IN THE STATE COURT OF KANSAS
DISTRICT COURT OF SHAWNEE COUNTY

LEAGUE OF WOMEN VOTERS OF KANSAS, LOUD LIGHT, KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC., and LOIS CURTIS 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. SN-2021-CV-000299

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT

Pursuant to Kansas Supreme Court Rule 141, League of Women Voters of Kansas, Loud Light, Kansas Appleseed Center for Law and Justice, Inc., and Lois Curtis Center (collectively, "Plaintiffs") hereby move this Court to grant them summary judgment and to permanently enjoin Kansas's signature verification requirement for advance mail ballots as described herein. Plaintiffs' motion is supported by the Parties' Joint Stipulated Facts and Plaintiffs' Statement of Additional Uncontroverted Facts previously filed with this Court and incorporated herein, as well as the memorandum set forth below.

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INTRODUCTION

This case is about whether Kansas's advance ballot Signature Verification Requirement ("SVR") ensures that, when county election officials apply that law's mandate and reject Kansas voters' ballots if they conclude that the signature on the ballot envelope does not "match" the voter's signature on file, (1) that decision is made with objective standards, such that another county looking at the same ballot would make the same decision as to whether to accept or reject it, and (2) voters are given sufficient notice of that decision and a meaningful opportunity to have their ballot nonetheless counted.[1]

In *League of Women Voters v. Schwab* ("*LOWV III*"), the Supreme Court remanded this case to give Plaintiffs "their full opportunity to prove up their claims as a matter of evidence in the district court." 318 Kan. 777, 807, 549 P.3d 363, 384 (2024). That record now includes: (1) testimony from county officials, the Secretary of State's Office, Plaintiffs, and voters who have been disenfranchised by the SVR, (2) records from the Secretary's Office regarding the implementation of the SVR, (3) business records from more than two dozen counties regarding their practices in applying and enforcing the SVR, and (4) testimony from experts in election administration and signature authentication. That record—which illustrates that, both on paper and in practice, the SVR fails to ensure meaningful protection for voters against erroneous and arbitrary disenfranchisement—compels the conclusion that Plaintiffs are entitled to summary judgment.

On their equal protection claim, Plaintiffs have shown that neither the statute at issue nor K.A.R. 7-36-9 provides objective standards for disqualifying a ballot. The regulation, which permits the rejection of ballots for signatures that "differ[] in multiple, significant, or obvious

[1] The term SVR as used in this brief includes both the statute passed by the Legislature, K.S.A 25-1124(h), and the implementing regulation promulgated by the Secretary, K.A.R. 7-36-9. Where the brief refers to one or the other, it says so expressly.

respects" from the one on file, *see* K.A.R. 7-36-9(a)(2), fails to define or provide any guidance on how to apply those terms. It is thus not surprising that, when shown the same signatures, Kansas county election officials attempting to apply those standards repeatedly reach diametrically different conclusions about whether they would accept a ballot for counting, a natural consequence of a standard without objective guardrails. As the Johnson County Commissioner succinctly put it: Determining whether a voter's signature should be accepted is like "judging art or judging a pie eating contest," except the ultimate decision being made is whose ballots should count. Under no reasonable application of *LOWV III* can it be said that this is a process governed by objective standards that are capable of being applied with reasonable uniformity so that no voter is subject to arbitrary and disparate treatment. As a result, the Court's inquiry can end right there.

But the record also establishes that the SVR fails to set objective standards for its application across a wide range of other practices, including: (1) whether to apply a presumption in favor of accepting the signature, (2) whether and how a county determines whether a voter is statutorily exempt from signature verification, and (3) how a voter can "cure" a rejected signature, including whether the voter must present to the county election offices in person or can verify that they cast that ballot in some less burdensome manner. The result is just what Justice Biles predicted: without "objective standard[s]," "unguided practices [have] emerged to reject legitimate ballots without any accountability" and "forced voters to cure through a haphazard process." *LOWV III*, 318 Kan. at 837 (Biles, J., concurring in part and dissenting in part). For these reasons, too, the SVR violates equal protection.

On their due process claim, Plaintiffs have shown that the SVR introduces an intolerable risk of erroneous disenfranchisement given the inherent difficulty of accurately authenticating signatures—a risk that Kansas has magnified several times over by failing to require any

meaningful training or conduct any actual oversight to ensure that the law as implemented is narrowly targeting only invalid ballots or rendering reliable judgments about whether any voter's signature is indeed inauthentic before their ballot is set aside for rejection.

Remarkably, Defendants do not appear to contend that Kansas election officials are even attempting to determine whether signatures are authentic; instead, throughout discovery, it became clear that the determination that a signature is "inconsistent" is merely a screening process for further investigation. But as the record establishes, the "screening process" is entirely arbitrary, creating an unacceptable risk that voters may be required to jump through burdensome hoops to "cure" their ballots for no good reason at all. That is, assuming they even learn that their ballot has been flagged for rejection—the record also shows that Kansas does not ensure that voters are actually notified with sufficient time to act before their ballots are rejected, or that they have a meaningful opportunity to reverse the county's decision. Given the lack of robust safeguards to guarantee both of these things, "the signature verification requirement actually threatens to undermine the State's interests in correctly validating the identity of voters casting mail-in absentee ballots." *Frederick v. Lawson*, 481 F. Supp. 3d 774, 799 (S.D. Ind. 2020).

Given the strength of the undisputed material facts, the Court should grant Plaintiffs' motion for summary judgment on Plaintiffs' equal protection and due process claims. And although this Court need not reach the issue, the record also demonstrates that the SVR unconstitutionally burdens the right to vote under the Kansas Constitution, an issue Plaintiffs preserve for appeal.

INCORPORATION OF PLAINTIFFS' FACTS IN SUPPORT OF SUMMARY JUDGMENT

As previously filed with this Court, Plaintiffs hereby incorporate the Parties' Joint Stipulated Facts and Plaintiffs' Additional Statement of Uncontroverted Facts (hereinafter "SOF") which entitle them to summary judgment.

LEGAL STANDARD

Summary judgment is appropriate when "the pleadings, the discovery and disclosure materials on file, and any affidavits or declarations show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." K.S.A. 60-256(c)(2). "A disputed question of fact which is immaterial to the issue[s] does not preclude summary judgment," and "[s]ummary judgment is proper where the only question or questions presented are questions of law." *Bank IV Wichita v. Arn*, 250 Kan. 490, 498, 827 P.2d 758 (1992).

ARGUMENT

I. PLAINTIFFS HAVE STANDING TO CHALLENGE THE SIGNATURE VERIFICATION REQUIREMENT.

Plaintiffs' allegations "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" were sufficient to establish standing at the motion to dismiss stage. *League of Women Voters v. Schwab* ("*LOWV I*"),[2] 63 Kan. App. 2d 187, 204, 525 P.3d 803 (2023); *see also* Order Denying Renewed Mot. to Dismiss at 6 (Mar. 27, 2025) (recognizing "*LOWV I* concluded that Plaintiffs had standing . . . and this

[2] Plaintiffs adopt the nomenclature used by the district court in its March 27, 2025 Order Denying Defendants' Renewed Motion to Dismiss but note for clarity that the Kansas Supreme Court has previously referred to the appeal of the district court's denial of Plaintiffs' request for a temporary injunction against the false representation provision as *LOWV I* and the appeal of the district court's granting of Defendants' original motion to dismiss as *LOWV II*.

conclusion was not disturbed by the Supreme Court in *LOWV III*"). If Plaintiffs establish the same by a preponderance of evidence at summary judgment, they satisfy Kansas's standing requirements, which require only a showing of "a cognizable injury and a causal connection exists between the injury and the challenged conduct." *Gannon v. State*, 298 Kan. 1107, 1127, 319 P.3d 1196, 1212–13 (2014); *see also Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995, 1002, 551 P.3d 62, 70 (2024). Plaintiffs do so, with sworn affidavits that show that they are directly injured by the SVR in the ways that *LOWV I* found sufficient for standing. *See* SOF ¶¶ 20–35, 46–53, 60–70; *see also* K.S.A. 60-256(a). Plaintiffs also have standing on associational grounds, because their members and constituents are also injured by the SVR, and each of the other elements for associational standing are met. These injuries are fairly traceable to the Secretary, who is responsible for carrying out the State's election laws, K.S.A. 25-126, has a mandatory duty to train and provide instruction to county election officers on how to "compl[y] with federal and state laws and rules and regulations," *id.*, and has promulgated rules and approved training specifically implementing the SVR. *See* SOF ¶ 73, 75; K.A.R. 7-36-9. The Court need only find that one Plaintiff has standing on either ground to proceed to the merits. *See Gannon*, 298 Kan. at 1131; *see also Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 & n.9 (1977).

A. Plaintiffs have direct standing as organizations.

Kansas courts have long recognized that an organization suffers "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." *LOWV I*, 63 Kan. App. 2d at 203. And, here, the Court of Appeals held that Plaintiffs could establish standing by showing they have "divert[ed] resources . . . to prevent voters from being disenfranchised by the new signature matching requirement." *Id.* at 204. That is precisely what Plaintiffs have shown.

Loud Light. Loud Light exists to empower and increase turnout among Kansas's young voters, SOF ¶¶ 9, 11, many of whom rely on advance ballots to vote while they attend school, SOF ¶ 12. Because the SVR requires counties to reject signatures that election officials believe do not match, Loud Light must spend time educating its constituents about how to confirm their vote was actually counted, and how to cure their ballots when they have been flagged for rejection under the SVR. SOF ¶ 21. Loud Light conducts this voter education in-person at the polls, through its voting rights trainings, on social media, and when voters affirmatively reach out to Loud Light to help resolve a ballot that has been challenged. SOF ¶¶ 23, 27–29. To answer questions and concerns from voters about the SVR, Loud Light's leadership must spend time educating staff and volunteers on how the SVR operates, including attempting to understand the vast differences in the policies and procedures utilized by county election offices in enforcing the SVR. SOF ¶ 30. In Loud Light's experience, these policies and procedures can vary not only county to county, but even within counties, from election to election. SOF ¶ 30. As a result of the resources it has had to divert to attempt to ameliorate the threats the SVR pose—including, in particular, to young voters—Loud Light is no longer able to tailor its "get-out-the-vote" outreach to ensure each voter knows when and where to vote, and it has also been unable to schedule post-election debriefs and review analytics on voter turnout to determine which voters the organization effectively reached and which strategies were successful so that it can improve upon its work in the future. SOF ¶¶ 32–33.

Lois Curtis Center. The Lois Curtis Center serves individuals with disabilities, including Parkinson's disease, cerebral palsy, muscular dystrophy, and other disabilities due to the aging process. SOF ¶ 55. Voting by advance ballot is particularly important for many of these voters, some of whom would be unable to participate in the franchise without it. SOF ¶ 57. At the same

time, voters with disabilities are more likely to have difficulty signing their names and to have signatures that may vary significantly, as well as to have difficulty curing their ballots due to challenges with transportation and communicating with election officials. SOF ¶¶ 58–59. Because of the threats posed in particular to voters with disabilities by the SVR, the Center has had to divert resources to educating the voters it serves about how to attempt to ensure their ballots are not rejected as a result of the SVR, including through individual one-on-one meetings with concerned voters. SOF ¶¶ 60–65. The Center has assisted voters in obtaining a signature stamp to ensure consistency in their signatures to attempt to avoid the risk of disenfranchisement from the SVR and advised them on how to simplify their signature to something easier to replicate given their limitations. SOF ¶¶ 66–67. The Center has limited resources and its need to divert resources towards combatting the effects of the SVR has required it to scale down other mission-critical initiatives, such as offering legal clinics for driver's license reinstatements, clinics helping people complete criminal expungement processes, and immigration deportation defense initiatives. SOF ¶ 69.

Kansas Appleseed. Kansas Appleseed serves underrepresented and underserved populations, including rural voters, voters experiencing food insecurity, and immigrant and minority voters—populations that turn out at lower rates and face higher barriers in exercising their right to vote. SOF ¶¶ 38–39. Advance ballots are critical for these voters because they are more likely to lack reliable access to transportation and to work multiple jobs, making it more difficult for them to get to the polls. SOF ¶ 45. Because of the SVR's lack of uniform standards, it is impossible for Kansas Appleseed to know whether its constituents may be disenfranchised when they vote by advance ballot, which undermines its voter education and get-out-the-vote efforts. SOF ¶ 46. As a result, Kansas Appleseed must alter its voter education and get-out-the-vote

programming in ways that could depress voter turnout, directly impeding Kansas Appleseed's mission. SOF ¶ 47. Kansas Appleseed also has to divert resources to educating its constituents about the need to attempt to sign their ballot envelope so as to "match" their signature on file, even where it requires them to abandon their natural and authentic signature, and to responding to voter concerns regarding the SVR. SOF ¶ 48. Those dollars would otherwise go towards other important voter engagement efforts such as registering college students to vote and encouraging more Kansans to vote in low-turnout school board and municipal elections, SOF ¶ 50, and towards deploying resources to encourage voters to ask candidates about their policy positions related to food insecurity, such as school lunch debt and free lunches. SOF ¶¶ 51–52.

B. Plaintiffs have associational standing.

Independent from their direct standing as organizations, Plaintiffs also have associational standing because they (1) have members or constituents who have standing to challenge the SVR in their own right; (2) the interests Plaintiffs seek to protect are germane to their organizational purposes; and (3) neither the claim asserted nor the relief requested requires the members or constituents' participation. *Sierra Club v. Moser,* 298 Kan. 22, 33, 310 P.3d 360, 369 (2013).[3]

League of Women Voters. Defendants have conceded that the League is a formal membership organization. *See* Defs.' COA Opp. Br. at 13. It has over a thousand members across the state of Kansas, virtually all of whom are registered voters. SOF ¶ 3. It is well established that a registered voter has standing to challenge a law that regulates how they may cast a ballot. Thus, every one of the League's registered voters would have standing to challenge the SVR in their own right. This is true even under the more demanding standard applied by federal courts. *See, e.g.*, *People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179, 1198 (N.D. Ala. 2020) ("[A] voter always

[3] The Court need not reach this question if it finds that even one of the Plaintiffs has organizational standing. *See Gannon*, 298 Kan. at 1131.

has standing to challenge a statute that places a requirement on the exercise of his or her right to vote."); *see also New Ga. Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1285 (N.D. Ga. 2020); *Nielsen v. DeSantis*, 469 F. Supp. 3d 1261, 1266 (N.D. Fla. 2020); *Jones v. U.S. Postal Serv.*, 488 F. Supp. 3d 103, 122–23 (S.D.N.Y. 2020). It is also true even if the voter can overcome the threat that the challenged law poses to their right to vote. *See, e.g.*, *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1351–52 (11th Cir. 2009) (holding even if voters "possessed an acceptable form of photo identification, they would still have standing to challenge the statute that required them to produce" photo ID to cast a ballot). No more is needed. *See Kan. 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). But in addition, the record establishes that the SVR poses a *heightened* threat to the League's membership in particular, because many are older and rely on advance ballots and are accordingly at greater risk of having their ballots flagged for rejection because of the SVR. SOF ¶¶ 5–6 (League member Lisa Vayda, who has voted by advance ballot, suffers from a neuromuscular disorder that she expects will affect her signature); SOF ¶ 174 (individuals with disabilities and the elderly are especially likely to have a greater range of variation in their signatures). The League also satisfies the second prong because the interests it seeks to protect are clearly "germane to" its purpose, *id.* at 747, to "promote civic engagement through voting and to safeguard Kansans' right to vote." SOF ¶ 1. Lastly, neither its asserted claims nor its requested relief requires individual member participation. *312 Educ. Ass'n v. U.S.D. No. 312*, 273 Kan. 875, 884–86, 47 P.3d 383, 389–90 (2002); *see also Kan. Health Care Ass'n Inc. v. State*, 958 F.2d 1018, 1021–22 (10th Cir. 1992) (distinguishing cases where an organization seeks declaratory or injunctive relief from cases in which damages are sought).

Lois Curtis Center, Loud Light, and Kansas Appleseed. The Lois Curtis Center, Loud Light, and Kansas Appleseed each also have associational standing to bring suit on behalf of the voter constituencies that they serve, even if they are not technically "members." *See, e.g.*, *Hunt v. Wash. State Apple Advert. 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); *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 Hum. Servs*., No. 1:19-CV-737, 2020 WL 1491186, at *7 (M.D. Pa. Mar. 27, 2020). It is sufficient that Plaintiffs "serve[] a specialized segment of the State's . . . community which is the primary beneficiary of its activities, including the prosecution of this kind of litigation." *Hunt*, 432 U.S. at 344. This is true of each of these organizations. *See, e.g*., SOF ¶ 54 (Lois Curtis Center is directed by and dedicated to providing services, support, and guidance for persons with disabilities); SOF ¶ 10 (Loud Light is a youth-led organization dedicated to engaging, educating, and empowering young voters whose programs and priorities are driven by feedback from young voters and its youth-led community action teams); SOF ¶¶ 36, 38 (Kansas Appleseed focuses on coalition-based work to ensure that its constituents—underrepresented and underserved populations, including rural voters, voters experiencing food insecurity, and immigrants and minorities—have the resources they need to flourish, raise healthy families, participate fully in their communities, and benefit from fair and effective systems of justice). These Plaintiffs also satisfy the second prong of the test because the interests they seek to protect in this litigation are clearly "germane to" their purposes. *Kan. Nat'l Educ. Ass'n*, 305 Kan. at 747; *see, e.g*., SOF ¶ 9 (Loud Light's purpose is to empower young voters to become active in the political process); SOF ¶¶ 54, 57 (Lois Curtis Center's mission is to support marginalized

individuals with disabilities in gaining independence, access, and agency, which they accomplish in part by promoting voting by advance ballot as a means of increasing voter turnout among individuals with disabilities); SOF ¶ 41 (Kansas Appleseed's purpose includes encouraging voters "to sign up for advance voting as a means of increasing turnout among underrepresented and underserved populations"). And for the same reasons that there is no need for the League's members to participate in this litigation, there is no need for the other Plaintiffs' constituents to do so.

