IN THE THIRD JUDICIAL DISTRICT
DISTRICT COURT, SHAWNEE COUNTY, KANSAS
CIVIL DEPARTMENT

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

Plaintiffs,

v.

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

Defendants.

Case No. 2021-CV-000299

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PLAINTIFFS' OPPOSITION TO DEFENDANTS' RENEWED MOTION TO DISMISS FOR LACK OF STANDING COUNTS III-IV OF PLAINTIFFS' AMENDED PETITION

TABLE OF CONTENTS

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I. INTRODUCTION

Kansas law and binding precedent foreclose Defendants' attempt to relitigate Plaintiffs' standing to challenge Kansas's Signature Verification Requirement. Indeed, that issue has been settled by the appellate courts in this very case. Defendants' renewed motion to dismiss is plainly improper and must be denied.

This case returns to this Court on remand after the Court of Appeals and the Kansas Supreme Court recognized that Plaintiffs have standing to survive a facial motion to dismiss their equal protection and due process claims against the Signature Verification Requirement. *See League of Women Voters v. Schwab*, 63 Kan.App.2d 187, 204 (2023) ("Plaintiffs have alleged that they encourage advance voting and that they will have to divert resources from their other voter assistance activities to ballot cure programs to prevent voters from being disenfranchised by the new signature matching requirement. These are sufficient allegations to establish their standing . . ."); *see also* Ex. 1, Kansas Supreme Court Oral Argument Tr. at 30:15-17 ("The court of appeals in their decision did a pretty lengthy analysis of your standing argument and rejected it."). Defendants acknowledge that the Court of Appeals found that Plaintiffs have standing, Defs.' Br. at 1, and have not argued that its holding was rejected by the Kansas Supreme Court—nor could they. Despite that, they now move this Court to "revisit the issue", *id.* at 4, because of the U.S. Supreme Court's decision in *Food and Drug Administration v. Alliance for Hippocratic Medicine* ("*FDA*") 602 U.S. 367 (2024), which addressed Article III standing in federal courts.

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At the threshold, Defendants' motion is improper. The Kansas Supreme Court has been crystal clear—including in this case—that Kansas applies its own two-part standing test, and this Court is bound by the higher courts' conclusion that Plaintiffs have satisfied it here. A U.S. Supreme Court decision does not change the applicable standards for evaluating standing in Kansas courts, and Defendants' attempt to argue otherwise ignores basic requirements of Kansas

law that bind this Court. K.S.A. 60-2106(c) clearly establishes that the opinion and mandate of an appellate court are conclusive and must "without exception" be followed by the trial court. *State v. Kleypas*, 305 Kan. 224, 297 (2016). Yet Defendants nonetheless invite the Court to erroneously consider their renewed motion to dismiss—without even grappling with that statute. That alone ends the matter.

But, in addition, Defendants misread *FDA*'s impact even on federal standing jurisprudence, improperly describing it as a change in the law, when by its own terms it simply reiterates long-standing precedent related to organizational standing in federal courts. And Plaintiffs more than satisfy not only Kansas's standing requirements (which is all that they need do here), but also would have standing under federal precedent—including *FDA*. Indeed, a federal court applying *FDA* just a few weeks ago found that the League of Women Voters in Ohio had organizational standing to challenge an Ohio voting law, because "unlike the Plaintiffs" in the *FDA* case, the League was injured by that law in ways similar to the way it—and the other organizational plaintiffs—are injured by the Signature Verification Law, here. *See League of Women Voters of Ohio v. LaRose*, No. 1:23-CV-02414, 2024 WL 3495332, at *5 n.3 (N.D. Ohio July 22, 2024).

For all of these reasons, the "renewed" motion to dismiss must be denied.

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II. PROCEDURAL HISTORY

In 2021, the Kansas Legislature passed Senate Substitute for House Bill 2183 over the Governor's veto. The bill created three new election laws, including what ultimately became K.S.A. 25-1124(h)—the Signature Verification Requirement. Shortly thereafter, Plaintiffs filed a lawsuit in this Court challenging each of those laws. As is relevant here, Plaintiffs argued that the Signature Verification Requirement violates the right to vote under the Kansas Constitution Bill of Rights sections 1 and 2 and the Kansas Constitution article 5, section 1; the right to equal protection under the Kansas Constitution Bill of Rights sections 1 and 2; and the right to procedural

due process under the Kansas Constitution Bill of Rights section 18.

