

**IN THE STATE COURT OF KANSAS  
DISTRICT COURT OF SHAWNEE COUNTY**

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

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

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The League of Women Voters of Kansas, Loud Light, Kansas Appleseed Center for Law and Justice, Inc., and Topeka Independent Living Resource Center (collectively, “Plaintiffs”) respectfully request that the Court issue a temporary injunction enjoining the enforcement of KSA 25-1124(h) in light of the constitutional infirmities discussed below, in order to protect Plaintiffs’ fundamental rights guaranteed under the Kansas Constitution until such time as this matter can be heard and decided at trial.

## I. INTRODUCTION

In 2021, the Legislature enacted KSA 25-1124(h), for the first time imposing a statewide mandate prohibiting election officials from counting advance ballots unless they have “verifie[d] that the signature of the person on the advance voting ballot envelope matches the signature on file in the county voter registration records” (the “Signature Matching Requirement” or “Requirement”). *Id.* Non-experts are notoriously bad at signature matching, prone in particular to concluding, wrongly, that valid signatures are mismatches. Yet, the law includes no meaningful safeguards to guard against this inevitability and protect lawful voters’ ballots from being erroneously rejected—and the voters disenfranchised—as a result. *Id.* It does not provide any guarantee that voters whose ballots are identified for rejection due to a perceived signature mismatch will have a meaningful opportunity to “cure” those ballots (i.e., by confirming that they did in fact cast them before they are rejected). *See id.* While counties must “attempt” to contact voters to offer an opportunity to cure, many will not find out that their ballot has been rejected until it is too late. There is nothing in the law to ensure that it is enforced consistently across the state, and the Secretary of State has thus far failed to provide any guidance to counties about how to implement the Requirement. He has also failed to implement or require any training for the local officials whose judgment calls about whether a signature “matches” the voter signature on file will effectively decide whether Kansans will have their fundamental right to vote honored or denied.

In other words, unless enjoined, Kansas's new, standardless Signature Matching Requirement will operate to disenfranchise lawful voters who have done everything right, but who have the bad luck of having their ballots reviewed by election officials unequipped to reliably or accurately determine whether the signature on their ballot is legitimate or fraudulent. And, the Requirement will do so despite the complete lack of any evidence that absentee ballot fraud is an actual problem in Kansas, which was the purported rationale that necessitated this restrictive measure. This is not speculation. Already, lawful voters have been disenfranchised as a result of mistakes made by county election officers in counties that conducted signature matching in previous elections; the Signature Matching Requirement guarantees that many more Kansans will suffer the same harm in future elections. Moreover, the pool of voters whose rights are threatened is significant: Kansas allows any lawful voter to vote using an advance ballot and, in the 2020 general election, more than 450,000 used this method to cast their ballots by mail.

The Kansas Supreme Court has recognized that voting is the "bed-rock" of our republic. *Moore v. Shanahan*, 207 Kan. 645, 649, 486 P.2d 506, 511 (1971). Indeed, "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Plaintiffs filed this action in June 2021, a month before the Requirement went into effect. At the time, there appeared to be sufficient time to litigate this matter to judgment before the 2022 elections. However, this case has progressed slowly, with Defendants seeking an extension to file their reply in support of their motion to dismiss and then raising a new argument for the first time in that reply, necessitating Plaintiffs' motion to strike the new argument. Both motions are still pending. The Court denied Plaintiff's request to set this matter for case management and indicated it would contact the parties



regarding further proceedings. As a result, it has become necessary to seek temporary injunctive relief to safeguard the rights of Kansas voters in advance of the coming primary and general elections, which will be the highest turnout elections—by far—since the Requirement was enacted. The harm threatening Plaintiffs’ and countless other Kansans’ fundamental rights to vote, to equal protection, and to due process under the Kansas Constitution is concrete and imminent and is harm that, once done, cannot be undone. *See, e.g., Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (“[T]here can be no ‘do-over’ or redress of a denial of the right to vote after an election.” (citation omitted)). Plaintiffs respectfully request that the Court grant the instant motion.

## II. STATEMENT OF FACTS

### A. The Kansas Legislature passed the Signature Matching Requirement without examining its impact or tailoring the provision to standardize enforcement.

At the outset of the 2021–22 Legislative Session, the Secretary declared during testimony before the Legislature that the state’s advance voting system was safe, that “nobody’s questioning” or “concerned with the results,” and that the state’s election laws need no “drastic changes.” Ex. 2 at 7-8; Ex. 3. He emphasized that the “Kansas election system’s ability to handle the surge in mail ballots in the 2020 election demonstrates the election system’s capabilities.” Ex. 4 at 1; Ex. 5 at 1. The Secretary’s comments followed his office’s confirmation that “Kansas did not experience any widespread, systematic issues with voter fraud intimidation, irregularities or voting problems,” rebutting baseless claims to the contrary spread by conspiracy theorists following the 2020 election. *VoteAmerica v. Schwab*, No. CV 21-2253-KHV, 2021 WL 5918918, at \*2 (D. Kan. Dec. 15, 2021); Ex. 6 at 1; *see also* Ex. 7 at 3. County election officials echoed the Secretary’s report. The Johnson County Election Commissioner credited the state’s advance vote-by-mail system for making the election a “historic” success. *VoteAmerica*, 2021 WL 5918918, at \*2. The Shawnee County Election Commissioner confirmed that he was “very happy with the way election day went

with the public,” and noted that “the public’s made it pretty clear to us that they’re happy with it [too].” Ex. 8 at 2. The State Board of Canvassers further confirmed the security of the 2020 election: “[A]ll 105 counties in Kansas successfully completed their post-election audits from the November general election. All votes have been accounted for and foul play, of any kind, was not found.” Ex. 9 at 4. The Board of Canvassers emphasized that the state’s advance voting by mail system, which in the 2020 general election processed nearly 460,000 ballots, securely managed “the anticipated increase in mail ballot use.” *Id.* at 2-3, 5.

Nevertheless, as soon as the 2021 legislative session convened, legislators moved swiftly to introduce several bills that severely restricted access to the franchise—and, in particular, to make it harder for voters to successfully use Kansas’s advance voting by mail system to exercise their right to vote. *See* Am. Pet. ¶¶ 51-58. Several of those proposals were ultimately amalgamated into two bills, HB 2183 and HB 2332, through unusual and rushed procedures that took place primarily in the Kansas Senate. *See id.* ¶¶ 59-102; Ex. 10 at 5-2183. Among the provisions contained in HB 2183 was the Signature Matching Requirement, which imposes the following new directive:

[N]o county election officer shall accept 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. Signature verification may occur by electronic device or by human inspection. In the event that the signature of a person on the advance voting ballot envelope does not match the signature on file in the county voter registration records, the ballot shall not be counted.

HB 2183, Sec. 5 (codified as KSA 25-1124(h)).

The discussion of the Requirement during HB 2183’s limited legislative history confirms that the legislators were aware of the problems that could be caused by the inevitable disparate applications of the law across the state’s 105 counties. At the hearing during which the

Requirement was inserted into HB 2183, in response to a question by Senator Mary Ware about how counties would determine a “match,” the Office of the Revisor explained that neither the bill nor existing law contained a statutory definition of “match,” and left it entirely “to the discretion of the county election officer to verify that these signatures are within a reasonable person standard a match.” Ex. 11 at 3. In response, Senator Ware expressed concern about the lack of specificity in the law, especially because “signatures vary constantly, depending on a thousand factors because we’re people . . . some [signatures] would be clear but many would be nebulous. . . .” *Id.* Other Senators—Republicans and Democrats alike—acknowledged that signatures will often be erroneously flagged for rejection. Senator Oletha Faust-Goudeau expressed concern because her own signature changes every time she writes because of a previous wrist injury. *Id.* at 6-7. And Senator Richard Hilderbrand, who introduced the amendment, admitted his signature changes every five years, though he suggested he supported the provision because he believed county election officers would verify signature mismatches through a cure process. *Id.* at 4.

Testimony during the same hearing also revealed that county election officials did not have a chance to comment on the provision before legislators added it to HB 2183. Senator Brenda Dietrich explained that she was “hesitant about [the bill] because the county election officers haven’t had a chance to weigh in.” *Id.* “[H]ow will this impact them? And I just don’t know if we’ve had that discussion with them. . . .” *Id.* at 5. Moreover, although the rushed procedural maneuvers used to add the Requirement severely limited public input on the provision, testimony by the Disability Rights Center warned that the provision was especially likely to harm individuals with disabilities, even with its supposed disability exception. Ex. 15.

Legislators did not offer any explanation for why the unusual legislative process or the Requirement itself was necessary. The only semblance of a cited state interest came in a statement

by one senator who suggested that he supported preventing “illegal voting,” yet there was no discussion about how the provision would achieve this goal. Ex. 11 at 9. Later, on the floor of the Senate, the bill’s sponsor, Republican Senator Larry Alley conceded that HB 2183 was not aimed at addressing any existing problem with voter fraud, suggesting that the issue is not what had “happen[ed] in Kansas,” but what *could* happen. Ex. 13 at 62. The Senate nevertheless approved HB 2183, including the Signature Matching Requirement. *See* Ex. 16.

