

**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.,
TOPEKA INDEPENDENT LIVING RESOURCE
CENTER, CHARLEY CRABTREE, FAYE
HUELSMANN, and PATRICIA LEWTER,

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

AMENDED PETITION

AMENDED PETITION

INTRODUCTION

1. Kansas voters turned out to vote in record-setting numbers in the 2020 general election. Over 1.3 million voters—nearly 71 percent of all registered voters—cast a ballot, making the election one of the highest statewide turnouts Kansas has ever seen. Over 450,000 voted by mail using an advance voting ballot, with another 370,000 submitting advance voting ballots in person—the largest number of advance voters in Kansas in its 25-year history of offering advance voting.

2. Not only did Kansas experience record voter participation in the 2020 election, the election went incredibly smoothly. The Deputy Assistant Secretary of State told the *New York Times* that “Kansas did not experience any widespread, systematic issues with voter fraud, intimidation, irregularities or voting problems,” and the Secretary of State’s office was “very

pleased with how the election has gone.” The Secretary later reiterated this directly to the Kansas State Legislature in testimony in January, in which he stressed that “[he didn’t] know how Kansas could do it better.” Kansas County election officers agreed. The Johnson County Election Commissioner credited the state’s advance voting system for making the election a “historic” success. And the Shawnee County Election Commissioner stated that he was “very happy with the way election day went with the public,” noting specifically that “the public’s made it pretty clear to us that they’re happy with it.”

3. The only people who seemed unhappy with the broad participation of the electorate in the 2020 election were the Republican majority in the Kansas State Legislature. Despite widespread and well-founded objections from voters, local churches, voter education organizations, and civil rights groups, the Legislature quickly moved forward with sweeping legislation—Senate Substitute for House Bill 2183 (“HB 2183”) and House Bill 2332 (“HB 2332”)—that is intended to and will have the effect of making it *harder* for lawful Kansas voters to participate in the state’s elections.

4. Together, HB 2183 and HB 2332 (which were enacted over the Governor’s veto), impose a myriad of unjustifiable and needlessly oppressive roadblocks (the “Challenged Provisions”) that will burden not only voters, elections officials, and organizers, but even good Samaritan friends and neighbors who want to assist their fellow citizens in effectively exercising their most fundamental right. Among other things:

- The Legislature has now made it a crime to assist and educate voters where the assistance could be subjectively perceived as assistance coming from an election official (the “Voter Education Restriction”). Specifically, the Legislature has empowered the State to criminally prosecute anyone who gives assistance to or

educates a voter where the person providing assistance knows that their conduct may “give[] the appearance of being an election official,” or “would cause another person to believe [the] person” is an election official. HB 2183, New Sec. 3 (to be codified at K.S.A. 25-2436). Notably, the law does not require that the person giving the assistance or engaging in the voter education *intends* to impersonate an election official. It is enough that it raises the possibility that another might come to this conclusion. As organizers well know, sometimes, even when they explicitly state that they are not elections officials, voters nevertheless come to the erroneous conclusion. This new criminal provision leaves Kansas citizens and organizers alike to guess as to when and whether their voter assistance and education activities might potentially be misperceived and, if they do not choose to abstain entirely from such activities, undertake them at their own risk. This threatens an enormous range of entirely innocent get-out-the-vote and voter education and assistance measures, without adequate specificity or justification.

- The Legislature has banned all people and organizations, including non-partisan organizations, who are not residents of Kansas from mailing “or caus[ing] to be mailed” mailers that include an application to sign up for an advance voting ballot (the “Advocacy Ban”). HB 2332, Sec. 3 (to be codified at K.S.A. 25-1122(1)(1)). Specifically, the Legislature has imposed a penalty of \$20 *per advance voting application* that is sent from out of state, meaning that any nonresident organization or individual who encourages Kansas voters to sign up for advance voting by including applications in mailers would amass crippling fines for this act of advocacy. Additionally, without any justification, organizations within Kansas will

be barred from partnering with printing and mailing services located outside of the state if they wish to engage in this type of advocacy.

- The Legislature has imposed a new, nonuniform, and standardless statewide signature matching requirement for advance voting ballots sent by mail that ensures the arbitrary disenfranchisement of lawful Kansas voters based on the inexpert and error-prone evaluation of signatures by county elections officials, ill-equipped to accurately identify true signature “mismatches” (the “Signature Rejection Requirement”). HB 2183, Sec. 5 (to be codified at K.S.A. 25-1124(h)). Even if the requirement that ballots with purportedly mismatched signatures were justified by any legitimate purpose, without any standards for enforcement, it guarantees that ballots across the state will be judged on highly differing standards. The requirement is all but certain to lead to higher rates of disenfranchisement of voters who are elderly, disabled, suffer from poor health, are young, or are non-native English speakers, populations who are particularly likely to have greater signature variability and therefore are especially likely to have their properly cast ballots rejected.
- The Legislature has made it a crime to help more than 10 voters deliver their advance voting ballots, suddenly closing off a relied-upon method that countless Kansas voters previously used to ensure their ballots were delivered to elections officials in time to be counted, despite there being no evidence whatsoever that this method has led to the casting or counting of fraudulent ballots (the “Delivery Assistance Ban”). HB 2183, New Sec. 2. This restriction—which applies even when voters identify and authorize a specific individual to return their ballot—

imposes an arbitrary and unjustified restriction on populations who are more likely to rely on such critical assistance, including but not limited to voters with disabilities, voters in group living situations, voters living in rural areas, Native voters on tribal lands, voters with limited access to transportation, and voters who have prohibitive work commitments, school schedules, or family care responsibilities. It also limits, if not altogether wipes out, the ability of organizations to engage in advocacy for voters who rely on their delivery assistance services, infringing on core political speech rights.

5. Together, the Challenged Provisions will make it more difficult for Kansans to vote, targeting in particular the precise voting method—advance voting—that helped Kansas achieve its historic participation in 2020, as well as the critical assistance that organizations like the League of Women Voters of Kansas, Loud Light, Kansas Appleseed Center for Law and Justice, Inc., the Topeka Independent Living Resource Center and numerous other churches, community organizations, and concerned citizens provided to ensure that every Kansan knew how to safely and effectively cast their ballot. These burdens will not fall equally on all Kansas voters. Instead, they will make it far harder for specific communities, namely Kansas’s senior citizens, minorities, young voters, disabled individuals, and rural residents, to cast their ballots.

6. As Governor Kelly explained when vetoing HB 2183 and HB 2332, they “are a solution to a problem that doesn’t exist.” There is no significant evidence of voter fraud in Kansas elections, and these laws achieve no legitimate, much less compelling, state interest. Instead, they erect needlessly complicated and confusing restrictions within the Kansas election code such that certain voters will be unable to cast a ballot and organizations will be deterred from exercising their freedom of speech and association rights. The Kansas Constitution provides broad protections

for its citizens' rights, forbidding precisely these types of infringements on the most fundamental of rights. The Challenged Provisions should be declared invalid and enjoined.

JURISDICTION AND VENUE

7. This is an action for declaratory and injunctive relief authorized by K.S.A. 60-1701, 60-1703 (declaratory relief) and K.S.A. 60-901, 60-902 (injunctive relief). This court has jurisdiction pursuant to K.S.A. 20-301.

8. This Court has personal jurisdiction over Defendants Secretary of State Scott Schwab and Attorney General Derek Schmidt because they are state government officials sued in their official capacity. *See Merriman v. Crompton Corp.*, 146 P.3d 162, 168 (Kan. 2006); *see also* K.S.A. 60-308.

9. Venue is proper before this Court under K.S.A. 60-602(2) because this action seeks an injunction regarding “act[s] done or threatened to be done” by Defendants where they hold official office.

PARTIES

10. Plaintiff League of Women Voters of Kansas (the “League”) is a nonpartisan nonprofit membership organization formed under section 501(c)(4) and section 501(c)(3) of the Internal Revenue Code that encourages informed and active participation in the political process as part of its mission. It is also a non-profit corporation, incorporated under the laws of Kansas.

11. From its roots in the suffragist movement, the League has promoted civic engagement through voting for more than a century in Kansas. It does this by registering thousands of Kansas voters each election cycle, educating Kansans about the voting process—including how to apply for an advance voting ballot and how to advance vote—and providing critical non-partisan information about candidates as well as ballot questions. In most election cycles, these voter engagements are primarily done through in-person interactions such as tabling at local fairs,

grocery stores, or through providing civics instructional programs at Kansas high schools where, among other things, the League encourages 16- and 17-year-old students to register to vote on their 18th birthdays. In addition, League members regularly assist voters by collecting and delivering their advance voting ballots. Through these activities, the League and its members interact directly with voters, encouraging them to participate in elections, conveying their message of political and civic participation, and assuaging any concerns that voters may have about voting.

12. Due to the pandemic, in 2020 the League's voter engagements turned largely virtual or, if done in person, at a social distance. For example, the League worked diligently to engage voters by organizing caravans of decorated cars to parade through communities of under-represented voters honking horns and waving banners encouraging these citizens to vote. Those caravans would promote the League of Women Voters' Education Fund website Vote411.org, which provides a wealth of information to guide voters through the voting process, as well as KSVotes.org, a website managed by an independent nonprofit which allows voters to register and sign up to vote by mail as well as housing educational materials about ballot issues, candidates, and other matters to be decided by popular vote.

13. Based on its tracking of local League organizations and website traffic, the League conservatively estimates that it helped to register more than 2,000 Kansas voters in the 2020 election cycle. Because of the pandemic, the League also redoubled its efforts to get Kansas voters to request and then return their advance ballots. And as mentioned elsewhere, Kansas saw an unprecedented surge in the use of advance ballots, reaching its highest usage in the nearly three decades of use in Kansas. Many of these voters were using advance ballots for the first time and were unfamiliar with how to vote successfully using this method. The League and other organizations' work to help educate them and assist them through this process was critical to

ensuring that they were not disenfranchised along the way as they familiarized themselves with a new method of voting.

14. Several League members also provided direct assistance to voters who were unable to safely return their advance voting ballot by collecting and delivering advance voting ballots. For example, member Charley Crabtree helped nursing home residents in his hometown of Lawrence, Kansas deliver their completed advance voting ballots, collecting and delivering approximately 75 ballots for senior voters in at least ten different nursing homes. The League's and its members' efforts were a critical part of safeguarding Kansans' right to vote during a global pandemic and their actions ensured that, even under such circumstances, the League was able to fulfill its mission of advocating for full civic participation in Kansas.

