

**IN THE SUPREME COURT OF THE STATE OF KANSAS**

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No. 22-125084-S

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

DEFENDANTS-PETITIONERS,

vs.

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-RESPONDENTS.

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**PLAINTIFFS-RESPONDENTS' OPPOSITION TO PETITION FOR REVIEW AS  
A MATTER OF RIGHT**

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Appeal from the Kansas Court of Appeals Opinion  
Dated March 17, 2023

Appeal from the District Court of Shawnee County  
Honorable Teresa Watson, Judge  
District Court Case No. 2021-CV-000299

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## Introduction

In 2021, the Legislature enacted several statutes that make it harder to exercise the fundamental right to vote, assist others with exercising that right, or provide election-related information to the public. Relevant here are: (1) K.S.A. 25-1124(h), which subjects advance ballots to a highly error-prone and unreliable signature-matching process, requiring their rejection unless an election officer “verifies that the signature” on the “ballot envelope matches the signature on file in the county voter registration records” (the “Signature Verification Requirement”), and (2) K.S.A. 25-2437(c), which arbitrarily limits ballot collection and delivery—which many Kansans have long relied upon to ensure their ballots are returned in time to be counted—making it a crime for any person to “transmit or deliver more than 10 advance ballots on behalf of other voters during an election” (the “Ballot Collection Restriction”). The Legislature billed these restrictions as election integrity matters, but conceded there was no evidence they were needed to secure Kansas’s elections. To the contrary, state and local election officials affirmed that Kansas’s elections were secure, and the Secretary himself confirmed that a statewide audit of the 2020 election found “[a]ll votes accounted for and foul play, of any kind, was not found.” (R.III, 347).

Plaintiffs are nonpartisan nonprofit organizations that encourage and promote civic engagement through voting, and individual voters who, prior to the new laws, regularly assisted their friends, neighbors, and sisters of their religious order by collecting and delivering their ballots. They seek declaratory and injunctive relief to block the challenged provisions as violative of the Kansas Constitution. When and if such relief is granted—or denied—review in this Court will be proper. At this stage, however, review is premature:

the Court of Appeals has done nothing more than apply longstanding precedent to reverse the district court's improper dismissal of Plaintiffs' claims. This Court should deny the petition for review and return this case to the district court for consideration under the proper and well-established analytical framework.

### **Statement of the Issues**

- I. Defendants may not petition as a matter of right from the Court of Appeals' reversal of the district court's grant of the motion to dismiss.
- II. The Court of Appeals' reversal of a motion to dismiss because the district court failed to conduct the analysis required by this Court's precedent does not merit discretionary review.
- III. The Court of Appeals correctly held that strict scrutiny applies to statutes that infringe on the fundamental right to vote.
- IV. The Court of Appeals correctly held that the Signature Verification Requirement infringes on the right to vote and properly remanded for further proceedings.
- V. The Court of Appeals correctly held that the Ballot Collection Restriction infringes on the right to vote and properly remanded for further proceedings.
- VI. The Court of Appeals correctly held that the Signature Verification Requirement implicates a liberty interest entitled to due process and properly remanded for further proceedings.
- VII. The Court of Appeals correctly held that the Plaintiffs stated a valid equal protection claim against the Signature Verification Requirement but remanded for consideration in light of newly enacted regulations.
- VIII. The Court of Appeals correctly held that the Ballot Collection Restriction limits the free speech rights of ballot collectors and properly remanded for further proceedings.

