the Restriction unjustifiably restricts core political speech in violation of Section 11 of the Kansas Constitution Bill of Rights.

2. Plaintiffs are substantially likely to succeed in showing the Voter Education Restriction is unconstitutionally overbroad.

The Voter Education Restriction is separately unconstitutional because its expansive regulatory breadth proscribes an unacceptably large amount of constitutionally protected speech. The overbreadth doctrine is premised on the notion that free-speech "freedoms need breathing space to survive"; "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanction provided by a statute susceptible of application to protected expression." *Gooding v. Wilson*, 405 U.S. 518, 521-22 (1972) (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)). As a result, "government may regulate in the area only with narrow specificity"; speech regulations must "be carefully drawn or be authoritatively construed to punish unprotected speech and not be susceptible of application to protected expression." *Id.* at 522. Plaintiffs' reluctance to continue their constitutionally-protected programs in the face of the Restriction serves as a striking example of what the overbreadth doctrine protects against.

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The Restriction is unconstitutionally overbroad because (1) "protected activity is a significant part of the law's target," and (2) "'there exists no satisfactory method of severing' constitutional applications of the law from unconstitutional ones." *State v. Boettger*, 310 Kan. 800, 804, 450 P.3d 805 (2019) (quoting *State v. Whitesell*, 270 Kan. 259, 270, 13 P.3d 887 (2000)). With respect to the first element, the Restriction "creates a criminal prohibition of alarming breadth," pulling within its prohibitions a vast amount of protected speech. *United States v. Stevens*, 559 U.S. 460, 474 (2010). As explained above, every time Plaintiffs engage in their

protected voter education, registration, or engagement activities they encounter an unavoidable risk that they will violate the Restriction's prohibitions because there is always a chance an observer might mistake them for a state or county employee. *Supra* Section II.C. In essence, "[t]he effect of the [Restriction] is to ban practically every" third-party voter registration, education, or engagement program in the state. *Dissmeyer v. State*, 292 Kan. 37, 42, 249 P.3d 444 (2011). Thus, "protected activity" is, at the very least, a "significant part" of the Restriction's target. *Boettger*, 310 Kan. at 804.

Nor is there a "satisfactory method of severing" the Restriction's "constitutional applications" from its unconstitutional ones. *Id.* Subsections (a)(2) and (a)(3) are expressly expansive, criminalizing *any* "conduct that gives" or "would" give the appearance that the person being observed is an "employee" of the Secretary or a county election commissioner or county clerk. This language cannot be construed narrowly. The only way to do so would be to read into the text a requirement that the person engaging in the conduct *intend* to give the impression that they are an election official. But that would render subsections (a)(2) and (a)(3) redundant of subsection (a)(1), which already criminalizes intentional impersonation of an election official. Because this Court's "function is to interpret legislation, not rewrite it," such a narrow interpretation would go too far. *State v. Beard*, 197 Kan. 275, 278, 416 P.2d 783 (1966). The Restriction therefore is not "readily susceptible" to a construction that would reduce its overbreadth and cannot be saved. *Stevens*, 559 U.S. at 481 (quoting *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 884 (1997)).

Finally, to the extent Defendants might attempt to assure Plaintiffs or this Court that, despite the Restriction's broad language, Kansas would prosecute only its most serious or egregious violations, that effort can play no part in this analysis. As the U.S. Supreme Court has

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explained, even it "would not uphold an unconstitutional statute merely because the Government promised to use it responsibly." *Stevens*, 559 U.S. at 480. And for good reason, it would be a small comfort to Plaintiffs, their staff, members, and volunteers—particularly those who come from marginalized communities who have experienced bias in having their actions inappropriately criminalized, *see* Ex. 37 at 64-65—to simply roll the dice, submitting themselves to highly discretionary charges and prosecution.

Because a significant portion of the Restriction's prohibition impacts protected speech, and because the law is not susceptible to a narrower reading, Plaintiffs are substantially likely to succeed in the claim that the Restriction is overbroad.

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3. Plaintiffs are substantially likely to succeed in showing the Voter Education Restriction is unconstitutionally vague.

