

IN THE SUPREME COURT OF KANSAS

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

Plaintiffs-Appellants,

v.

SCOTT SCHWAB, in his official capacity as
Kansas Secretary of State, and KRIS
KOBACH, in his official capacity as Kansas
Attorney General,

Defendants-Appellees.

Appellate Case No. 22-125084-S

Original Action No. 2021-CV-299

PLAINTIFFS' MOTION TO EXPEDITE PETITION FOR REVIEW

It has been nearly two years since the Legislature enacted H.B. 2183 and its provisions at issue in the Defendants' petition for review: (1) the Signature Verification Requirement, which requires that ballots be rejected based on a highly error-prone signature matching requirement, and (2) the Ballot Collection Restriction, which criminalizes the collection of more than ten ballots for delivery to election officials to ensure they arrive in time to be counted.¹ These challenged provisions constitute unconstitutional impediments on the fundamental right to vote (as well as other rights fundamental under the Kansas Constitution). Plaintiffs initiated this lawsuit to vindicate

¹ Plaintiffs' separately-filed response to Defendants' petition for review discusses the challenged provisions at greater length.

those rights immediately after H.B. 2183's enactment in May 2021. Plaintiffs now ask this Court to expedite consideration and resolution of Defendants' petition for review. Expedition is proper under the Court's rules for all the reasons discussed below. It is further appropriate under Supreme Court Rule 8.03(b)(4), because Plaintiffs' motion to expedite these proceedings was granted in part by the Court of Appeals.

Plaintiffs have at all times sought to quickly resolve this case. Shortly after Defendants' motion to dismiss was fully briefed in October 2021, Plaintiffs asked the district court to set a case management conference so that the status of the challenged provisions could be resolved in advance of the 2022 elections. That request was denied, and discovery was stayed while the district court considered the motion to dismiss. Six months passed with no decision on the motion. Finally, with the August 2022 primaries swiftly approaching, Plaintiffs decided they could not wait any longer and moved for a partial temporary injunction of the enforcement of the Signature Verification Requirement. Four days later, the district court issued an order dismissing all claims related to the Signature Verification Requirement and the Ballot Collection Restriction and ruled that the motion for partial temporary injunction was moot in light of this dismissal.

Plaintiffs promptly appealed and moved the Court of Appeals to expedite consideration and resolution of the appeal such that the matter could be resolved by June 24, 2022. The Court of Appeals granted that motion to expedite in part, recognizing that it could not commit to issuing a decision by the requested date but stating that the Court of Appeals would "endeavor to decide this case as quickly as possible." May 19, 2022 Order (attached as Exhibit A).

On March 17, 2023, the Court of Appeals issued its decision in which it applied this Court's precedent to reverse the district court's order granting the motion to dismiss and its related conclusion that the motion for a temporary injunction was moot. Op. at 47. The Court of Appeals explained that the district court made numerous errors, including (but not limited to) presuming that the challenged provisions were constitutional, *id.* at 23; failing to recognize the fundamental nature of the right to vote, *id.* at 24; applying an inapposite federal test never adopted by this Court, *id.* at 25; and "making factual determinations with no evidence," *id.* at 31. The Court of Appeals remanded to the district court to allow Defendants to attempt to carry their burden of showing that the challenged provisions are narrowly tailored to serve a compelling state interest, as well as for other additional proceedings consistent with the Court of Appeals' opinion. *Id.*

Instead of attempting to make the required showing, Defendants publicly attacked the Court of Appeals' reasoned opinion as "the most radical election law decision in the country." Press Release, Kris W. Kobach, *AG Kris Kobach to appeal court's election decision* (Mar. 17, 2023), <https://ag.ks.gov/media-center/news-releases/2023/03/20/ag-kris-kobach-to-appeal-court-s-election-decision>. Defendants' petition for review followed.

If this Court accepts review, it could be many more months—or even longer—before this matter returns to the district court for adjudication. In the meantime, elections in Kansas continue, including primary elections for municipal and school board positions that will be held in a little over three months on August 1, with general elections to follow on November 7. And the Legislature recently passed a law, which is currently with the Governor for signature, that would authorize a statewide primary for the presidential

election on March 19, 2024. H.B. 2053 (2023). This Court currently has dates in May, September, October, November, and December of this year reserved for hearing cases. In light of these upcoming elections, if the Court accepts review, the need to expedite this matter becomes all the more significant.

For all of these reasons, Plaintiffs respectfully ask this Court to expedite review of Defendants' petition. Plaintiffs filed this lawsuit seventeen months before the 2022 elections. If the petition is not expeditiously considered and disposed of, another election cycle will be marred by uncertainty regarding the fundamental rights of Kansan voters. Granting Plaintiffs' motion for expedition will allow this matter to be promptly returned to the district court for consideration of temporary injunctive relief before the coming elections, if this Court declines review. And, if it accepts review, expedition will help ensure that the resolution of any questions under review will not cause further injury to the rights of Kansas voters. For the same reasons, if the Court decides to accept review, whether as of right or exercising its discretion, Plaintiffs respectfully request that the Court issue an expedited briefing schedule, set this matter for argument, and endeavor to reach a decision as soon as reasonably possible.²

² Given the nature of the fundamental rights at stake and the extended timeline that this case has already proceeded under, should this Court decide to accept review, Plaintiffs intend to seek an injunction of the challenged provisions from this Court pending review, under K.S.A. 60-262. Should the Court grant that motion for temporary relief pending its review, a highly expedited schedule would become less critical.

CONCLUSION

Accordingly, Plaintiffs respectfully request that this Court expedite consideration and resolution of the petition for review.

Respectfully submitted, this 24th of April, 2023.

/s/ Jason A. Zavadil

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CERTIFICATE OF SERVICE

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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