15. The Challenged Provisions will make it harder, and in some cases impossible, for the League to achieve its mission moving forward. The Voter Education Restriction directly hinders the League's ability to engage in voter education and outreach as activities such as registering voters, educating them about the voting process, or even educating them about candidates, as these may also be activities that election officials engage in and individuals might mistakenly believe that they are election officials when they engage in these activities. Given the risk of heavy criminal penalties, the Voter Education Restriction has significantly chilled the League's and its members' engagement with voters in any of these ways, diminishing their ability to fulfill their mission and to fully exercise their free speech and association rights.

16. As of July 1, the date the Restriction went into effect, the League and its local chapters have had to cancel voter registration drives and events due to fear of prosecution under the Restriction. For example, the Johnson County chapter canceled planned voter registration events at Village Shalom Senior Living Center on July 1 and at Forum Senior Living on July 12.

The Lawrence-Douglas chapter cancelled multiple planned voter registration events, on July 1, July 8, and July 11 at the local Checkers restaurant, as well as events at the public library on July 9, 11, and 12, and a farmer's market on July 10. The Leavenworth chapter cancelled a planned voter registration event at a farmer's market on July 8, and the Manhattan chapter cancelled a voter registration event at an outdoor street festival on July 15. The League and its various chapters have many similar voter engagement events scheduled for future dates, but as long as the Voter Education Restriction is in place, they will be forced to cancel these events.

17. The Signature Rejection Requirement is also harmful to the League's members, many of whom are older and are at significant risk of having their ballots flagged erroneously as having a mismatched signature. The League is also extremely concerned about the impact the Signature Rejection Requirement will have on the broader Kansas electorate, countless of whom will be disenfranchised as the result of inexpert and arbitrary decisions by elections officials ill-suited, ill-equipped, and untrained to be signature matching at all. Study after study has shown that not only are non-experts particularly bad at accurately "matching" signatures (something that is nearly impossible for even an expert to do accurately under the conditions that signatures are "matched" in elections), but that they overwhelmingly misidentify valid signatures as "mismatches." Here, the consequences of that could mean total disenfranchisement. Because of these inevitable consequences, the League will have to expend additional resources, including valuable and limited volunteer time, to develop and execute programs to ensure that eligible voters are educated about and ultimately are not disenfranchised by the Requirement. These are resources that the League would expend on other programs and initiatives but for the passage of the Signature Rejection Requirement.

18. Finally, the League's members have, in multiple instances, collected and returned

dozens of advance ballots—well above the ten-ballot limit. The Delivery Assistance Ban directly impedes their ability to continue to do this, limiting the number of voters they may interact with in this way, and also meaning that they will have to enlist other members, friends, or volunteers to ensure that the same number of ballots are collected in future elections. Moreover, the League is directly harmed by the Ban as well. Because many voters rely on League member assistance with collection and delivery of their ballots, the League will have to expend additional resources to recruit a sufficient number of volunteers to legally collect their ballots without exceeding the ten-ballot limit as well as to educate voters about other ways to return their ballots should the League be unable to meet the voters' needs. These are resources that the League will have to divert from other programs and initiatives. The League brings this suit on behalf of itself as well as its members across Kansas, many of whom will find it more difficult, if not impossible, to cast their ballots and participate in the democratic process if the Challenged Provisions stand.

19. Plaintiff Loud Light is a nonpartisan nonprofit organization formed under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code operating in Kansas whose mission is to engage, educate, and empower individuals from underrepresented populations, and in particular, young voters, to become active in the political process. Loud Light achieves these goals by hosting events on social media, direct person-to-person contact with potential voters, presentations in classrooms on college campuses and online, and sending educational mailers to voters. Loud Light and its members proceed from the fundamental belief that less voter turnout means fewer needs are met within the community. As a result, it focuses on strategies to increase turnout among Kansas's young voters, who have traditionally suffered lower turnout rates. To achieve this goal, Loud Light also runs young voter registration drives, creates informative videos and other multi-media content about how to participate in elections, builds coalitions within the community to

advocate for positive policy changes for youth, and educates Kansans about how to engage the government.

20. For example, in 2020 and in previous election cycles, Loud Light's more than two-dozen student paid fellows, including eight Spanish-speaking fellows, and numerous volunteers encouraged voters to register to vote by implementing direct voter registration tabling on college campuses and in other locations, as well as running phone banking, canvassing, text banking, and other in-person events. In 2020 alone, Loud Light helped to register 9,621 voters, made 12,508 phone calls, sent 466,680 text messages, and mailed 115,775 pieces of mail. Loud Light also worked tirelessly to encourage voters to sign up for advance voting and to educate them on the process. For example, Loud Light produced a widely shared educational video about the advance voting process, "Mail Voting Explained 2020," which was viewed more than 220,000 times online. Loud Light also used its social media platforms to combat misinformation and provide updates to Kansans on rules, deadlines, and other information about the voting process. Loud Light also organizes ballot cure programs, contacting voters whose ballots are challenged by county election officers, including for mismatched signatures, and educating them on how to cure their ballots. Much of Loud Light's efforts focus on voters who election officials have been unable to contact, and many of these voters would not have known about their rejected ballot if it had not been for Loud Lights' contact. All of these efforts are aimed at ensuring that voters are able to register to vote, to cast their ballot, and, most importantly, have it counted. They are critical to Loud Light's ability to achieve its mission and also for it to interact with voters and convey its message of political and civic participation.

21. The Challenged Provisions will make it extraordinarily difficult for Loud Light to continue its voter engagement efforts in the future. The Voter Education Restriction and its threat

of criminal penalties will have a chilling effect on Loud Light's dozens of student fellows and hundreds of volunteers' political speech, as almost all of the activities discussed above could potentially lend themselves to being mistaken for the kinds of activity that an election official may engage in. Indeed, the President of Loud Light, Davis Hammet, has himself been mistaken for an election officer in the past, *not* because he has represented himself as an election officer, but because voters frequently and innocently mistake people who are knowledgeable about voter registration and election procedures as election officials.

22. Since the Voter Education Restriction went into effect, Loud Light has already cancelled or curtailed several voter registration and engagement activities due to fear of prosecution. For example, Loud Light was forced to cancel its plans to register voters as part of its celebration of the 50th Anniversary of the 26th Amendment from July 1 to 3, and also cancelled all of its in-person voter registration events on July 13, which was the date of the registration deadline for the August 3 primary.

23. The Advocacy Ban likewise significantly infringes on Loud Light's ability to exercise its free speech and association, as it limits the ways that it can engage with voters by dictating where the companies it can use to send mailers to voters must be located. As Hammet testified before the Legislature, Loud Light and other organizations will now be unable to engage with out-of-state organizations and companies of their choice to develop and send informational mailers that include advance voting applications in the future. Given the success of advance voting in the 2020 general election, Loud Light would like to be able to send advance ballot applications in future elections using mail vendors who are out of state. The Advocacy Ban prevents them from doing so.

24. Additionally, Loud Light will be significantly burdened by the standardless

Signature Rejection Requirement. Because of the provision, Loud Light will have to expend greater resources educating the public about the lack of standards for signature rejection, and how to avoid its disenfranchising effects. Because counties will now be *required* to reject any signatures that an official believes is not a match—which will necessarily result in a greater number of mismatches, Loud Light will be forced to expend more resources recruiting and training additional staff and volunteers to help voters cure their ballots and combat the disenfranchising effects of county election officials rejecting purportedly mismatched signatures. These are resources that Loud Light would have expended on its other important programs and initiatives.

25. Loud Light brings this suit on its own behalf and on behalf of its constituents across Kansas, many of whom will find it more difficult, if not impossible, to cast their ballots and participate in the democratic process if the Challenged Provisions stand.

26. Plaintiff Kansas Appleseed Center for Law and Justice, Inc. (“Kansas Appleseed”) is a statewide 501(c)(3) nonprofit, nonpartisan advocacy organization dedicated to the belief that Kansans, working together, can build a state full of thriving, inclusive, and just communities. It is also a non-profit corporation incorporated under the laws of Kansas. To accomplish its mission, Kansas Appleseed works with community partners to understand the root causes of problems, support strong grassroots coalitions, advocates for comprehensive solutions so all Kansans can reach their full potential, and educates and engages voters across the state. In particular, Kansas Appleseed’s voter engagement work focuses on voter education and turnout in Southwest and Southeast Kansas where underrepresented populations, including voters experiencing food insecurity, immigrants, and minorities, are not afforded the same access to the ballot as others in Kansas. Kansas Appleseed seeks to increase voter engagement by organizing these communities and educating voters about candidates, issues on the ballot, and ways to vote through direct mailers,

posting and amplifying social media content, text banking, as well as hosting in-person and virtual community relationship-building events. Kansas Appleseed also assists voters in remote and rural areas with returning their completed and sealed advance voting ballots to county election offices that would otherwise be inaccessible to the voter.

27. In 2020, Kansas Appleseed conveyed its message of civic and political participation by interacting with more than 13,000 voters through direct mail, digital communication, text banking, and virtual and in-person training and relationship-building events. It encouraged voters to sign up for advance voting as a means of helping to increase turnout among underrepresented and underserved populations, and sent mailers, including letters educating voters on how to register to vote and about polling locations. Because of these efforts, turnout among Kansas Appleseed's target audience rose by 12 percent in the 2020 elections as compared to the 2016 election. Kansas Appleseed utilized companies in New York and Missouri to develop and send its mailers.

28. The Challenged Provisions burden Kansas Appleseed's efforts to educate and support voters, by interfering with their mission and chilling their ability to engage in political speech. The Voter Education Restriction directly hinders Kansas Appleseed's ability to engage in its voter education and outreach as activities without risking criminal penalties, because they have no way of knowing whether a voter may mistakenly presume they are elections officials given that many of the activities in which they regularly engage may also be the types of activities carried out by elections officials. Given the risk of heavy criminal penalties, Kansas Appleseed is chilled from engaging with voters in any of these ways, diminishing its ability to fulfill its mission and to fully exercise its free speech and association rights.