The Voter Education Restriction is also unworkably vague. A statute "is [unconstitutionally] vague [when it] leaves the ordinary person to guess as to its meaning and as to whether any particular conduct is criminal or not." *State v. Allen*, 1 Kan. App. 2d 32, 41, 562 P.2d 445 (1977) (citations omitted). The prohibition of vague laws "is a basic principle of due process" under Section 18 of the Kansas Constitution Bill of Rights. *City of Wichita v. Wallace*, 246 Kan. 253, 258, 788 P.2d 270 (1990) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1990)); *see also id.* at 259 ("At its heart the test for vagueness is a commonsense determination of fundamental fairness." (quoting *State v. Kirby*, 222 Kan. 1, 4, 563 P.2d 408 (1977)).

The vagueness doctrine requires the Restriction to satisfy two minimum requirements, neither of which it can meet: (1) it must give a "person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly," and (2) it must not invite "arbitrary and discriminatory enforcement" by failing to provide "explicit standards for those who apply" it. *Id.* at 258-59 (quoting *Grayned*, 408 U.S. at 108). Further, in this case, the Court must

scrutinize the Restriction with a particularly skeptical eye because the Restriction (1) subjects Kansans to criminal penalties, *id.* at 259 ("This court has recognized that the standards of certainty in a statute punishing criminal offense are higher than those depending primarily upon civil sanction for enforcement."); and (2) regulates speech, making "precision of drafting and clarity of purpose" even more "essential," *id.* (quoting *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 217-18 (1975)).

The Restriction cannot satisfy either requirement. With respect to the first, because the Restriction focuses entirely on others' subjective perceptions, it is impossible for Plaintiffs to know when they might be violating it. While Plaintiffs can take steps to try to make it clear that they do not represent the state or a county, so much of their constitutionally protected activity necessarily overlaps with conduct performed by state and counties that it is unlikely they could account for every scenario, or that uninformed voters would distinguish them from election officials anyway. *Supra* Section II.C.

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The Restriction's exclusive focus on others' perceptions of Plaintiffs closely resembles the laws invalidated by the U.S. Supreme Court in *Coates v. City of Cincinnati*, 402 U.S. 611 (1971), and by the Kansas Supreme Court in *State v. Bryan*, 259 Kan. 143, 910 P.2d 212 (1996). In *Coates*, the Supreme Court held that a law making it unlawful for individuals to assemble on public property and engage in conduct that was "annoying to persons passing by" was unconstitutionally vague, explaining that because "[c]onduct that annoys some people does not annoy others," it was impossible for someone to determine whether they were violating the law. 402 U.S. at 611, 614.

Likewise, in *Bryan*, the Kansas Supreme Court invalidated a law outlawing conduct that would "alarm[], annoy[], or harass[]" another person, concluding that the law improperly used a standard focused on the "subjective state of mind of the victim" rather than an objective standard

or one focused on the defendant's intent. 259 Kan. at 147, 155. As the court explained, "[t]he danger in this situation [wa]s obvious": a "victim may be of such a state of mind that conduct which would never annoy, alarm, or harass a reasonable person would seriously annoy, alarm, or harass this victim." *Id.* There, "the defendant would be guilty of stalking, *a felony offense*," even though "a reasonable person in the same situation would not be alarmed, annoyed, or harassed by the defendant's conduct," making it impossible for individuals to determine their compliance with the law. *Id.* (emphasis added). So too here. When Plaintiffs operate their constitutionally protected programs, whether someone happens to mistake Plaintiffs' activity as state- or county-sponsored is out of Plaintiffs' control. Aside from completely halting their engagement in their protected activities (a result the Kansas Constitution certainly does not permit), Plaintiffs have no way of determining whether their activities will violate the Restriction.

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For the same reasons, the Restriction fails the void-for-vagueness doctrine's second requirement that it not invite arbitrary or discriminatory enforcement. Because Plaintiffs' voter-related activities always run a risk of their employees or volunteers being perceived as election officials, the Restriction gives those enforcing it free reign to pick and choose who might be prosecuted under its provisions. In other words, the Restriction presents "a standardless sweep [that] allows policemen, prosecutors and juries to pursue their personal predilections." *Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (quoting *Smith v. Goguen*, 415 U.S. 566, 575 (1974)).

In sum, because it is impossible for Plaintiffs to determine when they are complying with the Restriction and when they are violating it, Plaintiffs are likely to succeed in their claim that the Restriction is unconstitutionally vague.