The Requirement was never considered in the Kansas House of Representatives. *See id.* (“Signature match requirement . . . [n]ot included in any [House] bill.”). The only Representatives to formally weigh in on the legislation before final approval of HB 2183 were the members assigned to the Conference Committee. During the Conference Committee’s brief discussion of the provision, in response to one of the Republican Representatives’ questions about what the Requirement *adds* to existing law, the Revisor’s office explained that the provision “gives a directive as [to] whether or not to accept that advanced voting ballot,” based on the county election official’s perceived match or mismatch. Ex. 17 at 11. At this hearing, the Secretary’s office also confirmed that it is left entirely to the discretion of the counties how to “attempt” to provide a “cure” process to voters whose ballots are rejected. *Id.* at 7-8.<sup>1</sup>

Despite concerns about the legislation’s constitutional and practical infirmities, and without considering any alternatives to mitigate concerns about the likely disenfranchisement that would result from the legislation, the Conference Committee approved it, and the Legislature ultimately followed suit, passing HB 2183 along partisan lines on April 8, 2021. *See* Am. Pet. ¶¶

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<sup>1</sup> Though existing law includes a provision requiring that election officials “attempt” to notify a voter when his or her ballot has been rejected due to a missing or mismatched signature, it does not guarantee that the voter will in fact be contacted and then afforded a meaningful opportunity to cure the ballot so that it may be counted. *See* KSA 25-1124(b). And, in reality, voters often do not receive actual notification in time, or sometimes even at all. *E.g.*, 1st Aff. of Davis Hammet, Ex. 37 ¶ 14.

95-98. Governor Kelly vetoed it on April 23, 2021, stating “[a]lthough Kansans have cast millions of ballots over the last decade, there remains no evidence of significant voter fraud in Kansas. This bill is a solution to a problem that doesn’t exist. It is designed to disenfranchise Kansans, making it difficult for them to participate in the democratic process, not to stop voter fraud.” Ex. 19. The Legislature, again along party lines, overrode the Governor’s veto on May 3, 2021. *See* Am. Pet. ¶ 102. The law went into effect on July 1, 2021. *See* KSA 25-1124.

**B. Plaintiffs have diligently pursued relief, but circumstances outside of their control now necessitate this motion for a temporary injunction.**

Weeks before HB 2183 took effect, Plaintiffs filed this lawsuit, alleging that the Signature Matching Requirement (as well as three other provisions of HB 2183 or HB 2332) violate the Kansas Constitution’s robust protections for fundamental rights. *See* Pet. (filed June 1, 2021). Plaintiffs specifically alleged that the Signature Matching Requirement infringes the rights to vote, to equal protection of the laws, and to due process, all rights enshrined in the Kansas Constitution. *Id.* ¶¶ 185-227. In the following weeks, Plaintiffs sought a temporary injunction against a different provision in the law that made certain conduct a criminal offense. *See* Mot. for Partial Temp. Inj. at 1 (filed June 17, 2021). The Court denied the motion in September 2021, and the Court of Appeals is scheduled to hear argument on Plaintiffs’ appeal of that order on April 7, 2022.

Plaintiffs’ intent was to proceed to trial to address their other claims in the normal course, believing then that sufficient time to do so remained before the 2022 elections—which will be the first statewide, large-turnout election cycle in which the new legislation will be in effect. Plaintiffs have made repeated efforts to move the case forward on the merits, but prolonged preliminary proceedings have made that impossible. In particular, after Defendants filed a motion to dismiss the case on August 16, 2021, Plaintiffs moved to proceed with discovery and expedite the case, looking forward to the 2022 elections. *See* Pls.’ Mot. to Set Case Management Conf. at 1, 3 (filed

Oct. 14, 2021) (“Unless this litigation is quickly advanced and resolved—and the challenged provisions authoritatively construed upon a full record that evidences their anticipated and practical impact on Kansas voters, advocates, and elections officials alike—they will operate to chill core political speech and cause confusion in the 2022 elections, undermining public faith in the electoral system.”) (“Plaintiffs respectfully request that a case management conference be set as soon as the Court deems practicable.”). The Court denied the motion and stayed proceedings and discovery until it resolves the State’s motion to dismiss. *See* Order (Nov. 1, 2021). As of this filing, that motion to dismiss remains pending. As a result, Plaintiffs have no choice but to now seek temporary injunctive relief to prevent the Signature Matching Requirement from imposing irreparable harm in the 2022 elections.

**C. Absent temporary injunctive relief, the Signature Matching Requirement threatens severe injury to Plaintiffs’ fundamental constitutional rights.**

In the year since its enactment, the Secretary has taken no action to implement statewide standards governing the implementation or enforcement of the Signature Matching Requirement. Although the law now *mandates* election officials in every county across the state to compare signatures and reject ballot envelopes that they think contain a mismatch, it provides no explanation as to how they should do that, nor does it provide guidance for a cure process to help guard against disenfranchisement of lawful voters due to erroneous rejections. *See generally* KSA 25-1124(b), (h). Outdated guidance in the Secretary’s Election Standards Manual regarding “Envelope Signatures” recommends that counties engage in signature matching but states (now incorrectly) that “the law does not specifically require [county election officials] to compare the signature on each envelope to the signatures on file to determine whether the ballots were completed and statements signed by the voters themselves.” Ex. 20 at 49. The Manual includes no further direction for how counties should engage in signature matching nor the standards they

should employ in doing it (including what—if *any*—precautions should be taken to guard against disenfranchising lawful voters based on mistakes in signature matching). And, although the Manual (like the law) states that county election officials are required to “attempt” to contact voters whose ballots are flagged for rejection due to a perceived mismatch and give those voters the opportunity to cure, it does not provide *any* guidance to ensure that voters *actually* receive notice and have a meaningful opportunity to cure—e.g., it does not specify the time frame in which voters must be contacted, by what means county officials should attempt to contact them, how many times a county official should attempt to contact a voter, or what instructions county officials should give voters about the cure process. *See id.* The 2022 elections are quickly approaching, yet the Secretary has given no indication that any further action will be taken to provide counties with *any* guidance on how to apply the law—much less guidance that would serve to ameliorate the serious threat of disenfranchisement.

It is well established that non-experts are ill-equipped to accurately match signatures, and in making errors, are far more likely to erroneously identify a *valid* signature as invalid than the other way around. Ex. 1 ¶¶ 24-29. In the elections context, this means that Kansas has set up lawful voters to have their ballots erroneously rejected based on the inexpert and often entirely inaccurate judgment calls of untrained elections officials. The Legislature and the Secretary have significantly exacerbated this risk by failing to give election officials any tools to either (1) make the best of a bad situation, and make it more likely that they will make accurate assessments of the signatures they must review, or (2) ensure that voters whose ballots are flagged for rejection due to a perceived mismatch are given timely notice and a meaningful opportunity to save their ballot from rejection based on election official error.

Facts from the public record and the expert report from board-certified and internationally recognized forensic document examiner Dr. Linton Mohammed submitted by Plaintiffs in support of this motion confirm that, absent sufficient enforcement standards, training, and other safeguards, the Signature Matching Requirement will cause erroneous disenfranchisement and differential treatment of voters throughout the counties. After reviewing Kansas's law, the limited (and outdated) guidance materials from the Secretary, and information provided by several counties about how they conduct signature matching, Dr. Mohammed has concluded that, because neither Kansas law nor state guidance "set forth sufficient standards for determining reasonably whether a signature on a voter's advance voting ballot envelope matches the voter signature displayed in the county's voter registration file," "Kansas's signature matching procedures are all but guaranteed to result in the erroneous rejection of properly cast ballots." Ex. 1 ¶¶ 24, 59. "Determining whether a signature is genuine is a difficult task for even a trained [forensic document examiner], as signatures are written in different styles with varying levels of readability and variability," and "[l]aypersons, such as Kansas election officials, have a significantly *higher* rate of error in determining whether signatures are genuine." *Id.* ¶ 25 (emphasis added).

Particular subgroups of voters—such as young voters, disabled voters, the elderly, and non-native English speakers—are more likely to have their ballots rejected as a result of the Signature Matching Requirement. *Id.* ¶¶ 26, 39-45. "The high rate of error among laypersons generally results from the inability to distinguish between normal 'variations' in one individual's signatures as opposed to 'differences' resulting from multiple signers. An individual's signatures may vary for myriad reasons, including age, health, native language, and writing conditions. Laypersons lack the tools and training to properly account for signature variation, which leads to erroneous mismatch determinations that are particularly pronounced in [these populations]," who have



greater signature variability. *Id.* ¶ 26. And, because Kansas election officials are not screened for other issues, including latent disabilities like “form blindness,” a “perceptual inability to distinguish the small differences between shapes, colors, and patterns,” it is even more likely that such erroneous rejections will occur. *Id.* ¶ 48.