### **Statement of Relevant Facts**

The challenged provisions were enacted over Governor Kelly's veto in May 2021. (R. II, 259). Plaintiffs promptly sued, arguing that the provisions unduly burden rights protected by the Kansas Constitution, including the right to vote, to due process, to equal

protection, and to freedom of speech and association. (R. 1, 72-73). At every stage, Plaintiffs have pressed to have their claims adjudicated expeditiously. The state moved to dismiss, (R. 2, 300), and the district court denied Plaintiffs' request to take discovery while that motion was pending (R. 1, 16). The motion to dismiss then sat, pending, for more than six months until April 2022, when Plaintiffs—no longer able to wait in light of upcoming elections—filed a motion to temporarily enjoin the Signature Verification Requirement. (R. 5, 2). Four days later, the district court dismissed Plaintiffs' claims against the challenged provisions, holding that the Ballot Collection Restriction satisfied rational basis review and that the Signature Verification Requirement was permissible under the federal *Anderson-Burdick* balancing test, which has never been adopted by this Court (nor, it seems, any other court in Kansas). (R. 5, 54). Plaintiffs promptly appealed and requested expedition of that appeal, which the Court of Appeals granted in part. On March 17, 2023, the Court of Appeals reversed the district court, unanimously holding that this Court's precedents establish that voting is a fundamental right and that statutes that infringe upon it therefore must satisfy strict scrutiny. Op. at 25. The Court of Appeals further noted that the district court improperly resolved factual issues contrary to the well-established standard applicable to motions to dismiss. Op. at 32. The Court of Appeals remanded for consideration under the proper standards. Defendants now petition for review.

### **Arguments and Authorities**

It is Defendants' burden to show "why review is warranted." Sup. Ct. R. 8.03(b)(6)(E); *see also Wiechman v. Huddleston*, 304 Kan. 80, 86-87, 370 P.3d 1994 (2016) (holding right to appeal in civil cases comes from statutes, and appellate courts only

have jurisdiction if appeal is taken in manner prescribed). Defendants invoke K.S.A. 60-2101(b) and Sup. Ct. R. 8.03(g)(1), which grant a right of appeal from a “final decision of the court of appeals” when “a question under” the Kansas Constitution “arises for the first time as a result of such decision,” or Sup. Ct. R. 8.03(b)(6)(E), which grants discretion to consider appeals under other circumstances, including where the appeal presents “an issue of public importance, consequence, or attention,” or “an issue of first impression.”

Plaintiffs agree that the fundamental rights of Kansans under the Kansas Constitution are of the utmost importance, but that is not the standard for a petition as of right, and there are good reasons to decline discretionary review here. To petition as of right, the decision must be both final and the question must have “arise[n] for the first time as a result of [that] decision.” K.S.A. 60-2101(b). Here, the Court of Appeals applied this Court’s established precedent to reverse the district court’s erroneous grant of Defendants’ motion to dismiss. This Court does not need to clarify again that voting is a fundamental right under the Kansas Constitution or that statutes infringing fundamental rights must withstand strict scrutiny. And further interlocutory appellate review will only engender further delay of the actual resolution of these issues, which are central to the free exercise of Kansans’ most fundamental rights. Accordingly, Plaintiffs respectfully submit that this case should be promptly returned to the district court for consideration under the proper standards—after which Supreme Court review eventually may be warranted.

**I. Defendants may not petition as matter of right from the Court of Appeals’ reversal of the district court’s grant of the motion to dismiss.**

Defendants cannot petition as of right because the Court of Appeals’ decision does



not raise any new questions of constitutional law. *See* K.S.A. 60-2101(b); Sup. Ct. R. 8.03(g)(1). Defendants assert that this Court must hear this appeal, “[b]ecause this case represents the first time that a Kansas appellate court has addressed the constitutionality of *these laws*,” Pet. at 1 (emphasis added), but this both misstates the standard for review as of right and mischaracterizes the Court of Appeals’ decision.

A party may petition as of right from “*a final decision of the court of appeals*” when “a question under the [Kansas] constitution ... *arises for the first time* as a result of such decision.” K.S.A. 60-2101(b) (emphases added); *accord* Sup. Ct. R. 8.03(g)(1). There is not a right to review every time that the Court of Appeals addresses the constitutionality of a specific law in any context or at any stage in the litigation—much less in a case like this, where it applied this Court’s long-standing precedent to reverse an order granting a motion to dismiss and remanded to the district court to pass on whether the laws are constitutional, consistent with that precedent and under the appropriate analytical framework.