The State filed a motion to dismiss Plaintiffs' petition in its entirety for failure to state a claim. It also disputed Plaintiffs' standing to challenge the Signature Verification Requirement. On April 7, 2022, Plaintiffs filed a motion for partial temporary injunction against the Signature Verification Requirement. On April 11, 2022, this Court granted the state's motion to dismiss all of Plaintiffs' claims against the Signature Verification Requirement, "assum[ing] the existence of [Plaintiffs'] standing." (R. V, 60). This Court further held that its ruling mooted Plaintiffs' motion for temporary injunction against the Signature Verification Requirement.

Plaintiffs appealed, and in March of 2023, the Kansas Court of Appeals reversed this Court's dismissal of Plaintiffs' claims against the Signature Verification Requirement, finding that Plaintiffs had standing and had stated claims that the Requirement violates the rights to vote, to procedural due process, and to equal protection under the Kansas Constitution. *League of Women Voters*, 63 Kan. App. 2d at 224. It further ruled that the motion for temporary injunction against the Signature Verification Requirement was not moot and that this Court erred in dismissing it. *Id*.

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The State subsequently petitioned the Kansas Supreme Court to review the decision. At oral argument, Attorney General Kris Kobach again raised the issue of standing, making many of the same standing arguments that the State now raises again in its brief. *See* Ex. 1, Kansas Supreme Court Oral Argument Tr. at 30:19-21.[1] On May 31, the Kansas Supreme Court affirmed the Court of Appeals' holding that Plaintiffs had stated claims that the Signature Verification violates procedural due process and equal protection, but reversed on the right to vote claim. The Supreme

[1] The State did not actually raise standing in their affirmative briefing to the Kansas Supreme Court, but in colloquy with that Court, the Attorney General made clear that the State "assumed the [Supreme Court] would assess its jurisdiction" in considering the appeal. Ex. 1, Kansas Supreme Court Oral Argument Tr. at 31:1-4.

Court did not disturb the Court of Appeals' decision on the question of standing. It subsequently remanded to this Court to allow Plaintiffs "their full opportunity to prove up their [equal protection and due process] claims as a matter of evidence in the district court." *League of Women Voters of Kansas v. Schwab*, 549 P.3d 363, 384 (2024).

III. LEGAL STANDARD

"A lower court is bound to follow an appellate court's mandate and has no authority to consider matters outside the mandate." *Gannon v. State*, 303 Kan. 682, 368 P.3d 1024 (2016) (citing K.S.A. 60-2106(c)). This is the case *even* when a change in the law has occurred. *Kleypas*, 305 Kan. at 297. In the absence of a binding decision from an appellate court, when considering a motion to dismiss, the court must view the plaintiffs' well-pleaded facts in the light most favorable to them, assuming as true those facts and any inferences reasonably drawn from them. *Williams v. C-U-Out Bail Bonds, LLC*, 310 Kan. 775, 784, 450 P.3d 330, 338 (2019) (quoting *Cohen v. Battaglia*, 296 Kan. 542, Syl. ¶ 1, 293 P.3d 732 (2013)).

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IV. ARGUMENT

A. Defendants' renewed motion to dismiss is barred by Kansas law.

Under Kansas law, the opinion of an appellate court is part of the mandate and therefore is "controlling in the conduct of any further proceedings necessary in the district court." K.S.A. 60-2106(c). Although "[s]ome jurisdictions . . . hold that a trial court may depart from a mandate in order to obey new law without first asking permission from the appellate court," the Kansas Supreme Court has confirmed that "Kansas cases have not recognized the power of a district court to unilaterally depart from the mandate, even when a change in the law has occurred" and that consequently "the district court [is] duty bound to comply with the mandate as written." *Kleypas*, 305 Kan. at 297.