C. There is a causal connection between Plaintiffs' injuries and Defendants.

The Secretary has not previously contested that Plaintiffs meet the traceability element of standing, but nonetheless, Plaintiffs easily clear it: "the injury" is "fairly traceable to the challenged action of the defendant[s]." *Kan. Bldg. Indus. Workers Comp. Fund v. State*, 302 Kan. 656, 681, 359 P.3d 33, 51 (2015) (quoting *Gannon*, 298 Kan. at 1130) (cleaned up). This is not a demanding standard: as the Supreme Court has emphasized, it "is lower than that of proximate cause" and "does not set a high bar for plaintiffs." *Id.* at 681–82. The Secretary has a mandatory duty to instruct county election officers in "their duties in conducting official elections, including procedures for complying with federal and state laws and regulations." K.S.A. 25-124; *see also* K.S.A 25-126 (Secretary "shall be responsible for assisting and advising county election officers in conducting elections"); SOF ¶¶ 71, 73 (State Election Director Bryan Caskey acknowledging those duties). The Secretary was responsible for promulgating K.A.R. 7-36-9, the SVR's implementing regulation, *see* SOF ¶ 75, and is responsible for approving the training that election officials must take before applying it. *See* K.A.R. 7-36-9(f) ("Before performing signature verification, the county election official shall complete training approved by the secretary of state on procedures to determine whether a voter's signature is consistent with the signature in the voter registration database."). Put simply, the Secretary's responsibility for and role in implementing the

law and his failure to institute objective standards that can be uniformly applied or to ensure constitutionally adequate process before voters' ballots are rejected makes Plaintiffs' injuries clearly traceable to his conduct.

II. THE SIGNATURE VERIFICATION REQUIREMENT VIOLATES THE KANSAS CONSTITUTION'S EQUAL PROTECTION PROTECTIONS.

As the Supreme Court reaffirmed in *LOWV III*, the Kansas Bill of Rights guarantees equal protection to Kansas voters in the exercise of suffrage. *LOWV III*, 318 Kan. at 805–06. "Equal protection requires 'similarly situated individuals should be treated alike.'" *Id.* at 805 (quoting *State v. Gaudina*, 284 Kan. 354, 372, 160 P.3d 854 (2007)); *see also Reynolds v. Sims*, 377 U.S. 533, 565 (1964) (equal protection requires "uniform treatment of persons standing in the same relation to the governmental action questioned or challenged"). Thus, "[t]o comply with equal protection . . . any proper proofs devised by the Legislature must be capable of being applied with reasonable uniformity upon objective standards so that no voter is subject to arbitrary and disparate treatment." *LOWV III*, 318 Kan. at 805. The Court remanded to give Plaintiffs an "opportunity to test the signature requirement against the proper legal standard: Does the signature requirement (and its implementing regulations and policies, such as those promulgated in K.A.R. 7-36-9, K.A.R. 7-36-7 [2023 Supp.], and K.A.R. 7-36-3) achieve reasonable uniformity on objective standards[?]" *Id.* at 807; *see also id.* at 837 ("[T]he litigation going forward must focus on how these regulations reliably and uniformly sift out the feared fraudulent ballots by objective means without denying legitimate voters their fundamental right to vote.") (Biles, J., concurring in part and dissenting in part).

This is a two-part test, both of which the State must satisfy to comply with equal protection. Applying it, the Court must determine: (1) Does the SVR contain objective standards to disqualify ballots, and (2) Is Kansas actually achieving reasonable uniformity in applying those standards?

Because the record establishes that the State does not and cannot meet this standard, summary judgment must be entered for Plaintiffs on their equal protection claim. In addition, and although the Court need not reach this issue if it finds that the SVR violates the standard articulated in *LVW*, it also separately violates equal protection under the Kansas Constitution because it subjects voters to arbitrary and disparate treatment under the standards set out by the U.S. Supreme Court in *Bush v. Gore*. *See, e.g.*, *Rivera v. Schwab*, 315 Kan. 877, 894, 512 P.3d 168, 180 (2022) ("Kansas courts shall be guided by United States Supreme Court precedent interpreting and applying the equal protection guarantees of the Fourteenth Amendment of the federal Constitution when we are called upon to interpret and apply the coextensive equal protection guarantees of section 2 of the Kansas Constitution Bill of Rights.")

A. The Signature Verification Requirement fails to achieve reasonable uniformity on objective standards.

The record requires the conclusion that the SVR fails both parts of the *LOWV III* test applicable to Plaintiffs' equal protection claim: it fails to put forward objective standards by which election officials may disqualify ballots, and it fails to achieve reasonable uniformity in how county election officials in fact determine which ballots should not be counted under the SVR. Either is sufficient to find that Plaintiffs are entitled to summary judgment on their equal protection claim. *See, e.g.*, *LOWV III*, 318 Kan. at 807 ("The League has made a colorable claim . . . that the signature requirement is not sufficiently uniform *or* objective") (emphasis added).

1. Kansas lacks objective standards for key provisions of the Signature Verification Requirement.

The SVR does not comply with equal protection under the standards articulated by the Supreme Court in *LOWV III* because it lacks objective standards—and for some key provisions, no standards at all—for determining how to interpret it and consequently when to disqualify a ballot. For this reason alone, Plaintiffs are entitled to summary judgment.

a. Kansas lacks objective standards for determining whether a voter's signature is a "match" with the signature on file.

Plaintiffs are entitled to summary judgment because there is no credible dispute that the standards for determining when a signature is a "match" with the voter's signature on file under the SVR are not objective. K.S.A. 25-1124(h) states in full:

> Subject to the provisions of subsection (b), no county election officer shall accept an advance voting ballot transmitted by mail unless the county election officer verifies that the signature of the person on the advance voting ballot envelope matches the signature on file in the county voter registration records, except that verification of the voter's signature shall not be required if a voter has a disability preventing the voter from signing the ballot or preventing the voter from having a signature consistent with such voter's registration form. Signature verification may occur by electronic device or by human inspection. In the event that the signature of a person on the advance voting ballot envelope does not match the signature on file in the county voter registration records, the ballot shall not be counted.

As Justice Biles recognized, "subsection (h) could not be more subjective—it obviously fails the majority's uniform and objective standard because its language leaves each of our 105 county officials to exercise this authority on their own." *LOWV III*, 318 Kan. at 837 (Biles, J., concurring in part and dissenting in part). And K.S.A. 25-1124(b), produced below, does not further clarify matters:

> The county election officer shall attempt to contact each person who submits an advance voting ballot where there is no signature or where the signature does not match with the signature on file and allow such voter the opportunity to correct the deficiency before the commencement of the final county canvass.

The statute leaves many questions unanswered, but the most glaring one is this: What does it mean for a signature to "match"? The statute does not say. In legislative hearings, Senator Ware asked: "What's the definition of match when it applies to signatures?" A representative of the Kansas Office of Revisor of Statutes responded: "There is no, um, statutory definition for a match and so it would fall to common usage and be up to discretion of the county election officer, uh, to

verify that these signatures are, um, within a -- a reasonable person standard a match." SOF ¶ 110(b).

Approximately a year after the Legislature passed HB 2183, the Secretary issued a regulation, K.A.R. 7-36-9, directing counties as to the enforcement of K.S.A. 25-1124(h). SOF ¶¶ 124–125. As the Secretary's General Counsel explained to the State Rules and Regulation Board, the regulation was necessary because "[w]ithout standardization, counties could implement different approaches *which could result in disparate treatment of similarly situated voters with missing or inconsistent signatures*." SOF ¶ 126 (emphasis added). As such, the Secretary's Office effectively conceded that the statute alone cannot satisfy the standard announced by *LOWV III*. Plaintiffs agree.

K.A.R. 7-36-9, however, does not create objective standards to achieve this goal, and fails to answer several critical questions to ensure uniform treatment. To start, K.A.R. 7-36-9(a)(4) states only that a signature is a "match" when it is "generally uniform and consistent with the voter's signature in the voter registration database." What does it mean for something to be "generally uniform" or "generally consistent"? The regulation does not say. One might presume, at least, that this means that signatures need not be *identical* to be accepted—that is, at least *some* differences are permitted. The regulation continues, however: K.A.R 7-36-9(a)(2) states that a signature is "inconsistent"—as opposed to a "match"—when it "differs in multiple, significant, or obvious respects from the voter's signature in the voter registration database." So while *some* differences would seem to be permitted, *there cannot be multiple differences, significant differences, or obvious differences*. What does it mean for a difference to be "significant"? What does it mean for a difference to be "obvious?" Here, again, the regulation does not say. And if a signature is not required to be identical to be accepted, how does one determine which number of

differences is acceptable and what number of differences constitutes "multiple differences" such that the signature should be rejected? The regulation is silent on this question, too.

Nor has the Secretary issued any written guidance that answers any of these questions. SOF ¶¶ 134, 208, 211; *see also* SOF ¶ 214(a), 215(a), 216(a) (State Election Director Caskey confirming that the Secretary's Office has not issued guidance on when "multiple" differences in a signature would merit rejection, at Caskey Dep. Tr. 117:13–17, what differences in a signature would be "significant," at *id*. 120:15–18, or any elucidation "on what the word 'obvious' means" as used in the regulation, at *id*. 121:3–10). Kansas does not have a written signature verification manual explaining these standards. SOF ¶ 134. And there is nothing in the Kansas Election Standards guide that the Secretary publishes that answers any of these questions. SOF ¶ 208(c). This silence is inexplicable. An enormous amount rides on what it means for a signature to have an obvious difference, or a significant difference, or multiple differences, and whether and when such differences in fact merit rejection of a voter's ballot. The State's "unmoored use" of the term "match" in Kansas law, "combined with haphazard interpretations the State has provided in official guidance" fail to give Kansas county election officials clear notice of "what may come in from what must stay out." *Minn. Voters All. v. Mansky*, 585 U.S. 1, 16 (2018).

Nor is the Secretary's Office willing to distribute even unofficial advice as to what these terms mean as applied to common discrepancies that may appear between signatures. SOF ¶ 232. If a county official asked for guidance, the State Election Director testified that the Secretary's Office's response would be to tell the official to watch the video the Secretary has approved as the "training" that election officials must undertake before performing signature verification. *See* SOF ¶ 232; K.A.R. 7-36-9(f). That response is mystifying for many reasons, perhaps most of all because that video—which is Kansas's *only* required training before election officials may proceed to

disqualify ballots under the SVR, SOF ¶ 229—does *not* provide an answer to any of these questions, including what it means for a signature to be "generally consistent," or to have "multiple, significant, or obvious" differences under Kansas law. SOF ¶ 234(c).

Nor could the video provide these answers, for several reasons. *First*, in its entirety it is a 46-minute YouTube video, originally produced by the State of Oregon for use in Oregon's signature verification procedures. SOF ¶¶ 226, 230. Kansas does not provide additional written materials along with the video, SOF ¶ 134, nor is there any testing done by the Secretary to see if anyone who watches the video even understands it. SOF ¶ 242. *Second*—and not surprisingly, given its origins—the bit of instruction that the video offers advises the viewer on how to apply *Oregon law*—not Kansas law—in evaluating signatures. SOF ¶ 235. As the Secretary has now conceded, multiple parts of that video—including the standard of proof for determining whether to accept a signature—are Oregon-specific standards that differ from Kansas law. SOF ¶ 235(a). *Third*, the video was selected as the training to implement the SVR *before* K.A.R 7-36-9 even existed—that is, before the standards the regulation announces were put into place. SOF ¶ 231.

It was not until September 2025, more than three years after the Oregon video was selected by the Secretary as the training implementing the SVR, that the Secretary "updated" it to remove several slides that Plaintiffs' experts identified in their reports as containing Oregon-specific standards for signature matching. SOF ¶¶ 235, 237. But the "updated" video—which does not appear to have been distributed to the counties yet, SOF ¶ 237—still does not answer key questions about Kansas law. Instead, it begins with a minute-long voiceover that simply reads verbatim the unelucidated text of K.A.R. 7-36-9(a)(2) and K.A.R. 7-36-9(a)(4) and then moves straight into Oregon's presentation, which (as before) still does not explain what it means for a signature to be

"generally uniform," "generally consistent," or to have "multiple, significant, or obvious" differences under Kansas law. SOF ¶ 237(a)-(b).

The answers to these questions matter. All parties to this litigation agree that no one's handwriting is identical from one time to the next—there are *always* differences, which experts call natural variation, each time someone executes a signature. SOF ¶¶ 146–147. Those differences can arise from an endless number of factors—age, health, disability, writing surface, a person's emotional or psychological state, and more. SOF ¶¶ 152–155. As Plaintiffs' expert Dr. Linton Mohammed has shown, accurately differentiating between natural variation (inherent to authentic signatures) and fundamental differences (indicating an inauthentic signature) is a skill that takes years of training, adequate time for comparison, and an adequate number of known genuine signatures for comparison. SOF ¶¶ 149–150, 157–158, 160–161, 163; *see also* SOF ¶¶ 159, 162, 164 (Defendants' proffered handwriting expert, Mr. Mark Songer, agreeing that reliably determining whether signatures are authentic requires *at least* an adequate number of contemporaneous specimen signatures and adequate time for examination).

The inherent variation in signatures means that election officials will be confronted with differences across signatures *every single time* they engage in signature verification. This is particularly true for signature verification in Kansas elections, in which many signatures on file for comparison are digital signatures from the DMV or the State's online voter registration system, *see* SOF ¶¶ 18, 252–253, which will inherently differ from the wet-ink signatures on ballot envelopes that election officials are tasked with comparing. SOF ¶ 257 (Plaintiffs' expert, Defendants' proffered handwriting expert, and county election officials all agree signatures will differ depending on whether they are executed electronically on a digital stylus or by pen).

In light of the variation inherent in all signatures, county election officials *need* objective standards as to what differences are sufficient to constitute an "inconsistent" signature and trigger rejection of a voter's ballot. But even the Secretary's Office, *which chose and wrote the regulation's language*, SOF ¶¶ 125–127, was unable to coherently explain what the language in K.A.R. 7-36-9 means, let alone provide objective standards for its application. State Election Director Caskey does not believe that multiple differences between signatures *require* rejection; it instead matters what the differences are and depends on "context." SOF ¶ 214(b). Similarly, Caskey does not believe that a single significant difference would necessarily merit rejection; he said it would again require "context," in that "it depends on what" the "significant" difference is. SOF ¶ 214(d). He had the same view when asked whether a single "obvious" difference would permit the rejection of a signature as inconsistent, to which he responded: "Depends on what the - what 'obvious' means." SOF ¶ 216(b).

"It depends," is obviously not an objective standard and, as noted, the Secretary has not issued a manual, written guidelines, or any training that provides any guidance on what these words specifically mean or how to apply them (or, to use Caskey's terms—what "context" requires rejection and what does not). SOF ¶¶ 134, 208, 211. It is thus not surprising that county election officials are similarly unable to elucidate objective principles for when a signature should be rejected as "inconsistent." SOF ¶ 214–216. When asked "[h]ow many differences would qualify as multiple differences?" Riley County Clerk Rich Vargo said, "Good question. I don't know. That's not – there's not a definitive answer to that." SOF ¶ 214(d); *see also* SOF ¶ 214(d) (when asked if that could mean only two differences, he said, "Potentially, depending on how significant they are"); *see also* SOF ¶ 214(f) (Johnson County Commissioner Fred Sherman testifying that determining whether a signature is inconsistent is a "qualitative and quantitative" endeavor that is

"somewhat artistic" in evaluating the "totality" of the signature). Defendants' experts were similarly unable to offer anything even remotely specific. Instead, they conceded that the standard is effectively up to the signature verifier. *See* SOF ¶ 209(a) (when asked to explain what the regulation means by "generally uniform and consistent", Mr. Songer replied, "It means there's agreement. It could be, you know, whatever the election officer is seeing. . . . You know, it's – it varies."); SOF ¶ 209(b) (Defendants' expert Dr. Lonna Atkeson conceding that county election officials "create a standard in their head" for what constitutes a match).

The record establishes that reasonable people—including Kansas election officials who must implement the SVR—do *not* agree on what terms in the law and the regulation mean, or when they require rejection of a voter's signature. Riley County Clerk Vargo, for example, believes he is *required* to reject a signature with a single significant difference between it and the comparator. SOF ¶ 215(c). But Shawnee County Election Commissioner Andrew Howell does not understand the definition in K.A.R. 7-36-9(a)(2) to mean that a signature is necessarily inconsistent if there's a single significant difference between it and the comparator signature. SOF ¶ 215(e). Howell testified: "I think it depends on the exact difference. It depends on how significant it is." SOF ¶ 215(e). Similarly, State Election Director Caskey testified that "multiple differences" alone would not be enough to reject a signature; it instead "matters" what those differences are. SOF ¶ 214(b). But Defendants' own proffered handwriting expert, Mr. Songer, testified that he believed that, under K.A.R. 7-36-9, an election official *would* be authorized to reject a signature if they counted only *two* differences between a ballot envelope signature and the signature on file. SOF ¶ 214(c). When asked, "Does it matter what those differences are?" Mr. Songer responded, "I don't believe so." SOF ¶ 214(c). Confusion similarly abounds as to how the standards for whether a signature is a "match" or is "inconsistent" interact with each other. Mr. Songer agreed that a signature could

be a "match" and yet have "multiple differences," SOF ¶¶ 212(b), 217(b), which, under the regulation, would otherwise render that signature "inconsistent." K.A.R. 7-36-9(a)(2). He further agreed that deciding what to do in that scenario—whether to accept the ballot or reject it—was "absolutely" a decision that involves "a level of subjectivity and judgment." SOF ¶ 217(b).