Evidence from public records provided by county election officials confirm that signature-matching protocols and standards differ significantly among the counties. There are substantial differences in the amount and content of the guidance and training counties provided to officials who have the discretion to accept or reject ballots. Johnson County, for instance, created a signature-matching manual that outlines the basics of identifying a valid signature match, and it has also used signature matching training materials developed by the Oregon Secretary of State. *See* Ex. 21. Meanwhile, several other counties have reported either that they do not have any records of formal guidance or training with respect to matching signatures, *see* Exs. 22 (Sedgwick County), 23 (Reno County), 24 (Montgomery County), 25 (Lane County), 26 (Ellis County), or that they simply follow the Kansas Secretary of State’s standards, *see* Exs. 27 (Greeley County); 28 (Linn County), 29 (Labette County). And while some counties use machines to aid in the comparison of ballot envelope signatures, other counties use “no technologies” to do so. *Compare, e.g.,* Ex. 22 (Sedgwick County), *with* Exs. 30 (Cowley County), 31 (Wyandotte County).

The records collected by Plaintiffs also demonstrate disparities in the quantity and quality of the comparator signatures that counties must use for the purpose of determining whether the voter’s ballot signature “matches.” Labette County, for example, simply uses the voter registration card to match signatures. Ex. 29. Other counties, such as Wyandotte and Linn, report that they compare signatures to whatever signature-bearing documents are in the voters’ online records, i.e., the Kansas Electronic Voter Information System (“ELVIS”). Exs. 28, 31. Still, other counties use

a “combination of paper records” and electronic images saved in ELVIS and other databases. *E.g.*, Exs. 32 (Hodgeman County), 22 (Sedgwick County), 27 (Greeley County). Using so few comparators is highly likely to result in election officials not counting valid ballots given that, even if they used six comparators, they would be three and a half times more likely than a professional to reject an authentic signature. Ex. 1 ¶ 32. Plus, other factors, such as the use of non-contemporaneous signatures, writing conditions, the writing instrument, or the writing surface, can make signature matching even more difficult. *Id.* ¶¶ 39-42. While using a greater number of comparator signatures helps to ensure a more accurate signature matching process, even trained forensic document examiners “require at least 10 to 15 specimen signatures for comparison with a questioned signature, and often more if issues such as age or illness are involved.” *Id.* ¶ 50.

The risk of unjust disenfranchisement and differential treatment under the Signature Matching Requirement now threatens voters in the 2022 elections in Kansas. The primary election will be held on August 2, 2022, and the general election is three months later, on November 8, 2022. Plaintiffs have sought in good faith to move this case toward speedy resolution, but the circumstances now make it highly unlikely that fact discovery and a trial on the merits can take place with sufficient time to obtain effective relief ahead of the 2022 elections. Accordingly, Plaintiffs seek temporary injunctive relief to ensure that the Signature Matching Requirement is enjoined during the 2022 elections.

### **III. ARGUMENT**

The Court should issue a temporary injunction because (1) there is a “substantial likelihood” Plaintiffs will prevail on the merits of their challenge; (2) there is a “reasonable probability” Plaintiffs will suffer irreparable injury in the absence of an injunction; (3) Plaintiffs have no other adequate legal remedy, such as damages; (4) the injury that the Restriction threatens to impose on Plaintiffs outweighs any injury an injunction would impose on the State; and (5) an

injunction “will not be adverse to the public interest.” *Wing v. City of Edwardsville*, 51 Kan. App. 2d 58, 61, 341 P.3d 607, 611 (2014).

**A. Plaintiffs are substantially likely to prevail on their claims against the Signature Matching Requirement.**

Courts across the country have struck down signature matching requirements like the one at issue here, which includes no standards to ensure its uniform application or protect against the erroneous rejection of ballots cast by lawful voters. As those courts have repeatedly found, due to the inherent unreliability of signature matching, such laws raise serious and unjustifiable risks of disenfranchisement. *See, e.g., Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1320 (11th Cir. 2019) (“[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/CASE, 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). The standardless Signature Matching Requirement is similarly constitutionally infirm. Plaintiffs are substantially likely to prevail on their claims.

1. **The Signature Matching Requirement violates the fundamental right to vote under the Kansas Constitution.**
  - a. **The Kansas Constitution explicitly recognizes and guarantees the right to vote as a fundamental right.**

The Kansas Supreme Court has found that there is a fundamental right to vote under the Kansas Constitution. *Moore*, 207 Kan. at 649 (“[T]he right of suffrage is a *fundamental* matter.” (emphasis added)); *see also Harris v. Anderson*, 194 Kan. 302, 346, 400 P.2d 25, 56 (1965) (Fatzer, J., dissenting) (discussing the Kansas Constitution, “I agree that the right of suffrage is a *fundamental* matter in a free republic” (emphasis added)). This right is “a personal and individual right, to be exercised in a free and unimpaired manner.” *Moore*, 207 Kan. at 649. It is “pervasive of other basic civil and political rights” and “the bed-rock of [the state’s] free political system.” *Id.*; *see also Harris*, 194 Kan. at 346 (Fatzer, J., dissenting).

This fundamental right to vote is found in multiple provisions of the Kansas Constitution. Article 5, Section 1 expressly guarantees that every Kansan who (1) is a citizen of the United States, (2) “has attained the age of eighteen years,” and (3) “resides in the voting area in which he or she seeks to vote shall” have the right to vote. Kan. Const. art. 5, § 1; *see also Hodes v. Nausser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 657, 440 P.3d 461 (2019) (explaining that, although Article 5, Section 1 of the 1861 Kansas Constitution initially denied women the right to vote, “we now consider [the right] fundamental”). The right is also protected by Sections 1 and 2 of the Kansas Constitution Bill of Rights: Section 1 guarantees equal rights to all Kansans and provides that “[a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.” Section 2 declares 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,” and it specifically protects political rights, which include the right to vote. *State ex rel. Fatzer v. Urb. Renewal Agency of Kan. City*, 179 Kan. 435, 439–40, 296 P.2d 656, 660 (1956)

(noting that a political right is defined as “consisting of the right and power to . . . exercise the right of suffrage”). Together, these provisions provide further protection for the express rights guaranteed by Article 5, Section 1. *See Farley v. Engelken*, 241 Kan. 663, 667, 740 P.2d 1058, 1061 (1987) (finding Sections 1 and 2 of the Kansas Constitution Bill of Rights protect “individual personal” and “political” rights, respectively); *Moore*, 207 Kan. at 649 (referring to the right to vote as a “personal and individual right” that preserves other rights).

**b. Restrictions on the fundamental right to vote are subject to strict scrutiny under the Kansas Constitution.**

Sections 1 and 2 of the Kansas Constitution Bill of Rights are generally interpreted to provide protections that are at least coextensive with their federal counterparts. *See Farley*, 241 Kan. at 667 (noting that Sections 1 and 2 “are given much the same effect as the clauses of the Fourteenth Amendment relating to due process and equal protection of the law” (citation omitted)). The Kansas Supreme Court, however, “has the authority to interpret Kansas constitutional provisions independently of the manner in which federal courts interpret corresponding provisions of the United States Constitution,” which “can result in the Kansas Constitution protecting the rights of Kansans more robustly than would the United States Constitution.” *Hodes*, 309 Kan. at 621 (citing *State v. Lawson*, 296 Kan. 1084, 1090–91 (2013)). That is the case here.

Like the Kansas Supreme Court, the U.S. Supreme Court has described the right to vote as a “personal,” and “fundamental matter” that is essential to “basic civil and political rights” and a “free” society. *Compare Moore*, 207 Kan. at 649, with *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964); *cf. Fish*, 840 F.3d at 752 (“There can be no dispute that the right to vote is a constitutionally protected fundamental right.”); *Farley*, 241 Kan. at 669–70 (noting that the U.S. Supreme Court has recognized voting as a fundamental right). Federal voting jurisprudence, however, has been complicated by rights retained by the states (barring an act of Congress) to pass reasonable,

nondiscriminatory laws to regulate their own elections, and the concern by the *federal judiciary* about encroaching upon those reserved rights. These concerns have led the federal judiciary to create a balancing test that is generally used by federal courts when evaluating challenges to state election laws brought in federal courts based on alleged violations of the federal constitution. But these same concerns do not arise when a state court evaluates the constitutionality of its own election laws under its own constitution. As a result, state courts remain free to—and do—employ different, often stricter, tests when adjudicating voting rights cases in their home courts. As the Kansas Supreme Court has made clear, Kansas is among those states that take very seriously its duties to protect the rights guaranteed its citizens in the state constitution. As a result, when considering challenges brought under the *Kansas* Constitution, Kansas courts must apply the “most searching of . . . standards—strict scrutiny . . . when a fundamental right is implicated.” *Hodes*, 309 Kan. at 612, 663 (citations omitted). Because the evidence shows that the Signature Matching Requirement infringes on the fundamental right to vote under the Kansas Constitution, strict scrutiny applies.

The Kansas Supreme Court’s reasoning for applying strict scrutiny in *Hodes* is also particularly informative here. In that case, the parties disputed whether, in challenges to abortion restrictions, Kansas courts should apply the federal “undue burden” standard—a balancing test that seeks to accommodate both state interests and individual rights by weighing a restriction’s benefits against its burdens—or the more demanding strict scrutiny test. *Id.* at 664. After examining the text of Section 1 of the Kansas Constitution Bill of Rights, the Fourteenth Amendment, and the differences between the two, as well as the history of the Kansas Constitution with a particular focus on the adoption of the Bill of Rights at the Wyandotte Convention, the Court held that strict scrutiny applied. *Id.* at 638, 669. Of particular import, the Court found that

“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.” *Id.* at 624. The Court further explained that it is the Kansas courts’ “obligation to protect (1) the intent of the Wyandotte Convention delegation and voters who ratified the [Kansas] Constitution and (2) the inalienable natural rights of all Kansans today. And the strict scrutiny test best protects those natural rights that we today hold to be fundamental.” *Id.* at 669.