Defendants argued before the Court of Appeals that Plaintiffs lacked standing to challenge

the Signature Verification Requirement. *See* Defs.' COA Br. at 11-22. The Court of Appeals rejected that argument, determining that the organizational plaintiffs had made "sufficient allegations to establish their standing at this point" and squarely stating that, "[w]e hold that Plaintiffs have standing to sue." *League of Women Voters*, 63 Kan. App. 2d at 204, *aff'd in part, rev'd in part*, 549 P.3d 363 (Kan. 2024). Defendants then tried to take another bite at the apple, parroting the same standing arguments at oral argument before the Kansas Supreme Court. *See* Ex. 1, Kansas Supreme Court Oral Argument Tr. at 30:5–31:21. The Court evidently did not find their arguments persuasive. Following oral argument, the Kansas Supreme Court affirmed the Court of Appeals in part and remanded Plaintiffs' equal protection and due process challenges to this Court for determination on the merits. As Attorney General Kobach implicitly recognized in his colloquy with the Kansas Supreme Court on appeal, *see supra* n.1, "standing is a component of subject matter jurisdiction," *State v. Ernesti*, 291 Kan. 54, 60, 239 P.3d 40, 45 (2010), thus the Court's remand on the merits necessarily establishes that it agreed that Plaintiffs have standing, and Defendants do not argue otherwise. This Court is prohibited by K.S.A. 60-2106 from revisiting decisions made by higher tribunals; Defendants' motion therefore is baseless and must be denied.

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Defendants nevertheless argue that this motion is permissible due to an exception to the law of the case doctrine, but that argument misses the mark several times over. *See* Defs.' Br. at 3. First, Defendants misunderstand both the law of the case doctrine and the source of this Court's obligation to abide by the standing decision. Law of the case is not the applicable doctrine here. Although it is true that "the law of the case doctrine applies to a second appeal in the same case," *Kleypas*, 305 Kan. at 244, this is not a second appeal: it is a proceeding on remand. The Court's obligation to follow the decision on standing does not arise from law of the case, but its obligation to adhere to decisions made by a higher tribunal. Unlike law of the case, that is no "discretionary

policy which expresses the practice of the courts generally to refuse to reopen a matter already decided," Defs.' Br. at 3, but instead a firm *statutory requirement*. *See* K.S.A. 60-2106(c).

The Kansas Supreme Court has been clear: "the district court [is] duty bound to comply with the mandate," *even when a change in the law has occurred*. *Kleypas*, 305 Kan. at 297. Defendants misread *Kleypas*, arguing that it allows this Court to revisit standing because "a controlling authority has made a contrary decision regarding the law applicable to the issues," Defs.' Br. at 3 (citing *Kleypas*, 305 Kan. at 245), but that relates only to *law of the case*. *Kleypas* explicitly rejected that argument *with respect to the mandate*, holding that Kansas law does not "contemplate such an exception" and that any deviation from the mandate constitutes error. 305 Kan. at 297. This accordingly ends the inquiry under Kansas statute and Supreme Court precedent and requires that the motion be denied outright.

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B. Federal standing precedent is not controlling authority in Kansas courts.

Even if Kansas law allowed the Court to revisit the higher courts' standing decisions, Defendants' argument fails on its own terms for several additional reasons. Most obviously, the U.S. Supreme Court's decision in *FDA* is *not* "a controlling authority" that could trigger the exception in *Kleypas* upon which Defendants rely. *See* Defs.' Br. at 3.

The Kansas Supreme Court has repeatedly disavowed binding reliance on the federal standard for assessing standing—*including in this very case*. *See League of Women Voters of Kansas v. Schwab*, 317 Kan. 805, 813, 539 P.3d 1022, 1028 (2023) ("The test for standing in Kansas differs from the federal standard."); s*ee also Kansas Bldg. Industry Workers Comp. Fund v. State*, 302 Kan. 656, 679-80, 359 P.3d 33, 50 (2015) ("This court has occasionally cited to the federal constitutional standing requirements. But we have not explicitly abandoned our traditional state test in favor of the federal model . . . [and] do not feel compelled to abandon our traditional two-part analysis as the definitive test for standing in our state courts.") (citation omitted). And

the Court of Appeals grounded its evaluation of standing in *Kansas* law, not federal law. *See League of Women Voters*, 63 Kan. App. 2d at 203 (citing *Gannon*, 298 Kan. at 1127, for the proposition that "[a]n organization may assert standing in its own right if it can establish a cognizable injury and a causal connection between the injury and the challenged conduct"). True, the Court of Appeals also looked to "law from a federal case" as "persuasive on this point." *Id.* But a *persuasive* authority axiomatically is not a *controlling* authority; thus, even if Defendants' claimed exception existed, it would not apply here.