Indeed, it appears there is no dispute that Kansas's standard is inherently a subjective one. SOF ¶ 217. This is not only the conclusion of both parties' proffered experts, it is the conclusion of Kansas county election officials tasked with conducting signature verification under the challenged law. *See* SOF ¶ 217(d) (Dr. Mohammed concluding: "[w]hat a 'significant' or 'obvious' difference in a signature is to one election worker in Johnson County may be very different to another election worker in Douglas County."); SOF ¶ 217(a) (Mr. Songer testifying that signature evaluation inherently involves subjective decisions). When asked, "Do you think that different people might come to different conclusions about what constitutes a significant difference between signatures?" Johnson County Election Commissioner Sherman answered, "As stated before, yes. I think folks will come to different conclusions based off the same signature and reference guidelines." SOF ¶ 215(f); *see also* SOF ¶ 216(c) (Riley County Clerk agreeing different people might come to different conclusions about what constitutes an obvious difference between two signatures). In fact, Johnson County Election Commissioner Sherman admitted that whether or not he determined a signature was a "match" could vary *for himself* depending on how long he looked at a signature, *see* SOF ¶ 222(d) ("Again, off of a first blush, it probably would pass muster, but the more you look at it, the more you analyze it, you can see some elements of inconsistency"), or how pressed he was, *see* SOF ¶ 224(d) (answer of whether a signature is "an inconsistency or a match" might "depend[] on kind of the pressures of the workflow and how much I need to review"); *see also* SOF ¶ 222(d) (when shown a signature, stating, "I would probably let

it go by"). In the end, Commissioner Sherman succinctly summed up the process of evaluating signatures as a task that is "both quantitative and qualitative, just like judging art or judging a pie eating contest . . ." SOF ¶ 217(c). In other words, in the end, it is in the eye of the beholder.

This is the definition of a subjective standard. *Cf.* Black's Law Dictionary (12th ed. 2024) (defining "objective" as "of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions"). For these reasons alone, Plaintiffs are entitled to summary judgment on their equal protection claim.

b. Kansas lacks objective standards for applying key elements of the signature verification process.

In addition to the failure to provide objective standards to govern the fundamental question of when a signature is a "match," both K.S.A 25-1124(b) and (h) and K.A.R. 7-36-9 fail to satisfy the standard set forth in *LOWV III* because they fail to provide objective standards for several other critical aspects of the signature verification process, as well. This includes as it relates to (1) what signatures are part of the "file" to which ballot signatures are compared; (2) the process the counties must use to determine when a ballot may be disqualified due to a signature issue; (3) the application and enforcement of the SVR's disability exception; (4) the use of machines for signature verification; and (5) the process to "cure" a ballot flagged for rejection under the SVR.

(i) *Comparison to the signature "on file."*

K.S.A. 25-1124(h) mandates that a signature must "match" "the signature on file in the county voter registration records." There is, however, no law regulation governing when or how signatures are to be added to a voter's registration record, or even what signature the statute refers to when it speaks of the signature "on file." SOF ¶ 260. Does it mean the voter's registration form? Prior ballot envelope signatures? Advance ballot application signature? Poll book signature? Change of address form signatures? The new signature provided when a voter cures a mismatched

signature? Any or all of the above? And do counties actually have any obligation to maintain records of these signatures, or to store them in a database? The statutes and regulations do not say. SOF ¶ 260. Nor have counties received written guidance on the State from this topic, instead creating county-specific "workflows" for when a signature will be added to the voter's file. SOF ¶ 260.

These details matter, and are precisely the kind of issues that courts considering equal protection challenges to signature verification procedures have considered in striking them down as violative of equal protection. For example, in evaluating Iowa's signature verification system and holding it did not comply with equal protection, the court noted: "The universe of signatures 'on record' is unknown. On record with whom? How far back do we look? Is a signature on record pen to paper or electronic, using a stylus and computer signature pad? How hard does an auditor have to look for such a signature? Does the voter have any signature on record? How many?" *League of United Latin Am. Citizens of Iowa v. Iowa Sec'y of State Paul Pate*, No. CVCV056403, 2019 WL 6358335, at *16 (Iowa Dist. Sep. 30, 2019). Iowa left these questions for county auditors to answer themselves, just as Kansas does.

Without rules or guidance, the record here shows that counties have varying approaches to how, when, and under what circumstances signatures are added to a voter's "file." In Shawnee County, signatures from advance mail ballot applications are added to the voter registration file within 24 hours. SOF ¶ 262(c). In Johnson County, whether the county adds the signature from an advance mail ballot application to the voter's file depends on whether the county has the resources to do so. SOF ¶ 262(a). And, indeed, no Johnson County voter who had their ballot envelope signature flagged for rejection on the basis of signature mismatch in the 2024 General Election had an advance ballot application signature on file for comparison. SOF ¶ 262(b). Nor do counties

have uniform practices, including on whether they add the voter's ballot envelope signature to the voter's file, SOF ¶ 262(d)–(f), or even if they add the voter's now cured (and authenticated) signature to their file. SOF ¶ 262(e).

The result is that Kansas counties do not necessarily have many signatures on file for voters when they conduct signature verification. Even Johnson County, whose Commissioner testified that he has reason to believe Johnson County has more comparators on file than most counties, SOF ¶ 265(e), had on average only 3.14 unique signature samples on file for the voters whose ballots were rejected under the SVR in the 2024 General Election. SOF ¶ 265(c). And majority of those voters only had 1 or 2 signatures on file for comparison. SOF ¶ 265(c); *see also* SOF ¶ 265(g) (Riley County testifying the "overwhelming majority" of voters have "one" comparator on file: their voter registration card); SOF ¶ 265(a) (multiple counties producing only one comparator for voters in response to Plaintiffs' subpoenas).

This system, at least in practice, bears little resemblance to the one that the Secretary's Counsel indicated would be in place when he testified before the Legislature when the SVR was being considered. SOF ¶ 117 (Secretary's Counsel representing to Legislature that "every signature that voter has submitted over time" would be compared to the voter's ballot envelope signature). As the counties themselves have now testified, that is not true, SOF ¶¶ 261, 262(a), nor is there any law in Kansas that would require them make such a comparison in light of the lack of requirements to put signatures "on file." SOF ¶ 260.

(ii) *Procedure for disqualifying ballots.*

The statute itself, K.S.A. 25-1124(h), does not outline any process by which a county should determine whether a signature matches the signature on file, and the regulation provides little additional guidance. The most it offers is that no signature can be deemed inconsistent unless

"at least two election officials who have been trained by the secretary of state shall agree that the signatures are inconsistent." K.A.R. 7-36-9(g)(4). However, the statute, regulations, and the video training approved by the Secretary are all silent as to how that provision is implemented.

Does it mean that if one election official does not believe a signature is a match, it is presented to a second as a flagged ballot, and if *that* official will agree the signature is inconsistent, then the signature is rejected? Or can the first official search for any other official who will agree that the signature is inconsistent to reject the ballot? *See id.* (stating simply "[a]t least two must agree"). Could a county set a much higher floor, such that *all* reviewers must agree before a ballot is rejected? These questions may seem like small ones, but the answers functionally change the burden of proof that must be met before a signature is rejected, as well as the likelihood that any particular ballot may be rejected. In the absence of clear objective standards, counties may choose a variety of different approaches. And, here, again, the record demonstrates that is exactly what has happened. *See* SOF ¶ 298 (different counties requiring different numbers of people to agree a signature is "inconsistent" before it is rejected); SOF ¶ 298 (different counties employing different procedures for whether the reviewers evaluate signatures independently or not).

Similarly, the statute and regulations are also silent on the role of a county's canvassing board to consider the election officials' recommendation to not count a ballot because a signature is inconsistent. Is that a decision that a county canvassing board can review? If so, what standards would they use to make such a determination? Kansas law does not say. And counties have filled in the blanks in different ways. *See* SOF ¶ 301 (certain counties elevating ballots with inconsistent signatures to canvassing boards, which can make a decision to nonetheless count the ballot, and other counties choosing not to do so). As a result, voters in one county plainly cannot be said to have the same chances of having their ballot rejected under the SVR from one county to the next.

(iii) ***Applying and enforcing the disability exception.***

Before the Legislature, disability advocates expressed concerns about how the State would ensure that voters with disabilities are not at higher risk of having their ballots rejected under the SVR. SOF ¶ 114. The State has continuously minimized those concerns, pointing to K.S.A 25-1124(h) which, on its face, creates a mandatory exemption from signature verification for voters who have a disability that prevents them from (1) signing the ballot envelope at all, *or* (2) having a consistent signature. Neither the statute nor the regulation, however, provides any standards at all (much less objective ones) as to how that exemption should be enforced, and the record establishes that, in most cases, it has not been enforced in any objective or non-arbitrary manner (or, in some counties, at all). This is itself an independent equal protection violation.

In relevant part, K.S.A 25-1124(h) provides that: "verification of the voter's signature *shall not* be required if a voter has a disability preventing the voter from signing the ballot or preventing the voter from having a signature consistent with such voter's registration form." (emphasis added). The Secretary's regulation, K.A.R 7-36-9(g)(5), parrots this language, stating that: "Signature verification shall not be required if a voter has a disability preventing the voter from signing the ballot or preventing the voter from having a signature that matches the voter's registration form." These two lines are the sum total of direction that is provided to county election officials about that exception. There is *no* written guidance or manual explaining how to apply the exception, SOF ¶ 134, and Kansas's "training" video, which, again, was created to apply Oregon law, does not address it. SOF ¶¶ 234(b), 235.

But the SVR's disability exemption is critical to ensure that the law is not arbitrarily disenfranchising voters who simply cannot sign their name in a consistent manner due to any number of common disabilities. SOF ¶¶ 6, 55, 58, 181, 271. The lack of any standards leaves

several obvious questions unanswered, including, most importantly, how are election officials to know which voters qualify for this exemption? There are *no* processes in place that inform voters of the exemption or allow them to identify themselves as qualifying for it, either when they return their ballot or at any other time. SOF ¶¶ 274(c), 275. It is not surprising, then, that the record establishes that county election officials have no reliable way of identifying these voters. SOF ¶¶ 274(c), 275, 279–280, 282–283.

Although counties *do* maintain lists of the voters who are on the permanent advance voter list—which includes voters with permanent disabilities or illnesses—all parties agree that that list is both overinclusive and underinclusive of voters who would qualify for the exemption from the SVR. SOF ¶ 280(a) (Secretary agreeing); SOF ¶ 280(b) (Johnson County Commissioner explaining, "You could have a bad knee and be on the Permanent Advance List and that has nothing to do with your signature capabilities. Or you could . . . be a voter that's not on the Permanent Advance List and have arthritis of the hand. That would definitely impact the signature verification.").

A separate law allows voters who have a "disability preventing the voter from signing" to use a voter assistant, who may sign for them. K.S.A 25-1128(d). On its face, that would seem to address the first part of the SVR's exemption—for voters with a disability preventing them from signing the ballot at all—with the logical conclusion being that voters who use a voter assistant to sign for them should be exempt from signature verification. But, here, too, no standards have been issued as to how to apply the SVR's disability exemption and, as a result, even voters who cannot sign and use voter assistants to sign for them have had their ballots rejected under the law. This is what happened to Sharon Jumper, who had a voter assistant attest, under penalty of perjury, that Ms. Jumper was "physically unable" to sign her ballot envelope, but whose ballot was nonetheless

rejected by Thomas County for having "no signature/not the voter's signature." SOF ¶¶ 283(i), 431–434.[4]

But even if the voter assistance law worked to effectuate the first half of the SVR's disability exception (and the record establishes it does not), it could not possibly effectuate the second half, which purports to create a mandatory exemption for voters with a disability who cannot make a consistent signature. K.S.A 25-1124(h). Johnson County Commissioner Sherman agreed that there is no place on the ballot envelope for the voter to indicate to the county that the voter has a disability preventing them from making a consistent signature—only a spot for the voter to indicate that they are *physically unable* to sign. SOF ¶ 274(c); *see also* SOF ¶ 278 (Secretary agreeing that any voter who has the "capacity to sign an advance ballot envelope" is required to sign). Moreover, because a voter assistant must sign that the voter is "physically unable" to sign under penalty of perjury, SOF ¶ 274, individuals assisting voters who are physically able to sign their names but are not able to make a consistent signature have been (reasonably) unwilling to declare under penalty of perjury that the person they are assisting is physically unable to sign. SOF ¶¶ 276–277, 377–379, 406–407, 425–427. That includes Haley Kottler, whose mother has muscular dystrophy and can physically make a signature, just not in a consistent manner. SOF ¶¶ 377–379. The same issue arises for voters who might consider using a voter assistant to request

[4] It is possible that Thomas County interpreted the SVR's exception for voters who have "a disability preventing the voter from signing the ballot," K.S.A. 25-1124(h), to be different from the instructions on the ballot envelope which on their face allow *anyone* who is "physically unable" to sign the ballot to use a voter assistant, SOF ¶ 274. A strict interpretation of the statutory exemption, for example, might leave out voters are physically unable to sign because of a temporary injury, which the county might not consider a disability. Or, perhaps, the county was entirely unaware of the exemption in light of the State's failure to implement any procedures to implement it. Either way, because there are so many questions regarding the disability exemption that the SVR leaves completely unanswered, the result is ad hoc procedures and processes (or even no real procedures or processes at all) that is the very definition of an equal protection violation.

an advance ballot (AV1 form), sign up for the permanent advance voter list (AV2 form), or even to request assistance generally (AV5 form), *all of which* require the assistant to state under penalty of perjury the voter they are assisting has a disability "*preventing* the voter from signing." SOF ¶ 282 (emphasis added). In short, there is no evidence that any county informs voters of the part of the SVR's disability exception for voters who have difficulty making consistent signatures on the ballot envelope, SOF ¶ 274(c), nor that counties have any way to reliably identify voters as subject to that exception. SOF ¶ ¶¶ 274(c), 275, 279–280, 282–283.

In this void, counties have created ad hoc approaches that are both wildly divergent from each other and fail to uniformly exempt voters who cannot sign consistently due to disability. Take Riley County, which exempts a voter from signature verification *only* if the voter has an assistant sign on their behalf and *only* if the voter has previously indicated to the county that they require assistance signing their ballot. SOF ¶ 282. These are, of course, not rules that the State has promulgated anywhere. *See generally* K.S.A. 25-1124(h); K.A.R. 7-36-9; *see also* SOF ¶ 282(a)(iii) (State contending voters using an assistant are not required to fill out a form). Nor are those options clearly available to voters who cannot make consistent signatures, as just explained. Other counties follow different approaches, attempting to consult the permanent advance voter list, or whether the voter has an AV5 form on file, in attempting to decipher whether the voter might have a disability preventing them from making a consistent signature. SOF ¶¶ 281–282. But, again, neither would definitively tell the county whether the voter was in fact exempt from signature verification. SOF ¶¶ 280, 282.[5]

[5] As Johnson County Commissioner Sherman explained, the fact that counties may know which voters have an AV5 form on file does not tell the county whether the voter qualifies for the SVR's disability exception because those forms apply to voters who need assistance voting for a variety of reasons, including language barriers, and would not specify whether the voter has any particular

Still other questions remain entirely unanswered, all ensuring that the counties cannot possibly objectively and uniformly apply the disability exception. They are legion, but at a minimum, include: (1) Is an AV5 form required for a voter to take advantage of the exemption if their disability prevents them from signing at all? And if so, are voters told that? When and how? (2) If the county conducts signature verification on a ballot belonging to a voter who rightfully qualifies for the SVR's disability exception, and the county learns that when it contacts the voter, is the voter still required to cure their ballot? Or is the ballot automatically then counted? The Secretary contends the answer is that the ballot *is* automatically counted, SOF ¶ 283(a), while Kansas some counties insist that it is not—and require voters in those circumstances to "cure" their ballot or it will not be counted. SOF ¶ 283(b), (g). The wildly divergent answers are not surprising. The statute does not answer these questions, *see* K.S.A 25-1124(h), the regulation does not answer these questions, *see* K.A.R. 7-36-9, the training video does not answer these questions, SOF ¶¶ 234(b), 235, and there is no written manual or guide that would answer those questions, SOF ¶ 134.

All of these questions leave the fate of disabled voters' ballots up to chance, with no clear way to take advantage of an exemption they are entitled to under statute. The State's failure to even attempt to implement this exemption ensures not only are there no objective standards for its application, but no standards at all.

Use of machines in signature verification. K.S.A. 25-1124(h) provides: "Signature verification may occur by electronic device or by human inspection." The regulation simply parrots the statute: "Signature verification may occur by electronic device or by human

disability such that they qualified for exemption from the signature verification requirement, SOF ¶ 282(a)(iv).

inspection." K.A.R. 7-36-9(g)(2). Neither provides any further standards for the use of electronic devices in signature verification, or how to ensure screening of signatures with machines is consistent with the review of signatures by election officials. Indeed, that would be difficult to do: "Signature-matching machines typically use algorithms to compare a signature with other known signatures." SOF ¶ 294. "If different counties use different types of machine verification with each using different algorithms," the results would vary in each county, in addition to producing inherent variation compared to counties that did not use such algorithms. SOF ¶ 295–296. Making matters worse, the Secretary does not track which counties perform signature verification by electronic device and which conduct signature verification by human inspection. SOF ¶ 297. As a result, Kansas counties could be using such machines, taking literally any approach, and the Secretary would not even know it.

"Curing" a ballot mistakenly flagged for rejection. Under K.S.A. 25-1124(b), "[t]he county election officer shall attempt to contact each person who submits an advance voting ballot where there is no signature or where the signature does not match with the signature on file and allow such voter the opportunity to correct the deficiency before the commencement of the final county canvass." The statute does not explain *how* a voter can "correct that deficiency" (which, of course, may not actually be a "deficiency," but more likely an error in judgment by an election official). The regulation is not much better: it simply says that a voter's signature deficiency "may" be corrected "by providing an updated signature consistent with the signature on file." K.A.R. 7-36-9(d)(1). Those standards introduce the same questions as before. What does it mean for a signature to be consistent? Judged by whom and how? How can that signature be provided? And what if—e.g., because of a disability, health, or simply because the voter's signature has evolved—the voter is *not* able to produce a consistent signature to the one on file? Does the regulation require

the rejection of that voter's ballot, even if the county now has reason to believe the ballot envelope signature to be genuine? Again, the statutes, the regulation, and the training do not say.

Nor does the SVR set objective standards for when a voter must be contacted to permit them the opportunity to cure their signature to have the ballot counted. Although such contact must presumably occur "before the commencement of the final county canvass," K.S.A. 25-1124(b), there are no guardrails to ensure voters receive timely notice of the need to cure, all but ensuring different application from county to county.

* * *

Under *LOWV III*, the Legislature's "proper proofs" for electors do not comply with equal protection if they do not contain "objective standards" for its application. 318 Kan. at 807. The SVR plainly fails that test, lacking objective standards not only for what constitutes a "match" to the signature on file, but also for other key elements of the requirement—including how to determine whether a voter meets the statutory exemption from signature verification, the proper procedure for disqualifying ballots, and the standards for curing. For any of those reasons, the Court should hold that Plaintiffs are entitled to summary judgment on their equal protection claim.

