

**IN THE THIRD JUDICIAL DISTRICT
DISTRICT COURT, SHAWNEE COUNTY, KANSAS**

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

Plaintiffs,

vs.

Case No. 2021-CV-000299

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

Defendants.

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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Defendants Scott Schwab and Kris Kobach respectfully submit this Reply in Support of their Motion for Summary Judgment.

I. – Introduction

Plaintiffs' response to Defendants' motion for summary judgment does not create a triable issue of fact. Instead, it simply confirms why Defendants are entitled to summary judgment as a matter of law. Plaintiffs fail (procedurally and substantively) to meet the heavy burden required to invalidate Kansas' signature verification requirement ("SVR") on its face. Plaintiffs' response is marked by an improper attempt to import facts from their own summary judgment motion, a lack of appreciation of which party bears the burden of proving constitutional violations, a fundamental misstatement of the governing constitutional standards, and a misplaced reliance on speculation, hypotheticals, and isolated anecdotes that cannot sustain facial relief.

Even if the Court were to overlook Plaintiffs' procedural failure in not filing a statement containing any additional facts but instead relying on allegations from an entirely separate motion, their opposition brief would still be insufficient to stave off summary judgment for Defendants. Plaintiffs do not identify any genuine dispute of material fact concerning how the SVR operates in practice. The undisputed evidence establishes that Kansas' signature verification framework is governed by objective standards, applied through statewide regulations, reinforced by uniform training, and constrained by multiple safeguards – most notably, multi-reviewer determinations, prompt notice, and robust opportunities to cure. Plaintiffs' misguided attempt to portray the SVR as standardless or arbitrary collapses under minimal scrutiny.

Plaintiffs also mischaracterize the legal framework governing their facial constitutional challenges. They repeatedly seek to dilute the demanding standard applicable to facial attacks by recasting their claims as something less exacting than they are. But the law is clear: a facial chal-

lenge fails unless Plaintiffs can show the SVR is unconstitutional in all (or at least a vast majority) of its applications, or that the law lacks a plainly legitimate sweep. Plaintiffs come nowhere close to making such a showing. To the contrary, the record demonstrates overwhelmingly that the SVR functions constitutionally in nearly all (if not *all*) cases and has resulted in extraordinarily low rejection rates, far lower in fact than those upheld in comparable jurisdictions nationwide.

Plaintiffs' equal protection arguments fare no better. The Kansas Supreme Court in *League of Women Voters v. Schwab*, 318 Kan. 777, 549 P.3d 363 ("*LWV II*") did not announce a novel or heightened standard untethered from traditional equal protection doctrine. It simply reaffirmed that election regulations must be capable of being applied in a reasonably uniform manner based on objective standards, not that they must be applied with mechanical precision or identical procedures in every county. Equal protection does not demand uniformity for its own sake, and it emphatically does not prohibit modest procedural variations justified by differences in population, resources, and administrative scale. Plaintiffs' insistence that any deviation among Kansas' 105 counties is constitutionally suspect is contrary to controlling precedent and common sense. Indeed, it would mean *all* elections – none of which are, or have even been, perfect – are unconstitutional.

Plaintiffs' procedural due process claim is similarly deficient. The Kansas Supreme Court articulated a modest due process standard in *LWV II*: reasonable notice and a meaningful opportunity to be heard. The SVR exceeds that requirement by a wide margin. Voters receive prompt notice of any potential signature mismatch, are afforded multiple methods to cure, and have all the way until the county canvass (i.e., well after Election Day) to correct any deficiency. The undisputed evidence confirms that the number of ballots ultimately rejected for uncured mismatches is vanishingly small. Occasional human error, even if assumed, does not render the statutory scheme unconstitutional on its face.

Meanwhile, Plaintiffs' response constantly asserts that Defendants failed to offer evidence that Kansas' SVR is administered in a reasonably uniform manner based on objective facts, or that it provides voters meaningful notice and a meaningful opportunity to cure. But that argument misapprehends the purpose of Defendants' motion and the governing burden. Plaintiffs – not the Defendants – bear the burden of proving an equal protection or due process violation. Defendants are entitled to summary judgment by demonstrating that Plaintiffs cannot carry their burden on essential elements of their claims and that the record lacks evidence creating a genuine dispute of material fact. Defendants are not required to affirmatively “prove” the constitutionality of Kansas' procedures; rather, where Plaintiffs' “proof” is – as is the case here – irrelevant, speculative, anecdotal, and/or otherwise insufficient to establish non-uniform administration or constitutionally inadequate notice-and-cure protections, K.S.A. 60-256(b) requires judgment for Defendants.

Ultimately, Plaintiffs ask this Court to do what courts consistently refuse to do: invalidate a duly enacted election regulation based on speculation, conjecture, and dissatisfaction with how discretion operates at the margins. The Constitution does not require perfection. It requires reasonableness. The record shows that Kansas' SVR easily meets and exceeds that standard.

II. – Reply to Plaintiffs' Responses to Defendants' Statement of Uncontroverted Facts

Set forth below is Defendants' Reply to Plaintiffs' Responses to Defendants' Statement of Uncontroverted Facts. Defendants only address those specific statements of fact that Plaintiffs either controvert or do not controvert but offer additional commentary.

