

No. 21-125084-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

**LEAGUE OF WOMEN VOTERS OF KANSAS; LOUD LIGHT; KANSAS
APPLESEED CENTER FOR LAW AND JUSTICE; TOPEKA INDEPENDENT
LIVING RESOURCE CENTER; CHARLEY CRABTREE; FAYE HUELSMANN;
and PATRICIA LEWTER**

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

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
NOTICE OF ADDITIONAL AUTHORITY**

Plaintiffs have filed a notice of additional authority under Rule 6.09 alerting this Court to two recent decisions: (i) a Kansas Court of Appeals opinion dismissing – for lack of standing – Plaintiffs' appeal from the denial of their motion for a temporary injunction seeking to invalidate a statute prohibiting individuals from misrepresenting themselves as election officials, *League of Women Voters of Kan. v. Schwab*, No. 124378 (June 17, 2022) (“*LWV*”); and (ii) a Kansas Supreme Court decision upholding Kansas' redistricting maps. *Rivera v. Schwab*, No. 125092 (June 21, 2022). Neither case is relevant to this appeal.

In *LWV*, Plaintiffs claimed that they stopped conducting educational activities and voter registration drives due to their fear of violating the challenged statute. On the way to dismissing the appeal, the panel majority noted – in pure *dicta* and as an aside – that cases analyzing “similar issues” had held such activities to be First Amendment protected speech, something Defendants *did not even dispute in the context of that appeal*. *LWV*, Slip Op. at 13. The problem for Plaintiffs in that appeal was that they had suffered no injury.

Plaintiffs aver that *LWV* is somehow relevant to the analysis of their constitutional attack on the ballot collection restrictions in this appeal because they cited some of the same cases in their opening brief and in the district court. Nonsense. The instant appeal challenges a statute prohibiting third parties from collecting and returning other voters' completed ballots. As Defendants will make clear in their Appellees' Brief, courts have uniformly held that such activity does *not* constitute expressive conduct and is not entitled to protection under the First Amendment or its state analogues. None of the cases cited in the *LWV* dicta are to the contrary.

As for *Rivera*, that case merely reaffirms that Section 2 of the Kansas Constitution's Bill of Rights is coextensive with the Federal Constitution's Fourteenth Amendment, something, again, no party disputes. Plaintiffs' reference to *Bush v. Gore*, 531 U.S. 98 (2000), meanwhile, is hardly "new authority" under Rule 6.09 and will be dealt with in our Appellees' Brief.

Respectfully Submitted,

By: /s/ Bradley J. Schlozman

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CERTIFICATE OF SERVICE

I certify that on this 8th day of July 2022, I electronically filed the foregoing with the Clerk of the Court pursuant to Kan. Sup. Ct. R. 1.11(b), which in turn caused electronic notifications of such filing to be sent to all counsel of record. I also certify that a copy of the foregoing was e-mailed to the following individuals:

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