2. Kansas fails to achieve reasonable uniformity in applying the Signature Verification Requirement.

Under the test required by *LOWV III*, the SVR must also "achieve reasonable uniformity" across Kansas counties to comply with equal protection. *Id*. It fails that test spectacularly. The record establishes that, applying the bare standards provided for whether a signature is a "match," officials from different counties respond in different ways when asked whether they would accept or reject the same ballot. And, just as Justice Biles predicted would occur without objective standards, *see id.* at 837, different practices have emerged across counties regarding how voters' ballots are evaluated, rejected, and permitted to be cured for an alleged signature inconsistency.

Some of this evidence is already discussed briefly above, *see supra* § II(A)(1), and it is an undisputable and consistent reality of the application of the SVR in Kansas. For this reason, too, Plaintiffs are entitled to summary judgment on their equal protection claim.

a. Kansas does not achieve reasonable uniformity in what it means for a signature to be a "match" the signature on file.

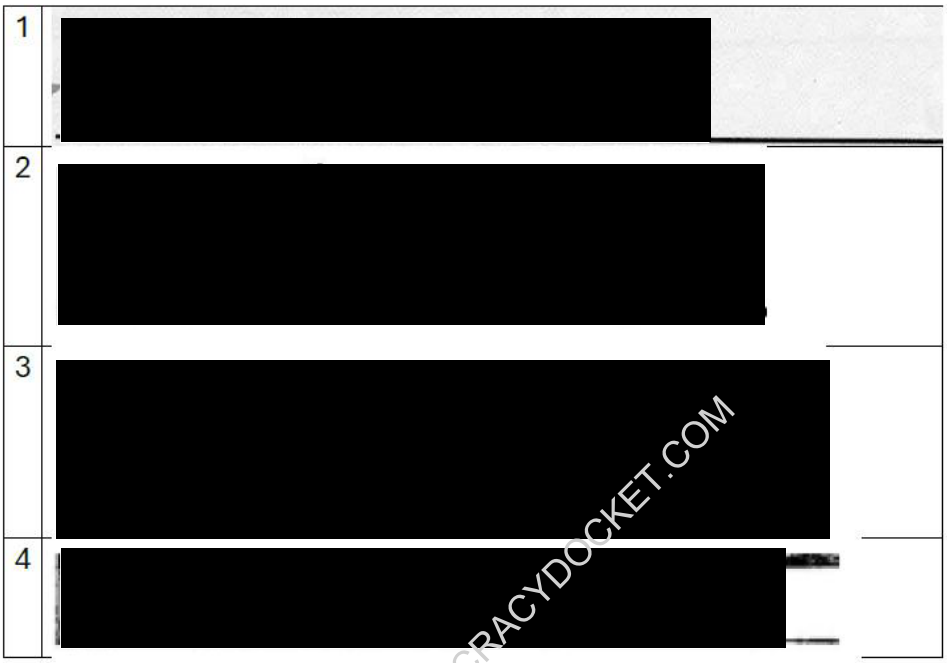
The evidence is overwhelming that, in applying the SVR, election officials fail to achieve reasonable uniformity in deciding which signatures to accept and which to flag for rejection.

To illustrate this persistent and fundamental issue, take the example of Douglas County voter ***Kenton Felmlee***,[6] whose ballot envelope signature was rejected as "inconsistent" in the 2024 General Election. SOF ¶ 219(a). The following are signatures that Douglas County produced in response to Plaintiffs' business record subpoena requesting the ballot envelope signatures and signature comparators on file for voters whose signatures were rejected as "inconsistent" in the 2024 General Election, SOF ¶ 219(a), which were then shown to county election officials during their depositions in this case, SOF ¶ 219(b):

[6] Consistent with the Protective Order entered in this case on June 3, 2025, Plaintiffs are redacting voters' signatures to maintain confidentiality. Plaintiffs will provide an unredacted copy to chambers.

General Signature Example 1 (Kenton Felmlee)

Signature #1 is the ballot envelope signature for examination. Signatures #2-4 are official comparators.



In the view of the Defendants' proffered handwriting expert, Mr. Songer, the rejection of Mr. Felmlee's signature was a proper application of the state's inconsistency standard, though he acknowledged that there were only "subtle differences" between the signatures and that those differences were "possibly" the variations of the same writer. SOF ¶ 219(g). He agreed that people could come to different conclusions than he did on the basis of these signatures. SOF ¶ 219(g).

And that is precisely what happened: Douglas County officials agreed with Mr. Songer when they rejected this ballot, SOF ¶ 219(a), and as did the Riley County Clerk, who, when shown these signatures in his deposition, confirmed he also would have rejected Mr. Felmlee's signature as inconsistent. SOF ¶ 219(d). But when shown the exact same signatures, the Johnson County and Shawnee County Election Commissioners came to the opposite conclusion: they would have accepted Mr. Felmlee's ballot as a "match." SOF ¶ 219(e)–(f). Not only are these outcomes

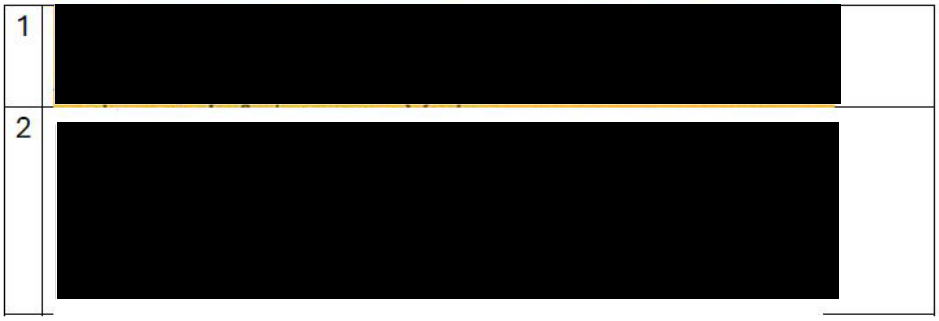
obviously diametrically different, the explanation as to what the county election officials observed about the signatures that led them to their conclusion show how, in the absence of objective standards, signature verifiers will—and are—simply creating their own standards (and different ones at that):

Riley County Clerk on why he would reject the signature:	**Johnson County Commissioner on why he would accept the signature:**
"The M, if it is an M, I'm assuming, isn't similar at all. The T is totally different as far as crossing over two other letters in the other one. It's got what appears to be two L's at the top and three on the second one, and on the second one, the second and third L have an extra letter in between them, so not even the same number of letters in the last name, or potentially in the first name. Just enough significant differences in the first name. The last letter does not end the same with that one pointing down and one pointing up and curving under so there's significant differences. The N is not even a similar form, if it is an N." SOF ¶ 219(d).	"I likely would have found it as a consistent or a match primarily because the No. 1 signature, the one on the return envelope, a lot of its characteristics match what is No. 2 and No. 4 in terms of the rhythm, the angle, and the style of the signature. They all appear to have been done probably as a wet signature, whereas No. 3 appears to be more of a digital signature." SOF ¶ 219(e).

Similarly, take the example of Dickinson County voter ***Elizabeth Anderson***, whose ballot envelope signature was rejected as "inconsistent" in the 2024 General Election. SOF ¶ 220(b). Ms. Anderson is a lawful registered Kansas voter, whose signature on the ballot envelope was genuine, SOF ¶¶ 405, 416, but whose ballot was rejected and not counted in the 2024 General Election because of the SVR. SOF ¶ 220(b). The following are the signatures that Dickinson County produced in response to Plaintiffs' business record subpoena requesting the ballot envelope signatures and signature comparators on file for voters whose signatures were rejected as "inconsistent" in the 2024 General Election, SOF ¶ 220(a), which were then shown to county election officials during their depositions in this case, SOF ¶ 220(c):

General Signature Example 2 (Elizabeth Anderson)

Signature #1 is the ballot envelope signature for examination. Signature #2 is the official comparator.



When shown Ms. Anderson's signatures, both Riley County and Johnson County officials agreed that the ballot envelope signature was "inconsistent" with little hesitation. SOF ¶ 220(e)–(f). When the Johnson County Commissioner was asked whether he would change his mind if he knew the comparator was a digital signature, he said he would not. SOF ¶ 220(f). Shawnee County Commissioner Howell, however, likely would have accepted the ballot. In coming to this conclusion, he first asked where the comparator signature was from, and when told it was from the DMV, he responded, "knowing that it was DMV, I might actually accept that one." SOF ¶ 220(g). When asked why, he said, "I know that sometimes those signatures are a little sloppy." SOF ¶ 220(g).

The same disparate treatment and conclusions were demonstrated repeatedly when Riley, Johnson, and Shawnee County officials were shown a variety of signatures from Johnson County's own Signature Verification Guide, which Johnson County produced on its own and attempts to highlight differences in signatures that election officials may come across. SOF ¶ 244. For example, when shown the signature of hypothetical voter "***Gerald Ford***," which the Johnson County Guide presents as an example of a signature with different curves and loops, SOF ¶ 222(a), the Riley County Clerk would have deemed it inconsistent, SOF ¶ 222(c), while the Johnson and

Shawnee County Commissioners would have accepted it as a match. SOF ¶ 222(d)–(e). Those signatures are presented below, SOF ¶ 222:

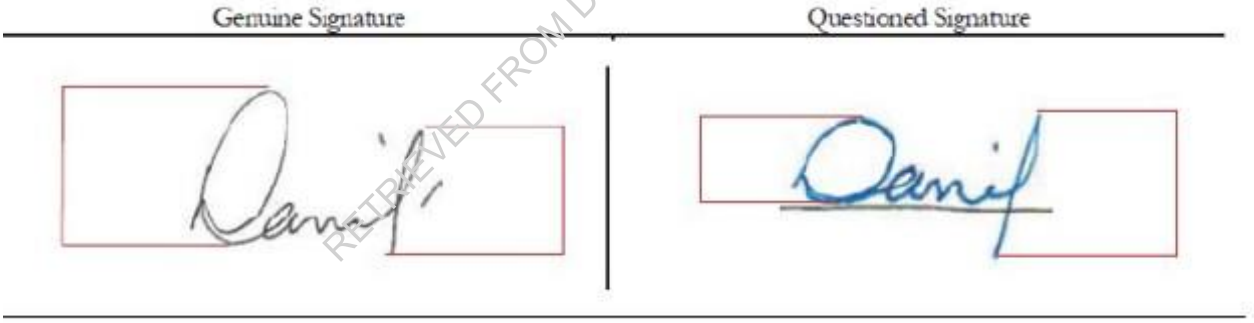
Here again, the county election officials' explanations as to how they came to their conclusions starkly demonstrate how disparate and subjective those determinations are:

Riley County Clerk on why he would <u>reject</u> the signature:	**Johnson County Commissioner on why he would <u>accept</u> the signature:**	**Shawnee County Commissioner on why he would <u>accept</u> the signature:**
"[T]here's extra – extra – some lines from one signature to the other that are longer or shorter than the others. The spacing between the letters, you know, the cross line's formed differently, the one cross line goes all the way through on the F, the other does not. Loops are different. Yeah. Loops are different on the R as well, one has a loop, one doesn't." SOF ¶ 222(c).	"I see some consistency in the two yes, at first glance." SOF ¶ 222(d).	"I don't know that I see enough difference to get terribly excited about rejecting it." SOF ¶ 222(e).

Similarly, when shown the signature of hypothetical voter "***Jimmy Carter***," which the Johnson County Guide presents as an example of a signature with different spacing between individual letters, SOF ¶ 223, the Riley County Clerk and Johnson County Commissioner testified it raised enough differences for them to flag as inconsistent, SOF ¶ 223(c)-(d), but the Shawnee County Commissioner would have accepted it as a match. SOF ¶ 223(e) (Shawnee Commissioner

explaining: "Although there is slightly more spacing, I think it's possible that it could be the same person."). Those signatures are presented below, SOF ¶ 223:

Yet again, when shown the signature of hypothetical voter "***Daniel***," which the Johnson County Guide presents as an example of a signature with letters with greater or shorter heights, SOF ¶ 224, the Riley County Clerk and Shawnee County Commissioner testified it raised enough differences for them to flag as inconsistent, SOF ¶ 224(c), (e), while the Johnson County Commissioner likely would have accepted it. SOF ¶ 224(d). Those signatures are presented below, SOF ¶ 224:



Although he suggested that Daniel's signature was a "match," the Johnson County Commissioner also testified that his answer might change depending on his workload: "First blush, I would say it's consistent. I would – depending on the kind of pressures of the workflow and how much I need to review, I – calling it inconsistent is probably a challenge because I do see some similarities between the two." SOF ¶ 224(d).

Finally, take the example not of a specific signature, but of a general scenario in which a voter signed the ballot envelope using a short name or nickname, but the voter's comparator has a full name. Riley County would consider those signatures "inconsistent," SOF ¶ 218(a), Shawnee County would need to consider other factors before deciding, SOF ¶ 218(b), and Johnson County would look to the totality of the circumstances, including specifically whether the last name was consistent across both signatures, before making a determination, SOF ¶ 218(c).

These divergent outcomes are simply not surprising outcomes when Kansas county election officials are tasked with attempting to judge whether a signature "differs in multiple, significant, or obvious respects," K.A.R. 7-36-9(a)(2), and left to their own devices to attempt to implement such standards. For this reason alone, the Court should find that the SVR fails to "achieve reasonable uniformity" consistent with equal protection. *LOWV III*, 318 Kan. at 807.

b. Kansas does not achieve reasonable uniformity in other key elements of the signature verification process.

Discovery has made plain that the State absolved itself of any responsibility for monitoring counties' attempted implementation of the SVR. The only information about the SVR that the State collects is the final number of ballots that were not counted due to an inconsistent signature, SOF ¶¶ 331, 351, and that is only because it is required to report that to the federal U.S. Election Assistance Commission. SOF ¶ 351. The Secretary does not, for example, collect information on (1) how many voters have their ballots flagged for rejection under the SVR in the first place, SOF ¶ 339, (2) the process by which counties determine signatures to be inconsistent, SOF ¶¶ 332–337, (3) how counties permit voters to cure those signatures, SOF ¶ 341, (4) whether counties are actually contacting voters to notify them of the issue and when they do so, SOF ¶ 341, or any other facet of the signature verification process, SOF ¶ 331. In sum total, the Secretary sent out a short YouTube video produced by another state, drafted the regulation, and hoped for the best.

In *LOWV III*, Justice Biles predicted that, without objective standards to guide county election officials, it was "virtually certain that unguided practices will emerge to reject legitimate ballots without any accountability. This will disenfranchise a voter through no fault of their own or force them to bear additional burdens to cure the product of a haphazard process." 318 Kan. at 837 (Biles, J., concurring in part and dissenting in part). Discovery has shown that this is exactly what happened: Different practices have emerged across Kansas counties regarding how voters' ballots are evaluated, rejected, and permitted to be cured for signature issues, disenfranchising voters through no fault of their own and forcing them to bear the burdens of a haphazard process. This is a known risk, particularly in the signature matching context. SOF ¶ 203–206. As other courts have found, without clear instruction, counties "across the state employ a litany of procedures when comparing signatures," resulting in "a crazy quilt of conflicting and diverging procedures." *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS, 2016 WL 6090943, at *7 (N.D. Fla. Oct. 16, 2016). The record shows this is precisely what has happened in Kansas.

Use of Presumptions. Many states have presumptions embedded in law that require election officials to presume that a voter's signature is authentic—a useful starting point for the analysis and a touchstone in close calls. *See, e.g.*, Wash. Admin. Code 434-261-051(2) ("At each stage of the signature verification process, there is a presumption that the signature on the ballot declaration is the voter's signature."); Cal. Elec. Code § 3019(a)(2)(A) (similar); Haw. Admin. Code § 3-177-652(c)(1) (similar). In Kansas, however, this presumption is not in the law at all. *See generally* K.S.A. 25-1124(h); K.A.R. 7-36-9; *see also* SOF ¶ 288 (State Election Director agreeing there is no presumption in Kansas law); SOF ¶ 290 (Defendants' proffered expert, Mr. Songer, agreeing that Kansas's definition of what it means to have an inconsistent signature does not itself give the benefit of the doubt to the voter).

Although the Secretary contends that a presumption that signature is valid part of election officials' training, SOF ¶ 288, the language that communicated a presumption in favor of the voter in the training video was *stripped out* when the Secretary modified it to remove certain slides containing Oregon-specific standards for signature matching. SOF ¶ 237(d). And while the Secretary's office claims to also convey such a presumption (apparently on an ad hoc basis) verbally to Kansas counties in "Q&A" sessions and telephone calls, SOF ¶ 288, Kansas counties themselves are not uniform in applying any such presumption. For example, in Riley County, election officials apply such a presumption; but in Johnson and Shawnee Counties, they do not. SOF ¶ 291(a)-(b).

Stages of Review and Use of Canvassing Boards. As noted *supra* § II(A)(1)(b), K.A.R. 7-36-9(g)(4) specifies that, "Before a signature on any application or mail ballot envelope is deemed inconsistent, *at least* two election officials who have been trained by the secretary of state shall agree that the signatures are inconsistent." (emphasis added). Thus, by its plain terms, the regulation invites counties to develop different thresholds before a ballot is flagged for rejection, with the obvious benefit going to voters where more officials must agree before their ballot is rejected. Thus, Shawnee County, for example, requires that only two election officials agree before a signature is rejected as inconsistent, while in in Riley County, three must agree, and in Johnson County, four must agree before a ballot is rejected. SOF ¶ 298(a)(ii), (b)(viii), (c)(iv).

As for whether county canvassing boards might save ballots flagged for rejection due to signature issues, the counties differ here as well. In Sedgwick and Butler Counties, in at least some instances, the Board of Canvassers votes on whether to accept or reject ballots that have been flagged as having a mismatched signature and have not been cured. SOF ¶ 301(d)-(e). In Riley, Shawnee, and Johnson Counties, they do not. SOF ¶ 301(a)-(c). Here, again, there is no consistent

rule: when the Sedgwick County Election Commissioner asked the Secretary's Office if election officials should present signatures that were identified as inconsistent and not cured to the Board of Canvassers for them to "verify that the signatures do not match before rejecting the ballots for non-matching signature issues," the Secretary's General Counsel made clear that it was entirely up to the county's discretion, replying that it was "your call." SOF ¶ 300.

