

IN THE SUPREME COURT 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 Secretary of State, and)
DEREK SCHMIDT, in his official)
capacity as Kansas Attorney General,)

Defendants-Appellees.)

Appellate Case No. 22-125084-S

Original Action No. 2021-CV-000299

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO EXPEDITE PETITION FOR REVIEW**

Defendants Scott Schwab and Derek Schmidt respectfully submit this response in opposition to Plaintiffs' motion to expedite Defendants' pending Petition for Review. For the reasons set forth below, Defendants urge the Court to deny Plaintiffs' motion.

This is the *fourth* motion to expedite that Plaintiffs have filed in the Kansas appellate courts in this case. The first two motions, both of which were denied by this Court, *see* Orders dated 10/18/2021 and 8/26/2022, were filed in connection with Plaintiffs' separate appeal involving their constitutional attack on K.S.A. 25-2438(a)(2) and (a)(3), which was recently argued to, and is now pending before, this Court. *See* Appeal No. 21-124378-S. Plaintiffs later filed a motion to expedite the instant appeal (involving facial challenges to

the State's signature verification requirement in K.S.A. 25-1124(h) and ballot collection restrictions in K.S.A. 25-2437(c)) in the Court of Appeals. Although the Court of Appeals characterized its ruling on the motion as a "grant in part," it was effectively a denial insofar as the Court merely said that it would not grant extensions absent exigent circumstances and would endeavor to decide the case as quickly as possible. *See* Order dated 5/19/2022. The Court of Appeals ultimately issued its opinion nearly ten months later on 3/17/2023, six months after the oral argument. Plaintiffs have now decided to go to the well again, because, well, why not.

In their latest motion to expedite, Plaintiffs once again contend that they have moved with alacrity in pursuing their novel attacks on these two statutes. This argument is difficult to square with the fact that, despite seeking a temporary injunction against the enforcement of 25-2438(a)(2)-(a)(3), Plaintiffs chose not to seek temporary injunctive relief with respect to the signature verification requirements or ballot collection restrictions. Indeed, it was not until 4/7/2022 – more than *ten months* after commencing their lawsuit on 6/1/2021 – that Plaintiffs (on the eve of the district court's outright dismissal of the claims) filed a last-minute motion for temporary injunctive relief in connection with those causes of action.

In any event, Plaintiffs now take Defendants to task for not capitulating to the Court of Appeals' fundamentally flawed decision and having the audacity to petition for review to this Court, rather than simply "attempting to make the required showing" of burden on remand – under a heightened (and wholly unreasonable) standard that deviates from the deferential review applied by virtually every state and federal court in the country to these types of election integrity statutes. (Mtn. at 3). Needless to say, the issues in this matter

are of grave importance – a point on which all parties agree – and there is no reason to rush their proper consideration. In fact, granting Plaintiffs the relief they seek in this appeal will indisputably have a highly deleterious impact on, among other things, the State’s ability to ensure that its elections are free of fraud, the public’s confidence in the fairness of the electoral process, and the credibility of the judiciary. With respect, that is not an endeavor that this Court should pursue on an expedited basis.

Moreover, the purported timing emergency about which Plaintiffs complain is entirely manufactured. Plaintiffs point to the (possible) primary elections for municipal and school board positions this summer.¹ But there are virtually always ongoing elections in Kansas throughout the year, particularly at the local level. If Plaintiffs were so worried about the application of the challenged statutes to municipal and school board races, then they could (and should) have sought temporary injunctive relief upon first filing this lawsuit back in the summer of 2021.

Although Plaintiffs’ facial challenges to the signature verification requirement and ballot collection restrictions were dismissed for failure to state a claim, Plaintiffs warn that if the pending petition for review is granted, they will seek an injunction from this Court pursuant to K.S.A. 60-262 pending final resolution. (Op. at 4, n.2). There would be no legitimate basis for doing so. As Defendants detailed in their Appellees’ Brief in the Court of Appeals, not a single appellate court – prior to the panel below – has embraced Plaintiffs’ far-flung theories for attacking these two statutes, and the handful of federal district courts

¹ The necessity of any primary elections will not be known until the 6/1/2023 filing deadline.

that have done so are completely distinguishable, targeting provisions (or omissions) that simply do not exist in the laws being challenged here. The notion that Plaintiffs could show not only a substantial likelihood of success on the merits, but also irreparable injury that outweighs the devastatingly adverse impact such a ruling would have on the public interest, is illogical.

Plaintiffs' motion to expedite also proceeds under an assumption that the Court of Appeals correctly analyzed the legal issues here. Defendants vigorously dispute that point. For the reasons articulated in Defendants' Appellees' Brief below and Petition for Review here, Plaintiffs' facial challenges – when evaluated under the proper (i.e., deferential) level of judicial scrutiny – can be easily disposed of at the pleading stage without the need for discovery.

To be clear, Defendants have no problem with this Court's timely resolution of their Petition for Review and have no interest in needlessly delaying this Court's evaluation of the legal issues presented in this suit. Indeed, it is essential that this Court weigh in here. The Court of Appeals' decision has left great uncertainty in its wake as to the validity of an array of election-related provisions as well as the legislature's constitutional authority to adopt prophylactic measures designed to ensure the integrity of the electoral process. But the scare tactics that Plaintiffs trot out in a presumed effort to circumscribe the normal briefing process and unduly influence this Court are totally unwarranted.

Accordingly, Defendants respectfully request that Plaintiffs' motion to expedite be denied.

Respectfully submitted,

/s/ Bradley J. Schlozman

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CERTIFICATE OF SERVICE

I certify that on this 27th day of April 2023, I electronically filed the foregoing document 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 true and correct copy of the above and foregoing was e-mailed to the following individuals:

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