These same principles require the application of strict scrutiny here, where Plaintiffs seek to protect a fundamental right enshrined in the Kansas Constitution with an intent to provide broader protection than is found in the federal constitution. The rights that Plaintiffs seek to vindicate include rights found in the same Section 1 of the Kansas Bill of Rights considered in *Hodes*, in which the Kansas Supreme Court found that the Constitution’s “broad declaration that all men are entitled to a nonexhaustive list of inalienable natural rights clearly reveals that section 1 recognizes a distinct and broader category of rights than does the Fourteenth Amendment.” *Id.* at 626. When the framers adopted Section 1, it was generally understood that natural rights “protected a vast range of unenumerated rights,” including political rights. *Id.* at 632. In accordance with this broad understanding of natural rights, the framers intended Section 1’s protection to be “broad enough for all to stand upon.” *Id.* at 632–33 (citing Wyandotte Convention, at 281–83). And the Kansas framers included additional protections for these rights in Section 2, which states that “all political power is inherent in the people”—a directive that is absent from the federal Fourteenth Amendment. *Hodes* makes clear that, under these circumstances, Kansas courts are obligated to strictly police incursions on those rights, regardless of whether the federal courts have chosen to use a balancing test. This Court should apply the test that the Kansas Supreme Court has

found “best protects” these fundamental rights and the framers’ intent: strict scrutiny. *Id.*; *see also*, *e.g.*, Order, *League of Women Voters of Ark. v. Thornton*, No. 60-CV-21-3138, Ex. 33 at 15 (Ark. Dist. Ct. March 24, 2022) (holding that, in Arkansas courts, laws affecting the right to vote “must be analyzed according to the strict scrutiny standard of review that has been the [Arkansas Supreme Court’s] established judicial standard for testing the validity of governmental measures that infringe on fundamental rights”).<sup>2</sup>

**c. The Signature Matching Requirement infringes upon the fundamental right to vote under the Kansas Constitution.**

The Signature Matching Requirement infringes on the fundamental right to vote by disenfranchising eligible Kansas voters through no fault of their own. The law mandates that county election officers compare a voter’s signature on the advance voting ballot envelope to the signature on file in the county voter registration records. KSA 25-1124(h). If the officer determines that the signatures do not match, “the ballot *shall not* be counted.” *Id.* (emphasis added). Yet, neither the law nor the Secretary have provided standards governing how to interpret or implement this requirement. Fundamental decisions like defining what constitutes a “match” or deciding whether voters will be afforded an opportunity to confirm that they did in fact cast the ballot

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<sup>2</sup> The federal balancing test is also inappropriate because it was created as a result of structural considerations about the roles that the federal judiciary and states play in the federal constitutional context that are simply not present here—in which Plaintiffs challenge a state law, before a state court, under that state’s constitution. Kansas law is enacted pursuant to the Kansas Constitution, and Kansas courts have the responsibility of determining whether the state’s laws are consistent with that foundational document; thus, the federalism concerns that animate the federal balancing test simply do not come into play. *See Hodes*, 309 Kan. at 621 (“[A]llowing the federal courts to interpret the Kansas Constitution seems inconsistent with the notion of state sovereignty. Indeed, this court has the authority to interpret Kansas constitutional provisions independently of the manner in which federal courts interpret corresponding provisions of the United States Constitution.” (quotation omitted)); *Moore*, 207 Kan. at 650 (“[T]his court is the sole arbiter of the question whether an act of the legislature is invalid under the Constitution of Kansas.” (cleaned up)). In *Hodes*, the Court applied strict scrutiny to determine the constitutionality of a *state* law under the *state* constitution. The Court did so despite acknowledging that federal courts apply a less-rigorous standard to better account for the State interest. 309 Kan. at 664 (noting that the U.S. Supreme Court created the less rigorous undue burden standard to “realign[] the ‘other side of the equation[, which] is the interest of the State’”). Like the *Hodes* Court, this Court should apply strict scrutiny to determine the constitutionality of laws that burden the fundamental right to vote under the Kansas Constitution.



flagged for rejection due to a perceived mismatch have been left entirely to the discretion of the state's 105 counties. Even the means by which counties verify signatures (i.e., by electronic device or human inspection) is explicitly left up to each county's discretion. *Id.* For counties that choose to conduct signature matching by human inspection, the Secretary has not provided any training on signature matching, nor has he given any guidance as to which machines or software counties that elect to use electronic verification should utilize. In other words, the Signature Matching Requirement creates a regime under which any Kansan's right to vote may be denied to them based on an entirely arbitrary, uninformed, inexpert, and almost certainly erroneous conclusion that the signature on their ballot is not theirs. It is not plausible that such a regime could withstand scrutiny under the Kansas Supreme Court's fundamental rights jurisprudence.

The risk of disenfranchisement of lawful voters is real. Even before the Requirement was enacted, some counties conducted signature matching and rejected hundreds of ballots on the basis of perceived signature mismatches. *See, e.g.*, Exs. 34, 35.<sup>3</sup> But now that election officials are *required* to reject any ballot bearing a signature that they believe is a mismatch, the rejection figures are certain to increase—especially in light of the growing number of Kansans who are exercising their right to vote using advance ballots. *See* Ex. 1 ¶ 29 (“Kansas’s current signature matching rules and procedures, which allow individuals without adequate training—and without sufficient guidance—to reject the signatures on the advance voting ballot envelopes, will result in a significant number of erroneous rejections.”). This risk of disenfranchisement is greatest in counties that verify signatures by hand because signature matching by laypersons often results in a “high rate of error” due to their “inability to distinguish between normal variations’ in one

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<sup>3</sup> It is difficult to determine the precise extent to which mismatched signatures have been rejected in Kansas. For example, Sedgwick County “does not have a specific category for mismatched signatures” in its record-keeping system. Ex. 22. Instead, it combines “signature missing or not the voter[']s signatures.” *Id.* Between the 2016, 2018, and 2020 elections, Sedgwick County rejected 2,454 ballots that fell into one of these two categories. Ex. 35.

individual’s signatures as opposed to ‘differences’ resulting from multiple signers.” *Id.* ¶ 26. Thus, “Kansas election officials are significantly more likely than trained examiners to make an incorrect signature comparison determination and are particularly likely to incorrectly decide that the signatures are *not* signed by the same person, resulting in the incorrect rejection of the voters’ advance voting ballot.” *Id.* ¶ 25. In short, because “Kansas’s current signature matching rules and procedures . . . will result in a significant number of erroneous rejections,” *id.* ¶ 29, Plaintiffs have established that the provision constitutes an infringement on the right to vote, triggering strict scrutiny.

**d. The Signature Matching Requirement is not sufficiently tailored to any state interest to survive scrutiny.**

Infringement of a fundamental right is “inherently suspect.” *Hodes*, 309 Kan. at 673. Consequently, “once a plaintiff proves an infringement—regardless of degree—the government’s action is presumed unconstitutional,” and it is the government’s burden to “establish the requisite compelling interest and narrow tailoring of the law to serve it.” *Id.* at 669 (citing *Reed v. Town of Gilbert*, 576 U.S. 155 (2015)). A compelling state interest is “one that is not only extremely weighty, possibly urgent, but also rare—much rarer than merely legitimate interests and rarer too than important interests.” *Id.* at 664 (internal quotation marks and citation omitted). “[N]arrowly tailored” means there are “no less restrictive alternatives” that would achieve the identified goal. *State v. Smith*, 57 Kan. App. 2d 312, 322, 452 P.3d 382 (2019).

Here, the Signature Matching Requirement is presumptively unconstitutional because Plaintiffs have demonstrated that it infringes upon the fundamental right to vote. By providing evidence that any Kansas voters will be disenfranchised due to the Requirement, *see, e.g.*, Exs. 1, 34, 35, Plaintiffs have met their burden of proof: infringement “*regardless of degree.*” *Hodes*, 309 Kan. at 669 (emphasis added). The State cannot meet its burden of establishing that the

Requirement is narrowly tailored to serve a compelling interest as it must to overcome this presumption of unconstitutionality.