Signature Matching for Voter Assistants. As already discussed *supra* § II(a)(2)(b), Kansas permits the use of voter assistants to sign on behalf of voters who are "physically unable" to sign their ballots. *See* K.S.A. 25-1121(b). Kansas also requires the signature of a voter assistant if an individual assisted the voter in marking or returning their ballot. *See* SOF ¶ 282(a). Although the Secretary contends that signature matching is not required for any kind of voter assistant, SOF ¶ 284, the law itself does not specify whether it is required. *See generally* K.S.A. 25-1124(h); K.A.R. 7-36-9. In practice, Riley County conducts signature verification on the signatures of voter assistants in some but not all instances. SOF ¶ 284(a). Johnson County conducts signature verification on the signatures of voter assistants who have filled out an AV5 form. SOF ¶ 284(b). Shawnee County does not conduct signature matching on voter assistant signatures. SOF ¶ 284(c).

Methods of Curing. K.A.R. 7-36-9(d)(1) directs that a voter's signature on an advance ballot envelope that has been deemed "inconsistent" with the voter's signature on file "may" be cured by providing an updated signature consistent with the signature on file until the commencement of the county board of canvassers. SOF ¶ 329. The record shows that, here, too, Kansas counties are implementing this provision in vastly different ways.

In Johnson County, for example, a voter may cure a ballot flagged under the SVR *only* if they appear in person at the county elections office during business hours and present photo ID. SOF ¶ 330(c)(i). There is no exception for voters who are sick or disabled, or who inform the

county that their signature did not match the one on file on account of a disability. SOF ¶ 330(c)(iii). Although Johnson County has the voter re-sign the ballot envelope, it does not perform signature verification on the new signature, SOF ¶ 330(c)(v)—that is, it appears there is no requirement in Johnson that the signature actually be "consistent" with the one on file for the ballot to be counted.[7]

Other counties, like Riley County, also do not appear to perform signature verification on the new signature, *see* SOF ¶ 330(e)(v), but permit voters to provide a new signature in a variety of ways, including by email, mail, text, or fax. SOF ¶ 330(e)(ii); *see also* SOF ¶ 330(d) (Shawnee County allowing same). Further, in Riley County, if the election office knows of someone who is elderly or has a disability and that individual indicates they want to cure their signature but cannot do so, a staff member will make a personal visit to their residence so that the individual can do so. SOF ¶ 330(e)(vi). Likely because of the variety of means provided to cure their ballots, Riley County reports that the "overwhelming majority" of voters whose ballots have been flagged for a signature mismatch ultimately have their ballots counted. SOF ¶ 330(e)(i).

* * *

It is not perfectly clear what the majority in *LOWV III* meant when it directed this Court to determine whether the SVR "achieve[s] reasonable uniformity." 318 Kan. at 807. But whether the standard is that articulated by Justice Biles (explaining, to comply with equal protection, "the likelihood of having a ballot discarded for signature mismatch must be the same in Wyandotte County as in Gove County," *id.* at 834 (Biles, J., concurring in part and dissenting in part), or

[7] Plaintiffs certainly do not advocate that a voter should be required to produce a consistent signature for their vote to be counted. Such a requirement would disenfranchise voters whose signatures have fundamentally changed or who cannot make a consistent signature, as the law already recognizes. *See* K.S.A. 25-1124(h). The point is that what a voter must do to have their ballot counted appears to be subject to the whim and preferences of county election officials.

something slightly more forgiving, the record is plain that the SVR does not achieve it. The likelihood that any voter's individual ballot will not be counted on the basis of signature mismatch varies across Kansas counties depending on a variety of subjective and standardless factors including: (1) the subjective determinations of whether the differences in a signature are substantial enough to merit rejection, (2) the starting presumptions about whether a signature matches, (3) the number of individuals who must agree with that determination, (4) whether a canvassing board can reverse the decision to not count that voter's ballot, (5) whether the county is able to correctly determine whether the voter is statutorily exempt from signature verification, (6) whether the county conducts signature verification on a voter assistant's signature, and (7) whether a county requires a voter with an "inconsistent" signature to appear in-person to have their ballot counted or requires something far less. For all or any of those reasons, the Court must hold that Plaintiffs are entitled to summary judgment on their equal protection claim.

3. Kansas's stated interests in the Signature Verification Requirement are insufficient, as a matter of law, to justify any equal protection violation.

In directing this Court on remand, the Supreme Court described the "proper legal standard" for Plaintiffs' equal protection claim as follows: "Does the signature requirement (and its implementing regulations and policies, such as those promulgated in K.A.R. 7-36-9, K.A.R. 7-36-7 [2023 Supp.], and K.A.R. 7-36-3) achieve reasonable uniformity on objective standards[?]" *LOWV III*, 318 Kan. at 807. That is a two-part test. Does the SVR have objective standards? And is it achieving reasonable uniformity in implementing those standards? As Plaintiffs have shown, the answer to both questions is no. Thus, the State's interest in the SVR is not relevant to whether it complies with equal protection under the applicable two-part test.

But even if this Court entertains the question of whether the SVR actually serves the State's interest in preventing voter fraud (as Defendants have previously claimed), the record establishes

that it does not. Voter fraud in Kansas, of any kind, is extraordinarily rare. SOF ¶¶ 453–456. Indeed, in a letter to the House Elections Committee in March 2022, Kansas Secretary of State Scott Schwab said: "To date, there has not been a single instance of reported and verifiable evidence of election fraud in the 2020 election." SOF ¶ 104(a); *see also VoteAmerica v. Schwab*, 790 F. Supp. 3d 1255, 1275 (D. Kan. 2025) (finding "Schwab had publicly declared that the 2020 election in Kansas was successful, without widespread, systematic issues of voter fraud, intimidation, irregularities or voting problems," which "calls into question any purported legislative intent to root out fraud, promote efficiency or avoid voter confusion in Kansas elections"); *see also id.* at 1278 (noting that the Secretary presented "no evidence of voter fraud effectuated through advance mail voting" and found instead that Kansas had "extremely effective" safeguards in preventing fraud in mail voting).

The record in this case is the same. Plaintiffs' expert, who affirmatively searched for evidence of voter fraud in the state, identified only 24 proven cases in Kansas *since* 1982, making the percentage of known fraudulent votes in Kansas elections dating back to 1982 a total of 0.000092%. SOF ¶ 457. Critically, *none* of these instances of fraud would have been prevented by signature verification. SOF ¶ 458. Plaintiffs sought evidence from Defendants in this litigation, including the Attorney General, for evidence of any individual who has ever been charged or convicted for forging a signature on voter's mail ballot envelope in Kansas. Defendants produced no such evidence. SOF ¶ 460.[8]

Even if the Court were to consider *potential cases* of voter fraud referred to prosecutors, the record reflects that this very rarely has happened. Shawnee County Election Commissioner

[8] The record demonstrates that many Kansas counties, including the three counties deposed in this litigation, have been conducting signature verification for many years. SOF ¶ 101. If signature matching was indeed catching fraudulent votes, Kansas should have evidence of it by now.

Howell, for example, can remember only one advance mail ballot, more than five years ago, that he referred for investigation as a result of signature matching, and he did not know the outcome of that investigation. SOF ¶ 471. The Commissioner did not turn any advance mail ballots over to law enforcement for suspected signature fraud in 2022 or 2024, during which time Shawnee County received, reviewed, and counted more than 14,000 mail ballots. SOF ¶ 471(a)–(b). Riley County's Clerk, too, has never encountered signature verification fraud, despite conducting signature matching for many years, SOF ¶ 470. Accordingly, the SVR does not strengthen the state's elections; it *threatens* their integrity given the number of lawful voters who are disenfranchised by the requirement as compared to the (likely nonexistent) number of fraudulent ballots that it could ever be reasonably projected to catch. SOF ¶ 474.

Kansas has long been proud of the integrity of its elections, which are already well protected against any risk of fraud by a variety of other safeguards. Nor is there any evidence that those safeguards have been insufficient in protecting advance voting specifically against fraud in the decades that Kansas has allowed voters to participate in its elections in that way, entirely without incident. Those safeguards include, but are not limited to: (1) conducting robust list maintenance to ensure voters who have passed, moved, or are ineligible to vote have been removed from the rolls (and could not be issued an advance ballot), K.S.A. 25-2316c; K.S.A. 25-2304; K.A.R. 7-38-1, SOF ¶ 449, (2) allowing voters to track the status of their ballot online, SOF ¶ 95, (3) unless the voter is on the permanent advance list, requiring voters to submit an application to receive an advance ballot for each new election, SOF ¶ 443, (4) ensuring that all voters are issued only one valid ballot, such that if an individual requested an advance ballot on behalf of a voter, and that voter later showed up to vote in person at the polls, the system would show that the voter had already been issued a ballot and the county could conduct an investigation, SOF ¶ 452, (5)

requiring signature verification on the ballot application itself, SOF ¶ 89, and (6) requiring voters to provide their unique, government ID numbers (or a copy of that photo identification) before they can even be issued an advance mail ballot, SOF ¶ 446. Indeed, the Secretary's General Counsel has emphasized that "KS is one of the only states that does signature verification and ID number [on the advance ballot application]. Most states do one or the other." SOF ¶ 448.[9]

Thus, to successfully commit voter fraud using an advance ballot in Kansas, a person would have to identify a voter on the rolls who they were confident was not going to vote (which would immediately bring the advance ballot into question), as well as successfully request and obtain that advance ballot—which would both require them to have the voter's ID number (or a photocopy of their identification) and not trigger any suspicions in the application signature verification process, and would further require them to retrieve that ballot and send it back without suspicion or the voter's knowledge. There are of course a host of criminal laws in place in Kansas that make doing this a felony, *see, e.g.*, SOF ¶ 450, and—in the end—it is a crime with little payoff and very high risk, SOF ¶ 451. It is accordingly not surprising that Defendants' proffered voter fraud expert Dr. Atkeson is not aware of any efforts to manipulate or introduce fraud into Kansas's elections through the use of advance ballots, SOF ¶ 461, nor is she aware of any evidence that advance ballots in Kansas have been stolen and voted by a third party in SOF ¶ 462.

Even if an individual successfully cleared all those hurdles, it is far from clear that the SVR would actually stop the submission of a fraudulent signature. As Plaintiffs' expert has shown,

[9] To be sure, Plaintiffs also have concerns about signature verification on advance ballot applications. But they do not raise as significant issues as arise in the context of signature verification on advance ballot *envelopes*, where the decision is whether or not to count a ballot, rather than whether to send a voter a traditional ballot *or* a provisional ballot, the latter of which is still sent to the voter if the signature on the advance ballot application does not appear to match the signature on file. *See* K.S.A. 25-1122(e)(1).

Kansas's standards for accepting signatures are not only a poor gauge for determining whether a signature is authentic, it is also a poor gauge for whether a signature is *inauthentic*. SOF ¶ 217(d). Laypersons tend to look for eye-catching features when they examine signatures—the same features that a forgery would attempt to capture. SOF ¶ 193–194. Perhaps not surprisingly, all three county election officials in this case accepted as a "match" the example forged signature shown to them, SOF ¶ 197, while rejecting as "inconsistent" the genuine signatures of Kansas voters, SOF ¶ 220(e)–(f).

Nevertheless, Kansas did not count the ballots of at least 224 voters as a result of the SVR in the 2022 and 2024 general elections, SOF ¶¶ 349–350. Even if there *were* questions as to the genuine authenticity of a handful of those ballots, it would be drowned out by the many, many ballots that are not counted that belonged to lawful Kansas voters. *See, e.g.*, SOF ¶¶ 436–438, 180(a)–(g) (Kansas voters attesting to genuineness of signatures that were rejected); SOF ¶ 469 (Shawnee County Election Commissioner Howell testifying to his belief that "most" uncured signature mismatch ballots are not the product of fraud); SOF ¶ 466 (Johnson County Election Commissioner Sherman testifying to his belief that most uncured signature mismatch ballots in his county belong to voters who simply cannot appear in-person at the county election office).

Indeed, throughout this litigation, Kansas has not even contended that county election officials are *capable* of reliably distinguishing between authentic and inauthentic signatures, *nor are they even purporting to do so*. SOF ¶ 199 (Defendants' proffered handwriting expert, Mr. Songer, agreeing that Kansas election officials are not providing a determination of a signature's "genuineness or authenticity"). Instead, Kansas merely envisions them as "front-line screeners," similar to a "bank teller" examining signatures on checks. SOF ¶ 202. Indeed, Kansas contends that all they are doing is picking out "multiple" or "significant" or "obvious" differences between

signatures, which, whatever those terms might mean, is not a task that requires much skill. SOF ¶¶ 201–202. But it is fundamental that equal protection, in addition to requiring objective standards, also protects against arbitrary treatment. *LOWV III*, 318 Kan. at 805 (equal protection requires "that no voter is subject to arbitrary" treatment). Signature verification is supposed to be about authenticating signatures, but the state admits that is not even what the system is purporting to do. That is the definition of arbitrariness.

Even if the State had not made such a concession, it is obvious that Kansas's SVR is not capable of reliably distinguishing between authentic and inauthentic signatures. *See infra* § III(C). As Plaintiffs show in great detail, Kansas's system does not and cannot account for the inherent, natural variation in authentic signatures and actual differences suggestive of forgeries. *See infra* § III(C). Indeed, the lack of training, the limited signature comparators on file to make a judgment, and the lack of time that election officials have to render judgment (often, mere seconds), make authentication of signatures virtually impossible. *See infra* § III(C).

For all of these reasons, the SVR simply cannot and does not "reliably and uniformly sift out the feared fraudulent ballots by objective means without denying legitimate voters their fundamental right to vote." 318 Kan. at 837 (Biles, J., concurring in part and dissenting in part). As Justice Biles warned, "[w]e must not sacrifice legitimate ballots cast by eligible voters to defend against a canard." *Id.* But that is precisely what Kansas is doing.

B. The Signature Verification Requirement also subjects voters to unconstitutional arbitrary and disparate treatment under *Bush v. Gore*.

The same result follows—that is, Plaintiffs are entitled to summary judgment on their equal protection claim—even if this Court or a reviewing court were to apply the standard from *Bush v. Gore*, 531 U.S. 98 (2000). *See LOWV III*, 318 Kan. at 806 (citing *Bush* for proposition that the Legislature's proofs require non-arbitrary treatment). As the U.S. Supreme Court recognized in

Bush, voters are entitled to "equal dignity," not only in "the initial allocation of the franchise," but also "the manner of its exercise." 531 U.S. at 104. Thus, after allocating the franchise, states must "satisfy the minimum requirement for nonarbitrary treatment of voters necessary to secure the fundamental right." *Id.* at 105.

In *Bush*, the Court applied these principles to Florida's county canvassing boards, which were tasked with determining the "intent of the voter" in deciding whether to count a ballot. *Id.* at 106. That instruction was "unobjectionable as an abstract proposition and a starting principle." *Id.* The problem, however, was "the absence of specific standards to ensure its equal application." As the Court explained, for example, "how to interpret the marks or holes or scratches" on a ballot must be "confined by specific rules designed to ensure uniform treatment." *Id.* The Court found that "[t]he want of those rules here has led to unequal evaluation of ballots in various respects." *Id.* at 107 (citing questions such as, "Should a county canvassing board count or not count a 'dimpled chad' where the voter is able to successfully dislodge the chad in every other contest on that ballot? Here, the county canvassing boards disagree.").

The same is demonstrably true here as to Kansas's SVR, for all the reasons already discussed. *See supra* § II(A)(1)–(2). As was the problem in *Bush*, the SVR imposes standardless statewide procedures that vest election officials with unguided discretion over whether to count a voter's ballot or reject it. This is a clear violation of equal protection. *See, e.g.*, *Pate*, 2019 WL 6358335, at *15–17 (invoking *Bush*, and holding Iowa's signature verification system violated equated protection because it "allows for similarly situated individuals to be treated differently"). As Plaintiffs have amply shown, the standard dictated by the SVR—*i.e.*, whether a signature is "generally uniform and consistent" or has "multiple, significant, or obvious differences"—is not a standard that is capable of resulting in uniform results, nor does it lead to uniform results. *See*

supra § II(A)(1)–(2). When conclusions can differ about whether to reject a ballot from county official to official—or even for *one official*, depending on workload and how many signatures that officials needs to review, *see supra* § II(A)(2)(a)—Kansas's procedures plainly lead "to unequal evaluation of ballots in various respects" sufficient to violate equal protection. *Bush*, 531 U.S. at 107. And that is just the beginning of the ways that Kansas's system violates equal protection—in particular, the different presumptions counties employ in the absence of clear, written guidance from the State all but guarantees unequal treatment. *See id*. (raising concerns that "Broward County used a more forgiving standard than Palm Beach County" in determining which ballots to count). The lack of standards for implementing the State's statutory disability exemption (likely counting those voters' ballots in some counties, but not others), along with all the other inconsistent procedures described *supra* § II(A)(2)(b), builds layer upon layer of arbitrary treatment.

Although *Bush* cautioned that its holdings were limited to the "present circumstances," "*Bush's* core proposition—that a state may not take the votes of two voters, similarly situated in all respects, and, for no good reason, count the vote of one but not the other—seems uncontroversial." *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 387 (W.D. Pa. 2020). For that reason, "courts have routinely relied on *Bush v. Gore* to identify equal protection problems in pre- and post-election procedures." *Griffin v. N.C. State Bd. of Elections*, 781 F. Supp. 3d 411, 432–33 (E.D.N.C. 2025) (relying on *Bush* and holding that order requiring certain voters to undertake additional efforts to comply with state's photo identification requirement violated equal protection); *Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 598 (6th Cir. 2012) (relying on *Bush* and holding that consent decree "likely violates equal protection" because it permitted different rules regarding whether similarly situated votes could cure their ballots); *Gallagher v. N.Y. State Bd. of Elections*, 477 F. Supp. 3d 19, 46 (S.D.N.Y. 2020) (relying

on *Bush* and granting preliminary injunction based on finding of likely equal protection violation where election officials treated ballots differently "in Brooklyn as compared to the other boroughs"); *Pierce v. Allegheny Cnty. Bd. of Elections*, 324 F. Supp. 2d 684, 705 (W.D. Pa. 2003) (relying on *Bush* and granting a preliminary injunction and concluding that varying practices both within and across counties regarding the acceptance of absentee ballots hand-delivered by third parties "raise a serious equal protection claim under a theory similar to that espoused by the United States Supreme Court in *Bush v. Gore*"). Whether a court evaluates the law under this test of the one set out by the majority in *LOWV III*, the result is the same: The SVR violates equal protection.