29. Similarly, Kansas Appleseed is also concerned about the Advocacy Ban, which places Kansas Appleseed at risk of being investigated and charged by the Attorney General if it

mails absentee applications to voters and it continues to use the same out-of-state vendors it currently uses to send them, diminishing its ability to engage in this form of political speech and associate with their constituencies in this way.

30. The Delivery Assistance Ban directly impedes Kansas Appleseed's ability to continue to collect and deliver ballots by limiting the number of voters they may interact with in this way, effectively requiring them to enlist far more volunteers to ensure that the same number of ballots are collected in future elections.

31. Kansas Appleseed also brings this suit on its own behalf and on behalf of its members and constituencies across Kansas, many of whom will find it more difficult, if not impossible, to cast their ballots and participate in the democratic process if the Challenged Provisions stand. Many of the individuals that Kansas Appleseed serves have relied on delivery assistance from the organization to cast their ballot. And the constituencies that Kansas Appleseed serves, as described above, are far more likely to have their ballot rejected due to purportedly mismatched signatures under the Signature Rejection Requirement.

32. Plaintiff Topeka Independent Living Resource Center, Inc. (the "Center"), is a federally-recognized not-for-profit Center for Independent Living operated and governed by people who themselves have disabilities. Its mission is to advocate for justice, equality and essential services for a fully accessible and integrated society for all people with disabilities. Additionally, the federal enacting legislation for the Center requires that it provide services aimed at achieving equal access for individuals with significant disabilities, such as voter registration, voter education, voter support, and voter advocacy. *See* 29 U.S.C. § 796f-4(c)(8)(E). As a disability services organization in Kansas, the Center must also provide voter registration materials and opportunities. *See* 52 U.S.C. § 20506. As a result, for over 40 years, every single public event the

Center has hosted has included voter registration and education. The Center recognizes that access to absentee ballots, permanent absentee ballots, and advance balloting options are critical to increasing voter turnout among individuals with disabilities. As a result, it promotes these forms of voting through its voter education programs and collects and delivers ballots for individuals with disabilities. In fact, in 2020, multiple volunteers affiliated with the Center collected more than 10 ballots in a single election thereby helping numerous Kansans with disabilities effectively cast their ballots and, but for the new laws enacted by the Legislature, would continue to provide this critical assistance to protect the enfranchisement of these voters in the future.

33. The Challenged Provisions will make it harder, and in some cases impossible, for the Center to achieve its mission moving forward. In particular, the Voter Education Restriction directly hinders the Center's ability to engage in its voter education and outreach given the significant threat of criminal prosecution for doing so. The Center, its employees, and its volunteers are chilled from engaging with voters in any number of the ways that they have historically done so, diminishing their ability to fulfill their mission and to fully exercise their free speech and association rights.

34. As of July 1, the date the Restriction went into effect, the Center has been forced to curtail its voter registration and education activities due to fear of prosecution under the provision. Specifically, it is no longer affirmatively offering voter registration or assistance during its intake process. It has also placed a freeze on offering voter registration at its public events, including its annual celebration of the Americans With Disabilities Act, which took place on July 17.

35. Similarly, the Signature Rejection Requirement is also harmful to the Center and its constituency, who are more likely to vote by advance ballot and, as a result, are more likely to be put at risk of signature mismatch and also to face substantial burdens in attempting to cure such

a mismatch due to challenges with transportation and communication with election officials. Because of the Requirement the Center will expend more resources, including limited staff hours, ensuring that people are educated about its disenfranchising effects and how to avoid them, as well as assisting any voters whose ballots are rejected as a result of a signature mismatch. These are resources the Center would expend on its other key services if the Restriction were not in place.

36. Finally, the Center collects and returns dozens of advance ballots—well above the new ten-ballot limit. The Delivery Assistance Ban directly impedes its ability to continue to engage with voters in this manner and operates directly contrary to its goal of assisting as many voters as possible. This not only limits the number of voters that the Center may interact with in this way, but also requires that the Center expend more resources by using staff hours and enlisting additional volunteers in order to attempt to reach and serve the same number of disabled voters who require this type of assistance in future elections. These are resources the Center would expend on its other key services but for the Delivery Assistance Ban.

37. Plaintiff Charley Crabtree is a longtime resident of Lawrence, Kansas in Douglas County, and a member of the League. While Crabtree engages with the League in several ways, each election he focuses his voter assistance on helping voters at several nursing homes in Douglas County register to vote and obtain and return advance voting ballots. First, Crabtree supplies the local nursing homes with applications to register to vote and applications for the permanent advance ballot list. Next, once it gets closer to the election date, Crabtree returns to the nursing homes and collects the ballots of those residents who were unable to return their ballots themselves. Each voter votes and seals the ballot prior to giving it to Crabtree. Crabtree then signs and dates the ballot envelope to indicate his assistance, and in every instance, he returns the ballots to the Douglas County clerk the same day, never retaining the ballots overnight. In 2020 alone, Crabtree

collected and returned more than 75 ballots for Douglas County nursing home residents who were unable to return those ballots themselves. Crabtree brings this lawsuit to challenge the constitutionality of the Delivery Assistance Ban, which curtails his ability to return the advance ballots of similar residents of Douglas County, significantly limiting his engagement with voters and his ability to effectively communicate his message of civic participation and engagement, and placing him at risk of prosecution.

38. Plaintiff Faye Huelsmann is a resident of Concordia, Kansas, where she is a Sister of an institute of religious women of the Roman Catholic Church. Sister Huelsmann resides in a group living environment in which many of her Sisters are capable of voting but, for various reasons, such as mobility problems, are unable to return their advance voting ballots. Indeed, administrators and volunteers within her group home must deliver all incoming mail to their Sisters, and similarly must collect their outgoing mail. This necessarily includes their completed, signed mail ballots. Without such assistance, it would be extremely difficult, if not impossible, for these residents to send any mail, including their advance voting ballots. As a result, Sister Huelsmann and her other Sisters are committed to collecting and delivering completed ballots on their behalves. To Sister Huelsmann, the ability to provide ballot delivery assistance is critical to her commitment to building a community of loving, helpful neighbors united by faith in Concordia, and to her efforts to encourage others to exercise their fundamental right to vote. The Delivery Assistance Ban significantly curtails her ability to do this by making it a felony for her to merely provide delivery assistance to more than ten voters. As a result, there are many people in Sister Huelmann's community who will not receive any assistance with returning their ballots, as Sister Huelmann cannot provide it to them without fear of criminal investigation and prosecution. But for the Delivery Assistance Ban, Sister Huelsmann would provide delivery

assistance to more than ten voters in future elections.

39. Plaintiff Patricia Lewter is a resident of Concordia, Kansas, where she is a Sister of an institute of religious women of the Roman Catholic Church and resides in a group home. Sister Lewter is committed to providing ballot delivery assistance to individuals in her community who face obstacles to casting their ballots on their own. To Sister Lewter, the ability to provide ballot delivery assistance is critical to her commitment to building a community of loving, helpful neighbors united by faith in Concordia, and to her efforts to encourage others to exercise their fundamental right to vote. The Delivery Assistance Ban significantly curtails her ability to do this by making it a felony for her to merely provide delivery assistance to more than ten voters. As a result, there are many people in Sister Lewter's community who will not receive any assistance with returning their ballots, as Sister Lewter cannot provide it to them without fear of criminal investigation and prosecution. But for the Delivery Assistance Ban, Sister Lewter would provide delivery assistance to more than ten voters in future elections.

40. Defendant Scott Schwab is the Secretary of State of Kansas (the "Secretary"). The Secretary is the chief election official of the state and is responsible for carrying out the state's election laws. K.S.A. 25-204. He has a mandatory duty to train and provide instruction "for complying with federal and state laws and regulations" to county election officers. K.S.A. 25-124. The Secretary also has specific responsibilities flowing from the Challenged Provisions. He is charged with prosecuting election crimes, including offenses created by those laws. K.S.A. 25-2435(a)(3). He is further responsible for standardizing and providing county election officers with affirmation forms for advance ballots which voters, and anyone who assists them, must sign under penalty of perjury. K.S.A. 25-1122d. He may be served at the Kansas Secretary of State's Office, Memorial Hall, 1st Floor, 120 S.W. 10th Avenue, Topeka, KS 66612-1594.

41. Defendant, Derek Schmidt, is the Attorney General of Kansas. He is responsible for defending the state's laws against constitutional challenges. K.S.A. 75-702. Like the Secretary, the Attorney General is authorized to investigate and prosecute election crimes. K.S.A. 25-2435(a)(2). The Attorney General also has specific responsibilities flowing from HB 2332's Advocacy Ban. HB 2332 mandates that the Attorney General "shall" investigate complaints filed by any individual regarding alleged violations of the Advocacy Ban, and may bring an action against any person he determines has violated the provision. HB 2332, Sec. 3(1)(2). He may be served at the Kansas Attorney General's Office, Memorial Hall, 2nd Floor, 120 S.W. 10th Avenue, Topeka, Kansas 66612-1594.

STATEMENT OF FACTS

I. Kansas's 2020 general election was widely regarded as a resounding success.

42. Despite the significant challenges presented by the COVID-19 pandemic, Kansas saw one of the highest rates of voter participation in its history, with nearly 71 percent of registered voters casting their ballots and making their voices heard.

43. 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."

44. Likewise, over 450,000 Kansans—the largest number since the state enacted advance voting 25 years ago—voted by mailing an advance ballot, and over 350,000 voted advance ballots in person.

45. Kansas's success in 2020 was not by chance. As the Secretary explained to the Kansas House of Representatives, "Unlike many states which struggled to implement mail balloting for the first time, Kansas's election system has 25 years of experience with mail ballots

and has developed the institutional knowledge, procedures, and infrastructure to securely process the anticipated increase in mail ballot use at the general election. The Kansas election system's ability to handle the surge in mail ballots in the 2020 election demonstrates the election system's capabilities."

46. Moreover, advocates and organizers from organizations like the League, Loud Light, Kansas Appleseed, the Center, and numerous other churches, community organizations, and concerned citizens worked tirelessly to educate Kansas voters on how to register to vote, apply for and vote by advance ballot, vote in person, and cure any ballots that were rejected for signature issues, as well as to assist them with collection and delivery of their voted, sealed advance ballots. These efforts reached thousands of voters who would otherwise have been disenfranchised and contributed to Kansas' historic voter turnout.