Plaintiffs argued below that the challenged provisions infringe on the fundamental right to vote and must satisfy strict scrutiny. (R. II, 410-14). The district court rejected this argument and held that laws implicating the right to vote are subject to lower levels of scrutiny—either rational basis review or the *Anderson-Burdick* balancing test utilized by federal courts. (R. V, 60-63). The only relevant constitutional questions that the Court of Appeals considered therefore were (1) whether the right to vote is fundamental under the Kansas Constitution and (2) what standard applies to a law that allegedly infringes on fundamental rights. This Court has already answered both questions.

There is no dispute that voting is a fundamental right. *See* Pet. at 7 (“No one disputes

that the right to vote is fundamental or that legally cast votes must be counted.”); *see also* *Farley v. Engelken*, 241 Kan. 663, 669, 740 P.2d 1058, 1063 (1987) (“Fundamental rights recognized by the Supreme Court include voting”); *Moore v. Shanahan*, 207 Kan. 1, 649, 486, P. 2d 506, 511 (1971) (right to vote “is a fundamental matter”). This question therefore cannot be the basis for an appeal as of right. And this Court has repeatedly held that laws that violate fundamental rights are subject to strict scrutiny, including in *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 673 (2019) (explaining “government infringement of a fundamental right is inherently suspect,” and as such subject to “strict scrutiny” review). Even before *Hodes*, this Court recognized that strict scrutiny applies to “infringements of fundamental rights” as far back as 1978, *see State ex rel. Schneider v. Liggett*, 223 Kan. 610, 617, 576 P.2d 221, 227 (1978), and has reiterated that principle numerous times. *See, e.g., Farley*, 241 Kan. at 669 (“[S]trict scrutiny . . . applies in cases involving . . . fundamental rights expressly or implicitly guaranteed by the Constitution . . . .”); *Jurado v. Popejoy Const. Co.*, 253 Kan. 116, 124, 853 P.2d 669, 676 (1993) (“This strict level of scrutiny applies when fundamental rights are affected . . . .”); *Bd. of Educ. of Unified Sch. Dist. No. 443, Ford Cnty. v. Kansas State Bd. of Educ.*, 266 Kan. 75, 88, 966 P.2d 68, 80 (1998) (same); *State v. Voyles*, 284 Kan. 239, 257, 160 P.3d 794, 807 (2007) (same); *State v. Ryce*, 303 Kan. 899, 957, 368 P.3d 342, 377 (2016), *adhered to on reh’g*, 306 Kan. 682, 396 P.3d 711 (2017) (“Because a fundamental right is involved we apply strict scrutiny.”).

The lack of any new question of constitutional law is a sufficient basis on which to deny the petition as of right. But, in addition, the Court of Appeals’ decision was not “final,” as Sup. Ct. R. 8.03(g)(1) requires. It simply reversed the denial of the motion to

dismiss. Plaintiffs are not aware of a single case (and Defendants cite none) in which this Court has found that there is an appeal as of right under Rule 8.03(g)(1) from a decision reversing a grant of a motion to dismiss. This finality principle is reflected in other well-established jurisdictional rules, including the rule that a denial of a motion to dismiss is not appealable as a final order because the case continues after a motion to dismiss is denied.

Even if the Court finds that the question of what standard applies to Plaintiffs' claims "arises for the first time as a result of the Court of Appeals decision," there were clear alternative grounds for reversal of the district court. As the Court of Appeals repeatedly noted, the district court transformed the motion to dismiss standard by ruling that "there were no facts necessary to evaluate Plaintiffs' facial challenge," but then "conversely appl[ied] a fact-driven test to determine the questioned statutes were not a severe burden on the right to vote," including by "us[ing] [the court's own] facts to decide" the motion. Op. at 30-31. That clear error—having nothing to do with any constitutional question—also permeates Defendants' petition for review. *See* Pet. at 11 (arguing without the Signature Verification Requirement, "there is almost no way to safeguard against individuals casting advance/absentee ballots on behalf of others"); Pet. at 12 (arguing about the relative "hardship[s]" imposed by the Ballot Collection Restriction).