III. THE SIGNATURE VERIFICATION REQUIREMENT VIOLATES THE KANSAS CONSTITUTION'S GUARANTEE OF DUE PROCESS.

If the Court concludes that Plaintiffs are entitled to summary judgment on their equal protection claim—which is alone sufficient to permanently enjoin the SVR—it need not decide whether Plaintiffs are also entitled to summary judgment on their procedural due process claim. But, on this issue too, Plaintiffs' motion for summary judgment should be granted.

A. The Supreme Court remanded to determine whether the Signature Verification Requirement comports with due process under the well-established balancing test.

In *LOWV III*, the Kansas Supreme Court made clear that voting laws are not immune from the Kansas Constitution's due process guarantees: "To comply with due process guarantees, any proper proofs devised by the Legislature must include reasonable notice to the voter and an opportunity to be heard at a meaningful time and in a meaningful manner by providing an opportunity to contest the disqualification of otherwise valid absentee ballots and to cure deficiencies based on an apparent discrepancy between the voters' signatures and sample signatures available to election officials." 318 Kan. at 806. A court "reviewing a procedural due process claim . . . must first determine whether a protected liberty or property interest is involved

and, if it is, the court must then determine the nature and extent of the process which is due." *State v. Wilkinson*, 269 Kan. 603, 608–09, 9 P.3d 1, 5 (2000) (citing *Murphy v. Nelson*, 260 Kan. 589, 598, 921 P.2d 1225 (1996)). Determining what process is due is decided using a balancing test that weighs "(1) the individual interest at stake, (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and (3) the State's interest in the procedures used, including the fiscal and administrative burdens that the additional or substitute procedures would entail." *Id.* at 609 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

Applying these standards to this case, "the litigation going forward must focus on how these regulations reliably and uniformly sift out the feared fraudulent ballots by objective means without denying legitimate voters their fundamental right to vote. This consideration necessarily includes analyzing the procedures and protections employed to issue an advance ballot, as well as carefully scrutinizing how a mismatched signature is flagged, how effectively the soon-to-be-disenfranchised voter is notified, and whether they are given a meaningfully reasonable opportunity to cure the perceived problem before the ballot is discarded." *LOWV III*, 318 Kan. at 837 (Biles, J., concurring in part and dissenting in part); *see also id.* at 834 ("[T]he majority requires the State implement procedures establishing reasonable notice to a voter and an opportunity to be heard at a meaningful time and in a meaningful manner . . . . That is a tall order.") (Biles, J., concurring in part and dissenting in part).

As discussed below, this balancing test weighs decisively in favor of Plaintiffs. The individual interest at stake is enormous, entitled to the "strongest possible constitutional protections." *Id.* at 800. The risk of erroneous disenfranchisement under existing procedures is also great: Indeed, the State does not even contend that Kansas election officials even attempting

to determine whether signatures are authentic; instead, their experts appear to take the position that the determination that a signature is "inconsistent" is merely a screening process for further investigation. SOF ¶ 202. Counties agree: The determination that a signature is "inconsistent" is not meant to be a determination that someone other than the voter in fact signed the ballot. SOF ¶¶ 467–468. The State's curing procedures thus must impose a robust check on this process—they *must* ensure that voters are *actually* notified with sufficient time to act before their ballots are rejected, and they *must* ensure that voters have a meaningful opportunity to reverse the county's decision.

The SVR does neither: It does not require timely or successful notice to the voter of any "apparent inconsistency" in the voter's signature, nor does it guarantee a voter a meaningful opportunity to cure their ballot—which, for mail voters, must include an opportunity to have their votes counted (1) without physically appearing in person at their county elections office, and (2) without requiring voters to produce a "consistent" signature if the voter confirms the legitimacy of their signature on their ballot envelope. Finally, the State has little interest, if any, in the existing procedures. Indeed, without a robust curing process in place, "the signature verification requirement actually threatens to *undermine* the State's interests in correctly validating the identity of voters casting mail-in absentee ballots." *Frederick*, 481 F. Supp. 3d at 799 (emphasis added). The record establishes that the SVR violates procedural due process and summary judgment must be entered for the Plaintiffs on this claim as well.

B. Kansas voters' right to have their ballot counted, if eligible and qualified, is subject to the "strongest possible constitutional protections."

On appeal, the Court of Appeals held that this Court "erred by ruling that the signature matching requirement did not implicate a liberty interest entitled to procedural due process." *LOWV I*, 63 Kan. App. 2d at 217. The Supreme Court agreed, holding that Plaintiffs had stated a

valid procedural due process claim, and remanded the matter to consider what procedural protections are due to Kansas voters. *See* 318 Kan. at 806–07; *see also id.* at 828 ("The majority appears to agree the legislation denies a liberty interest; it focuses only on whether the plaintiffs set forth facts sufficient to show the statute does not offer due process. It concludes the plaintiffs have done so.") (Rosen, J., concurring in part and dissenting in part).

As the majority opinion in *LOWV III* recognized, Kansas voters' right to suffrage is entitled to the "strongest possible constitutional protections." 318 Kan. at 800. Although the Legislature is entitled to establish proper proofs, such proofs are impermissible if they "disenfranchise[] the genuine vote of someone who is qualified to vote." *Id.* at 802; *see also id.* at 803 (Article 5 is "singularly focused on achieving the goal of ensuring that no qualified elector will have his or her vote 'not count'"). Indeed, the Supreme Court previously held that, "[s]ince the right of suffrage is a fundamental matter, any alleged restriction or infringement of that right strikes at the heart of orderly constitutional government, and must be carefully and meticulously scrutinized." *Moore v. Shanahan*, 207 Kan. 645, 649, 486 P.2d 506 (1971); *see also Provance v. Shawnee Mission U.S.D. No. 512*, 231 Kan. 636, 641, 648 P.2d 710 (1982) (holding "the right to vote for elected representatives is fundamental" and subject to close scrutiny). The Court did not overrule these cases in *LOWV III*, and as Justice Biles recognized, "cases like *Provance* [and *Moore*] still inform the scrutiny and guiding principles the district court must comply with on remand to protect the vote." 318 Kan. at 834 (Biles, J., concurring in part and dissenting in part) (cleaned up).

In sum, because the Parties' previous appeal resolved whether Kansas voters have a liberty interest in having their advance ballots counted in Plaintiffs' favor, this Court must proceed to the next part of the analysis: what process is due.

C. Kansas's signature verification system creates an intolerable risk of erroneous disenfranchisement.

Signature authentication is a notoriously difficult practice: No one writes their signature the same way twice, and a variety of factors contribute to differences in handwriting. SOF ¶¶ 146–147, 152–155. Age, health, disability, mental state, the writing surface used, and more can contribute to differences in one's signature, SOF ¶¶ 152–155, and the ability to reliably differentiate between natural variation in one's signature (present in an authentic signature) and fundamental differences (suggesting an inauthentic signature) is a practice that takes years of training and skill, in addition to sufficient signature comparators and time for examination. SOF ¶¶ 148–151, 156–164. But not even trained experts can always tell whether a signature is authentic; they, too, are subject to a small error rate, even under the best circumstances. SOF ¶ 169. As courts have recognized, "even if election officials uniformly and expertly judged signatures, rightful ballots still would be rejected just because of the inherent nature of signatures." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1319–20 (11th Cir. 2019); *see also Fla. Democratic Party*, 2016 WL 6090943, at *2 n.3 (recognizing the irony "that handwriting experts are often challenged under *Daubert*" and yet states empower laypersons with much less training "to declare ballots illegal"). In sum, "the task of handwriting analysis by laypersons . . . is fraught with error." *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217–18 (D.N.H. 2018); *see also League of Women Voters of S.C. v. Andino*, 497 F. Supp. 3d 59, 69–70 (D.S.C. 2020) (noting "the high risk of erroneous deprivation of the right to vote by unskilled and untrained election officials attempting to match voters' signatures"); *Frederick*, 481 F. Supp. 3d at 796 (noting the "real risk of erroneous

rejection" in the signature matching context); *Pate*, 2019 WL 6358335, at *17 (noting the "likelihood of error in determining a voter's signature doesn't match" by election officials).

With the SVR, Kansas has chosen to subject voters to such risk of erroneous disenfranchisement. The task is performed by laypersons, SOF ¶ 168, who receive the barest instruction as to how to distinguish between authentic and inauthentic signatures, SOF ¶¶ 229, 234, 236–237, and who must make judgments about whether or not the voter signed their own ballot in matter of seconds, SOF ¶¶ 161, 298(b)(iv), while comparing the signatures to limited samples, SOF ¶¶ 263–267, many of which are of poor quality, SOF ¶¶ 18, 220(g), 252–259. Paired with Kansas's failure to ensure those with certain disabilities are actually exempt from signature verification, SOF ¶¶ 272–283, failure to ensure election officials even understand the minimal training they are given, SOF ¶ 242, failure to screen those conducting signature verification for form blindness, SOF ¶ 249, and failure to conduct any oversight over the process whatsoever, SOF ¶¶ 331–342, Kansas makes it certain that election officials will arbitrarily reject the ballots of lawful, qualified voters in this process.

And indeed it has: Kansas voters like Abigail Moore, Elizabeth Anderson, Kaylin Phillips, and many more, all had their ballots rejected (and not counted) as a result of an election official erroneously concluding that their signature did not match the signature on file. SOF ¶¶ 384–401 (Moore); ¶¶ 402–430 (Anderson); ¶¶ 435–438 (Phillips). As even the State's witnesses Shawnee County Election Commissioner Howell and Johnson County Commissioner Sherman admit, they do not believe that most of the ballots that go uncured and are not counted as a result of the SVR are in fact a product of fraud. SOF ¶¶ 466, 469. In other words, they believe most belong to qualified, lawful voters.

Below, Plaintiffs set out the features of Kansas's system that create a substantial risk that when a Kansas official rejects a voter's signature as "inconsistent," it is in fact rejecting the ballot of a lawful, qualified voter.

1. Kansas's failure to recognize inherent variability of signatures is likely to lead to erroneous disenfranchisement.

As other courts have recognized, without "functional standards to distinguish the natural variations of one writer from other variations that suggest two different writers," the risk of erroneous disenfranchisement is significant. *Saucedo*, 335 F. Supp. 3d at 206. Despite the inherent variability of signatures, Kansas nonetheless permits the rejection of a voter's signature if it "differs in multiple, significant, or obvious respects" from the signature on file. K.A.R. 7-36-9(a)(2). Yet "an individual's signature might differ in multiple or significant or obvious respects, but such differences may reflect only variation in the individual's signature, and nothing more." SOF ¶ 217(d) (Dr. Mohammed); *see also* SOF ¶¶ 467–468 (multiple county officials agreeing a determination of "inconsistency" is not a determination that the signature is inauthentic). The standard is simply not a reliable gauge for authenticity, whether performed by laypersons or experts alike.

As demonstrated in discovery, application of Kansas's standard by Kansas county election officials results in rejection of the known genuine signatures belonging to voters who have wide variation in their signature styles, SOF ¶¶ 171–173, who are elderly, SOF ¶¶ 184–186, or who have disabilities, SOF ¶¶ 187–189. And Kansas's standard for "inconsistent" signatures, even as applied by the Secretary's own proffered signature expert, would necessarily result in the rejection of signatures that Kansas itself *knows to be authentic*. Take, for example, what Kansas contends are known (genuine) comparators for Dickinson County voter Elizabeth Anderson, SOF ¶ 221(a), whose ballot envelope signature was rejected and not counted for an alleged inconsistency in the

2024 General Election. SOF ¶ 403. As the Defendants' proffered expert, Mr. Songer, testified, each of these known, genuine comparators would be "inconsistent" with each other (and thus rejected) under Kansas's standards. SOF ¶ 221(b).

Mr. Songer too, contends that the ballot envelope signatures of Elizabeth Anderson, Abigail Moore, and Kaylin Phillips were "correctly" rejected as "inconsistent" under Kansas's standard, SOF ¶¶ 179(d), 180(e), 220(h), *but we know they were in fact genuine*, as each has attested in this case. SOF ¶¶ 389, 405, 437. None of their ballots were counted. SOF ¶¶ 385, 403, 436.

Because the Secretary does not track the number or identity of voters whose ballots are deemed to be "inconsistent" and who later cure their ballots, SOF ¶¶ 339–340, 343, we cannot know for certain what percentage of those voters in fact had authentic signatures. But we know that it is an extremely high percentage. The Secretary's General Counsel Clay Barker wrote in an email to Kansas legislators in 2024, "I do not have numbers, but signatures are rejected every election and the county must reach out to the voter to verify – *and almost all are verified by the voter*." SOF ¶ 348 (emphasis added). In other words, "almost all" of the determinations that a

signature is inconsistent *are incorrect in determining whether the ballot envelope was signed by the lawful voter*, and it is only *because* of a cure that Kansas is able to remedy that wrong.

2. Kansas's failure to require counties to maintain signatures on file for voters is likely to lead to erroneous disenfranchisement.

As Plaintiffs have shown, although K.A.R. 7-36-9(g)(1) requires county election officials to compare a voter's signature to "as many recorded signatures as possible from the voter registration database," there are no rules regarding when counties must add signatures to this database, SOF ¶ 260, and in many cases (potentially even most) election officials are matching to very few comparators. SOF ¶ 264–266. Even Johnson County, a county with more resources and signatures on file than most counties, had only a *single* comparator on file for 31% of the voters whose signatures were rejected as inconsistent in the 2024 General Election; 60% of the voters whose signatures it rejected had no more than two comparators on file. SOF ¶ 265(c).

This itself raises a significant and serious risk that a voter will be erroneously deprived of their most fundamental liberty interest, because when "officials compare the signatures on the voter's ballot envelope with only one or a few reference signatures on file, they simply cannot distinguish accurately between natural features or variations as compared to *differences*, only the latter of which would suggest the signature is not genuine." SOF ¶ 160; *see also* SOF ¶ 164 (Defendants' proffered expert, Mr. Songer, agreeing an adequate number of contemporaneous samples is a minimum standard for reliably determining whether signatures are authentic).

This outcome is not what the Legislature was led to believe would occur when it considered HB 2183. During those hearings, the Secretary's General Counsel stated: "Every signature that [a] voter has submitted over time on advance ballot applications and motor vehicle signatures is compared to the ballot signature." SOF ¶ 117. This directive only has force if counties are required to add signatures to the voter's file, which they are not. *See supra* § II(A)(1)(b). Moreover, the

record shows that, in practice, it is completely false. Not a single Johnson County voter who had their signature rejected as inconsistent in the 2024 election had an advance ballot application signature on file for comparison. SOF ¶ 262(b). As the Johnson County Election Commissioner testified, the county finds it difficult to prioritize putting those advance ballot application signatures on file as election day approaches. SOF ¶ 262(a). Nor are counties required by anyone, anywhere, to do so.

The inherent difficultly in comparing ballot envelope signatures to signatures "on file" is made even more difficult by the prevalence of digital or electronic signatures in Kansas's voter database. As the State Election Director confirmed, the majority of Kansas voter registrations now come directly from the DMV, online, or from ksvotes.org, all of which capture signatures electronically or digitally using a stylus and a digital pad. SOF ¶¶ 18, 252–253. Advance ballot applications—if they even make it into a voter's file—can also be submitted electronically or digitally. SOF ¶ 254. As both sides' experts and county officials agree, wet-ink signatures (such as those on ballot envelopes) and digital electronic signatures can be difficult to compare, making them ill-suited for the task of signature authentication, particularly if a digital signature is the only signature on file. SOF ¶¶ 157, 220(g), 257. Yet Kansas permits (indeed, requires) signature verification even if all the county has on file for that voter is a single, digitally produced comparator. SOF ¶¶ 255–256. In fact, of the voters in Johnson County who only had one comparator on file and whose ballot envelope signature was rejected as "inconsistent" in the 2024 election, 81% of those single comparators were digital. SOF ¶ 265(d). The same was true for voters Abigail Moore and Kaylin Phillips, both of whom had their signatures rejected as inconsistent (and ballots ultimately not counted) on the basis of a single digital comparator. SOF ¶¶ 179–180.

As other courts have found, "the unknown source, quantity and quality of any signatures 'on record' all contribute to a likelihood of error in determining a voter's signature doesn't match." *Pate*, 2019 WL 6358335, at *17. Kansas suffers from precisely those same risks.

3. Kansas's failure to implement its stated disability exemption is likely to lead to erroneous disenfranchisement.

Although both K.S.A. 25-1124(h) and K.A.R. 7-36-9(g)(5) mandate that "[s]ignature verification shall not be required if a voter has a disability preventing the voter from signing the ballot or preventing the voter from having a signature that matches the voter's registration form," as Plaintiffs have already shown, there is no evidence that Kansas has even attempted to implement this exemption. *See supra* § II(A)(1)(b), (2)(b). As a result, voters who should have been eligible for the exemption have had their ballots rejected under the SVR. These include Johnson County voters, who, when called to inform them that their signature was rejected, told the County that they were wheelchair bound and struggling to write, SOF ¶ 330(c)(vii), or had a broken hand that affected their signature. SOF ¶ 330(c)(x). The County nonetheless required them to appear in person to cure, and if they could not, rejected their ballots. SOF ¶ 330(c). In Butler County, this included a voter who was on the permanent advance voter list who indicated that he has post-polio disease, a disease which causes muscle atrophy and weakness and can contribute to difficulty with handwriting, and whose ballot was similarly not counted when rejected for not matching the signature on file. SOF ¶ 330(e).

4. Kansas's failure to adequately train and screen signature reviewers is likely to lead to erroneous disenfranchisement.

The likelihood of erroneous disenfranchisement under the SVR is further magnified by the fact that signature reviewers in Kansas are (1) not tested for form blindness, (2) provided only the barest training, and (3) not required to be assessed on whether they understand even the minimal training that is provided to them.

