

IN THE SUPREME COURT OF KANSAS

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

Plaintiff-Appellants,

v.

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

Defendant-Appellees.

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

PLAINTIFF-APPELLANTS' MOTION TO EXPEDITE REVIEW

Pursuant to Kansas Supreme Court Rules 7.01(b) and 8.03(b)(4), Appellants respectfully move that the petition for review and subsequent briefing be expedited given the urgency of this matter.

At issue in this appeal are subsections (a)(2) and (a)(3) of K.S.A. 25-2438, which make it a felony to not only knowingly misrepresent oneself as an election official but also to knowingly engage in conduct that “*gives the appearance*” or “*would cause another person to believe*” that one is an election official (emphases added) (the “Challenged Provisions”). As discussed in the petition for review—and as established by the unrefuted record evidence in this case—Appellants know that their regular voter registration and education

activities sometimes cause another person to believe that they are election officials, even when Appellants do not intend to cause that misapprehension, and even when they take affirmative steps to prevent it. As a result, Appellants have an entirely reasonable fear that they could be prosecuted if they continue to engage in those activities, and have largely curtailed them as a result of that fear. The Court of Appeals, which considered Appellants' appeal of the district court's denial of their motion for a temporary injunction of the Challenged Provisions, recognized that Appellants' activities constitute constitutionally protected speech, but declined to reach the merits, finding that Appellants' activity was not threatened by the Challenged Provisions. To reach this conclusion, the Court of Appeals read the statute in a way that cannot be reconciled with its plain text or long-standing canons of statutory construction. Indeed, even when the matter was before the Legislature, legislators voiced concerns that the statutory language was broad enough to reach the legitimate activities of one of the Appellants who has brought this suit—the League of Women Voters. As a result, while the Challenged Provisions remain in force, Appellants remain afraid to continue their vital voter registration and education activities.

Kansas Supreme Court Rule 7.01(b) provides that the Supreme Court “on motion may advance other cases as justice or the public interest may require.” Rule 8.03(b)(4) provides that the Court “may expedite other petitions

for review on motion by a party or on its own.” In this case, both justice and the public interest require expedited consideration of the petition for review and expedited briefing in this case. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976). This holds especially true in the context of voter outreach because “[t]he nature of elections . . . is that time is of the essence,” and “when each chance [to vote] is gone, it is gone.” *Tennessee State Conf. of N.A.A.C.P. v. Hargett*, 420 F. Supp. 3d 683, 711 (M.D. Tenn. 2019). The Challenged Provisions have already forced Appellants to forego many of their plans for voter education and registration for the 2021 local elections as well as the critically important 2022 August primary election. With each passing day, Appellants lose additional opportunities to educate and register voters in advance of the 2022 general election. Though Appellants have made every effort to resolve this matter as quickly as possible, the standard appellate timeline would not allow this case to be decided until long after the October 18, 2022 general election voter registration deadline. *See* Kan. Sup. Ct. R. 6.01.

Appellants request that this matter be set for expedited briefing so that they are not required to make an impossible choice: forgoing the exercise of their free speech and associational rights or making themselves vulnerable to criminal prosecution. Given the importance of these matters and the

restrictions on Appellants' protected activities created by the Challenged Provisions, the quantum of speech surrounding the right to vote in Kansas is irreparably reduced, and an expedited decision is both necessary and appropriate.

If this case is not determined on an expedited schedule, Appellants will—through no fault of their own—be denied the opportunity to obtain meaningful review of the Challenged Provisions for yet another election cycle. This would be a particularly unjust outcome because it is not only Appellants' rights that are at stake; the democratic participation that Appellants facilitate ensures election results are representative and reinforces public trust in the integrity of the electoral process. Thus, expedited consideration is needed not only to promote justice for Appellants, but also to protect the public's interest in ensuring that important questions with ramifications for the upcoming election are decided at a time when they are still meaningful.

For the reasons stated herein, Appellants respectfully request that the petition for review be determined on an expedited basis and that the briefing schedule be truncated to afford Appellants relief prior to the November election.

Respectfully submitted, this 15th day of July 2022.

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