**II. The Court of Appeals' reversal of a motion to dismiss because the district court failed to conduct the analysis required by this Court's precedent does not merit discretionary review.**

Defendants argue in the alternative that the Court should nevertheless grant the petition because "the case presents issues of first impression on matters of extremely significant public importance," but that argument is premature. Pet. at 1. Plaintiffs fully

agree that the question of whether the challenged provisions violate the Kansas Constitution is both of extremely significant public importance and of first impression. Although the *case* presents this question, the Court of Appeals' decision does not. Rather than delaying resolution of that question for months, this Court should deny the petition for review and return the matter to the district court to consider the challenged provisions' constitutionality consistent with this Court's precedent, after which this Court may then properly evaluate whether the challenged provisions violate the Kansas Constitution.

**III. The Court of Appeals correctly held that strict scrutiny applies to statutes that infringe on the fundamental right to vote.**

As noted, this Court has long recognized that statutes that infringe on fundamental rights are subject to strict scrutiny, and there is no dispute that the right to vote is fundamental. Defendants' agreement that the right to vote is fundamental confirms that strict scrutiny applies to Plaintiffs' claims. *See Hodes*, 309 Kan. at 664.

Attempting to avoid this straightforward result, Defendants argue strict scrutiny should not apply because "there is no fundamental right . . . to vote absentee or by mail," Pet. at 7, but as the Court of Appeals recognized, the challenged provisions may make it impossible for an eligible Kansan to have their vote counted at all. *See Op.* at 32-38. Defendants alternately argue that the Kansas Constitution carves out "challenges to statutes and regulations governing election administration" as meriting a lower standard of scrutiny because the Constitution allows the Legislature to enact election-related laws. Pet. at 6. But none of the provisions that Defendants cite confer the power to enact election-related laws that violate Kansans' fundamental right to vote. Defendants suggest that this Court's

decisions in *Lemons v. Noller*, 144 Kan. 813, 63 P.2d 117 (1936), and *Sawyer v. Chapman*, 240 Kan. 409, 729 P.2d 1220 (1986), support deferential review of election-related statutes, but both involved absentee ballot laws intended to make it *easier*, rather than harder, to vote. *See Lemons*, 144 Kan. at 186 (“The primary object of an election law . . . is to provide means for effective exercise of suffrage.”); *Sawyer*, 240 Kan. at 415 (recognizing “compelling state interest in increased participation in the election process”).

Defendants also make the hyperbolic claims that subjecting voting laws that impede the right to vote to strict scrutiny “makes a mockery of our Constitution” or will “grind our election framework to a halt.” Pet. at 8-9. These contentions are baseless. Requiring laws that make it more difficult to vote to be narrowly tailored to compelling government interests ensures that the Legislature cannot unduly restrict access to the franchise by enacting an endless series of small barriers and *affirms* Kansas’s longstanding constitutional commitment to the fundamental right to vote. This commitment can be seen in Kansas’s long history of open *access* to the franchise—including by granting all of its citizens the right to advance voting nearly 30 years ago—an approach that has only recently, and radically, shifted in response to false claims that the 2020 election was tainted by fraud. It is these attacks—not the Court of Appeals’ unanimous decision recognizing the strong protections afforded to the fundamental right under the Kansas Constitution—that threaten Kansas’s elections and its constitutional commitment to maintaining a free and fair democracy.

