

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

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**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-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*

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**DEFENDANTS-APPELLEES' RESPONSE TO  
SUPREME COURT'S SHOW CAUSE ORDER OF JAN. 2, 2024**

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Appeal from the Kansas Court of Appeals Opinion  
Dated June 17, 2022

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

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## I. Introduction

On January 2, 2024, this Court issued an Order directing the “parties to show cause why the court should not consolidate this case with Case No. 125,084.” Defendants do not object to such a consolidation.

## II. Legal Standard

The standard governing consolidation of cases before this Court is presumably the same as that governing district courts, namely K.S.A. 60-242(a)(2). The Court has broad discretion in making this determination, and must “weigh the saving of time and effort consolidation would produce against any inconvenience, delay or expense that it would cause.” *Plains Transport of Kan., Inc. v. Baldwin*, 217 Kan. 2, 5, 535 P.2d 865 (1975).

## III. Argument

In their Amended Petition, Plaintiffs wage facial constitutional attacks on three statutes: (i) K.S.A. 25-2438(a)(2)-(3), which prohibits individuals from engaging in “conduct that gives the appearance of being an election official” or conduct that “would cause another person to believe a person engaging in such conduct is an election official”; (ii) K.S.A. 25-1124(h), which prohibits the counting of an advance ballot where the voter’s signature does not match the signature on file with the county election office (with myriad exceptions); and (iii) K.S.A. 25-2437(c), which imposes restrictions on how many advance ballots may be returned by a third-party in a single election cycle.

The causes of action challenging K.S.A. 25-2438(a)(2)-(3) are before this Court on an appeal of the denial of a temporary injunction. The claims challenging the other two

statutes are here on an appeal of the outright dismissal of those claims pursuant to K.S.A. 60-212(b)(6).

Regardless of whether this Court affirms or reverses the district court's temporary injunction ruling regarding K.S.A. 25-2438(a)(2)-(3) (the subject of the appeal in Case No. 124,378), the claims will still need to return to the district court for dispositive motions and, depending on the resolution of such motions, potential discovery and trial. As for the other two statutes (the subject of the appeal in Case No. 125,084), if the Court affirms the district court's dismissal of those claims, consolidation will be harmless and the Court can simply issue a single ruling on all causes of action, remanding the causes of action attacking K.S.A. 25-2438(a)(2)-(3) while challenges to K.S.A. 25-1124(h) and K.S.A. 25-2437(c) will no longer be part of the case. If, on the other hand, the Court reverses the district court's dismissal of those two claims (which Defendants strongly believe would be unwarranted), then all of the consolidated causes of action would return to the district court for dispositive motions, discovery, and trial. The bottom line is that consolidation will presumably help minimize additional piecemeal litigation in this case.

What is particularly critical is that this Court address the proper legal standard that governs constitutional challenges to election statutes. Plaintiffs' counsel (and similar law firms) have launched a nationwide campaign in recent years to alter/radicalize the nearly universal standard applied to such claims. *See* <https://www.democracymocket.com/cases/>. No doubt, 2024 will see a rash of new suits. Unless this Court puts to rest the dangerous and unworkable standards that Plaintiffs proffer in this case, Kansas will be at the forefront of the next wave of litigation, which promises to dramatically increase voter confusion,

complicate election administration, compromise the integrity of our electoral process, and sap the public's confidence in the same.

Respectfully submitted,

/s/ Bradley J. Schlozman

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**CERTIFICATE OF SERVICE**

I certify that on January 16, 2024, I arranged for the foregoing document to be hand-served with the Clerk of the Court, 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 will be e-mailed to the following individuals, as authorized by Administrative Order 2023-RL-077.

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