C. Plaintiffs have standing under Kansas and federal precedent.

Setting aside that Defendants' motion is improper as a matter of procedure and misunderstands the import of federal standing decisions, it also is wrong on the substance—whether Kansas *or* federal precedent is applied. The Court of Appeals correctly held that Plaintiffs have organizational standing at this stage because Plaintiffs allege that the Signature Verification Requirement interferes with their efforts to promote advance voting and they will therefore "have to divert resources from their other voter assistance activities to ballot cure programs to prevent voters from being disenfranchised." *League of Women Voters*, 63 Kan. App. 2d at 204. That is sufficient for organizational standing both under Kansas and federal law; with respect to the latter, *FDA* clarified that the plaintiffs in that specific case lacked Article III standing, but did not "fundamentally transform" the law. Defs.' Br. at 3. Plaintiffs also have adequately alleged associational standing based on harm to their members and constituents—an independent basis for standing that the U.S. Supreme Court's decision in *FDA* does not involve at all.

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1. Plaintiffs have direct organizational standing.

Contrary to Defendants' suggestion, the Court of Appeals' determination that Plaintiffs have organizational standing is not "without legal foundation" following the U.S. Supreme Court's decision in *FDA*. Defs.' Br. at 18. As discussed above, Kansas courts evaluating standing to sue

under Kansas law are not bound by federal precedent evaluating standing. *See supra* § IV(A). Indeed, the Kansas Supreme Court has repeatedly rejected attempts—even in recent years and even by Defendants in this case—to conform Kansas's standing requirements to those that the federal courts apply under Article III of the federal constitution. Repeatedly, the Kansas Supreme Court has affirmed that in Kansas, standing requires only two elements: (1) "a cognizable injury," and (2) "a causal connection between the injury and the challenged conduct." *Hodes & Nauser, MDs, P.A. v. Stanek*, 551 P.3d 62, 70 (Kan. 2024); *see also League of Women Voters*, 63 Kan. App. 2d at 203 ("An organization may assert standing in its own right if it can establish a cognizable injury and a causal connection between the injury and the challenged conduct.").

But Defendants overstate the impact of *FDA* even as a matter of federal standing law. In that case, plaintiff medical associations challenged FDA regulations of mifepristone, but were "mere bystander[s]" who did not prescribe, manufacture, or advertise mifepristone or sponsor a competing drug. 602 U.S. at 369. The plaintiffs argued that they had standing because they incurred costs to oppose the FDA's regulations of mifepristone, claiming "standing exists when an organization diverts its resources in response to a defendant's actions." *Id.* at 395. The Supreme Court correctly noted that its long-standing precedent requires more: to establish standing, an organizational plaintiff cannot simply "spend a single dollar opposing those policies" they dislike, but also must show that the defendant's "actions directly affected and interfered with [plaintiff's] core business activities." *Id.* In other words, the *FDA* decision did not meaningfully change the *federal* test for standing—it just confirmed that, under that long-standing test, the *FDA* plaintiffs lacked standing.[2]

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[2] This is also in line with the standard formulation described by the Court of Appeals here: "an organization has suffered a cognizable injury when the defendant's action impairs the organization's ability to carry out its activities and the organization must divert resources to counteract the defendant's action." *League of Women Voters*, 63 Kan.

Only one plaintiff need have standing to challenge the Signature Verification Requirements, *see Gannon v. State,* 298 Kan. 1107, 1130, 319 P.3d 1196 (2014), and here several clearly alleged facts are sufficient to establish organizational standing. Unlike the plaintiffs in *FDA*, the organizational plaintiffs here provide services that are directly affected by the Signature Verification Requirement. For example, in pursuit of its mission of "increas[ing] turnout among Kansas's young voters," Loud Light "runs young voter registration drives" and "organizes ballot cure programs, contacting voters whose ballots are challenged by county election officers." (R. II, 239-40). The Signature Verification Requirement interferes with those activities by "result[ing] in a greater number of mismatches," requiring Loud Light "to expend more resources recruiting and training additional staff and volunteers to help voters cure their ballots and combat the disenfranchising effects" of the Requirement. (R. II, 241-42). The League both "educate[s]" *and* "assist[s]" voters throughout the process of registering to vote and casting advance ballots. (R. II, 236-37). The Signature Verification Requirement interferes with those activities by increasing the risk of "total disenfranchisement"—including, in particular, with respect to the League's own members. (R. II, 238). The League therefore must "expend additional resources, including valuable and limited volunteer time," to take action to ensure that voters "ultimately are not disenfranchised by the Requirement." *Id*. For its part, the Center is required by federal law to "provide services aimed at achieving equal access for individuals with significant disabilities," including "voter registration, voter education, voter support, and voter advocacy." (R. II, 244). Because the Center serves those "who are more likely to vote by advance ballot and, as a result, more likely to be put at risk of signature mismatch and also to face substantial burdens in attempting to cure such a