**IV. The Court of Appeals correctly held that the Signature Verification Requirement infringes on the right to vote and properly remanded for further proceedings.**

The Court of Appeals held that, as pleaded by Plaintiffs, the Signature Verification Requirement infringes on the right to vote because lawful voters' ballots may be discarded for reasons beyond their control. Op. at 30. Defendants do not dispute this; in fact, they concede as much by arguing that the Requirement contains "cure mechanisms, exceptions, and other measures designed to *minimize* the rejection of any ballots." Pet. at 10 (emphasis added). As the Court of Appeals correctly held, "[u]nder strict scrutiny, once the plaintiff has shown an infringement—regardless of degree—the state action is presumed unconstitutional [and the] burden then shifts to the State to establish a compelling interest and narrow tailoring of the law to serve the interest." Op. at 28. Because Defendants do not dispute valid ballots will be rejected, their argument regarding safeguards is properly directed toward the narrow tailoring requirement—an issue the Court of Appeals did not reach. Defendants also reassert that the Requirement must be presumed constitutional and overturned only if "no set of circumstances exists under which the Act would be valid." Pet. at 11 (quoting *State v. Jones*, 313 Kan. 917, 931, 492 P.3d 433 (2021)). But as the Court of Appeals correctly found—consistent with this Court's precedent—that is not the law when evaluating a statute that implicates a fundamental right. Op. at 24; *see also Hilburn v. Enerpipe Ltd.*, 309 Kan. 1127, 1132 (2019).

Regardless of the test applied to the ultimate constitutional claim, other portions of the Court of Appeals' decision establish that the dismissal of Plaintiffs' claims cannot stand. When evaluating a motion to dismiss, the district court is bound to accept the non-

movants' factual allegations as true. *Williams v. C-U-Out Bail Bonds, LLC*, 310 Kan. 775, 784, 450 P.3d 330, 338 (2019). The district court completely failed to adhere to that standard. *See Op.* at 31 (“In its eagerness to use the *Anderson-Burdick* test, the court erred by making factual determinations with no evidence.”).

**V. The Court of Appeals correctly held that the Ballot Collection Restriction infringes on the right to vote and properly remanded for further proceedings.**

As the Court of Appeals recognized, the Ballot Collection Restriction creates hardships that will likely keep some lawful Kansas voters from successfully exercising their right to vote. Nevertheless, it did not strike the Restriction down. Instead, it remanded to the district court to allow Defendants the opportunity to demonstrate that the Restriction is narrowly tailored to serve compelling state interests.

In any event, the district court's order cannot stand because it again failed to apply the proper standard for evaluating a motion to dismiss. *See Op.* at 32 (“It is clear that the court did not take as true the facts as pled in the petition . . .”). Further, Plaintiffs alleged that, absent their collection efforts “it would be extremely difficult, if not impossible, for [the Plaintiffs' community co-residents] to send any mail, including their advance ballot” and that some would be unable to vote. (R. II, 247). But the district court never even analyzed whether the Restriction burdened voting rights, instead addressing only Plaintiffs' speech claims. *See (R. V, 69)* (“Because the BCRs do not restrict core political speech or expressive conduct, the rational basis test applies.”). The district court's failure to adhere to the appropriate standard for reviewing a motion to dismiss provides an alternate rationale for reversal and remand of its decision with respect to the Ballot Collection Restriction.

**VI. The Court of Appeals correctly held that the Signature Verification Requirement implicates a liberty interest entitled to due process and properly remanded for further proceedings.**

The Court of Appeals correctly held that the Signature Verification Requirement implicates a liberty interest—voting—which is entitled to procedural due process, and that the district court erred in dismissing Plaintiffs’ due process claim. Op. at 36-38. The Court of Appeals also properly remanded to the district court to consider in the first instance whether the procedural protections provided by the regulation are sufficient. *Id.* at 38.

As the Court of Appeals held, the liberty interest here is the fundamental right to have one’s vote counted. Op. at 36 (quoting *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964)). This Court has acknowledged that fundamental rights can also be considered liberty interests for due process analysis. *In re J.D.C.*, 284 Kan. 155, 166, 159 P.3d 974 (2007) (holding a parent’s fundamental right to the custody, care, and control of their child is also a protected liberty interest). Thus, the Court of Appeals properly applied this Court’s precedent to conclude that the fundamental right to vote, like the fundamental right of a parent to raise their child, can be considered a liberty interest. Op. at 38. As the Court of Appeals succinctly stated: “Both rights are fundamental. Both rights are important.” *Id.*

