

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 22-125084-S

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-Respondents,

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-Petitioners.

RESPONSE TO DEFENDANTS' NOTICE OF ADDITIONAL AUTHORITY

Appeal from the Kansas Court of Appeals
Case No. 22-125084-A
Appeal from the District Court of Shawnee County
Honorable Teresa Watson, Judge
District Court Case No. 2021-CV-000299

Jason Zavadil (#26808)
**IRIGONEGARAY, TURNEY, &
REVENAUGH LLP**
1535 S.W. 29th Street
Topeka, KS 66611
Telephone: (785) 267-6115
Facsimile: (785) 267-9458
jason@itrlaw.com
Counsel for Plaintiffs

Defendants filed a notice of supplemental authority under Rule 6.09(a)(1) regarding the Ada County, Idaho District Court’s decision in *Babe Vote v. McGrane*, No. CV01-23-04534 (Ada Cnty., Idaho Oct. 2, 2023). As a threshold matter, the notice does not comply with Rule 6.09(b), which requires a notification letter to “contain a reference ... to the page(s) of the brief intended to be supplemented.” This omission is understandable; the *BabeVote* decision is neither persuasive nor controlling authority on any issue relevant to the decision under review—and very well may have been wrongly decided even under the Idaho Constitution.

The provisions at issue in that case, moreover, are highly distinct from those here. *BabeVote* involved a challenge under the Idaho Constitution to Idaho statutes eliminating student ID for voting or registering to vote, *see* Slip Op. at 3, whereas this case involves a challenge under the Kansas Constitution to Kansas statutes limiting ballot collection and imposing signature match requirements. Kansas and Idaho have different constitutions with different protections for the right to vote. Most notably, Article VI, Section 4 of the Idaho Constitution expressly allows that “[t]he legislature may prescribe qualifications, limitations, and conditions for the right of suffrage”—a provision with no analog in the Kansas Constitution, but which the Idaho trial court relied upon and Defendants ignore.

Moreover, the Idaho trial court’s decision in *BabeVote* is inconsistent with the Idaho Supreme Court’s decision in *Van Valkenburgh v. Citizens for Term Limits*, which squarely held that strict scrutiny applies “if a fundamental right is at issue” and specifically rejected the *Anderson Burdick* standard. 135 Idaho 121, 126 (2000). The court attempted to distinguish *Van Valkenburgh* by asserting that the Idaho Supreme Court’s rejection of

Anderson Burdick turned on the distinction between time, place, and manner restrictions and ballot access restrictions, but that was not the Idaho Supreme Court’s primary rationale: instead, it was that “*Burdick* did not deal with the Idaho Constitution.” *Id.*

Just as *Burdick* did not deal with the Idaho Constitution, *BabeVote* does not deal with the Kansas Constitution and is entirely irrelevant to this case.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Respectfully submitted, this TK day of October, 2023.

/s/ Jason Zavadil

Pedro L. Irigonegaray (#08079)
Nicole Revenaugh (#25482)
Jason Zavadil (#26808)
J. Bo Turney (#26375)
**IRIGONEGARAY, TURNEY, &
REVENAUGH LLP**
1535 S.W. 29th Street Topeka, KS 66611
(785) 267-6115
pli@plilaw.com
nicole@itrlaw.com
jason@itrlaw.com
bo@itrlaw.com

Counsel for Plaintiffs

Elisabeth C. Frost*
Mollie A. DiBrell*
Marisa A. O’Gara*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, DC 20002
(202) 968-4513
efrost@elias.law
mdibrell@elias.law
mogara@elias.law

*Counsel for Loud Light, Kansas Appleseed
Center for Law and Justice, Topeka
Independent Living Resource Center, Charley
Crabtree, Patricia Lewter, and Faye Huelsmann*

David Anstaett*
PERKINS COIE LLP
33 East Main Street, Suite 201
Madison, WI 53703
608) 663-5408
danstaett@perkinscoie.com

Counsel for League of Women Voters of Kansas

** Admitted Pro Hac Vice*

RETRIEVED FROM DEMOCRACYDOCKET.COM