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App. 2d at 203; *see also Havens Realty Corp. v. Coleman,* 455 U.S. 363, 379 (1982) ("Such concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources" is sufficient for standing). It is not a repudiation of the existing case law.

mismatch," the Signature Verification Requirement directly impacts the Center's operations by requiring it to "expend more resources, including limited staff hours," on activities including "assisting any voters whose ballots are rejected as a result of a signature mismatch." (R. II, 245-46).

In sum, Plaintiffs engage in providing services that are directly affected by the Signature Verification Requirement, and have sufficiently alleged that they must "divert resources from their other voter assistance activities to ballot cure programs to prevent voters from being disenfranchised by the new signature matching requirement." *League of Women Voters*, 63 Kan. App. 2d at 204. That is sufficient for standing under both federal and Kansas law. Indeed, a federal court applying the *FDA* decision to a voting rights case brought by the League of Women Voters in Ohio just a few weeks ago found that the League had organizational standing to challenge an Ohio voting law because "unlike the organizational Plaintiffs" in the *FDA* case, the League was directly injured by a law preventing it from assisting disabled voters. *League of Women Voters of Ohio v. LaRose*, 2024 WL 3495332, at *5 n.3. Likewise, Plaintiffs here—including the League—are directly injured by the Signature Verification Requirement because it interferes with their ballot cure programs and their attempts to enfranchise voters in Kansas.

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Defendants' argument that "Plaintiffs' legal position would be deficient even in the absence of" the *FDA* decision, Defs.' Br. at 18, is a transparent attempt to get this Court to overturn the Court of Appeals and should be rejected out of hand. The Court of Appeals held that Plaintiffs have standing; the only rationale that Defendants have proposed for revisiting that decision is the U.S. Supreme Court's opinion in *FDA*. Any argument premised on the claim that the Court of Appeals was wrong under the law at the time of its decision is foreclosed beyond any shadow of a doubt. And the argument that diverting resources to expand pre-existing programs is insufficient,

Defs.' Br. at 19, both ignores that these same facts were before the Court of Appeals when it found Plaintiffs have standing and has been repeatedly rejected by federal courts applying even the more demanding federal standard. *See, e.g.*, *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1039-40 (9th Cir. 2015) (holding diversion of resources towards activities already "regularly [] conducted" was cognizable); *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1267 (N.D. Ga. 2019) (rejecting argument that diversion of resources to pre-existing "get-out-the-vote activities and voter-education programs" was inadequate). It is enough that Plaintiffs must put additional resources into cure efforts because of the Requirement, leaving less to support other mission-critical activities. *See, e.g.*, *Common Cause Ind. v. Lawson*, 937 F.3d 944, 952 (7th Cir. 2019) (affirming standing where organizations must "increase the time or funds (or both) spent on certain activities to alleviate potentially harmful effects of" challenged law); *OCA Greater Hous. v. Tex.*, 867 F.3d 604, 610 (5th Cir. 2017) (similar); *Ga. State Conf. of NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1336 (N.D. Ga. 2012) (similar claims "plainly" sufficient for standing).

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2. At least one Plaintiff has associational standing.