47. The result was not just tremendous voter participation, election officials uniformly agree it was also a safe and secure election free from fraud.

48. The Secretary has confirmed that "Kansas did not experience any widespread, systematic issues with voter fraud, intimidation, irregularities or voting problems" to multiple newspapers.

49. And after the state completed its post-election audit of every ballot in all 105 counties, the Kansas State Board of Canvassers reported that "all votes have been accounted for and foul play, of any kind, was not found."

50. As the Secretary explained to the Legislature in January: "I don't know how Kansas could do it better." "We don't need a drastic change in our election law."

II. Without justification, the Legislature passed a sweeping set of voting restrictions that will impede access to the franchise and chill critical voter assistance.

51. Nevertheless, as soon as the 2021 legislative session convened, Republicans in the

Legislature moved swiftly to introduce several bills that severely restrict access to the franchise and chill voter education and assistance in myriad ways.

52. The justifications for these revisions to Kansas's elections laws after they had just resulted in record-setting voter participation in an election that was lauded as extremely secure were few and far between.

53. In most instances, the Legislature relied on little more than vague references to concerns about elections integrity or fraud that was rumored to have occurred in other states. Yet, no legislator pointed to even a *single* instance of fraud precipitating the need for these drastic changes.

54. As Democratic Senator Ethan Corson put it, "we keep hearing these vague things of I heard this there, somebody whispered in my ear this, somebody told me that they were concerned about that." Yet "we don't have any actual proof."

55. Even those who supported the bill admitted as much. For instance, Republican Senator Larry Alley conceded, the Challenged Provisions were concerned with "not what did happen, the issue is what *could* happen."

56. Throughout the consideration of the suppressive bills, the Republicans seeking to move the legislation repeatedly acknowledged and agreed that Kansas elections are "fair, safe and secure," that Kansas "ha[s] good election laws, and there are no "serious problems within Kansas."

57. Given the lack of justifications, it is no surprise that the procedures that the legislators used to pass the Challenged Provisions were abnormal, allowing the Legislature to avoid serious substantive debate and study on the bills by engaging in a chaotic scramble to consolidate a barrage of restrictive proposals that were raised and defeated as individual bills in the normal course into the laws now at issue here.

58. These procedures were a far cry from the type of thoughtful tailoring that is usually required when affecting fundamental rights.

A. HB 2183's chaotic path to passage.

59. HB 2183 was initially 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. At that time, the bill prohibited the Governor and judiciary from altering election laws and prohibited the Secretary from negotiating election-related lawsuit settlements without approval from the Legislature.

60. In this form, the bill passed the House by a vote of 84 to 39 and was transmitted to the Senate for consideration on March 4.

61. HB 2183 quickly became unrecognizable in the Senate where the Senate Federal and State Affairs Committee began an effort to use last-minute amendments and procedural maneuvers to remake HB 2183 into new, omnibus election legislation.

62. After voting to advance the bill in its nearly-original form, 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 legislative sessions.

63. Republican Mike Senator Peterson was candid about what was going on, explaining that: "We're trying to put [other proposals that were previously introduced in the Senate] in a House bill [that has already passed] so it can get to Conference [Committee]."

64. Once the bill was reconfigured, the original contents of HB 2183 and another bill were then inserted into HB 2332, the other law at issue here.

65. Republican Senators openly acknowledged that this was an unusual procedural

maneuver. Senator Jeff Longbine conceded, “We have not passed out the three bills individually. What we’re going to do is place three bills into one bill and then pass that bill out favorably.” He admitted that this meant that the Legislature was, “now voting for all three of these bills instead of individually.”

66. Ultimately, the final form of HB 2183 included provisions from several other bills as well as largely unvetted floor amendments that skirted the committee process, all of which had been met with opposition and were supported by little justification. The pertinent Challenged Provisions of HB 2183 are discussed below.

67. ***Voter Education Restriction.*** Added to HB 2183 as a floor amendment during a meeting of the Committee of the Whole on March 31, the Voter Education Restriction creates a new level 7, nonperson felony offense called “false representation of an election official.” New Sec. 3(a).

68. While the name of the crime appears reasonable enough, the definition of the crime is anything but.

69. HB 2183 sets forth a sweeping definition of false representation, providing not only that anyone who knowingly “[r]epresent[s] oneself as an election official” is subject to prosecution, but also that anyone who “(2) engag[es] in conduct that *gives the appearance of being an election official*; or (3) engag[es] in conduct that would *cause another person to believe a person engaging in such conduct* is an election official,” is also subject to criminal penalties. New Sec. 3(a)(1)-(3).

70. It defines election official as “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.” New Sec. 3(c).

71. No Senator provided any examples of election official impersonation necessitating the creation of the new crime, nor was any definition or limiting language provided to curb the expansive reach of the offending conduct.

72. Likewise, no Senator indicated why Kansas's existing crime for "false impersonation" of a government official, which is carefully limited to "representing oneself to be a public officer" or "public employee," with "knowledge that such representation is false," K.S.A. 21-5917, and carries only a misdemeanor penalty, was not sufficient to address the targeted conduct. *Id.*

73. ***Signature Rejection Requirement.*** The newly configured HB 2183 also provides that no county election officer shall count "an advance voting ballot transmitted by mail unless the county election officer verifies that the signature of the person on the advance voting ballot envelope matches the signature on file in the county voter registration records, except that verification of the voter's signature shall not be required if a voter has a disability preventing the voter from signing the ballot or preventing the voter from having a signature consistent with such voter's registration form." Sec. 5(h).

74. The law specifies that "[s]ignature verification may occur by electronic device or by human inspection," *id.*, leaving the method and standard for verification up to the discretion each of the 105 Kansas counties.

75. Ironically, some Senators attempted to justify passing the Signature Rejection Requirement due to a need for uniformity amongst counties, some of which had already been engaging in signature matching of advance ballots and others which had not.

76. But no one provided any evidence of fraud or other issues that would support requiring signature matching in *any* of the counties, much less statewide. In fact, as Senator Brenda

Dietrich explained in Committee, the very individuals most likely to know if there were problems related to signatures (i.e., county election officers), “[didn’t have] an opportunity to weigh in,” on the bill.

77. Moreover, the Legislature expressly recognized that the standard for determining a “match” was entirely up to the counties, in stark contradiction to any professed need for uniformity. Specifically, when Senator Ware asked during a Federal and State Affairs Committee hearing about the definition of “match,” a staff attorney confirmed for her and the Committee that “there is no statutory definition for a match and so it would fall to common usage and be up to the discretion of the county election officer.”

78. ***Delivery Assistance Ban.*** The final version of HB 2183 also includes a ban on assisting voters with the collection and delivery of their advance ballots. It incorporates language from an earlier Senate bill (SB 292) that was introduced this year to revive a similar House Bill that died in the House Elections Committee during 2020 session (HB 2684) in response to the same concerns that Plaintiffs and others have raised about the impact of restrictions on delivery assistance.

79. Specifically, HB 2183 provides that “[n]o person shall knowingly transmit or deliver an advance voting ballot to the county election officer or polling place on behalf of a voter who is not such person, unless the person submits a written statement accompanying the ballot at the time of ballot delivery to the county election officer or polling place as provided in this section. Any written statement shall be signed by both the voter and the person delivering such ballot and shall be delivered only by such person. The statement shall be on a form prescribed by the secretary of state.” HB 2183, New Sec. 2(a).

80. The bill further imposes an across the board quantitative ban, declaring that, “No

person shall deliver more than ten advance voting ballots on behalf of other voters during an election.”¹ This ban applies regardless of whether the written statement described above is obtained from the voter and submitted when the ballots are delivered.

81. Public opposition to any limitations on ballot collection and delivery—a service that numerous voters used, and several individuals and organizations provided in 2020—was overwhelming, and the justification for the Ban were few.

82. When questioned about the Delivery Assistance Ban on the floor, the Republican Chair of the Federal and State Affairs Committee Senator Alley said that it was needed because there had been “allegations of ballot harvesting” in other states. Crucially, he was not willing to assert that this was an actual problem, just rumor: “I’m not saying they were true, but there were allegations. What we want to do is not have those type of allegations here in Kansas.”

83. Repeatedly, Senator Alley (and others) confirmed that they were not aware of any such problems in Kansas. The best he was able to offer was that, “we’ve always heard that some guy found a box of ballots here in the janitor’s closet,” but even then he immediately admitted, “I don’t have any details. We have heard of it happening, we don’t know if it happened in Kansas.”

84. The same was true of the other Challenged Provisions. Over and over again it was made clear that the laws were not being revised because of actual problems, but simply mere rumors of problems. Rumors, that apparently the legislative majority felt were sufficient to justify making it harder for countless lawful Kansas voters to successfully cast their ballots.

85. Having been fully remade, HB 2183, including the Challenged Provisions, passed during a floor session on March 31, 2021.

¹ The final version of HB 2183 that passed the Senate limited ballot collection to just five ballots; however, in conference committee, a representative from the House proposed changing the five-ballot limit to ten, and it is the ten-ballot limit that was ultimately enacted.

B. HB 2332's unusual path to passage.

86. HB 2332 was initially introduced in the House on February 10, 2021. In its original form, it was deemed a “disclosure bill” by its sponsor, simply specifying certain new necessary requirements and qualifications for organizations and individuals who mail advance ballot application materials to voters in an effort to address “voter confusion” by voters who had received multiple third-party mailers in 2020.²

87. The bill was assigned to the House Elections Committee on February 10, and at the last minute before the House moved it out of Committee, Committee Chair, Republican Representative Blake Carpenter, moved to add new language to HB 2332 to introduce the Advocacy Ban, which would prohibit all nonresidents from “mail[ing] or caus[ing] to be mailed an application for an advance voting ballot.” Sec. 3(l)(1).

88. This Advocacy Ban immediately caused confusion in the Elections Committee. Legislators professed to different interpretations of the provision and expressed their confusion about whether the provision would apply to an organization that uses out-of-state printers.

89. Ultimately, no answers were provided, and the Committee advanced the bill with the Advocacy Ban intact.

90. The bill passed in the House without further discussion by a vote of 86 to 38 on March 3 and was transmitted to the Senate.