First, there is no compelling state interest to justify the Signature Matching Requirement. Assuming it is designed to prevent voter fraud, there is no evidence of fraud, let alone specific evidence of advance-voting voter impersonation. *See supra*, Section II-A. The State's own admissions and the legislative history of HB 2183 prove this point. *See id.* Prior to the introduction of HB 2183, the Secretary declared during testimony to the Legislature that the state's advance voting system was entirely safe. Exs. 2, 3, 4, 5. He stated to the media and in other settings that "Kansas did not experience any widespread, systematic issues with voter fraud[,] intimidation, irregularities or voting problems" in the 2020 election. *VoteAmerica*, 2021 WL 5918918, at \*2; Ex. 6, 7. The State Board of Canvassers further confirmed that every county completed "post-election audits," and "[a]ll votes [were] accounted for and foul play, of any kind, was not found." Ex. 9 at 5. During discussion of HB 2183 on the floor of the Senate, the bill's supporters conceded that the issue is not what had happened, but what *could* happen. Ex. 13 at 62. When the bill reached Governor Kelly's desk, she vetoed it, concluding that the "bill is a solution to a problem that *doesn't exist*." Ex. 19 (emphasis added). Even since then, the Attorney General, responding to a voter's question about election integrity, stated that he has never seen any evidence of significant fraud or other systemic problems with Kansas' elections. Ex. 36 at 2 ("I think on the whole, Kansas elections are solid. I really believe that. I'm not saying there's no problems. I'm saying we don't have the types of widespread institutional problems—at least *I've never seen the evidence*—that I think some other states do." (emphasis added)).

Second, even if there were evidence of election fraud related to advance ballots, the Requirement is not narrowly tailored to achieve the state interest in preventing it. Again, narrow

tailoring means there are “no less restrictive alternatives” that would further the identified issue. *Smith*, 57 Kan. App. 2d at 322. Here, due to the lack of uniform standards, the Requirement is *overly* restrictive—it makes the likelihood that county election officials will erroneously discard valid advanced ballots for signature “mismatches” even stronger, because they have no guidance or training concerning how to verify signatures. Ex. 1 ¶¶ 24-29. For the same reason, the Requirement is unlikely to successfully prevent fraud because untrained election officials cannot reliably determine whether signatures are written by different individuals (i.e., fraudulent) or by one person who exhibits natural variations in their signature (i.e., authentic). *Id.*; *see also, e.g., League of Women Voters of Ark.*, No. 60-CV-21-3138, Ex. 33 at 80-81 (holding that Arkansas’ “signature matching rules and procedures” failed to “further the governmental interest in promoting confidence in election integrity and preventing voter fraud” because “individuals without adequate training” would erroneously reject absentee ballot applications). The Requirement also does not include key safeguards against discarding valid ballots, such as a presumption in favor of accepting ballots, or a codified notice and cure program that ensures voters have a meaningful opportunity to challenge determinations that a signature is fraudulent.

Likewise, the lack of tailoring in the Signature Matching Requirement cannot be saved by KSA 25-1124(b), which requires election officials to “attempt to contact each person who submits an advance voting ballot where there is no signature or where the signature does not match with the signature on file and allow such voter the opportunity to correct the deficiency before the commencement of the final county canvass.” *Id.* The provision does not even specify how election officials should “attempt” to contact voters, nor does it require that they do so promptly, or on any time frame other than sometime before the final county canvass. And it also does not provide for a process that would actually guarantee that voters are afforded a meaningful ability to save their

ballots from rejection.<sup>4</sup> There is also evidence that whatever protections the Legislature may have intended with that provision are illusory. Plaintiff Loud Light has obtained ballot rejection lists after recent elections to attempt to help voters whose ballots have been rejected “cure” the error and has found that “many of these voters likely would not have known about their rejected ballot if it had not been for *Loud Light’s* contact.” 1st Aff. of Davis Hammet, Ex. 37 ¶ 14 (emphasis added). And even those voters who receive actual notice may be unable to vote if the notice comes near to or after the deadline for casting a new ballot and their county does not offer a cure process.

Accordingly, even assuming signature matching could have some marginal benefit for election integrity, it could be implemented in ways that are both more effective and less burdensome on fundamental voting rights. Because there are less restrictive alternatives, the Requirement necessarily fails strict scrutiny, and Plaintiffs are substantially likely to prevail on this claim.

**e. Even under the *Anderson-Burdick* test, the Signature Matching Requirement unconstitutionally burdens Kansans’ right to vote.**

The State has previously suggested that the *Anderson-Burdick* test applies here. That is wrong. The *Anderson-Burdick* test is employed by federal courts in cases challenging state election laws under provisions of the federal constitution. Neither the Kansas Supreme Court nor the Kansas Court of Appeals have adopted—or even cited to—the *Anderson-Burdick* test. While

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<sup>4</sup> Even its very language—“allow such voter the opportunity to correct the deficiency”—invites more questions than it answers. How does a voter “correct” a “deficiency” that is in actuality a mistake by an election official who has erroneously concluded that the voter’s actual signature is not their signature? If in fact the measure is meant to simply protect against voter fraud (a dubious proposition for the reasons explained), then a simple statement on the phone to a county official, for example, that the voter did in fact cast the ballot, should be more than sufficient. But here, like everywhere else, crucial questions about the mechanics of the law are left entirely up to the discretion of each individual election official. And the evidence confirms that, even in those counties that do offer a cure process, the procedures differ significantly and impose disparate burdens on voters. Ex. 17 at 7-8 (confirming counties have unfettered discretion in implementing the cure process under KSA 25-1124(b)); *compare, e.g.*, Ex. 24 (Montgomery County asks voters “to come into the office and bring their photo ID and . . . sign in front of a staff member or . . . reach[es] out by mail if [officials are] unable to reach [the voters] by phone . . .”), *with* Ex. 30 (Cowley County does not have a “‘written’ policy” but “call[s the voter] while [their] record [is] open” to “verif[y] it is actually them.”).

Kansas courts have at times adopted standards used in federal case law when applying analogous federal constitutional provisions, they do so “in cases where a party asserts violations of both Constitutions without making unique arguments about sections 1 and 2 [of the Kansas Bill of Rights].” *Hodes*, 309 Kan. at 620 (emphasis added). But Plaintiffs bring claims only under the Kansas Constitution and expressly argue that there is a fundamental right to vote under the state constitution that is more protective than its federal counterpart. *See* Am. Pet. ¶¶ 189-201. Thus, for the reasons discussed in Section III-A-1(b), *supra*, this court should apply strict scrutiny—the standard that *has* been adopted by the Kansas Supreme Court—to Plaintiffs’ claims. *See also League of Women Voters of Ark.*, No. 60-CV-21-3138, Ex. 33 at 15 (rejecting the *Anderson-Burdick* standard and holding that election laws that burden the right to vote “must be analyzed according to the strict scrutiny standard” in Arkansas state courts).

Nonetheless, even if this court were to apply the *Anderson-Burdick* test, the Requirement cannot survive because the severe burden of disenfranchisement is not sufficiently justified by any governmental interest. *Anderson-Burdick* applies a “flexible standard” in which the degree of scrutiny applied depends on the challenged law’s burden on the right to vote. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). If the burden is “severe,” the State must show that the law is “narrowly drawn to advance a state interest of compelling importance.” *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). But even if the burden is less than severe, the challenged law must be justified by a “corresponding [state] interest sufficiently weighty to justify the limitation.” *Norman*, 502 U.S. at 288–89. Thus, as the Tenth Circuit has emphasized, even if a state’s interest in a challenged provision is “legitimate in the abstract,” the state must demonstrate why the interest makes it “*necessary* to burden voters’ rights.” *Fish v. Schwab*, 957 F.3d 1105, 1133 (10th Cir. 2020) (striking down Kansas’s documentary proof of citizenship requirement) (emphasis added),

*cert. denied*, 141 S. Ct. 965 (2020). Determining the burden imposed by the law requires not only assessing the law’s impact on all voters, but also its impact on subclasses of voters who are uniquely affected by the rule because of their factual circumstances. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008); *Fish*, 957 F.3d at 1125.

Here, the Signature Matching Requirement severely burdens the fundamental right to vote. Standardless signature matching has disenfranchised eligible Kansas voters and will continue to do so. *See supra*, Section III-A-1(c); Exs. 1, 34, 35. Additionally, the Requirement disproportionately impacts eligible Kansas voters who are members of subclasses that are more likely to have variations in their signatures, such as disabled, young, and elderly voters or voters who have less formal education or who learned English as a second language. *See Ex. 1 ¶¶ 26, 40-45.*<sup>5</sup> In the context of voting rights cases, this is unacceptable as “even one disenfranchised voter . . . is too many.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 1735 (2015). Moreover, because these voters will be disenfranchised through no fault of their own, but rather due to government error and without the opportunity to

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<sup>5</sup> The State has suggested in previous briefing that the Signature Matching Requirement’s burdens on Kansans with disabilities are ameliorated because the law “expressly exempts” such individuals. *See* Defs.’ Mot. to Dismiss 38 (Aug. 23, 2021). However, election officials have no reliable way of determining which voters have “a disability preventing [them] from signing the ballot or . . . having a signature consistent with [their] registration form,” and the law specifies none. KSA 25-1124(h). The only means election officials have to determine whether a voter has a disability are (1) to check whether the voter is signed up for the permanent advance voting list (which is available only to voters with disabilities), Ex. 20 at 44 (the “Application for Permanent Advance Voting Status” “requires the voter to specify the nature of the permanent physical disability or illness that makes it difficult or impossible for the voter to go to the regular polling place to cast a ballot . . .”), or (2) to determine whether the voter received third-party assistance in filling out their ballot itself by checking whether an “Affidavit of Assistance” was provided alongside or on the ballot envelope itself, Ex. 25 (“Any registered voter who has a temporary illness or disability . . . may request assistance from another person in applying for, marking or returning the voter’s advance voting ballot, or in signing . . . the ballot envelope . . . . This affidavit must be completed by the person rendering assistance to the voter.”). But not all Kansas voters whose signatures might be impacted by a disability fall into these categories, and various counties have confirmed they have no other means of identifying voters with disabilities for this purpose. Exs. 22 (Sedgwick County) (“The [advance voting] application is generally the only way we can identify these voters.”), 24 (Montgomery County) (affidavit of assistance is the means to identify voters with disabilities), 25 (Lane County) (same); *see also* Ex. 29 (Labette County) (“We have no way of determining if a voter has a disability due to that being privileged information.”).

cure their ballots, the burden on the right to vote is even more severe. *See Ne. Ohio Coal. For the Homeless v. Husted*, 696 F.3d 580, 593–95 (6th Cir. 2012) (finding an election law’s burden on the right to vote is more substantial when it is caused by poll-worker error). As one court observed in a different signature-matching case, “[i]f disenfranchising thousands of eligible voters does not amount to a severe burden on the right to vote, then this Court is at a loss as to what does.” *Fla. Democratic Party*, 2016 WL 6090943, at \*6.