Even if this Court accepts Defendants’ framing that the inquiry is whether there is a liberty interest in voting *by mail*, the Court of Appeals holding is still correct. Kansas has provided for voting by mail for decades, and even an entirely state-created right entitles citizens “to due process before it is taken away.” *Creecy v. Kan. Dep’t of Revenue*, 310 Kan. 454, 463, 447 P.3d 959, 967 (2019). Indeed, the Court of Appeals noted that the state-created privilege of having a driver’s license cannot be taken away without due process,



reaching the logical conclusion that the right to vote by mail must be subject to similar protections. Op. at 35-37. There can be no serious dispute of this conclusion. Unlike the right to drive, voting by mail is a means by which Kansas citizens *vote*, engaging in the process that is the very “bed-rock” of democracy, a fundamental right protected by the Kansas Constitution. *Moore v. Shanahan*, 207 Kan. 645, 649, 486 P.2d 506, 511 (1971); *see also League of Women Voters of S.C. v. Andino*, 497 F. Supp. 3d 59, 77 (D.S.C. 2020) (“[A] large body of case law . . . recognizes that the franchise is a fundamental right and the cornerstone of a citizen’s liberty.” (collecting cases)). Defendants’ argument that the right to vote can be revoked without due process simply because Kansas made the franchise more accessible by allowing mail voting is untenable.

Although Defendants intimate that the Signature Verification Requirement’s notice and cure provisions provide sufficient due process protections, Pet. at 13, any inferences must be construed in the light favorable to Plaintiffs at this stage. Plaintiffs sufficiently alleged that voters will be deprived of their right to vote without notice or an actual opportunity to cure due to the Signature Verification Requirement’s lack of standards, and it is improper to disregard their factual allegations at this stage of the proceedings.

**VII. The Court of Appeals correctly held that the Plaintiffs stated a valid equal protection claim against the Signature Verification Requirement but remanded for consideration in light of newly enacted regulations.**

Again, ignoring the requirement that appellate courts must construe well-pleaded facts and inferences in the light most favorable to plaintiffs, *Williams*, 310 Kan. at 784, Defendants argue that the Court of Appeals erred by holding that Plaintiffs stated a valid equal protection claim. Pet. at 14-15. In support, Defendants quote the opinion without

providing context, asserting that the Court of Appeals opined on the Signature Verification Requirement's lack of standards and that requiring identical treatment of voters in different counties will "upend[] Kansas' voting process." Pet. at 14. It did no such thing. Rather, recognizing that Plaintiffs' equal protection claim is based on the ruling in *Bush v. Gore*, the Court of Appeals held that "Plaintiffs have adequately stated an equal protection claim because the signature matching statute contains no standards to determine what constitutes a signature match, and requires no training—ensuring that what constitutes a signature match will vary from county to county and even from one election official to another." Op. at 41-42. The Court did not opine on the merits of Plaintiffs' equal protection claim or hold that voters in different counties must be treated identically. It simply reviewed Plaintiffs' well-pleaded facts in Plaintiffs' favor—as required under the motion to dismiss standard—and held that Plaintiffs sufficiently stated a claim to avoid dismissal.

Finally, the Court of Appeals did not err by not considering K.A.R. 7-36-9. As the Court of Appeals acknowledged, there was no information in the record about the regulation and no briefing on the issue. Op. at 42. At the motion to dismiss stage, there is no weighing of the evidence, so the Court of Appeals properly left the effect of the regulation as a matter for the district court to decide in the first instance on remand. *Id.*

**VIII. The Court of Appeals correctly held that the Ballot Collection Restriction limits the free speech rights of ballot collectors and properly remanded for further proceedings.**

The Ballot Collection Restriction infringes on the free speech and assembly rights of ballot collectors, including Plaintiffs. Read as a whole, the Court of Appeals opinion clearly instructs that the Ballot Collection Restriction "does limit the free speech of the

ballot collector but not the speech of the voter,” and that on remand the district court should focus on this burden when applying strict scrutiny. Op. at 47.