² Specifically, the new requirements imposed by HB 2332 state that “[a]ny person who solicits by mail a registered voter to file an application for an advance voting ballot and includes an application for an advance voting ballot in such mailing shall include on the exterior of such mailing, and on each page contained therein, except the application, a clear and conspicuous label in 14-point font or larger that includes: (A) The name of the individual or organization that caused such solicitation to be mailed; (B) if an organization, the name of the president, chief executive officer or executive director of such organization; (C) the address of such individual or organization; and (D) the following statement: ‘Disclosure: This is not a government mailing. It is from a private individual or organization.’” Sec. 3(k).

91. HB 2332 was introduced in the Federal and State Affairs Committee on March 16, with the House sponsor explaining that the Advocacy Ban was added to ensure out-of-state organizations and individuals are altogether “prohibited from, basically, getting involved in Kansas’s elections and trying to mail advance voter applications.”

92. During the Committee hearing, Kansas organizations, including Plaintiffs, raised concerns about the Ban. For example, the President of Loud Light questioned whether the Ban was, “even constitutional? Because, essentially, what it is doing is it blocks Kansas citizens from legally engaging with business with out of state mailing vendors. So, if [an organization] wanted to hire an Oklahoma City vendor to send out this mailer, right now this appears to be illegal and [it] could amass huge fines for that.” He urged Senators to recognize the Advocacy Ban is not a “carefully crafted” solution.

93. Advocacy organizations were not the only ones to caution the Legislature on this issue. In fact, as early as January the Secretary “caution[ed] that the issue was complex and that if [the House Elections Committee] chooses to address the topic it should do so through an interim committee that can fully explore the issue.” No such exploration took place.

94. Instead, HB 2332 was quickly workshopped on March 25 and 26, when the Senate Committee proceeded to engage in another “gut and go” maneuver, adding several other restrictions to the bill before it took its final form.

95. HB 2332 and its Advocacy Ban passed in the Senate by a vote of 28 to 12 on March 31, 2021.

C. Legislative override of the Governor’s veto.

96. After passage, the Challenged Provisions proceeded to Conference Committee on April 8, where they were reconciled, reported out of conference, and approved by both chambers that same day.

97. Both the House and Senate passed the final version of HB 2183 along a nearly party line vote, with all but four of the present Republican Representatives voting for the bill for a final vote of 80 to 42, and all present Republican Senators voting for the bill for a final vote of 27 to 11.

98. The final vote on HB 2332 was similarly party line, with all present Republican Representatives voting yes for a final vote of 83 to 38, and all present Senate Republicans voting in favor of the bill for a final vote of 27 to 11.

99. Both bills were sent to Governor Kelly for her signature.

100. Recognizing the unconstitutional burdens they imposed as well as the lack of any justification given the historic success of Kansas's elections, the Governor exercised her authority under Article 2, Section 14(a) of the Constitution to veto each of the bills on April 23, 2021.

101. 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."

102. The Legislature returned to Topeka on May 3, 2021 and voted to override the Governor's vetoes. HB 2183 went into effect on July 1, 2021, and HB 2332 will go into effect on January 1, 2022.

III. The Challenged Provisions burden the right to vote and chill free speech and association rights.

A. *Voter Education Restriction*

103. The Voter Education Restriction's broad prohibition on "engaging in conduct that gives the appearance of being an election official" or "engaging in conduct that would cause another person to believe a person engaging in such conduct is an election official," and its corresponding criminal penalties (which are punishable by up to 15-17 months in prison), burden

Plaintiffs' ability to engage in nearly all voter education and engagement work.

104. These efforts are key pieces to accomplishing Plaintiffs' missions and are the primary mediums through which Plaintiffs communicate their beliefs in the power and importance of participating in democratic elections, including to the very voters who they communicated with successfully in 2020.

105. Plaintiffs engage in protected political speech and association when they interact with Kansas voters to persuade them to cast their ballots and assist them in registering to vote, obtaining an advance ballot application, submitting an advance ballot, and educating voters on where and how to vote in person. Encouraging voters to participate in the democratic process through this assistance are forms of political speech and expressive conduct inherently tied to Plaintiffs' missions.

106. For example, in 2020, Plaintiff Kansas Appleseed engaged with nearly 14,000 eligible voters to educate them on voter registration, ballot initiatives, and generally encourage and advise them on how and where to cast a ballot. This work had a marked effect on Kansas' 2020 elections: Among the voters that Plaintiffs targeted, turnout rose by 12 percent compared to the 2016 election.

107. Likewise, Plaintiffs Loud Light, the League, and the Center and their members and volunteers have regularly expended significant resources encouraging voters to participate in elections, educating them on how to vote, and registering them to vote.

108. All of these activities directly allowed Plaintiffs to interact with voters and convey their core message of political participation and civic engagement, a message that would have been diminished or wholly stifled if it had not been able to engage with voters in this way.

109. The Voter Education Restriction unduly hinders Plaintiffs from engaging in

virtually all of this activity. This is because the definition of “false representation of an election official” is inherently subjective, as there is no way to know whether a voter who interacts with Plaintiffs will mistakenly believe that they are communicating with election officials. Especially when many of Plaintiffs’ activities overlap with actions that election officials may take, such as educating and encouraging eligible voters to register to vote and working to expand voter turnout through direct voter engagement.

110. 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.” Plaintiffs, too, engage with young voters, hold events to expand political engagement, and generally educate and work to advance civic engagement and increase representation, especially through voter registration and direct voter engagement.

111. And though HB 2183 requires an actor to “knowingly” misrepresent themselves as an election official, the law places the burden on Plaintiffs to convince law enforcement that they have not “knowingly” *appeared* to be election officials or “knowingly” caused *another* to believe they are election officials.

112. Thus, the threat of criminal penalties for virtually any and all of the activities that Plaintiffs engage in deters Plaintiffs, their members, and volunteers from engaging in even the most basic voter education activities for fear of prosecution, stifling their voice, limiting their ability to freely communicate their message and associate with voters, and preventing them from accomplishing their missions.

113. Because HB 2183’s Voter Education Restriction significantly inhibits their protected speech and association rights, it can only be upheld if it is narrowly tailored to serve a compelling state interest. *Buckley v. American Cont’l Law Found., Inc.*, 525 U.S. 182, 192 n.12

(1999). But Kansas has not provided *any* state interest to justify HB 2183's burdens on core political speech and association.

114. Indeed, this challenged provision was added by Senator Caryn Tyson immediately before the final vote as a floor amendment without explanation or debate, eliminating any chance for proponents or opponents to testify on the matter.

115. Even if the Legislature had a justification for enacting the Voter Education Restriction, the provision is not narrowly tailored to any interest, as it attempts to encompass *any kind of action* that Plaintiffs might adopt to engage with and educate voters.

116. This is in stark contrast from the existing crime of "false impersonation" of a government official, which is carefully limited "representing oneself to be a public officer" or "public employee," with "knowledge that such representation is false," K.S.A. 21-5917, and carries only a misdemeanor penalty. *Id.*

117. Thus, under the regime created by HB 2183, a person who might be mistaken for an election official would be liable for a felony, while a person who intentionally represents any other government official is guilty of a misdemeanor. Such criminal penalties no doubt chill core political speech of Plaintiffs, and any other organizations whose mission is to educate voters and encourage them to vote.

B. *The Advocacy Ban*

118. The Advocacy Ban limits Plaintiffs' political speech by prohibiting them from engaging with out-of-state vendors to mail advance voting ballot applications to eligible voters. HB 2332 Sec. 3(1)(1) ("[n]o person shall mail or cause to be mailed an application for an advance voting ballot, unless such person is a resident of this state or is otherwise domiciled in this state").

119. Violating this provision carries heavy liability. Under the new law, any individual may file a complaint in writing with the attorney general alleging a violation of the Advocacy Ban,

and the law specifies that the attorney general must investigate and may file an action against any person found to have violated this subsection.

120. The law also specifies that any person who violates this provision is subject to a civil penalty of \$20, and that each instance in which a person mails an application for an advance voting ballot in violation of this section constitutes a separate violation. Where hundreds of mailers are sent out, this fine can quickly multiply and become substantial.

121. Plaintiffs regularly engage with voters and out-of-state vendors by providing application materials to help voters register to vote by mail. For example, Plaintiff Kansas Appleseed contracts with vendors in Pennsylvania and Missouri to develop and mail postcards to eligible voters in Kansas to start a dialogue about the importance of voting and educate voters on where to find their polling places. Likewise, Plaintiff Loud Light regularly contracts with out-of-state vendors for similar mailers.

122. In doing so, Plaintiffs are able to interact with significantly more voters and to fully express their core message of political and civic engagement. Given the increase in advance voting, Plaintiffs view mailing advance voting applications as an important way to engage with their voters in the future but will be prohibited from doing so by the Advocacy Ban if they use the same cost-effective out-of-state mail vendors that they currently use for other advance ballot mailings.

123. The Advocacy Ban will therefore not only hinder out-of-state organizations from directly engaging in Kansas, it also inhibits Kansas organizations from contracting with out-of-state vendors to engage with Kansas voters when educating them on applying for advance voting.

124. When these very concerns were raised by Loud Light during committee hearings, *see supra* Section II, B, no one could assure them otherwise.

125. HB 2332 restricts Plaintiffs' core political speech and can only be upheld if it is

narrowly tailored to a compelling government interest. *Buckley*, 525 U.S. at 192 n.12; *Meyer v. Grant*, 486 U.S. 414, 421 (1988). Much like the Voter Education Restriction, there is no interest supporting the Advocacy Ban, which was offered with no explanation, other than to keep out-of-state organizations from sending mail to Kansas.

126. Moreover, the Advocacy Ban is not narrowly tailored because it does not include exceptions for Plaintiffs, who must engage in activities prohibited by this provision to accomplish their goals.

C. Signature Rejection Requirement

127. HB 2183 imposes a statewide Signature Rejection Requirement that by its very terms endorses the use of standardless, nonuniform signature matching procedures across Kansas's 105 counties.

128. The Signature Rejection Requirement is certain to disenfranchise lawful Kansas voters—including many of the senior citizens, minority, and young voters who relied on advance voting in the 2020 general election, as well as Plaintiffs' members and constituents—and subject others to needless additional steps simply to ensure their lawfully cast ballot is counted.