B. Plaintiffs will suffer irreparable harm without an injunction and no other legal remedies can address this harm.

"The loss of [free-speech] freedoms, for even minimal periods of time, unquestionably

constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) ("When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). The affidavits offered with this Motion confirm this reality: if the Restriction goes into effect on July 1, 2021, Plaintiffs will have to immediately and drastically scale down, and in most cases completely terminate, their voter registration, education, and engagement activities this summer. *See* Hammet Aff. ¶¶ 9, 25-28 ("Loud Light [could] become completely inoperable as of July 1."); Hyten Aff. ¶¶ 17-25 (discussing the Center's plans for events on July 17 and beyond, but explaining that, due to the Restriction, its "voter education activities are effectively on hold"); Lightcap Aff. ¶¶ 21-27 (same); Smith Aff. ¶¶ 20-25 (same).

If this happens, the potential impact that activity would have had on the upcoming election will be forever lost because "once the election occurs, there can be no do-over and no redress." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). Even worse, given that these activities are a core way that Plaintiffs effectuate their missions, the Restriction might cause at least one Plaintiff to cease functioning altogether. Hammet Aff. ¶ 28.

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For these same reasons, Plaintiffs' impending loss of free-speech freedoms cannot be compensated through a "legal remedy, such as damages." *Hodes & Nauser*, 309 Kan. at 619. Violations of free-speech rights are "irreparable"; as such, they cannot be remedied at all, let alone by damages. *Elrod*, 427 U.S. at 373 (emphasis added); *see also Wing v. City of Edwardsville*, 51 Kan. App. 2d 58, 64, 341 P.3d 607 (2014) (holding "damages would not provide adequate compensation for" a "chilling effect on union participation" (citing *Allee v. Medrano*, 416 U.S. 802, 814–15 (1974))). An injunction is necessary.

C. The remaining elements strongly support a temporary injunction.

The harm Plaintiffs will encounter far outweighs any damage to the State. A "threatened

injury to Plaintiffs' constitutionally protected speech outweighs whatever damage [a] preliminary injunction may cause Defendants' inability to enforce what appears to be an unconstitutional statute." *Am. Civil Liberties Union v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999). It is unclear how maintaining the status quo by deferring enforcement of the Restriction will "damage" Defendants at all, particularly given that the law already operates (and would continue to operate) to punish those who would *actually attempt* to intentionally impersonate an election official both in K.S.A. 21-5917, and subsection (a)(1) of Section 3 of HB 2183, which Plaintiffs do not challenge.

Likewise, by issuing an injunction, this Court will be "correcting a violation of the law," an act that "is *in* the public interest." *Wing*, 51 Kan. App. 2d at 66, 341 P.3d 607 (emphasis added). This is particularly so when the Court is "[v]indicating [free-speech] freedoms." *Pac. Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1237 (10th Cir. 2005) (describing such an injunction as "*clearly* in the public interest" (emphasis added)); *see also Johnson*, 194 F.3d at 1163 ("[T]he preliminary injunction will not be adverse to the public interest as it will protect [] free expression."); *Elam Constr., Inc. v. Regional Transp. Dist.*, 129 F.3d 1343, 1347 (10th Cir. 1997) ("The public interest [] favors plaintiffs' assertion of their [free-speech] rights."). In fact, once a court concludes that a challenged statute "unconstitutionally limit[s] free speech," "enjoining [its] enforcement is an appropriate remedy not adverse to the public interest." *Utah Licensed Beverage Ass'n v. Leavitt*, 256 F.3d 1061, 1076 (10th Cir. 2001).

Finally, an injunction would also serve the public interest because Plaintiffs' voter-related activities play a pivotal role in helping Kansans exercise their fundamental right to vote. *See* Shew Aff. ¶ 6 (Douglas County "rel[ies] on outside groups," including the Kansas League, "to do much of the civic engagement work in the community, including almost all of our voter registration

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drives"); Mullen Aff. ¶ 16 ("[M]any voters with disabilities actually rely on the Center to register and to help them sign up for a method of voting that works for them because they are unable to do so without assistance from an advocate they trust to have their best interest in mind—and that's what we do here."). Without an injunction, thousands of Kansans will lose access to the information and assistance that Plaintiffs provide. *See supra* Sections II.A, II.C.

IV. CONCLUSION

The Court should grant Plaintiffs' motion for a temporary injunction and enjoin enforcement of the Voter Education Restriction until the parties reach final judgment in this case.

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Respectfully submitted, this 17th day of June, 2021.

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