SOF ¶ 10. This fact is immaterial to the resolution of this case. “An issue of fact is not genuine or material in ruling on a summary judgment motion unless it has legal controlling force as to the claims or defenses at issue in the motion. In other words, if a disputed fact could not affect the outcome of the case, it does not present a genuine issue of material fact for purposes of summary judgment.” *Acord v. Porter*, 58 Kan.App.2d 747, 757, 475 P.3d 665 (2020) (citing *N. Nat. Gas Co. v. ONEOK Field Servs. Co.*, 296 Kan. 906, 934, 296 P.3d 1106 (2013)). The SVR and accompanying regulation being challenged here were not adopted until 2021 and 2022, respectively. Turnout figures in Johnson County for 2020, therefore, are legally irrelevant. Defendants

noted this figure simply to underscore that Johnson County – the State’s most populous county – processes exponentially more advance mail ballots than other counties. That information is already evident from Ex. 1, Attachments 1A and 1B.

SOF ¶ 18. Plaintiffs do not controvert SOF ¶ 18 but only note that Defendants inaccurately cited Subsection (b)(1) rather than (a)(4) in K.A.R. 7-36-9. There is no material fact in dispute, particularly given that this is a stipulated fact.

SOF ¶ 19. Plaintiffs do not controvert SOF ¶ 19 but then add commentary citing facts from their own Statement of Facts in their own (separate) motion for summary judgment. These citations are not evidence and should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs’ procedural non-compliance and considers these additional facts, Defendants expressly incorporate herein their responses to each of those Statements of Fact. *See* Dkt Index No. 240. In any event, none of the additional facts are material to the legal issues to be decided in this case anyway. *See Acord*, 58 Kan.App.2d at 757. Whether a county keeps track of disabled voters, and whether the Secretary of State keeps records on how counties administer disability exceptions under the SVR are immaterial.

SOF ¶ 23. Plaintiffs are incorrect in their recitation of Andrew Howell’s deposition testimony. Mr. Howell explicitly stated that Shawnee County’s standard practice is to process advance mail ballots within one day of receipt. Ex. 5 to Defs.’ MSJ (Howell Dep. Tr.) at 115:23-116:7. While Plaintiffs’ *question* may have focused on how soon the Shawnee County election office contacts a voter following a signature mismatch determination, Mr. Howell’s *answer* was that the “standard practice” of the office is “*to process and begin the reach out process within 24 hours.*” He also later reiterated that his office is “getting phone calls and mail sent out within . . . 24 to no more than 48 hours.” *Id.* at 118:8-10. Plaintiffs’ citations thus do not controvert SOF ¶ 23, and it should be deemed uncontroverted in its entirety.

SOF ¶ 29. Plaintiffs do not controvert SOF ¶ 29 but then add commentary citing facts from their own Statement of Facts in their own (entirely separate) motion for summary judgment. These citations are not evidence and should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs’ procedural non-compliance and considers these additional facts, Defendants expressly incorporate herein their responses to each of those Statements of Fact. *See* Dkt Index No. 240. In any event, none of the additional facts are material to the legal issues to be decided in this case. *See Acord*, 58 Kan.App.2d at 757.

SOF ¶ 30. Plaintiffs do not controvert SOF ¶ 29 but then add commentary citing facts from their own Statement of Facts in their own (entirely separate) motion for summary judgment. These citations are not evidence and should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs’ procedural non-compliance and considers these additional facts, Defendants expressly incorporate herein their responses to each of those Statements of Fact. *See* Dkt Index No. 240. In any event, none of the additional facts are material to the legal issues to be decided in this case. *See Acord*, 58 Kan.App.2d at 757.

SOF ¶ 31. Mr. Caskey's testimony about his own instructions to county election officials is not hearsay. *See* Defs.' Resp. to Pls.' Mtn. to Strike Caskey Decl. at 16-19. Moreover, Plaintiffs have not controverted anything in Mr. Caskey's statement. Plaintiffs' claim that there is "no evidence" that Mr. Caskey's statements represent part of the current training is nonsensical. *Mr. Caskey's affidavit is itself evidence of the Secretary of State's Office's current instructions.* Plaintiffs certainly have not controverted his sworn testimony. SOF ¶ 31 thus should be deemed uncontroverted for purposes of summary judgment.

SOF ¶ 32. Mr. Caskey's testimony about his instructions to county election officials is not hearsay. *See* Defs.' Resp. to Pls.' Mtn. to Strike Caskey Decl. at 16-19. And Plaintiffs' claim that this SOF is "controverted as not reflective of the actual formal guidance" makes no sense. Plaintiffs simply cite K.S.A. 25-1124(h) and K.A.R. 7-36-9 to support this contention. But there is no legal basis for arguing that an instruction or training not formally codified into a statute or regulation is not "actual formal guidance."