129. Pursuant to the law, county election officials statewide are now *required* to reject any advance ballot transmitted by mail where the county official determines that the signature does not match the signature on file for the voter's registration records.³

130. The law states that signature matching “may occur by electronic device or by human inspection.” HB 2183, Sec. 5(h). No other standards are provided, leaving Kansas's 105 county election officials to choose for themselves the method and process of verification they will

³ To be sure, prior to the Signature Rejection Requirement's passage the Secretary recommended that counties conduct signature matching for ballots in the past, but not all counties did so. The Signature Rejection Requirement means that all counties will now do so and, as a result, that the number of voters' ballots who are incorrectly rejected due to a signature mismatch will increase.

use.

131. But signature verification by laypersons is inherently unreliable, and non-experts are significantly more likely to misidentify authentic signatures as forgeries.

132. In one study, for example, laypersons falsely declared authentic signatures to be inauthentic at least 26 percent of the time, despite having access to six authentic reference signatures for comparison. K. Gummadidala, *Signature authentication by forensic document examiners*, J. Forensic Sci. 46(4), 884-88 (2001).

133. Accurate signature matching is particularly difficult because it is common for handwriting to change. Age, illness, injury, medication, eyesight, alcohol, and drugs; mechanical factors, such as pen type, ink, writing surface and position, and paper quality; and psychological state of mind all can affect a person's handwriting and cause an untrained layperson to misjudge a signature. See, e.g., Tomislav Fotak, et al., *Handwritten Signature Identification Using Basic Concepts of Graph Theory*, 7 WSEAS Transactions on Signal Processing 145 (2011).

134. As one Senator explained on the floor, even she experiences significant fluctuation in her handwriting due to metal plates in her wrist that were inserted after an accident years ago.

135. Voters who are elderly, disabled, suffer from poor health, are young, or are non-native English speakers are particularly likely to have greater signature variability and therefore are especially likely to have their properly cast ballots rejected under Kansas's standardless Signature Rejection Requirements. See Michael P. Caligiuri, et al., *Kinematics of Signature Writing in Healthy Aging*, 59 J. Forensic Sci. 59(4), 1020 (2014), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4077921/> (concluding that the "advanced age of a writer likely contributes to uncertainty and reduced reliability in the document examiner's judgment of authenticity").

136. It is therefore inevitable that Kansas election officials who choose to inspect signatures by hand will erroneously determine voters' signatures are mismatched, leading to wrongful rejection of legitimate ballots and the disenfranchisement hundreds of eligible voters, as well as disparate rates of disenfranchisement across counties.

137. As a result, organizations like Loud Light, who regularly assist voters in curing problems with their advance voting ballots will have to expend more resources that they would have otherwise been able to spend on other important programs and initiatives to do so to ensure that they reach the increased number of individuals whose ballots are all but certain to be rejected.

138. Moreover, the option for machine verification of signatures does not solve this problem. Rather, it only reinforces the variability of signature matching across counties as there is simply no guarantee that cash-strapped counties will employ this expensive equipment.

139. And even the best machines may, in some instances, require human inspection where they are unable to confirm a match, placing voters back in the position of having their signature mismatched by untrained human eyes and their vote discarded.

140. As one federal court found, the absence of any standards or training to differentiate between natural signature variation and signature mismatches—much less the express endorsement of differing standards in Kansas—results in “a crazy quilt of enforcement of the requirement from county to county.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1320 (11th Cir. 2019).

141. While it is true that the law provides that voters with a disability that would prevent them from having a signature consistent with their registration are exempt from the Rejection Requirement, HB 2183, Sec. 5(h), this does not sufficiently ameliorate the burdens imposed by the Signature Rejection Requirement on disabled voters.

142. Advance voting is crucial to many voters with disabilities, particularly those with ambulatory disabilities, making them more likely than the general population to be subject to the Signature Rejection Requirement.

143. Indeed, in 2020, more than 51 percent of voters with disabilities voted by mail, compared to 44 percent of voters who have no disability. Lisa Schur & Douglas Kruse, U.S. Election Assistance Commission, *Disability and Voting in the 2020 Elections: Final Report on Survey Results* tbl. 5 (Feb. 16 2021), <https://www.eac.gov/election-officials/us-election-assistance-commission-study-disability-and-voting-accessibility-2020>.

144. And even well before the pandemic, when all people were more likely to vote by mail, more than 40 percent of individuals with disabilities voted by advanced or absentee ballot, often out of necessity. Daniel P. Tokaji & Ruth Colker, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 *McGeorge L. Rev.* 1015, 1017 (2007); *see also*, e.g., Rabia Belt, *Contemporary Voting Rights Controversies Through the Lens of Disability*, 68 *Stan. L. Rev.* 1491, 1509 (June 2016).

145. While some voters may have a disability that exempts them because it is expressly related to their ability to sign the advance ballot, many others will have disabilities that are unrelated to their handwriting. Nevertheless, just like any other voter, their handwriting may be inconsistent with their registration form for the myriad of reasons noted above, making them subject to a signature mismatch determination. This is especially true where registration signatures may have been obtained years earlier and where counties also rely on inconsistent sources for the signatures to match against.

146. Further, the law does not provide any way for county election officials to know for certain if someone has a disability preventing the voter from having a signature consistent with

their registration form outside of their being listed on the Permanent Advance Voter List, but as the Director of Policy and Advocacy for the Disability Rights Center of Kansas explained to the Legislature while they were considering the provision, “You can’t just assume everyone on the Permanent Advanced List is all the people with disabilities.”

147. And the fact of the matter is that the handwriting of *any* individual can be inconsistent with their registration form.

148. Likewise, it is of little help that the law purports to provide voters with an opportunity to cure any perceived signature mismatches. The law suggests that, when a county election official believes that the signature on a voter’s advanced ballot does not match a signature in the voter’s registration file, that county election officials should attempt to contact and the voter and allow them the opportunity to correct the deficiency before the commencement of the final county canvass.

149. But there is no guarantee that such voters will be actually contacted, and even when they are, virtually every aspect of that contact and any opportunity to cure are left to the discretion of county election officials. County election officials determine how much time voters have to cure perceived mismatches. *See* K.S.A. 25-1124(b), 25-3104 (allowing voters to cure a purported signature mismatch signature until the commencement of the county canvass, which is in the discretion of the county election officer). Also left to their discretion is the manner by which they attempt to notify the voter, and aggressively they attempt do so (*e.g.*, by mail, phone, or email; only once or several times).

150. In other words, whether and how a voter is actually notified, and how long they will have to address an erroneously flagged signature “mismatch” (or even how they may “cure” it), are all subject to significant variance depending on the voter’s place of residence, and how that

jurisdiction manages the process. This only ensures that the rates of signature mismatches will be disparate as voters in some counties will be granted far more time to cure than others.

151. As Loud Light’s ballot cure program in past elections demonstrates, election officials in counties that have previously engaged in signature matching have often failed to contact voters, let alone contact them with sufficient time for those voters to cure any perceived signature mismatch. Such a scheme leaves the fate of many people’s votes to depend on the availability of volunteers who work to help track down voters who would otherwise be disenfranchised.

152. Recognizing these grave issues, courts across the country have struck down Signature Rejection Requirements just like Kansas’s for these same reasons. *See, e.g., Lee*, 915 F.3d at 1320 (“[E]ven if election officials uniformly and expertly judged signatures, rightful ballots still would be rejected just because of the inherent nature of signatures.”); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 206 (D.N.H. 2018) (“As will become evident, this signature-matching process is fundamentally flawed.”); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1339–40 (N.D. Ga. 2018) (enjoining signature match scheme because it violated due process guarantees); *Fla. Democratic Party v. Detzner*, No. 4:16cv607-MW/CAS, 2016 WL 6090943, at *7 (N.D. Fla. Oct. 16, 2016) (ballot rejection rules “ha[ve] categorically disenfranchised thousands of voters arguably for no reason other than they have poor handwriting or their handwriting has changed over time”); *LULAC v. Pate*, No. CVCV056403, 2019 WL 6358335, at *15–17 (Iowa Dist. Ct. Sept. 30, 2019) (rejecting signature match scheme as violation of due process and equal protection).

D. Delivery Assistance Ban

153. The collection and delivery of advance voting ballots was critical to ensuring that Kansans could exercise their right to vote in the 2020 general election.

154. In particular, many of Kansas’s most vulnerable citizens needed ballot collection

and delivery assistance. Those citizens include seniors, minority voters, rural voters in western Kansas where mailboxes are often centrally located in communities far away from individual homes, Native voters living on tribal lands who may have to travel for hours on unpaved roads to access mail services or election offices, and Kansans with limited access to transportation, work commitments, school schedules, and family care responsibilities that would otherwise prevent them from voting.

155. Similarly, Kansas voters who needed to return an advance ballot by mail but could not because there was not enough time for the ballot to arrive in the mail to the county election official before the deadline also utilized such assistance.

156. As the Executive Director of the Disability Rights Center of Kansas testified before the House Elections Committee: “[m]any Kansans with disabilities also have cognitive or other impairments that may make it difficult for them to remember to mail back their advanced ballot so that it arrives at the election office on time,” and restricting ballot collection would “disproportionately harm Kansans with disabilities.”

157. All of these voters voluntarily chose to provide trusted representatives of community organizations like Kansas Appleseed, League members, churches, campaigns, or friends and neighbors with their sealed advance ballots to return to county election offices or other drop-off sites.

158. HB 2183’s ten-ballot limit on returning advance voting ballots and corresponding threat of criminal penalties up to six months of jail and a \$1,000 fine will create barriers for these voters.

159. Indeed, for representatives from organizations like Kansas Appleseed and the Center, members of the League, and members of faith communities who engage in ballot collection

and delivery assistance, they will be limited to collecting just 10 ballots per representative, meaning that they will have to recruit substantially more volunteers to assist voters and, in some cases, may not be able to recruit enough, effectively chilling them and organizations or individuals like them from providing any ballot collection services at all.

160. Likewise, the threat of criminal penalties also dissuades and discourages volunteers from collecting any ballots at all.

161. As a result, voters will have significantly reduced options for returning their ballots and some, particularly those without access to reliable mail or transportation, may not be able to return them at all.