The State cannot show that it has a “sufficiently weighty,” let alone “compelling,” interest to justify disenfranchising Kansas voters or that the Requirement is “narrowly drawn” to advance that interest. With respect to the former, while Kansas has an interest in preventing fraud, as discussed in Section II-A, *supra*, there is no evidence of fraud and no evidence that the Requirement advances fraud prevention. *See, e.g., Fish*, 957 F.3d at 1126 (“Thus, we agree with the Secretary that Kansas’s interest in counting only the votes of eligible voters is legitimate in the abstract, but, on this record, we do not see any evidence that such an interest made it necessary to burden voters’ rights here.”); *League of Women Voters of N.C.*, 769 F.3d at 246 (“North Carolina asserts goals of electoral integrity and fraud prevention. But nothing in the district court’s portrayal of the facts suggests that those are anything other than merely imaginable.”); *Obama for Am. v. Husted*, 697 F.3d 423, 433–34 (6th Cir. 2012) (holding voting regulation was not justified by “vague interest[s],” especially when the state had submitted “no evidence” to justify its invocation of the interests); *VoteAmerica*, 2021 WL 5918918, at \*19 (“While preventing voter fraud is a potentially compelling state interest, HB 2332 is not narrowly tailored to prevent voter fraud.”) (holding HB 2332’s advance voting application restrictions fail under *Anderson-Burdick* or strict scrutiny). Additionally, any State interest in avoiding administrative expenses related to implementing signature-matching standards is outweighed by the risk of disenfranchisement. *See,*



*e.g., Taylor v. Louisiana*, 419 U.S. 522, 535 (1975); *United States v. Berks Cnty.*, 250 F. Supp. 2d 525, 541 (E.D. Pa. 2003) (“Although these reforms may result in some administrative expenses . . . such expenses are likely to be minimal and are far outweighed by the fundamental right at issue.”).

The Requirement is also not narrowly drawn to prevent fraud. Instead, the standardless Requirement will result in disenfranchisement of eligible voters without ensuring that voters receive adequate notice or the opportunity to cure before their ballots are discarded due to governmental error. Thus, even under the *Anderson-Burdick* standard, Plaintiffs are substantially likely to prevail on their claim that the Signature Matching Requirement unduly burdens the fundamental right to vote under the Kansas Constitution.

## **2. The Signature Matching Requirement violates equal protection.**

Plaintiffs are also substantially likely to show that the Signature Matching Requirement violates equal protection under the Kansas Constitution. The Kansas Constitution provides powerful protections against unjustified differential treatment, especially when the differential treatment affects fundamental political rights such as voting. Section 1 of the Kansas Bill of Rights guarantees equal rights to all Kansans: “All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.” Section 2 provides 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.” Again, these guarantees of equal rights under the Kansas Constitution Bill of Rights are even broader and more robust than that of the 14th Amendment to the U.S. Constitution.

While some cases suggest that the equal protection provisions of the Kansas Constitution are given similar effect to their federal counterpart, the Kansas Supreme Court has clarified that, in the equal protection context, Section 1 “affords separate, adequate, and greater rights . . . .”

*Farley*, 241 Kan. at 671; *see also Hodes*, 309 Kan. at 624. This conclusion is further bolstered by the text of Section 2 of the Kansas Bill of Rights, which the *Farley* Court expressly noted provides distinct and *additional* protections in cases—such as this one—where political rights are at stake. 241 Kan. at 671. Indeed, the provision provides that the government is “instituted” *for the purpose* of providing “equal protection” to the people in the exercise of their political rights. Kan. Const. Bill of Rights, § 2. Moreover, under the well-established, three-tier equal protection analysis, the Kansas Supreme Court has already noted that the most searching level of scrutiny—strict scrutiny—applies when the challenged differential treatment impacts voting. *See Farley*, 241 Kan. at 669–70 (“The most critical level of examination under current equal protection analysis is ‘strict scrutiny,’ which applies in cases involving . . . fundamental rights expressly or implicitly guaranteed by the Constitution . . . includ[ing] voting.”) Here, because the Signature Matching Requirement guarantees there will be differential treatment of ballots among and within Kansas’s 105 counties, impacting Kansans’ right to vote, it is subject to strict scrutiny. And, for the same reasons discussed *supra*, Section III-A-1(d), it cannot withstand such scrutiny.

Even if the Court were to look to federal equal protection case law, the Requirement fares no better. Under the U.S. Constitution’s equal-protection principle of “one person, one vote,” courts must “[e]nsure that each person’s vote counts as much, insofar as it [i]s practicable, as any other person’s.” *Hadley v. Junior Coll. Dist. of Metro. Kan. City*, 397 U.S. 50, 54 (1970). The “right to vote is protected in more than the initial allocation of the franchise.” *Bush v. Gore*, 531 U.S. 98, 104 (2000). That is, “[e]qual protection applies as well to the *manner* of its exercise.” *Id.* (emphasis added). “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Id.* at 104–05; *see also Wright v. North Carolina*, 787 F.3d 256, 259 (4th Cir. 2015); *Hoblock v. Albany Cnty.*

*Bd. of Elections*, 487 F. Supp. 2d 90, 96 (N.D.N.Y. 2006) (“More than just the act of voting . . . the counting of said vote is also guarded.”); *Gallagher v. N.Y. State Bd. of Elections*, 477 F. Supp. 3d 19, 49 (S.D.N.Y. 2020).

Applying these core principles, federal courts have recognized that laws that cause or allow ballots to be counted or rejected based on “varying standards” throughout the state violate equal protection under the Fourteenth Amendment.<sup>6</sup> In *Bush v. Gore*, for instance, the controversy revolved around counting ballot cards designed to be punched by a stylus, but which were not punctured with sufficient precision for a machine to register the vote. 531 U.S. at 105. The Florida Supreme Court had ordered that the intent of the voter be discerned by officials from such ballots. *Id.* The U.S. Supreme Court found that, while the command was “unobjectionable as an abstract proposition and a starting principle,” the problem was “*the absence of specific standards to ensure its equal application.*” *Id.* at 106 (emphasis added). The Court further noted that officials administering the recount “had no previous training in handling and interpreting ballots.” *Id.* at 109. Similarly, but more recently, a federal court in New York held that a state law requiring the rejection of mail ballots that were missing a postmark violated equal protection because—in light of the Postal Service’s inconsistent and arbitrary postmarking practices—the law subjected “absentee voters across the state to unjustifiable differences in the way that their ballots are counted.” *Gallagher*, 477 F. Supp. 3d 19, 49 (ordering state to adopt procedures to ensure county election officials count additional ballots that were presumably mailed on time).

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<sup>6</sup> Federal case law is not always clear in this area. Federal courts often apply the *Anderson-Burdick* standard articulated above to equal-protection claims involving vote-counting procedures, but courts, applying *Bush v. Gore*, have also independently held that the equal protection clause prohibits “varying standards” among the state’s counties in implementing its voting systems. *E.g.*, *Gallagher*, 477 F. Supp. 3d at 49; *see also League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477 (6th Cir. 2008) (recognizing that “district courts have found [*Bush v. Gore*’s] analysis application in challenges to voting systems”). In any event, any lack of clarity in federal case law only supplies further reason to refrain from adopting federal standards and apply the test that Kansas courts have articulated for fundamental rights (strict scrutiny). *See Hodes*, 309 Kan. at 666 (explaining that whether a federal standard has proven “difficult to apply” is relevant to whether it should be adopted).