Case law strongly supports that the type of one-on-one political engagement that ballot collection entails constitutes core political speech subject to core constitutional protections. *E.g.*, *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 192 (1999) (holding First Amendment requires courts “to guard against undue hindrances to political conversations and the exchange of ideas”); *Meyer v. Grant*, 486 U.S. 414, 422 (1988) (holding interactive communication regarding political change properly described as “core political speech”). The amended petition alleges that Plaintiffs collect ballots to spread their message of political and civic engagement throughout their communities. (R. II, 247) (describing Plaintiff Sister Huelsmann’s efforts to collect ballots as “encourag[ing] others to exercise their fundamental right to vote”); *id.* (explaining that Plaintiff Crabtree’s collection of ballots “effectively communicates his message of civic participation and engagement”). The diminution of this important political speech must, as the Court of Appeals correctly held, be subjected to exacting scrutiny, Op. at 44 (citing *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 344-45 (1995)), which is precisely the instruction given for remand. This Court need not revisit this determination now.

### **Conclusion**

Defendants’ petition for review is premature. This Court should deny the petition and allow the district court to consider Plaintiffs’ claims.

Dated: April 24, 2023

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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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# EXHIBIT A

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CASE NO. 125,084

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, INC., AND TOPEKA  
INDEPENDENT LIVING RESOURCE CENTER,  
*Plaintiffs-Appellants,*

v.

SCOTT SCHWAB, IN HIS OFFICIAL  
CAPACITY AS KANSAS SECRETARY  
OF STATE, AND DEREK SCHMIDT,  
IN HIS OFFICIAL CAPACITY AS KANSAS  
ATTORNEY GENERAL,  
*Defendants-Appellees.*

ORDER

This order concerns Appellees' motion for involuntary dismissal and Appellants' motion to expedite. We deny on present showing Appellees' motion for involuntary dismissal and note the reply and response. We grant in part Appellants' motion to expedite and note the reply and response.

This appeal involves, in part, the denial of a temporary injunction, giving rise to an appeal as of right under K.S.A. 2020 Supp. 60-2102(a)(2). The extent to which our review of that injunction will reach the constitutionality of the challenged statutory provisions goes to the merits of the parties' arguments, not to our jurisdiction to consider the appeal at all. And appellate jurisdiction under K.S.A. 2020 Supp. 60-2102(a)(3)—a



matter rarely litigated—turns on novel legal analyses intertwined with factual questions we cannot answer without the benefit of further briefing and the record on appeal.

This case will thus proceed to briefing and will be assigned to a panel for its consideration. To permit a more comprehensive review by the panel of appellate jurisdiction, we order the parties to address the following questions in their briefs (in addition to any arguments regarding the merits of the district court's decision):

1. Which of Appellants' claims remain pending before the district court, and what is the status of those claims?
2. What is required for a decision to have a "semblance of finality" such that it may be reviewable under K.S.A. 2020 Supp. 60-2102(a)(3)?
3. How, if at all, does the finality requirement of K.S.A. 2020 Supp. 60-2102(a)(3) differ from the final order requirement of K.S.A. 2020 Supp. 60-2102(a)(4)?
4. What was the basis of the district court's conclusion that the request for temporary injunction of the Signature Verification Requirement was moot?
5. May we review the district court's denial of the temporary injunction since the district court dismissed the constitutional challenges to the Signature Verification Requirement on the merits?
6. How, if at all, was the district court's constitutional analysis of the Ballot Collection Restrictions related to the district court's constitutional analysis of the Signature Verification Requirement?

Turning now to Appellants' motion to expedite, we grant that motion in part and note the response and reply. We cannot commit to issuing a decision by June 24, 2022.

But we will endeavor to decide this case as quickly as possible. To that end, extensions of time for briefing will be granted only if exceptional circumstances are shown. Once briefing is complete, we will make every effort to assign the case to a panel for decision.

DATED: May 19, 2022.

FOR THE COURT

/s/ Sarah E. Warner

SARAH E. WARNER, Presiding Judge

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