162. The testimony in opposition to placing restrictions on ballot collection made this clear. Plaintiff Sister Huelsmann, who lives in a group home in Concordia, explained to the Senate Committee considering an earlier version of this bill that “many of our sisters who are perfectly capable of voting but would find it very hard to take their own ballot to the Court House or even to a drop box.”

163. And Plaintiff Sister Lewter, who also lives in a group living environment, explained that “[t]here are several of these homes in Concordia. [The Delivery Assistance Ban] would impact several hundred of us without considering that our population is made up of good, kind neighbors who know and love each other.”

164. Rabbi Moti Rieber told the Legislatures that the Delivery Assistance Ban “is a particular concern for communities of faith, because they often collect and deliver ballots from shut-ins, the elderly, the disabled, and others who are restricted in their movements. This bill would therefore prevent communities of faith from fulfilling a vital part of their community support role.”

165. For minority voters, ballot collection is also a way to directly counteract the effects

of systemic discrimination that have resulted in burdens disproportionately carried by minority communities. As Glenda Overstreet Vaughn of the Kansas State Conference of the NAACP submitted in testimony opposing the Delivery Assistance Ban, “[m]any of the voters that are disabled, elderly, and disadvantaged depend on the NAACP, church members, neighbors, friends and family to assist them in turning in their ballots to the election office because they are untrusting of the establishment.”

166. Moreover, the Delivery Assistance Ban imposes this 10-ballot limit for no discernable reason as HB 2183 also provided for the inclusion of a signed, written statements by both the voter and the person collecting the ballot swearing that the voter authorized the person providing assistance to deliver their ballot and that the voter has not been not unduly influenced. Accordingly, any concerns about fraud are already addressed by that statement, and there is simply no reason for a corresponding limit on the number of ballots that can be collected.

167. Accordingly, there is little question the Delivery Assistance Ban will severely burden Kansas voters and organizations alike and will do so for no reason.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violations of Freedom of Speech, Association
(Kan. Const. Bill of Rights §§ 3,11)

168. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

169. Section 3 of the Bill of Rights of the Kansas Constitution promises Kansans “the right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government, or any department thereof, for the redress of grievances.”

170. Section 11 of the Bill of Rights states that “all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights.”

171. The Kansas Supreme Court has recognized that these freedom of speech rights are “secured against abridgment” by the state Constitution. *Unified Sch. Dist. No. 503 v. McKinney*, 236 Kan. 224, 234 (Kan. 1984). These “are among the most fundamental personal rights and liberties of the people.” *Id.*

172. The Kansas Supreme Court “customarily interpret[s]” the provisions of the Kansas Constitution “to echo federal standards.” *Alpha Med. Clinic v. Anderson*, 280 Kan. 903, 920 (2006). As such, Kansas courts have understood these freedom of speech provisions of the state Constitution as analogous to the U.S. Constitution. *State v. Russell*, 227 Kan. 897, 899, 610 P.2d 1122 (Kan. 1980); *see also, e.g., State v. Smith*, 57 Kan. App. 2d 312, 317–18 (2019).

173. Under the First Amendment, an activity aimed at encouraging voters to participate in the political process is considered constitutionally protected “core political speech” because it involves “interactive communication concerning political change.” *Buckley*, 525 U.S. at 186; *Meyer v. Grant*, 486 U.S. 414, 421 (1988).

174. Restrictions involving limitations on core political expression are subject to exacting scrutiny and are valid only if they are “narrowly tailored to serve an overriding state interest.” *Buckley*, 525 U.S. at 186; *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995).

175. Plaintiffs’ efforts to engage Kansas voters and encourage them to participate in the political process by registering them to vote; educating them on how to vote in Kansas; assisting them with applying for and voting by advance ballot, voting in-person, and assisting in the collection and delivery of their completed advance ballots, as well as the conversations and interactions between volunteers and voters surrounding these activities, are the types of interactive

communications concerning political change that are properly understood as core political speech. *Meyer*, 486 U.S. at 421.

176. Whether a voter should register, vote, and ultimately participate in an election is a “matter of societal concern that [Plaintiffs] have a right to discuss publicly without risking criminal sanctions.” *Id.* at 421; *see also Buckley*, 525 U.S. at 186-87.

177. The Voter Education Restriction, Advocacy Ban, and Delivery Assistance Ban all impose severe burdens on Plaintiffs’ core political speech, diminishing their ability to convey their message and further it by engaging more individuals in the political process without any compelling state interest to justify these burdens in violation of Kansas’s Bill of Rights.

178. ***Voter Education Restriction.*** The Voter Education Restriction’s threat of criminal prosecution for “engaging in conduct that gives the appearance of being an election official” or “engaging in conduct that would cause another person to believe a person engaging in such conduct is an election official,” H.B. 2183 New Sec. 3(a)-(b), is a severe burden on Plaintiffs’ free speech and association rights under the Kansas Bill of Rights, as it prevents Plaintiffs from engaging in virtually all forms of political speech, less they risk criminal prosecution and penalties.

179. There is no compelling state interest to justify this burden. Plaintiffs, their members, volunteers, and others like them have engaged in this type of activity without incident for decades, including the election immediately preceding the passage of this restriction.

180. To the extent the state can articulate an interest in the Voter Education Restriction, the language of the provision is not the type of narrowly tailored restriction that can withstand constitutional scrutiny.

181. ***Advocacy Ban.*** The Advocacy Ban’s prohibition of non-Kansas residents sending Kansas voters an advance ballot application is a severe burden on Plaintiffs’ free speech and

association rights under the Kansas Bill of Rights, as it diminishes their ability to engage in core political speech by encouraging their participation in the democratic process, less they risk criminal penalties.

182. There is no compelling state interest to justify this burden. Plaintiffs, their members, volunteers, and others like them have engaged in this type of activity without incident for decades, including the election immediately preceding the passage of this restriction.

183. To the extent the state can articulate an interest in the Advocacy Ban, the language of the provision is not the type of narrowly tailored restriction that can withstand constitutional scrutiny.

184. ***Delivery Assistance Ban.*** The Delivery Assistance Ban's criminal prohibition of the delivery of more than ten advance ballots directly restricts Plaintiffs' core political speech and expressive conduct by severely diminishing their capacity and ability to carry out these activities. This limitation requires Plaintiffs to recruit more volunteers, putting stress on their limited resources and, in some instances, preventing them from effectively carrying out their missions altogether.

185. The threat of criminal penalties for delivering more than ten completed advance ballots is a severe burden on Plaintiffs' free speech and association rights under the Kansas Bill of Rights as it chills volunteer collection and delivery of ballots, further diminishing Plaintiffs' ability to engage in the protected activity and straining their resources.

186. There is no compelling state interest to justify this burden. Plaintiffs, their members, volunteers and others like them have engaged in this type of activity without incident for decades, including the election immediately preceding the passage of this restriction.

187. And the law already includes other protections—specifically, a signed, written

statement by both the voter and the person assisting them, swearing that the voter has requested assistance and that they have not been unduly influenced—which protects against any perceived fraud.

188. To the extent the state can articulate an interest in placing a criminal prohibition on the delivery of more than ten completed advance ballots, the Delivery Assistance Ban is not the type of “narrowly tailored” restriction on core political speech that is required to withstand exacting scrutiny.

SECOND CLAIM FOR RELIEF

Violations of the Right to Vote
(Kan. Const. art. 5, § 1; Bill of Rights §§ 1, 2)

189. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

190. Article 5, Section 1 of the Kansas Constitution guarantees all Kansans a right to vote in the state’s elections.

191. Section 2 of the Bill of Rights of the Kansas Constitution states that “[a]ll political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit.”

192. Section 1 of the Bill of Rights of the Kansas Constitution guarantees equal rights to all Kansans, stating that “[a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.”

193. As the Kansas Supreme Court recently concluded, “section 1 of the Kansas Constitution Bill of Rights acknowledges rights that are distinct from and broader than the United States Constitution and that our framers intended these rights to be judicially protected against

governmental action that does not meet constitutional standards.” *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 624 (2019).

194. The Signature Rejection Requirement and Delivery Assistance Ban violate the fundamental right to vote under the Kansas Constitution.

195. ***Signature Rejection Requirement.*** Here, the Signature Rejection Requirement imposes a severe burden—disenfranchisement—on the right to vote, and it does so disparately, as different voters are subjected to different standards based solely upon where they live.

196. As a result of the Requirement, numerous lawful Kansas voters will be disenfranchised, including Plaintiffs’ members and constituents, or will have to undergo additional steps to ensure that their vote will count.

197. This burden is not outweighed by any legitimate, much less compelling, state interest in the law. There is no indication of any fraud necessitating such a requirement. Moreover, despite the fact, the Legislature recognized that uniformity was a key justification of the statute, the Requirement rejects any uniform standard, ensuring that countless eligible, registered Kansas voters will suffer direct and irreparable injury if the Signature Rejection Requirement is in place.

198. ***Delivery Assistance Ban.*** The Delivery Assistance Ban severely burdens the right to vote by significantly limiting the pool of individuals who can assist voters in delivering their completed ballots to election officials. As fewer people are available to collect and deliver Kansans’ ballots, Kansas will face greater obstacles casting them and some may not be able to cast them at all, including Plaintiffs as well as Plaintiffs’ members and constituents.

199. The Delivery Assistance Ban imposes a particularly severe burden on senior citizens, minority voters, disabled voters, rural voters in western Kansas, Native voters living on tribal land, Kansans with limited access to transportation, those with work commitments, school

schedules, and family care responsibilities who face greater obstacles to casting their ballot and who rely on such assistance to exercise their fundamental right to vote. The Delivery Assistance Ban also imposes a severe burden on voters who need to return an advance ballot by mail but cannot return it because there may not be enough time for the ballot to arrive in the mail to the county election official before the deadline.

200. The Delivery Assistance Ban is unconstitutional because there is no State interest sufficiently compelling to justify the severe restrictions imposed by a criminal prohibition on the delivery of more than ten completed ballots. Indeed, the Legislative record did not reflect any instances of voter fraud, and Legislators admitted that there were no problems with collection of any kind in Kansas. *Supra* Section II, A.

201. To the extent the State can articulate a compelling interest in placing a criminal prohibition on the delivery of more than ten completed ballots, it is not sufficiently tailored to justify the arbitrary limitation imposed by the Delivery Assistance Ban.