Here, the Signature Matching Requirement violates equal protection for much the same reasons. It fails to establish any statewide standards for county officials to determine whether an advance voting ballot envelope signature “matches” the signature on file, guaranteeing disparate treatment of voters throughout the state. Without statewide standards, each of Kansas’ 105 county election officials will determine how to verify the authenticity of signatures on absentee ballot envelopes at their own discretion. Ex. 11 at 3. Different matching methods will demand different degrees of exactitude, and a signature that would qualify as a match if considered using one county’s methodology will be rejected as a mismatch under another’s. *See* Ex. 1 ¶ 22 (noting that Kansas counties apply “different standards and criteria for signature matching”). This differential treatment is further exacerbated by variability in the types, quantity, and quality of signatures available to reviewers across the counties, as well as the variation in the training and instruction provided to the officials who conduct signature matching. *See supra*, Section II-C.

Further, in those counties that perform signature matching by hand, election officials will inevitably have different, subjective standards for deciding whether a signature matches, and a signature that one official perceives as a mismatch will qualify as a match from another’s point of view. Just as in *Bush*, where the standardless recount allowed identical ballots to be treated differently as a result of individual election officials’ differing subjective impressions regarding the intent of the voter, the Requirement ensures that whether voters’ ballots are counted will depend on random factors, including where in the state the voter resides and the identities of the election officials who verify their signatures. And as in *Gallagher*, where voters had no say in whether the Postal Service postmarked their ballot, voters cannot reliably predict or control whether a particular official or automated matching methodology will regard their signature as a match. As a result, the requirement “creates an arbitrary voting system with insufficient

‘guarantees of equal treatment.’” *Gallagher*, 477 F. Supp. 3d at 48 (quoting *Bush*, 531 U.S. at 107); *see also* *Bush*, 531 U.S. at 107 (noting that even “[a]n early case in our one-person, one-vote jurisprudence arose when a [s]tate accorded arbitrary and disparate treatment to voters in its different counties”).

Historic ballot rejection data confirms the intuitive conclusion that, in the absence of statewide standards, differences in signature matching methodologies and individual perceptions result in very different rates of ballot rejection. This is evidenced by the stark disparity among counties that voluntarily conducted signature matching for mail ballots prior to the Requirement’s enactment. For example, in the 2016 general election, Johnson County rejected 337 mail ballots based on a signature mismatch, while the 17 other counties that reported rejecting mail ballots for this reason rejected 156 ballots *combined*. In other words, Johnson County, which in 2016 accounted for 34 percent of mail voters in the counties that rejected ballots based on a signature mismatch, accounted for 68 percent of the known rejections.<sup>7</sup> In short, the Signature Matching Requirement ensures that voters will be subject to “varying standards” due to “the absence of specific standards to ensure its equal application.” *Bush*, 531 U.S. at 106; *see* Ex. 1 ¶ 22, 57. This is precisely the type of differential treatment across “different counties” in the ballot-counting process that cannot withstand scrutiny even under federal equal protection principles. *Id.* at 107; *Gallagher*, 477 F. Supp. 3d at 48.

Thus, regardless of whether the Court concludes that the Kansas Constitution provides distinct, broader protections for equal political rights and applies strict scrutiny, or if it draws from federal equal protection cases in the vote-counting context, the Signature Matching Requirement violates the equal protection provisions of Sections 1 and 2 of the Kansas Constitution.

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<sup>7</sup> Mail voter data and ballot rejection figures derived from U.S. Election Assistance Commission, 2016 EAVS Datasets, available at <https://www.eac.gov/research-and-data/2016-election-administration-voting-survey>.

### 3. The Signature Matching Requirement violates due process.

Plaintiffs are also substantially likely to show that the Signature Matching Requirement violates due process under the Kansas Constitution. Section 18 of the Kansas Constitution Bill of Rights guarantees Kansans due process of law. *Creecy v. Kan. Dep't of Revenue*, 310 Kan. 454, 462, 447 P.3d 959, 966 (2019) (citing *In re J.D.C.*, 284 Kan. 155, 166, 159 P.3d 974 (2007)). Section 18 states, “All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.” Kansas courts interpret Section 18 as coextensive with its federal counterparts. *State v. Boysaw*, 309 Kan. 526, 537–38, 439 P.3d 909, 917 (2019) (collecting cases).

“In reviewing a procedural due process claim[,] the court must first determine whether a protected liberty or property interest is involved and, if it is, the court must then determine the nature and extent of the process which is due.” *State v. Wilkinson*, 269 Kan. 603, 608–09, 9 P.3d 1, 5 (2000) (citing *Murphy v. Nelson*, 260 Kan. 589, 598, 921 P.2d 1225 (1996)). “Procedural due process protections are calibrated to the nature of the liberty interest or property right at stake—the more important the interest or right the greater the constitutionally required procedures aimed at averting a wrongful deprivation.” *State v. Allen*, 478 P.3d 796 (Kan. Ct. App. 2021) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)), *review denied* (Apr. 23, 2021). To determine the procedural protection that must accompany a deprivation of a particular liberty or property interest, Kansas courts apply the *Mathews v. Eldridge* balancing test, weighing (1) the individual interest at stake; (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the State’s interest in the procedures used, including the fiscal and administrative burdens that the additional or substitute procedures would entail. *Wilkinson*, 269 Kan. at 608–09 (citing *Mathews*, 424 U.S. at 335).

**a. Voting is a protected liberty.**

As discussed in Section III-A-1(a), *supra*, there is a fundamental right to vote under the Kansas Constitution. As the U.S. Supreme Court has explained, the fundamental right to vote includes not just “the right to put a ballot in a box,” but also “the right to have one’s vote counted.” *Reynolds*, 377 U.S. at 554 (quoting *United States v. Mosley*, 238 U.S. 383, 386 (1915)). Once a state offers an absentee voting scheme, as Kansas has for over 25 years, it “create[s] a sufficient liberty interest in exercising [the] right to vote in such a manner. . . .” *Frederick v. Lawson*, 481 F. Supp. 3d 774, 792-93 (S.D. Ind. 2020) (recognizing “the vast majority of courts addressing this issue” agree); *see also Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 227 (M.D.N.C. 2020); *Martin*, 341 F. Supp. 3d at 1338; *Saucedo*, 335 F. Supp. 3d at 217; *Raetzel v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1356 (D. Ariz. 1990); *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, at \*6 (N.D. Ill. Mar. 13, 2006).

**b. The Signature Matching Requirement deprives voters of the fundamental right to vote without an opportunity to be heard.**

Under the three-factor *Mathews v. Eldridge* balancing test, the risk voters will be erroneously deprived of the right to vote outweighs any state interest in requiring signature-verification of mail-in advance ballots. First, the Kansas Supreme Court has recognized that a voter has a significant interest in the exercise of the franchise. *Moore*, 207 Kan. at 649 (holding that the right to vote is “fundamental” and stating that it is “pervasive of other basic civil and political rights” and “the bed-rock of [the state’s] free political system.”); *see also* Section III-A-1(a), *supra*, discussing the fundamental right to vote under the Kansas Constitution.

Second, authorizing election officials (who have no expertise or training in signature matching) to determine the validity of the signature on an advance ballot without providing any uniform statewide standards or guidelines carries a great risk that they will erroneously reject valid

ballots. Non-experts are highly unreliable in determining whether a signature is genuine. Ex. 1 ¶¶ 24-29. Laypersons are much more likely to believe that an authentic signature is inauthentic than to find the reverse. *Id.* Additionally, the fact that election officials will likely only have one or a few signatures to use as a point of comparison, very limited time to examine each advance ballot, and lack proper equipment (such as magnifying tools) further increases the odds that they will err and discard valid advance ballots for signature “mismatches.” *Id.* ¶¶ 49-52. These errors will disproportionately impact voters whose signatures are statistically more likely to vary, such as the young, elderly, disabled, poorly educated, or those who learned English as a second language. Ex. 1 ¶¶ 26, 40-45. This risk of disenfranchisement is not pure speculation—it has already occurred in counties that previously conducted signature matching. *E.g.*, Exs. 34, 35.

Additional procedural safeguards would have substantial probative value and protect against the erroneous disenfranchisement of eligible Kansas voters. Currently, how to implement the Requirement has been left to the discretion of Kansas’s 105 counties, and this lack of guidance is likely to cause confusion and errors. Instituting statewide standards, such as uniform electronic signature matching or a presumption that signatures are valid, would reduce the risk of authentic signatures being erroneously deemed inauthentic. The likelihood of erroneous disenfranchisement is compounded by the lack of any meaningful way for a voter to challenge a signature “mismatch” determination. Election officials must “attempt” to contact voters whose signatures are rejected, but the law does not guarantee that voters receive an opportunity to cure an advance ballot for a signature “mismatch,” leaving the notice and cure process to the discretion of the counties. Thus, codifying a statewide notice and cure process would further alleviate the risk of erroneous disenfranchisement.



Third, the State's interests in adhering to its present standardless signature matching regime are outweighed by the risk of erroneous disenfranchisement. As discussed above, there is no evidence of fraud having occurred in previous Kansas elections, undermining any argument that the State's interest in preventing fraud should be given significant weight. Furthermore, additional procedures would only *improve* the reliability of the signature-matching scheme, which would in turn improve the State's likelihood of preventing fraud. Finally, it is the responsibility of the Secretary to administer all national and state elections in Kansas. *See generally* Ex. 20. Accordingly, the Secretary already provides guidance to standardize other election processes across the state. In the signature matching context, the State's interest in avoiding "fiscal and administrative burdens" that may be incurred as the result of implementing guidance—which is the Secretary's duty—is also outweighed by the significant liberty interest at stake. *See, e.g., Fish*, 840 F.3d at 755 ("There is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by . . . state and local offices involved in elections.").