Defendants' contention that Plaintiffs' challenges to the Signature Verification Requirement must be dismissed for lack of standing also fails because at least one organizational plaintiff has associational standing to challenge the Requirement, an alternative basis for standing that the *FDA* decision does not address. To assert standing on behalf of their members and constituents, organizational plaintiffs must (1) have members or constituents who have standing in their own right; (2) the interests they seek to protect must be germane to their organizational purposes; and (3) neither the claim asserted nor the relief requested can require their members' or constituents' participation. *Sierra Club v. Moser*, 298 Kan. 22, 33, 310 P.3d 360, 369 (2013). Notably, Defendants do not argue that this issue was in any way affected by *FDA*, yet the issue consumes the majority of their motion.

Defendants previously have conceded, and do not now dispute, that the Kansas League is a formal membership organization. Defs.' CoA Opp. Br. at 13. They primarily argue—relying almost exclusively on federal law—that the injury caused to the League's members by the Signature Verification Requirement is too speculative to support standing. But the Kansas Supreme Court held that, for purposes of a motion to dismiss, "[t]he League has made a colorable claim—accepting the allegations in the petition as true—that the signature requirement is not sufficiently uniform or objective, and that the notice and cure provisions are not reasonable." *League of Women Voters*, 549 P.3d at 383-84. Defendants' various merits-tinged arguments regarding Kansas's procedures for signature matching or cure therefore have no place in this motion; Plaintiffs have sufficiently alleged that the Requirement cannot be implemented in a manner that would prevent erroneous mismatches, and the Kansas Supreme Court accepted those allegations, as is appropriate at this stage in the proceedings. Plaintiffs also have alleged that the Signature Verification Requirement is particularly "harmful to the League's members, many of whom are older and are at significant risk of having their ballots flagged erroneously as having a mismatched signature." (R. II, 238). Those allegations are similarly sufficient to establish that at least one of the League's members faces the threat of disenfranchisement at this stage. *See Kansas Nat'l Educ. Ass'n v. State*, 305 Kan. 739, 748, 387 P.3d 795, 802 (2017) (finding associational standing where it could be "inferred that at least one" of plaintiff's members would be affected by the challenged statute).

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Defendants boldly assert that the League nevertheless lacks standing because "an organization must identify at least one member by name who would have standing to sue in his/her own right," citing the U.S. Supreme Court's decision in *Summers v. Earth Island Institute*, 555 U.S. 488 (2009). Defs.' Br. at 11. But that is not the law in Kansas. Like *FDA, Summers* is a federal

case evaluating the constitutional requirements for standing in federal court; Defendants cite no *Kansas* case requiring that an individual member with standing be named at the pleading stage. *Cf. Kansas Nat'l Educ. Ass'n*, 305 Kan. at 742 (finding standing where "[n]o individual association members [were] named as parties."). In fact, the only reported Kansas Supreme Court case discussing *Summers* reiterates that "the federal decisions do not control our interpretation of the judicial power clause of Article 3, § 1 of the Kansas Constitution," *Sierra Club v. Moser*, 298 Kan. at 38, and the Court of Appeals in this case specifically refused to address whether a specific individual must be identified. *League of Women Voters*, 63 Kan. App. 2d at 203. Moreover, federal cases interpreting *Summers* have clarified that where a reasonable "inference" can be drawn that an organization has members who will be impacted by a challenged law, the organization need not identify an individual member by name. *See, e.g.*, *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 270 (2015). Here, where Plaintiffs have alleged that Kansas's signature matching scheme results in the "overwhelming[] misidentif[ication] of valid signatures as 'mismatches,'" (R. II, 238), and that many of their members "are older" and "at significant risk of having their ballots flagged erroneously as having a mismatched signature," *id*., such an inference can easily be made. *See, e.g.*, *League of Women Voters of Ohio v. LaRose*, 489 F. Supp. 3d 719, 730 (S.D. Ohio 2020) ("While Organizational Plaintiffs may not be able to identify in advance who will be affected, they have met their burden of demonstrating that some members inevitably will be affected."); *Richardson v. Texas Sec'y of State*, No. SA-19-cv-00963-OLG, 2019 WL 10945422, at *6 (W.D. Tex. Dec. 23, 2019) (finding associational standing established at motion to dismiss stage where allegations do not identify individual members but "make clear that the membership of these organizations is comprised in significant part by individuals who are likely to be impacted by the relevant policies at issue").

