

**IN THE COURT OF APPEALS  
IN THE STATE OF KANSAS**

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

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

Appellate Case No. 2021-CV-124378  
Original Action No. 2021-CV-000299

**REPLY IN SUPPORT OF PLAINTIFFS-APPELLANTS' MOTION TO TRANSFER TO  
SUPREME COURT AND EXPEDITE BRIEFING**

The State's dramatically dismissive rhetoric aside, this case implicates constitutional issues of great magnitude—much more than a simple statutory interpretation disagreement—that require this Court's expeditious attention. Subsections 3(a)(2) and 3(a)(3) of HB 2183 (“the Voter Education Restriction,” or “the Restriction”) have severely hampered many of Plaintiffs-Appellants' voter registration, education, and engagement activities, grinding them to a halt before the August Primary. Those are voter engagement opportunities that Plaintiffs-Appellants will never get back. And the district court's failure to issue a temporary injunction has continued to impose similar injury, resulting in irreparable harm not only to Plaintiffs-Appellants but to the many Kansas voters whose enfranchisement may very well depend on those interactions. Transfer and highly expedited consideration of this appeal is necessary to avoid continuing harms as the

October 12 registration deadline for the November election is now less than two weeks away. This matter is now fully briefed and Plaintiffs-Appellants urge the Court to act as quickly as possible.

**A. The Restriction's Plain Language Criminalizes Plaintiffs-Appellants' Protected Activities**

The State's argument against transfer boils down to a contention that no review is needed because the district court got it right. But the purported correctness of the lower court's decision is not one of the grounds bearing on whether transfer is warranted. *See* K.S.A. 20-3016(a), 20-3017. Plaintiffs-Appellants are not requesting transfer and expedited consideration simply for the Supreme Court to error-correct, but also to obtain a swift and definitive answer on a question of great public interest from the only judicial body that can speak definitively and finally on the matter. *State v. Ryce*, 306 Kan. 682, 694 (2017) (holding Supreme Court to be "the ultimate arbiter of state statutory interpretation"). Only the State's highest court can ensure the important work from which Plaintiffs-Appellants have been forced to curtail since July 1 receives the significant protections that the Kansas Constitution guarantees to such core political speech.

Plaintiffs-Appellants need these assurances because, on a plain reading, the Voter Education Restriction prohibits their efforts. The law proscribes knowing conduct that "gives the appearance of" or "would cause another person to believe [the actor] is an election official." H.B. 2183 § 3(a)(2),(3). As the undisputed evidence submitted to the district court proved, Plaintiffs-Appellants *know* that, despite their best efforts, their activities do often give such an appearance and cause people to so believe—a point which both the district court in its decision and the Defendants-Appellees in their opposition fail to address. In fact, Defendants-Appellees admit the point Plaintiffs-Appellants have been making all along. In their response, they write that, "if an actor chose not to overtly represent himself as the Secretary of State, but still engaged in conduct that he knew would cause others to perceive him to be the Secretary of State, Subsection (a)(1)

would not be implicated but *Subsections (a)(2) or (a)(3) might be.*” Opp. at 8 (emphasis added). That’s precisely the point. The evidence submitted to, and disregarded by, the district court demonstrates that Plaintiffs-Appellants *know* that their voter-engagement conduct causes regular citizens to sometimes mistake them for state elections officials. Mot. at 14-15. Plaintiffs-Appellants’ activities thus implicate the Restriction *on its face*—and, now, by the State’s own admission. Thus, a real and legitimate threat of prosecution of Plaintiffs-Appellants’ members and volunteers continues to prevent them from freely engaging in these protected activities.

**B. This Case Warrants Expedited Consideration**

Because the issues implicated in this case are high-stakes, the Plaintiffs-Appellants have moved expeditiously at every stage of these proceedings. Not only did they submit their reply brief in the district court 10 days before the deadline, but they also informed the district court—in conjunction with the Defendants-Appellees—that it was appropriate to decide the motion on the papers without oral argument. The State incorrectly suggests that Plaintiffs-Appellants somehow caused the district court’s delay in resolving their motion for a temporary injunction by amending their petition after filing their motion. Opp. at 9. But, as indicated *in its own exhibit*, the State itself explicitly recognized that the amended petition was totally immaterial to any issues presented by the motion. Opp. Ex. B ¶ 2 (“Plaintiffs have conferred with counsel for Defendants, and *the parties stipulate* that the Plaintiffs’ Amended Petition does not impact the previously filed TI Motion.” (emphasis added)).

The State presents no reason that transfer should not be promptly granted. The Court should not allow protracted litigation to impede or threaten, much less stop, the Plaintiffs-Appellants’ important work, allowing the looming threat of an unconstitutional statute to indirectly do what even the State acknowledges it could never do directly. *See* Opp. at 6-7.

## CONCLUSION

For the reasons stated herein and in Plaintiffs-Appellants' Motion, the Court should grant transfer and expedite consideration of this motion and the briefing thereafter.

Respectfully submitted, this 1st day of October, 2021.

/s/ Pedro L. Irigonegaray

Pedro L. Irigonegaray (#08079)

Nicole Revenaugh (#25482)

Jason Zavadil (#26808)

J. Bo Turney (#26375)

**IRIGONEGARAY, TURNEY, &  
REVENAUGH LLP**

1535 S.W. 29th Street

Topeka, KS 66611

(785) 267-6115

[pli@plilaw.com](mailto:pli@plilaw.com)

[nicole@itrlaw.com](mailto:nicole@itrlaw.com)

[jason@itrlaw.com](mailto:jason@itrlaw.com)

[bo@itrlaw.com](mailto:bo@itrlaw.com)

*Counsel for Plaintiffs*

Elisabeth C. Frost\*

Henry J. Brewster\*

Tyler L. Bishop\*

Spencer M. McCandless\*

**ELIAS LAW GROUP LLP**

10 G Street NE, Suite 600

Washington, DC 20002

(202) 968-4513

[efrost@elias.law](mailto:efrost@elias.law)

[hbrewster@elias.law](mailto:hbrewster@elias.law)

[tbishop@elias.law](mailto:tbishop@elias.law)

[smccandless@elias.law](mailto:smccandless@elias.law)

*Counsel for Loud Light, Kansas Appleseed  
Center for Law and Justice, and Topeka  
Independent Living Resource Center*

David Anstaett\*

**PERKINS COIE LLP**

33 East Main Street, Suite 201

Madison, WI 53703  
(608) 663-5408  
[danstaett@perkinscoie.com](mailto:danstaett@perkinscoie.com)

*Counsel for League of Women Voters of Kansas*

*\*Pro Hac Vice Applications Forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was electronically transmitted by email on October 1, 2021, to:

Brad Schlozman  
Hinkle Law Firm  
1617 North Waterfron Parkway, Suite 400  
Wichita, KS 67206-6639  
Email: [Bschozman@hinklkw.com](mailto:Bschozman@hinklkw.com)  
Attorney for Appellees Scott Schwab and Derek Schmidt

Scott Schillings  
Hinkle Law Firm  
1617 North Waterfron Parkway, Suite 400  
Wichita, KS 67206-6639  
Email: [Sschillings@hinklkw.com](mailto:Sschillings@hinklkw.com)  
Attorney for Appellees Scott Schwab and Derek Schmidt

Krystle Dalke  
Hinkle Law Firm  
1617 North Waterfron Parkway, Suite 400  
Wichita, KS 67206-6639  
Email: [KDalke@email.com](mailto:KDalke@email.com)  
Attorney for Appellees Scott Schwab and Derek Schmidt

/s/ Pedro L. Irigonegaray

Pedro L. Irigonegaray