Thus, weighing all three factors indicates that the Signature Matching Requirement fails to guarantee basic fairness as required by due process, and Plaintiffs are likely to succeed on this claim.

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

Plaintiffs also satisfy their burden of showing a "reasonable probability" of irreparable injury absent a temporary injunction, and a lack of any "adequate legal remedy, such as damages." *Hodes*, 309 Kan. at 619.

"When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Fish*, 840 F.3d at 752 (citation omitted); *Hodes & Nauser, MDs*,

*P.A. v. Schmidt*, No. 2015-CV-490, 2015 WL 13065200, at \*5 (Kan. Dist. Ct. June 30, 2015) (collecting cases). This is because “a deprivation of a constitutional right is in and of itself irreparable harm.” *Id.* As the Tenth Circuit has emphasized, “[t]his is especially so in the context of the right to vote. Because there can be no ‘do-over’ or redress of a denial of the right to vote after an election, denial of that right weighs heavily in determining whether plaintiffs would be irreparably harmed absent an injunction.” *Fish*, 840 F.3d at 752 (quoting *League of Women Voters of N.C.*, 769 F.3d at 247); accord *Obama for Am.*, 697 F.3d at 436; *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986). For similar reasons, the potential loss of the fundamental right to vote is a harm that cannot be compensated by a legal remedy like damages. *E.g.*, *Fish*, 840 F.3d at 753 (“[D]enial of the right to vote constitutes a strong showing of irreparable harm, and one which cannot be compensated by money damages.”); *cf. Wing*, 51 Kan. App. 2d at 64 (holding that “damages would not provide adequate compensation for” a “chilling effect on union participation” (citing *Allee v. Medrano*, 416 U.S. 802, 814–15 (1974))).

Here, Plaintiffs’ members and constituents stand to suffer irreparable injuries to their fundamental right to vote in the upcoming 2022 elections absent an injunction. The League is a formal membership organization with Kansas voters throughout the state comprising its membership; Loud Light, Kansas Appleseed, and the Center each serve communities of Kansans whose voices have traditionally been marginalized in the political process. 1st Aff. of Jacqueline Lightcap, Ex. 40 ¶¶ 6, 10 (describing the League’s 1,300 dues-paying members who “empower voters and promote civic engagement through informed and active participation in government”); 1st Aff. of Davis Hammet, Ex. 37 ¶ 7 (“Loud Light . . . engage[s], educate[s], and empower[s] individuals from underrepresented populations, and in particular, young voters, to become active in the political process.”), Aff. of Caleb Smith, Ex. 39 ¶ 7 (“Kansas Appleseed’s voter engagement

work focuses on voter education and turnout efforts in Southwest and Southeast Kansas where . . . voters experiencing food insecurity, immigrants, and minorities—are not afforded the same access to the ballot as others in Kansas.”); Aff. of Gabriel Mullen, Ex. 41 ¶ 16 (explaining that “many voters with disabilities actually rely on the [Topeka Independent Living Resource] Center” for assistance with voting). As detailed above, absent injunctive relief, many of these voters’ fundamental right will be at risk as a result of likely erroneous rejections under the Requirement. *See supra*, Section II-C.

The organizational Plaintiffs will also suffer direct irreparable injury because they must divert greater resources toward operating programs to mitigate the burdens of the Requirement—resources that they would otherwise be able to put toward other mission-critical activities. In fact, “[c]ourts routinely recognize that organizations suffer irreparable harm when a defendant’s conduct causes them to lose opportunities to conduct election-related activities, such as voter registration and education.” *League of Women Voters of Mo. v. Ashcroft*, 336 F. Supp. 3d 998, 1005 (W.D. Mo. 2018) (collecting cases). Here, Loud Light will be forced to expend its resources operating programs to help prevent unjust disenfranchisement as a result of the Signature Matching Requirement. *See* 1st Aff. of Davis Hammet, Ex. 37 ¶ 14 (explaining that, among other efforts, Loud Light has “organized ballot cure programs, contacting voters whose ballots are challenged by county election officers, including for mismatched signatures, educating these voters on how to cure their ballots . . . and many of these voters likely would not have known about their rejected ballot if it had not been for Loud Light’s contact”). And, as with the fundamental right to vote, any opportunity to remedy these harms will be forever lost “once the election occurs,” because at that point, “there can be no do-over and no redress.” *League of Women Voters of N.C.*, 769 F.3d at 247; *see also* 3d Aff. of Davis Hammet, Ex. 38 ¶ 11 (noting that “[t]he harm of having to miss each one

of these [voter engagement] opportunities extends much further than just the single voter contact or engagement . . . when we miss an opportunity to engage with a voter, we know we may not *ever* be able to reach them” (emphasis in original)).

The Court should reject any argument that Plaintiffs cannot establish irreparable injury because of a delay in seeking temporary relief. Plaintiffs affirmatively sought to expeditiously move this case to resolution ahead of the 2022 elections. *See supra*, Section II-B. The State successfully opposed allowing even discovery to proceed until their motion to dismiss—which remains pending—is resolved, so they cannot now argue in good faith that Plaintiffs sat on their rights, or that they face any prejudice as a result of the timing of this motion. *See, e.g., Fish*, 840 F.3d at 753 (noting that, even when a plaintiff *does* delay seeking preliminary relief, whether such delay factors into the irreparable harm analysis depends on whether it “was reasonable, was not a decision by the party to ‘sit on its rights,’ and did not prejudice the opposing party” (citing *Kan. Health Care Ass’n, Inc. v. Kan. Dep’t of Soc. & Rehab. Servs.*, 31 F.3d 1536, 1543–44 (10th Cir. 1994))). There remains sufficient time for this Court to determine whether temporary relief is appropriate and (if the non-prevailing party decides to appeal) for the Court’s decision to be expeditiously reviewed.

For all these reasons, Plaintiffs have satisfied their burden of demonstrating a “reasonable probability” of irreparable injury absent a temporary injunction, and a lack of any “adequate legal remedy, such as damages.” *Hodes*, 309 Kan. at 619.

**C. The remaining elements strongly support a temporary injunction.**

Plaintiffs also satisfy the remaining temporary injunction factors: the threatened injuries to Plaintiffs outweigh any injury to the State, and an injunction will not be “against the public interest.” *Id.* As explained, the threatened harms to Plaintiffs are grave and irreparable. Indeed, the Signature Matching Requirement has already resulted in past disenfranchisement of eligible

Kansas voters and will result in future disenfranchisement. *See supra*, Section II-C. And, absent an injunction, Plaintiffs will be forced to divert more resources away from their other election activities to help Kansans avoid disenfranchisement due to the provision. *See supra*, Section III-B.

Any alleged harms to the State stemming from an injunction do not compare. To the extent the State claims that the Requirement protects the state's interests in preventing fraud, the State cannot point to any evidence of actual fraud, let alone widespread fraud, that would ensue if the Signature Matching Requirement were enjoined. Moreover, as explained above, the Requirement already fails to serve the State's interests in the accuracy or integrity of elections because it will result in substantial erroneous disenfranchisement. *See supra*, Section III-A-1(d). If the State were to somehow claim that an injunction temporarily enjoining signature matching would be administratively burdensome, such harms are clearly outweighed by the potential loss of fundamental rights. *See, e.g., Fish*, 840 F.3d at 755 (“There is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by [state] and local offices involved in elections.”). It is therefore difficult to see how any genuine harm might occur to any of the State's interests.

For similar reasons, an injunction would clearly not be against the public interest. Indeed, “ensuring qualified voters exercise their right to vote is always *in the public interest*.” *League of Women Voters of Mo.*, 336 F. Supp. 3d at 1006 (emphasis added); *Fish*, 840 F.3d at 756 (holding “[t]he public interest in broad exercise of the right to vote will be furthered rather than harmed” by an injunction); *Obama for Am.*, 697 F.3d at 437 (public interest “favors permitting as many qualified voters to vote as possible”); *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) (“[T]he Plaintiffs’ franchise-related rights [are] without question in the

public interest.”); *cf* *Burke v. State Bd. of Canvassers*, 152 Kan. 826, 107 P.2d 773 (1940) (“Election laws are liberally construed to permit exercise of the right of suffrage conferred by the Constitution and laws of the state.”). Likewise, by issuing an injunction, this Court will be “correcting a violation of the law,” which is also “in the public interest.” *Wing*, 51 Kan. App. 2d at 66; *see also, e.g., KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th. Cir. 2006) (the “public has no interest in enforcing an unconstitutional” law). Accordingly, Plaintiffs have satisfied all the factors necessary to obtain temporary injunctive relief.

#### IV. CONCLUSION

The Court should grant Plaintiffs’ request for a temporary injunction, enjoining enforcement of KSA 25-1124(h) until such time as this matter can be heard and decided at trial.

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Respectfully submitted, this 7th day of April, 2022.

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I hereby certify that a true and correct copy of the above and foregoing was electronically transmitted via the Court's electronic filing system to the following:

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