Form blindness is a condition in which an individual may possess normal eyesight, but lack the capacity to perceive patterns, angles, forms, and sizes in handwriting. SOF ¶ 249. It may go entirely undetected in everyday life, but it will diminish a reviewer's ability to make accurate determinations of a signature's genuineness. SOF ¶ 249. Although professional handwriting experts must pass a form blindness test, SOF ¶ 249, Kansas does not require signature verifiers undergo any such screening before rejecting ballots, SOF ¶ 249, increasing the potential for error. *See, e.g.*, *Saucedo*, 335 F. Supp. 3d at 210 (considering that New Hampshire officials "are not screened for conditions [which] may impede their ability to discern subtle variations in signatures"). Even Defendants' proffered handwriting expert agreed it is important to ensure that form blind individuals are not permitted to engage in signature verification, and that it would no be appropriate to have someone who is form-blind to engage in such work. SOF ¶ 249.

When HB 2183 passed, the law did not require any kind of training whatsoever. *See* K.S.A. 25-1124(h). Although the Secretary's regulation purports to require training, *see* K.A.R. 7-36-9(f), the "training" approved by the Secretary is a single 46-minute YouTube video produced by Oregon, which does not apply any Kansas-specific standards for conducting signature verification. SOF ¶¶ 226, 230, 234–235. Neither does the "updated" September 2025 training; it merely recites the text of K.A.R. 7-36-9(a)(2) and K.A.R. 7-36-9(a)(4) and then moves straight into Oregon's presentation, which, of course, does not discuss Kansas's standards, or how to apply them. SOF ¶ 237.

Even considering the video on its own terms, which provides some basics of handwriting analysis, "it is not possible to be trained on signature verification in any meaningful way in a 46-minute YouTube video." SOF ¶ 237. The video the Secretary selected is thus "unlikely to lead to any significant improvement in signature verification capabilities by the election officials," and

includes "very little discussion of natural variation that can cause an individual's signature to look dissimilar." SOF ¶¶ 234(a), 236. Perhaps tellingly, none of Defendants' experts, including Mr. Songer, offer any opinion on the adequacy of the State's training. SOF ¶ 248.

Kansas's training is also not accompanied by any test or assessment that would gauge whether a county election official understood it, let alone could implement it. SOF ¶ 242. Although some counties, like Shawnee County, require new reviewers to work next to more experienced reviewers before the county "turn[s] them loose," SOF ¶ 246(b), that is a county-specific policy, not anything Kansas law requires. It also is meaningless if the "experienced" reviewers are poorly trained themselves. And there is no evidence that any county in Kansas follows up to determine whether its signature reviewers are doing a poor job, rejecting lawful voters' ballots, or does anything whatsoever to attempt to minimize the chances of that repeating itself.

5. Kansas's failure to engage in any oversight of signature matching rejection practices is likely to lead to erroneous disenfranchisement.

A final factor that increases the likelihood of erroneous disenfranchisement is that there is virtually no oversight of this process at any level, whether by counties or, even more importantly, the State. *See, e.g., Saucedo*, 335 F. Supp. 3d at 210 (noting, in considering the likelihood of error, that "[t]he Secretary of State does not regularly monitor rates of rejection due to signature mismatch to ensure moderators' compliance with the statute, and has never engaged in a review of any statistical anomalies related to the requirement") (cleaned up). The same is true in Kansas: the Secretary has never attempted to engage in any oversight of this process. The only information about the SVR that the State collects is the final number of ballots that were not counted as a result

of an inconsistent signature, SOF ¶ 351, and that is only because it is required to report it to the federal U.S. Election Assistance Commission. SOF ¶ 351.[10]

D. In light of the risk of erroneous disenfranchisement, Kansas's system does not guarantee reasonable notice or a meaningful opportunity to cure.

As courts have found, "without procedural safeguards, the use of signature matching is not reasonable and may lead to unconstitutional disenfranchisement." *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017, 1030 (N.D. Fla. 2018). Because Kansas lacks many procedural protections on the front-end, it is absolutely critical that robust protections are in place on the back-end to "achiev[e] the goal of ensuring that no qualified elector will have his or her vote 'not count.'" *LOWV III*, 318 Kan. at 803. To that end, this Court must closely scrutinize the State's notice and cure procedures to determine whether it is effectively designed to ensure the State's SVR does not "disenfranchise[] the genuine vote of someone who is qualified to vote." *Id.* at 802. Because Kansas's system has done just that—and will continue to do that unless it is permanently enjoined—the Court should hold that the SVR fails to comply with procedural due process.

The constitutionally adequate response to this record would be to order the State to count any ballot that the county election officials deem inconsistent, whether or not the county is able to reach the voter, and whether or not the voter is able to cure, if the county has no reason to believe the signature is not authentic other than the subjective determination of county election officials. After the election, the county could notify the voter of the identification of an inconsistent signature, at which point the county could invite the voter could update the signature on file or to contact their county attorney if they did not in fact vote and sign their ballot.

[10] In prior years, the number of ballots rejected for a signature mismatch in Kansas that the State has submitted to the Election Assistance Commission has been an undercount of the ballots actually rejected on the basis of signature mismatch. SOF ¶ 351.

At a minimum, however, the State must implement the following additional procedures:

1. Kansas must ensure voters receive actual and timely notice before their ballots are rejected.

Kansas's existing notification procedure for voters who have an inconsistent signature is markedly inadequate in at least two ways. First, it fails to require *timely* notice to the voter before their ballot is rejected. And second, it fails to require that county election officials exhaust all reasonable means of contacting voters before their signature is rejected.

Although K.S.A. 25-1124(b) states that counties "shall attempt to contact" voters whose signatures do not match, and "allow such voter the opportunity to correct the deficiency before the commencement of the final county canvass," it imposes no requirement that the county actually succeed in contacting the voter or even that it make any attempt to notify the voter in a timely manner. Neither does the Secretary's regulation. *See, e.g.*, K.A.R. 7-36-9(b) (requiring county to attempt to call voter and send a letter, but imposing no requirement on when those attempts must be made). Thus, a county could wait to begin calling a voter and to send a letter until as late as the day before the county canvass—leaving a voter mere hours to cure (if they even receive the notice in time). While this may be an extreme example, county records that are required to be kept in compliance with K.A.R. 7-36-9(c) document numerous instances in which a voter was mailed a letter, but election officials did not even attempt to contact the voter by phone for seven, eight, or nine days afterward. SOF ¶ 317. Given the length of time that it can take mail to travel in Kansas—the Secretary advises voters to assume at least a week for election may to be delivered, SOF ¶ 315—those late phone calls may often be the first time the voter learns of the issue with their ballot.

A requirement that county election officials timely notify voters of an alleged signature inconsistency is essential in Kansas in particular, which has one of the shortest periods for voting

by mail in the country. SOF ¶ 314. Kansas law prohibits election officials from mailing ballots to voters until 20 days before the election, even if the voter has requested an advance ballot well before then or is on the permanent advance voter list. *See* K.S.A. 25-1123(a); SOF ¶ 314(a). Kansas also suffers from particularly egregious mail delays, SOF ¶ 315–316, and when ballots take at least a week to reach voters and at least a week to get back to the county, SOF ¶ 315, even voters who return their ballots promptly may have very limited time to cure a signature issue by the time the county receives the ballot and makes a judgment to reject it. SOF ¶ 314(b). If the voter does not learn of the rejection for another week, it may be too late for the voter to do anything about it.

It is not too much to ask to require Kansas to promptly notify a voter of the issue, *particularly* when there is good reason to believe that the county's determination that the signature is "inconsistent" is *not* a reliable indicia of fraud. *See supra* §§ II(A)(3), III(C). Indeed, many other states require election officials to do just that for an alleged signature mismatch. *See, e.g.*, Cal. Elec. Code § 3019 (California requiring voter notification a minimum of eight days before certification); Ga. Code Ann. § 21-2-386 (Georgia requiring "prompt" notification); Iowa Code § 53.18(2) (Iowa requiring "immediate" notification); LAC 31:I Ch. 3 (Louisiana requiring "prompt" notification); Me. Rev. Stat. Ann. tit. 21-A, § 756-A (Maine requiring notification "within one business day"); Md. Elec. Code Ann. § 11-302 (Maryland requiring notification "as soon as possible"); N.J.S.A. 19:63-17 (New Jersey requiring notification "within 24 hours"); N.M. Code R. § 1.10.12.16 (New Mexico requiring "immediate[]" notification) N.Y. Elec. Law § 9-209 (McKinney 2024) (New York requiring notification "within one day"); N.C. Gen. Stat. § 163-230.1 (North Carolina requiring "prompt" notification); Tex. Elec. Code Ann. § 87.0411; *id.* § 86.011 (Texas requiring notification within "two business days"); Utah Code Ann. § 20A-3a-401 (Utah requiring notification within "two business days"); 17 V.S.A. § 2546; *id.* § 2547

(Vermont requiring notification "the next business day," and "as soon as possible" if the defect is discovered within five business days of the election).

Similarly, courts have repeatedly affirmatively required states to notify voters of an alleged signature mismatch in a timely manner. *See, e.g.*, *Self Advoc. Sols. N.D. v. Jaeger*, No. 3:20-cv-00071, 2020 WL 3068160, at *1 (D.N.D. June 5, 2020) (after holding signature matching regime did not comply with due process, ordering state notify voters "*as soon as practicable* to inform the voter that his or her ballot has been identified as having a signature mismatch and will be rejected if not verified by the voter") (emphasis added). Plaintiffs respectfully suggest a more objective standard: officials must attempt to notify a voter of an alleged signature inconsistency by phone within one business day, and if such contact is not successful or a phone number is not reasonably available, must mail a notice to the voter by first-class mail that same day.

Moreover, any reasonable cure notice must also be sent to the voter at an address they will reasonably be expected to receive it. Kansas voters are not required to have a ballot sent to their registration address. SOF ¶ 318. Indeed, one common reason that many voters may need to vote by mail is if they are not located at their registration address during the election—they may be away from home for school, work, or any other number of reasons. SOF ¶¶ 12, 367, 388. For voters who request a ballot to be sent to an address out of their home county, for example, mailing a cure letter to their registration address, but not their mailing address, is likely to be entirely ineffective. Yet the record shows that this is happening here. Kaylin Phillips, for example, requested her mail ballot to be sent to her address where she attended college, SOF ¶ 318(b). Her cure letter from Shawnee County, however, was sent to her home registration address. SOF ¶ 318(b). To protect against such outcomes, if the county mailed the voter the ballot to an address different than the registration address on file, they should be required to send a notification letter to both the

registration address *and* the mailing address. This would impose a minimal burden on the county but a tangible benefit to the voter.

Finally, K.A.R. 7-36-9(b)(2)(C) *permits* Kansas counties to contact voters who need to cure their signature by other means; it does not require them to do so. Given the existence of voters whom Kansas counties report they are unable to successfully contact by phone call, SOF ¶¶ 321–325, counties must be required to exhaust all reasonable means of contacting the voter, especially if the county already has other contact information on file for the voter, such as their email address.

2. Kansas must ensure voters have a meaningful opportunity to cure.

Kansas must ensure that voters have a meaningful opportunity to cure their ballots, which means, *at a minimum*, not requiring voters to appear in person to cure an alleged signature mismatch. *See, e.g.*, *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1339 (N.D. Ga. 2018) (holding Georgia's signature mismatch cure procedures did not comply with procedural due process in requiring voters to appear in-person to cure their ballots, recognizing the class of "absentee voters who vote by mail because they physically cannot show up in person").

In creating the permanent advance voter list, Kansas itself recognized that there is an entire class of mail voters who vote by mail because they have a permanent disability or illness that prevents them from voting in person. SOF ¶¶ 81–84. Even those who are not on the permanent advance voter list may lack the ability to appear in person, including, for example if they are away from their county at the time. SOF ¶ 367. Under the circumstances, in which a county has *erred* in determining that the voter did not sign their own ballot, requiring a mail-voter to appear in-person to have their ballot counted all but takes away that voter's right to vote by mail, which every voter in Kansas is entitled to do under statute, *see* SOF ¶ 80; K.S.A. 25-1119, and under the Kansas Constitution for presidential elections, *see* Kan. Const. art V, § 1.

Although not all counties require voters to appear in person to cure an alleged signature inconsistency, some of Kansas's largest counties do, including Johnson County. SOF ¶ 330(c)(i). In recent elections, multiple voters informed Johnson County that they would not be able to appear in person to cure—because they were bedridden, because they could not drive, or because they were wheel-chair bound—and the County did not make any accommodation to allow those voters to have their ballots counted. SOF ¶ 330(c)(vi)-(ix). The County confirmed in this litigation that it does not make exceptions to its in-person cure requirement, even if the voter is sick or disabled. SOF ¶ 330(c)(iii).

This is not what the Legislature was told would occur when it was considering HB 2183. During committee hearings, Senator Hilderbrand indicated that he believed that voters would be able to confirm the validity of their ballot over the phone. SOF ¶ 112(a). As he stated, "my understanding in the intent of it is if they see the signature doesn't match, they would get on the phone just like they would verifying any other information . . . and ask about are you the one that signed this ballot? And they would verify that they were the one that signed the ballot and that would be the verification that they would require." SOF ¶ 112(a). Senator Hilderbrand had good reason to believe that: That is precisely the verification the Secretary's Counsel represented would be required, telling the Legislature, "[i]f the county is assured they're talking to the correct voter and the voter says yes, that is my signature, that's good enough." SOF ¶ 112(c).

As those exchanges make plain, the Legislature also did not contemplate that voters would need to execute a "signature consistent with the signature on file," K.A.R. 7-36-9(d)(1), let alone appear in person to do so, to have their ballot counted. Instead, all that was supposed to be required was confirmation from the voter that they in fact signed the ballot envelope. As the Secretary's own expert conceded, the purpose of a State's signature matching system is to confirm the

authenticity of a ballot; it is not to ensure that voters are capable of executing consistent signatures. SOF ¶ 220. Nor are all voters capable of doing so, as Kansas' disability exemption recognizes in the first place. *See* K.S.A. 25-1124(h); *see also Martin*, 341 F. Supp. 3d at 1339 (recognizing the risk that a genuine voter's signature still may not "match" on a second attempt).

As other courts have done, and in keeping with legislative intent here, the Court should order that all that is required from the voter is confirmation that the voter in fact signed their ballot. In *Jaeger*, for example, after holding North Dakota's signature verification procedures did not comply with procedural due process, the court ordered the state to allow voters to have their ballots counted by having the voter "confirm or deny the legitimacy of the signatures in question." 2020 WL 3068160, at *1. As the court explained, "[t]he voter may confirm the legitimacy of the signatures by a response using any form of written communication, phone call or in-person visit with the county auditor." *Id.* Similarly, in *Saucedo*, 335 F. Supp. 3d at 219, after holding that New Hampshire's signature verification procedures did not comply with procedural due process, the court ordered the state to simply contact voters by phone to ascertain whether the voter in fact signed the ballot envelope before permitting the rejection of the ballot.

Indeed, the record reflects that at least some Kansas counties do not conduct signature matching on the new signatures that voters provide after the original signature was flagged for rejection. *See* SOF ¶ 330(c)(v), (e)(v). That makes sense if what the county is after is confirmation of the ballot's authenticity—*not* a determination of whether a voter is capable of executing consistent signatures. For this reason, too, simple confirmation from the voter that they in fact signed their ballot is all the county should need to effectuate the purpose of the SVR.

E. The State has little interest in the existing procedures used, which operate to disenfranchise genuine voters and burden countless others.

The State's existing procedures operate to disenfranchise lawful Kansas voters whose ballots would have been counted but for the subjective determination by a county election official that their signature did not match a signature on file. These include, for example, Kansas voters Abigail Moore and Elizabeth Anderson, neither of whom received any notification from their county about what they could do to remedy the rejection of their ballot. SOF ¶¶ 390–391, 408–413. In the 2022 and 2024 general elections, at least 224 Kansas voters' ballots were not counted as a result of the SVR, SOF ¶¶ 349–350, and the State has not put forward any evidence that any one of those was actually a fraudulent ballot. SOF ¶ 460. Even if there *were* questions as to the genuine authenticity of a handful of those ballots, it would be drowned out by the many, many ballots that are not counted that belonged to lawful Kansas voters. *See, e.g.*, SOF ¶ 469 (Shawnee County Election Commissioner Howell testifying to his belief that most uncured signature mismatch ballots are not the product of fraud); SOF ¶¶ 330(c)(xi), 466 (Johnson County Election Commissioner Sherman testifying to his belief that most uncured signature mismatch ballots in his county belong to voters who simply cannot appear in-person at the county election office).

The SVR also imposes unnecessary burdens on countless other Kansas voters. Although we cannot know the precise number of voters whose ballots have been flagged for signature mismatch because Kansas does not track that data, SOF ¶¶ 343, 339–340, county records demonstrate that many more voters are having their ballots flagged for rejection on this basis, and required to cure, than are ultimately not counted, *see* SOF ¶¶ 347–348. For these voters, the burden of having to provide a new signature to the election office on a fast-approaching deadline, or even appear in person at their county election office, may be substantial, for the same reasons that they chose to rely on mail voting in the first place, SOF ¶¶ 366–368, 373–375.

As courts have repeatedly found in the signature matching context, requiring additional notice and cure procedures to help ensure the ballots of lawful voters are actually counted *advances* the State's interest in the integrity of its elections, it does not weaken it. *See, e.g.*, *Saucedo*, 335 F. Supp. 3d at 220 ("[I]f anything, additional procedures further the State's interest in preventing voter fraud while ensuring that qualified voters are not wrongly disenfranchised."); *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1053 (D.N.D. 2020) ("[A]llowing voters to verify the validity of their ballots demonstrably advances—rather than hinders—these goals [of preventing voter fraud and upholding the integrity of elections]."); *see also Lee*, 915 F.3d at 1325 ("[T]he state's interest in preventing fraud is not in conflict with the voters' interest in having their legitimately-cast ballots counted.").