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The League also easily satisfies the second prong of the associational standing test, which Defendants do not challenge. The League's purpose is to "promote[] civic engagement through voting," which includes "safeguarding Kansans' right to vote." (R. II, 235, 237.) That is precisely what the challenge to the Signature Verification Requirement seeks to do. The interests Plaintiffs seek to protect in this litigation therefore are clearly "germane to the organization's purpose." *Kansas Nat'l Educ. Ass'n*, 305 Kan. at 747.

Finally, the League also easily satisfies the third prong of the associational standing test. Defendants' argument that "[s]ignature matching is an inherently individualized determination," Defs.' Br. at 15, and that "[a]ny potential issues with particular voters will necessarily entail an exploration into the individual's unique circumstances" completely misses the point of this suit (and of the Kansas Supreme Court's remand). The issue before the Court is not whether some individual's signature will wrongly be rejected; it is whether the Signature Verification Requirement and its implementing regulations "achieve reasonable uniformity on objective standards" and "provide reasonable notice of defects and an opportunity to cure." *League of Women Voters of Kansas*, 549 P.3d at 384. Resolving that issue does not require any "individualized determination" at all. *Cf. Bd. of Cnty. Comm'rs of Sumner Cnty. v. Bremby*, 286 Kan. 745, 763, 189 P.3d 494, 506 (2008) (holding that claim that permitting decision was arbitrary and capricious "does not require the participation of the individual members").

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Plaintiffs Appleseed, Loud Light, and the Topeka Independent Living Resource Center also have associational standing. Defendants argue that because Appleseed and Loud Light do not have formal members, their members cannot possibly have standing to sue on their own. For over 40 years, courts across the country have found that non-membership organizations can assert associational standing on behalf of their beneficiaries, even if they are not technically "members."

See, e.g., *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 344 (1977); *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 280 (3d Cir. 2014) (rejecting "formalistic" view of membership); *Or. Advoc. Ctr. v. Mink,* 322 F.3d 1101, 1110 (9th Cir. 2003) (holding organization that advocates for the mentally ill may sue on their behalf); *see also Am. Unites for Kids v. Rousseau*, 985 F. 3d 1075, 1096-97 (9th Cir. 2021); *Flyers Rts. Educ. Fund, Inc. v. U.S. Dep't of Transp.*, 957 F.3d 1359, 1362 (D.C. Cir. 2020); *Doe v. Stincer*, 175 F.3d 879, 886 (11th Cir. 1999); *Disability Rts. Pa. v. Pa. Dep't of Human Servs*., No. 1:19-CV-737, 2020 WL 1491186, at *7 (M.D. Pa. Mar. 27, 2020).

Defendants' contention that Loud Light and Appleseed do "not allege any actual relationship with [the constituents they serve] that would give rise to associational standing," Defs.' Br. at 8, is simply wrong. Plaintiffs have precisely the type of relationship with their constituents that gives rise to associational standing. For example, Loud Light has consistently employed dozens of paid student fellows to help lead its work, cementing its commitment to being a youth-led organization, (R. II, 240), and in fact, *all* of its work is inherently constituent-driven, evidenced by its commitment to using a coalition-based model to advocate for positive policy changes for youth. (R. II, 239-40). Likewise, Appleseed focuses on coalition-based work in order to serve its constituents. (R. II, 242). It also offers in-person trainings to the individuals it serves so they are always at the forefront of the organization's work to build a state of thriving, inclusive, and just communities (R. II, 242-43). Their constituents—underrepresented populations, in the case of Loud Light and Appleseed, and people with disabilities in the case of the Center (R. II, 244-45)—are indisputably the "primary beneficiar[ies] of [their] activities." *See Hunt* , 432 U.S. at 344. That is sufficient to allege associational standing at this stage.

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V. CONCLUSION

Defendants' improper motion is squarely foreclosed by Kansas law and binding precedent. It should be denied on that reason alone. But, in addition, for the reasons discussed above, even if there were a defensible basis for relitigating these issues, Plaintiffs have more than adequately established standing to challenge the Signature Verification Requirement.

Respectfully submitted,

/s/ Pedro L. Irigonegaray
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*
Justin Baxenberg*
Marisa A. O'Gara*
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
(202) 968-4490
efrost@elias.law
jbaxenberg@elias.law
mogara@elias.law

Counsel for Loud Light, Kansas Appleseed Center for Law and Justice, and the Topeka Independent Living Resource Center

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