THIRD CLAIM FOR RELIEF

Violation of Equal Protection

(Kan. Const. art. 5 § 1; Kan. Const. Bill of Rights §§ 1-2)

202. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

203. Article 5, Section 1 of the Kansas Constitution guarantees all Kansans a right to vote in the state's elections.

204. Section 2 of the Bill of Rights of the Kansas Constitution states that “[a]ll political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit.”

205. Section 1 of the Bill of Rights of the Kansas Constitution guarantees equal rights

to all Kansans, stating that “[a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.” As the Kansas Supreme Court recently concluded, “section 1 of the Kansas Constitution Bill of Rights acknowledges rights that are distinct from and broader than the United States Constitution and that our framers intended these rights to be judicially protected against governmental action that does not meet constitutional standards.” *Hodes & Nauser, MDs, P.A.*, 309 Kan. at 624. Nonetheless, the Kansas Supreme Court does look to federal law as a baseline when interpreting these provisions. *See, e.g., Estes*, No. 04-C-813, 2004 WL 1557930, at *4.

206. Federal principles of equal protection ensure “the equal weight accorded to each vote and the equal dignity owed to each voter.” *Bush v. Gore*, 531 U.S. 98, 104 (2000). Among other things, this requires “specific rules designed to ensure uniform treatment” in order to prevent “arbitrary and disparate treatment to voters” based on which county or local jurisdiction they live in. *Id.* at 106-07.

207. The Signature Rejection Requirement explicitly and arbitrarily endorses multiple, standardless processes for verifying signatures, placing voters across the state’s 105 counties at differing risks of disenfranchisement. By permitting counties to verify signatures “by electronic device or by human inspection,” HB 2183, Sec. 5(h), the law accepts differing treatment of ballots. Not only that, but additionally, once a county chooses between an electronic device or human inspection, the law fails to provide any guidance for the implementation of those processes. Accordingly, different counties will have different procedures for verifying signatures that will result in unequal treatment of ballots across the state.

208. The Signature Rejection Requirement also fails to define which signatures must be rejected. The Requirement mandates that when the signature on a ballot does not “match” the

signature in a voter's registration records, the ballot must be rejected. But there is no statutory definition for "match," so counties must exercise their individual discretion in determining whether a ballot must be rejected. Because counties will interpret "match" in distinct ways, some counties will apply stringent standards for signature verification, while other apply less stringent standards. As a result, a ballot that will be accepted in one county would be rejected in another one, in violation of Kansas's Equal Protection provisions.

FOURTH CLAIM FOR RELIEF

Overbreadth

(Kan. Const. Bill of Rights §§ 3, 11)

209. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

210. An overbroad statute makes conduct punishable which under some circumstances is constitutionally protected from criminal sanctions. *State v. Huffman*, 228 Kan. 186, 189 (1980). A successful overbreadth challenge can be made under the Kansas Constitution when (1) a protected activity is a significant part of a law's target, and (2) there exists no satisfactory method of severing that law's constitutionality from its unconstitutional applications. *Id.*

211. Efforts to register, educate, and encourage Kansas voters to participate in the political process, including assisting in the collection and delivery of their completed advance ballots, as well as the conversations and interactions between volunteers and voters surrounding the submission of ballots, are properly understood as core political speech.

212. As a result, the Voter Education Restriction and Advocacy Ban are both unconstitutionally overbroad as they place an arbitrary restriction on a substantial amount of Plaintiffs' constitutionally protected expression.

213. ***Voter Education Restriction.*** The sweeping language of the Voter Education

Restriction would ban virtually all voter assistance, education, and encouragement activities that Plaintiffs engage in, and the provision provides no way to separate out applications that are constitutional from those that are unconstitutional.

214. **Advocacy Ban.** Though the Advocacy Ban bans out-of-state vendors from mailing absentee applications to Kansans, its sweeping language would also prohibit Plaintiffs from engaging out-of-state vendors from mailing applications, limiting their protected political expression, and the provision provides no way to separate out constitutional applications of the law to such engagements from those that are unconstitutional.

FIFTH CLAIM FOR RELIEF

Void for Vagueness (Kan. Const. Bill of Rts. § 18)

215. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

216. Statutes challenged on vagueness grounds “must clear two distinct hurdles. (1) whether the ordinance gives fair warning to those persons potentially subject to it, and (2) whether the ordinance adequately guards against arbitrary and discriminatory enforcement.” *City of Wichita v. Wallace*, 246 Kan. 253, 259, 788 P.2d 270 (1990). Regarding the first hurdle, a law may not leave persons of common intelligence to guess at its meaning. Regarding the second hurdle, the law must provide explicit standards for those who apply them. *State v. Harris*, 311 Kan. 816, 822 (2020).

217. The Voter Education Restriction and Advocacy Ban are both void for vagueness.

218. **Voter Education Restriction.** The Voter Education Restriction fails to provide adequate notice to persons potentially subject to it, including Plaintiffs and other individuals who engage in conduct that may “give the appearance of being an election official” or “would cause

another person to believe a person engaging in such conduct is an election official.” HB 2183, New Sec. 3(a)(2)-(3).

219. Indeed, it is wholly unclear which activities that Plaintiffs, their members, and volunteers would be subject to for prosecution and criminal penalties under the Restriction.

220. Likewise, the Voter Education Restriction’s broad language gives arbitrary discretion to enforcement officials in determining what constitutes conduct that may “give the appearance of being an election official” or “would cause another person to believe a person engaging in such conduct is an election official,” HB 2183, New Sec. 3(a)(2)-(3), and provides no standards to determine what such broad language means.

221. The risk of arbitrary enforcement is further exacerbated by the expansive definition of “election official,” which includes “any county election commissioner or county clerk, or any employee thereof, or any other person employed by any county election office.” HB 2183, New Sec. 3(c).

222. **Advocacy Ban.** The Advocacy Ban fails to provide adequate notice to persons potentially subject to it, including Plaintiffs and other individuals who contract with out-of-state companies for advance voting application mailings. It is unclear under the language of the law whether Plaintiffs and others within the state may permissibly work at all with nonresident vendors or organizations when they produce advance voting application mailers, and whether all forms of advance voting applications, such as web links or scannable QR codes that lead to online advance voting applications, are prohibited under the provision.

223. Indeed, even the Legislators enacting the provision were confused about what it meant and could not answer even the most basic questions about the extent of its application.

224. Moreover, the provision includes no standards regarding enforcement, opening the

door for arbitrary and discretionary enforcement of the provision.

SIXTH CLAIM FOR RELIEF

Violation of Due Process
(Kan. Const. Bill of Rts. § 18)

225. Plaintiffs hereby re-allege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

226. “The [Kansas] Bill of Rights protects the basic liberties which inure to each person at birth.” *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 636 (2019) (quoting *Kansas Malpractice Victims Coalition v. Bell*, 243 Kan. 333, 341, 757 P.2d 251 (1988) (recognizing that courts have power to ensure due process protections against violations of rights enshrined in the Kansas Bill of Rights)). “[T]he Kansas Constitution affords separate, adequate, and greater rights than the federal Constitution.” *Id.*

227. To determine whether a plaintiff has been denied procedural due process in violation of the Due Process Clause of the Fourteenth Amendment, a court asks first whether a constitutionally protected liberty interest is at stake; if one is, the court then determines whether the procedural protections provided are sufficient by examining “[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *In re Marriage of Hutchison & Wray*, 47 Kan. App. 2d 851, 855 (2012) (same).

228. The nature of the interest at stake in this case—the right to vote and to have that vote counted—is the most precious liberty interest of all because it is preservative of all other basic

civil and political rights. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“Other rights, even the most basic, are illusory if the right to vote is undermined.”); *see* Kan. Const. Bill of Rts. § 2 (“All political power is inherent in the people . . .”).

229. Yet, Kansas’s standardless Signature Rejection Requirement threatens to erroneously and arbitrarily deprive Kansans of that right. Due process requires that Kansans’ advance votes be protected by additional procedures and standards that would help safeguard their right to vote.

230. The Signature Rejection Requirement fails to provide any standard by which county election officials are to evaluate a voter’s ballot. Without uniform standards for rejecting or accepting signatures, the law guarantees that voters will be denied their right their due process rights in violation of the Kansas Bill of Rights.

PRAYER FOR RELIEF

WHEREFORE, this Court should:

- A. Declare that the Voter Education Restriction, HB 2183, New Sec. 3(a)(2)-(3), infringes on Plaintiffs’ fundamental rights to free speech and association in violation of the Kansas Bill of Rights, Sections 3 and 11, is void for vagueness, and is unconstitutionally overbroad, and enjoin Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from enforcing the Voter Education Restriction;
- B. Declare that the Advocacy Ban, HB 2332, Sec. 3(l)(1), infringes on Plaintiffs’ fundamental rights to free speech and association in violation of the Kansas Bill of Rights, Sections 3 and 11, is void for vagueness, and is unconstitutionally overbroad, and enjoin Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from enforcing the Advocacy Ban;
- C. Declare that Kansas’s standardless Signature Rejection Requirement, HB 2183, Sec. 5(h), violates Plaintiffs’ fundamental right to vote under the Kansas Constitution, Article 5, Section 1, and the Kansas Bill of Rights, Sections 1 and 2, and Plaintiffs’ right to due process under the Kansas Constitution, or, alternatively, declare that HB 2183 violates Plaintiffs’ right to equal protection under the Kansas Constitution and enjoin the Secretary, his respective agents, officers, employees,

and successors, and all persons acting in concert with each or any of them, from enforcing the Signature Rejection Requirement;

- D. Declare that the Delivery Assistance Ban, HB 2183, New Sec. 2(a)(B) & (c), infringes on Plaintiffs' free speech and association rights in violation of the Kansas Bill of Rights, Sections 3 and 11, and violates Plaintiffs' fundamental right to vote under the Kansas Constitution, Article 5, Section 1, and the Kansas Bill of Rights, Sections 1 and 2, and enjoin the Delivery Assistance Ban.
- E. Award Plaintiffs their costs, expenses, and reasonable attorneys' fees; and
- F. Grant such other and further relief as the Court deems just, proper and equitable.

Respectfully submitted, this 2nd day of August, 2021.

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