Several of the kinds of procedures that Plaintiffs call for—such as requiring notification within one business day, or permitting voters to verify the authenticity of their ballot without having to execute a new signature or appear in-person—would impose virtually no burden on the counties, which must, after all, *already* call the voter if they are in fact complying with K.A.R. 7-36-9(b). Other procedures, while "new"—such as requiring Kansas counties to exhaust all reasonable means of contacting voters, if such contact is on file—impose minimal addition burden with great benefit to Kansas voters. As the U.S. Supreme Court has explained, "administrative convenience" cannot justify the deprivation of a constitutional right. *Taylor v. Louisiana*, 419 U.S. 522, 535 (1975); *see also Detzner*, 347 F. Supp. 3d at 1032 (finding "[a]ny potential hardship imposed" by requiring additional notice and cure procedures for ballots rejected for signature mismatch "is out-weighed by the risk of unconstitutionally depriving eligible voters of their right to vote and have that vote counted"); *Jaeger*, 464 F. Supp. 3d at 1054 ("[A]ny fiscal or administrative burden is miniscule when compared to the palpable threat of disenfranchisement.").

IV. THE SIGNATURE VERIFICATION REQUIREMENT VIOLATES THE RIGHT TO VOTE UNDER THE KANSAS CONSTITUTION.

Although this Court need not reach these arguments to conclude that Plaintiffs are entitled to summary judgment, the record demonstrates that the SVR violates Article 5 of the Kansas Constitution even under the test set forth by the majority in *LOWV III* because it is not reasonably related to the Legislature's authority to institute proper proofs. To the extent *LOWV III* held that the Legislature's proofs need not satisfy strict scrutiny if those proofs burden the fundamental right to vote, *LOWV III* was wrongly decided. Plaintiffs thus contend, and preserve for appeal, the argument that the SVR is unconstitutional under the Kansas Constitution because it burdens the right to vote and is not supported by a compelling state interest.

A. The Signature Verification Requirement is not reasonably related to the Legislature's authority to institute proper proofs.

In *LOWV III*, the majority held that Kansas precedent, including *State v. Butts*, 31 Kan. 537, 2 P. 618 (1884), permits the Legislature to institute "*reasonable* provision[s] for ascertaining who is entitled to vote—that is, who is a qualified elector under article 5." *LOWV III*, 318 Kan. at 801; *see also id.* (recognizing the Legislature's prerogative to establish "proper proofs necessary to ascertain who shall be entitled to the right of suffrage" (cleaned up)). These goals must be understood against Article 5, which is "singularly focused on achieving the goal of ensuring that no qualified elector will have his or her vote 'not count' either by actually not counting it, or by having its effect diluted by the counting of illegitimate votes." *Id.* at 803.

Although the majority of the Court in *LOWV III* held that the "signature verification requirement at issue is properly categorized as a reasonable effort by the Legislature to provide 'proper proofs' of the right to be a qualified elector," *id.* at 805, it made this determination without the benefit of the record that has since been complied. Plaintiffs accordingly respectfully submit that the record, now developed after discovery on remand, compels a different conclusion: The

SVR is not a reasonable provision "for ascertaining who is entitled to vote—that is, who is a qualified elector under article 5." *Id.* at 801. This is so for two reasons.

First, to the extent the SVR is meant to "ascertain who shall be entitled to the right of suffrage," *id.*, the State has all but admitted that it does not perform that function. The record is undisputed that when an election official determines a signature is "inconsistent" under the SVR, *they are not making a determination that the signature is inauthentic*. SOF ¶¶ 199, 467–468. They are instead merely making a determination that the signature *has differences from* the one on file. SOF ¶¶ 201–202, 468. Because signatures have such inherent variability, SOF ¶¶ 146–147, 152–156, simply observing that a signature bears differences to the one on file does not bear a reasonable relationship to "ascertaining who is entitled to vote." *LOWV III*, 318 Kan. at 801.

Second, to the extent that the SVR is meant to ensure that "that no qualified elector will have his or her vote 'not count,'" *id.* at 803, it does not achieve that goal. It does not even come close. The record has shown that the SVR has unquestionably disenfranchised lawful voters, *see* SOF ¶¶ 384, 385, 394, 395, 403, 416, 435–436, 438, *and* that Kansas does not have a record of fraud in its elections that the SVR is preventing. *See supra* § II(A)(3). The result is that the SVR is almost certainly disenfranchising far more eligible voters than any ineligible voters it could identify, even if Kansas signature reviewers were in fact capable of identifying such forgeries. Such a system does not bear a reasonable relationship to "ascertaining who is entitled to vote." *LOWV III*, 318 Kan. at 801; *see also id.* at 837 ("We must not sacrifice legitimate ballots cast by eligible voters to defend against a canard.") (Biles, J., concurring in part and dissenting in part). If anything, it achieves the opposite goal of what the Legislature's proper proofs are designed to ensure—that Kansas does not "disenfranchise[] the genuine vote of someone who is qualified to vote." *Id.* at 802.

This is not simply a matter of not counting the votes of individuals who do not comply with the Legislature's requirements. *See id.* at 804 ("*Butts* makes it clear that citizens wishing to exercise the right of suffrage must meet the reasonable requirements of the Legislature, and that a failure to do so does not mean that citizen has been disenfranchised."). The record has shown that the SVR is disenfranchising voters who have not received notification of the need to do anything to fix their ballot, SOF ¶¶ 390–391, 408–410, nor does a voter have any real ability to guard against their ballot being rejected under the SVR. As another court explained in the signature matching context:

> It is one thing to fault a voter if she fails to follow instructions about how to execute an affidavit to make her vote count, or if she inexcusably fails to enroll in a political party by a stated deadline. But it is quite another to blame a voter when she may have done nothing wrong and instead may have simply had the bad luck to have had her ballot reviewed by a particularly strict (and not formally trained) judge of signatures, and then to not have been notified of the problem until it was too late to do anything about it.

Lee, 915 F.3d at 1324–25 (cleaned up); *see also Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081, 1086 (9th Cir. 2020) (recognizing "voters are not readily able to protect themselves against the prospect that a polling official might subjectively find a ballot signature not to match a registration signature"). The record has shown these are not "isolated instances" resulting in a failure of proof of a voter's qualifications, *LOWV III*, 318 Kan. at 804, but instead a natural result of such a system.

Because the record shows that the SVR is not in fact a reasonable proper proof, the Court should hold it violates Article 5 of the Kansas Constitution under the majority's analysis in *LOWV III*.

B. The Signature Verification Requirement violates the fundamental right to vote because it burdens that right and does not further a compelling state interest.

To the extent *LOWV III* held that the Legislature's proper proofs need not satisfy strict scrutiny even if those proofs burden the fundamental right to vote, *LOWV III* was wrongly decided.

The Court should have held that burdens on the right to vote, as the SVR unquestionably is, must be supported by a compelling state interest to be constitutional, as Kansas courts have held for decades before *LOWV III*. *See, e.g.*, *Moore*, 207 Kan. at 649 ("[S]ince the right of suffrage is a fundamental matter, any alleged restriction or infringement of that right strikes at the heart of orderly constitutional government, and must be carefully and meticulously scrutinized."); *Farley v. Engelken*, 241 Kan. 663, 669-70, 740 P.2d 1058 (1987) ("Strict scrutiny . . . applies in cases involving . . . fundamental rights," and "fundamental rights recognized by the [U.S.] Supreme Court include voting") (cleaned up); *Provance*, 231 Kan. at 641 (agreeing the 'compelling state interest' standard applies to classification that interferes with the "right to vote for elected representatives"). To the extent the Kansas Supreme Court held in *LOWV III* that strict scrutiny does not apply to Kansas laws that burden the fundamental right to vote, even if those laws relate to proving voter qualifications, the Court was clearly erroneous in so holding, and Plaintiffs will seek to correct that error on appeal.

Applying the proper test, the SVR is plainly unconstitutional: It needlessly disenfranchises hundreds of Kansas voters, SOF ¶¶ 349–350, and burdens countless more who must cure their ballot within days to have it counted, all because of an election official's subjective judgment. SOF ¶¶ 217(a)–(b), 314(a), 317, 373–374. Nor would the law survive strict scrutiny; it is not narrowly tailored to address the state's interest in preventing voter fraud or increasing voter confidence, nor does it actually serve those interests. SOF ¶¶ 458, 460, 461, 463–466, 469–470, 472. To the contrary, the voters who have been disenfranchised by or burdened by the SVR testify that it has decreased their confidence in Kansas's advance voting system. SOF ¶¶ 384, 400, 429–430, 474; *see also* SOF ¶ 476 (political science literature finding that a single bad experience in the voting process can reduce a voter's sense of political efficacy).

V. THE COURT SHOULD PERMANENTLY ENJOIN THE SIGNATURE VERIFICATION REQUIREMENT.

Because Plaintiffs have shown actual success on the merits, the Court should grant their motion for summary judgment and issue a permanent injunction, the scope of which Plaintiffs outline below. *See Roll v. Howard*, 59 Kan. App. 2d 161, 175, 480 P.3d 192, 203 (2020). In addition, Plaintiffs are entitled to such an injunctive relief because (1) there is a reasonable probability of irreparable future injury to Plaintiffs; (2) an action at law will not provide an adequate remedy; (3) the threatened injury to Plaintiffs outweighs whatever damage the proposed injunction may cause Defendants; and (4) the injunction, if issued, would not be adverse to the public interest. *See, e.g.*, *Nat'l Compressed Steel Corp. v. Unified Gov't of Wyandotte Cnty./Kan. City*, 272 Kan. 1239, 1246, 38 P.3d 723, 729 (2002).

A. There is at least a reasonable probability Plaintiffs will suffer irreparable harm absent an injunction and no other legal remedies can address this harm.

Absent an injunction there is at least a reasonable probability that Plaintiffs will suffer irreparable harm to (1) the voting rights of their members and constituents, *see supra* § I(A)–(B), and (2) their core activities, forcing them to continue to divert resources to prevent the ongoing harms inflicted by the SVR, *see supra* § I(A). Both are irreparable injuries.

"When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (citation omitted). This is because "a deprivation of a constitutional right is in and of itself irreparable harm." *Hodes & Nauser, MDs, P.A. v. Schmidt*, No. 2015-CV-490, 2015 WL 13065200, at *5 (Kan. Dist. Ct. June 30, 2015). As the Tenth Circuit has emphasized, "[t]his is especially so in the context of the right to vote. Because there can be no 'do-over' or redress of a denial of the right to vote after an election, denial of that right weighs heavily in determining whether plaintiffs would be irreparably harmed absent an injunction." *Fish*, 840 F.3d at 752 (quotation omitted).

Here, there is a reasonable probability that Plaintiffs' members and constituents will suffer irreparable injuries to their fundamental right to vote in the upcoming 2026 elections, as well as all elections that follow, absent an injunction. Plaintiffs' members and constituents include young voters, voters with disabilities, and voters who are aging, among others, *see supra* § I(A)–(B). As detailed above, absent injunctive relief, these voters' fundamental right to vote will be at risk of arbitrary and erroneous disenfranchisement under the SVR. *See supra* §§ II, III(C). Such disenfranchisement would also harm Plaintiffs, whose missions include empowering their members and constituents to participate in the political process, *see supra* § I(A)–(B).

As shown, Plaintiffs will also suffer direct irreparable injury because they must divert critical resources toward education and cure programming to mitigate the burdens of the SVR—resources that they would otherwise put toward other mission-critical activities. *See supra* § I(A). "Courts routinely recognize that organizations suffer irreparable harm when a defendant's conduct causes them to lose opportunities to conduct election-related activities, such as voter registration and education." *League of Women Voters of Mo. v. Ashcroft,* 336 F. Supp. 3d 998, 1005 (W.D. Mo. 2018) (collecting cases). Plaintiffs have shown these precise harms here. Both Loud Light and Kansas Appleseed, for example, have been forced to divert resources from its "get-out-the-vote" work towards attempting to ensure its constituents are not disenfranchised by the SVR. *See supra* § I(A). As with the fundamental right to vote, any opportunity to remedy these harms will be forever lost "once the election occurs," at which point, "there can be no do-over and no redress." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

Likewise, a legal remedy such as damages cannot possibly compensate for the threatened loss of the fundamental right to vote. *See Fish*, 840 F.3d at 753 ("[D]enial of the right to vote constitutes a strong showing of irreparable harm, and one which cannot be compensated by money

damages."). For all these reasons, Plaintiffs have demonstrated a "reasonable probability" of irreparable injury absent a permanent injunction, and that "an action at law will not provide an adequate remedy." *Nat'l Compressed Steel*, 272 Kan. at 1246.

B. The remaining elements support a permanent injunction.

Plaintiffs also satisfy the remaining permanent injunction factors: the threatened injuries to them outweigh any injury to the State, and an injunction will not be against the public interest. *Id.* The threatened harms to Plaintiffs are serious and irreparable. Indeed, the SVR has already resulted in past disenfranchisement and will continue to do so. *See supra* § III(C). Absent an injunction, Plaintiffs will be forced to continue to divert more resources away from their other civic engagement activities to help Kansans avoid disenfranchisement due to the law. *See supra* § I(A). Any alleged harms to the State stemming from an injunction pale in comparison.

To the extent the State claims that the SVR protects the State's interests in preventing fraud, the State has failed to produce any evidence of actual fraud, let alone widespread fraud, that would result if the SVR were enjoined. *See supra* § II(A)(3). The SVR also fails to advance—and, in fact, undermines—the State's interest in election integrity because it results in the arbitrary and erroneous disenfranchisement of eligible voters. *See supra* §§ II, III(C). *See, e.g.*, *Martin*, 341 F. Supp. 3d at 1340 ("[A]ssuring that all eligible voters are permitted to vote [does not] undermine[e] integrity of the election process . . . it strengthens it."). Likewise, any argument the State could make suggesting a permanent injunction of the SVR would be administratively burdensome would be perplexing given that the law *creates* additional administrative burdens for county election officials. Any such argument would also be exponentially outweighed by the threatened loss of fundamental rights. *See*, *e.g.*, *Fish,* 840 F.3d at 755 ("There is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by [state]

and local offices involved in elections."). A permanent injunction would therefore not cause any genuine harm to any of the State's possible asserted interests.

For similar reasons, an injunction would be in the public interest. Indeed, "ensuring qualified voters exercise their right to vote is always *in* the public interest." *League of Women Voters of Mo.*, 336 F. Supp. 3d at 1006 (emphasis added); *Fish*, 840 F.3d at 756 (holding "[t]he public interest in broad exercise of the right to vote will be furthered rather than harmed" by an injunction); *cf Burke v. State Bd. of Canvassers*, 152 Kan. 826, 107 P.2d 773 (1940) ("Election laws are liberally construed to permit exercise of the right of suffrage conferred by the Constitution and laws of the state."). Likewise, by issuing an injunction, this Court will be "correcting a violation of the law," which is also "in the public interest." *Wing v. City of Edwardsville*, 51 Kan. App. 2d 58, 66, 341 P.3d 607 (2014); *see also*, *e.g.*, *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th. Cir. 2006) (the "public has no interest in enforcing an unconstitutional" law). In sum, Plaintiffs have satisfied all the factors necessary to obtain permanent injunctive relief.

* * *

The scope of injunctive relief depends on the grounds on which the Court enjoins the law. If the Court enjoins it on the basis of equal protection, the Court should permanently (1) enjoin the Secretary and those in concert with him from enforcing the Signature Verification Requirement and (2) order the Secretary to inform all Kansas county election officials of the injunction and advise them they are not permitted to reject an advance ballot for counting based on the determination that the signature on the ballot envelope does not match the signature on file.

If the Court enjoins the law on the basis of procedural due process, the Court may fashion the injunction to order "what process is due," a question of law, *Wilkinson*, 269 Kan. at 609, as many courts have done before it. On the basis of this record, the Court should permanently (1)

enjoin the Secretary and those in concert with him from enforcing the Signature Verification Requirement and (2) order the Secretary to inform all Kansas county election officials of the injunction and advise them they are not permitted to reject an advance ballot for counting based on the determination that the signature on the ballot envelope does not match the signature on file even if they are not able to contact the voter and even if the voter does not cure, unless the county has reason to believe the signature is not authentic *other than* the county's own subjective judgment that the signature does not match the signature on file.

In the alternative, if Plaintiffs prevail on their due process claim, the Court should permanently (1) enjoin the Secretary and those in concert with him from enforcing the Signature Verification Requirement absent the below notice and cure procedures and (2) order the Secretary to inform all Kansas county election officials they are not permitted to reject an advance ballot for counting based on the determination that the signature on the ballot envelope does not match the signature on file unless the following procedures are followed:

(a) Election officials must attempt to notify a voter of an alleged signature inconsistency by phone within one business day, and if such contact is not successful or a phone number is not reasonably available, must mail a notice to the voter by first-class mail that same day. Such letter must be mailed to the voter's registration address and the mailing address to which the county mailed the voter a ballot, if applicable.

(b) Election officials must exhaust all reasonable means of contacting the voter, especially if the county already has other contact information on file for the voter, in addition to their telephone number, such as the voter's email address; and

(c) Election officials must count the ballot of a voter who has an apparently inconsistent signature if the voter provides confirmation to a county election official that

the voter in fact signed their ballot envelope. Such confirmation can be verbal or written and does not require the voter to produce a new, consistent signature for their ballot to be counted, nor does it require the voter to appear in person to have the ballot counted.

Respectfully submitted,

Nicole M. Revenaugh (#25482)
Pedro L. Irigonegaray (#08079)
IRIGONEGARAY & REVENAUGH
1535 S.W. 29th Street
Topeka, KS 66611
(785) 267-6115
nicole@itrlaw.com
pedro@itrlaw.com

Elisabeth C. Frost*
Christina Ford*
Marisa A. O'Gara*
Julianna D. Astarita*
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
(202) 968-4490
efrost@elias.law
cford@elias.law
mogara@elias.law
jastarita@elias.law

Counsel for Loud Light, Kansas Appleseed Center for Law and Justice, and Lois Curtis Center

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

*Appearing Pro Hac Vice

Teresa A. Woody (#16949)
KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC.
211 E. 8th St., Suite D
Lawrence, KS 66044
(785) 251-8160
twoody@kansasappleseed.org

Counsel for Kansas Appleseed Center For Law and Justice, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2025, a true and correct copy of the above and foregoing was served on all parties by electronic transmission via the Court's electronic filing system and electronically mailed.

Nicole M. Revenaugh (#25482)