Plaintiffs also cite to SOF ¶ 291 from their own Statement of Facts in their own (entirely separate) summary judgment motion to support an argument about how counties administer the signature verification review process. This citation is not evidence and should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs' procedural non-compliance and considers this additional fact, Defendants expressly incorporate herein their response to that Statements of Fact. *See* Dkt Index No. 240. In any event, none of the additional facts are material to the legal issues to be decided in this case. *See Acord*, 58 Kan.App.2d at 757.

Finally, the testimony of Mark Songer that Plaintiffs reference is inadmissible and irrelevant. Plaintiffs asked Mr. Songer to interpret the governing regulation. But that is a legal issue for the Court. As such, the testimony is inadmissible and cannot be considered for purposes of summary judgment. *Schneider v. Kansas Securities Comm'r*, 54 Kan.App.2d 122, 136-37, 397 P.3d 1227 (2017) (citation omitted). In sum, SOF ¶ 31 should be deemed uncontroverted for purposes of summary judgment.

SOF ¶ 33. Plaintiffs do not actually controvert SOF ¶ 33 but instead play semantical games. Defendants urge the Court to read the relevant portion of the transcript for itself. Defs.' MSJ Ex. 5 (Howell Dep. Tr.) at 90:11-90:24. It will confirm that Mr. Howell said exactly what Defendants said he did. Nothing in this exchange contradicts SOF ¶ 33 and it should be deemed uncontroverted for purposes of summary judgment.

Incidentally, rather than citing Mr. Howell's testimony, Plaintiffs refer to SOF ¶ 291 from their own Statement of Facts in their own (entirely separate) summary judgment motion. This citation is not evidence and should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs' procedural non-compliance and considers this additional fact, Defendants expressly incorporate herein their response to that Statements of Fact. *See* Dkt Index No. 240.

SOF ¶ 34. For all the reasons set forth in the Reply to SOF ¶ 33 above, SOF ¶ 34 should also be deemed uncontroverted for purposes of summary judgment.

SOF ¶ 35. Plaintiffs do not controvert SOF ¶ 35 but then add commentary referring to SOF ¶ 291 from their own Statement of Facts in their own (entirely separate) motion for summary judgment. This citation is not evidence and should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs’ procedural non-compliance, Defendants expressly incorporate herein their response to that Statement of Fact. *See* Dkt Index No. 240.

SOF ¶ 37. In controverting SOF ¶ 37, Plaintiffs rely in large part on citations to facts from their own Statement of Facts in their own (separate) motion for summary judgment. These citations are not evidence and should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs’ procedural non-compliance and considers these additional facts, Defendants expressly incorporate herein their responses to each of those Statements of Fact. *See* Dkt Index No. 240. In any event, none of this is material to the legal issues in this case. *See Acord*, 58 Kan.App.2d at 757. Plaintiffs have produced no evidence that county election officials have improperly rejected the signature of any disabled voter (let alone done so systematically) or acted contrary to the requirements of K.A.R. 7-36-9 in reviewing disabled voters’ signatures since the SVR and implementing regulation were adopted.

SOF ¶ 40. Whether or not there might be inconsistencies between Mr. Caskey’s deposition testimony and his declaration is irrelevant. The issue of what a disabled voter must do to have a third-party sign on his/her behalf is ultimately a *legal issue*.

Plaintiffs’ effort to manufacture a statutory inconsistency is predicated on an artificially cramped reading of K.S.A. 25-1124(c). When the statute is read as a whole, K.S.A. 25-1121(c) and K.S.A. 25-1124(h) are easily harmonized: a voter whose disability prevents him/her from producing a signature *that satisfies legal requirements* – including consistency with the signature on file – is functionally “unable to sign” for purposes of K.S.A. 25-1121(c). And K.S.A. 25-1124(h) confirms rather than contradicts this understanding by expressly acknowledging that a disability may prevent a voter from signing at all *or* from signing consistently. Plaintiffs’ interpretation not only disregards the obligation to construe statutory provisions in harmony, but it would also create the very ambiguity they accuse the State of imposing. The statute itself does not create any such classifications; it simply recognizes that disabilities manifest differently and ensures that all disability-related signing limitations – whether total or partial – receive equal accommodation.

Furthermore, this SOF is immaterial in a facial equal protection challenge like the one presented here. Plaintiffs cannot possibly show that Kansas’ signature verification framework is unconstitutional in all its applications, i.e., that *no* circumstance exists in which the SVR can operate constitutionally. Nearly all of the State’s voters, including the disabled, can and do readily comply through either their personal signature, the statutory disability accommodation available to those unable to sign, or the cure process that follows any mismatch determination. Plaintiffs’ reliance on edge-case hypotheticals cannot support the extraordinary remedy of facial invalidation. *See Hill v. Colorado*, 530 U.S. 703, 733 (2000) (“[S]peculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute when it is surely valid in the vast majority of its intended applications.”) (quotation omitted).

SOF ¶ 42. In controverting this SOF, Plaintiffs rely on exhibits that are attached to their own Statement of Facts in their own (separate) motion for summary judgment. These exhibits were not part of Defendants’ summary judgment exhibits, nor do Plaintiffs include them as attachments to their response. They thus should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below.

More substantively, Plaintiffs cherry-pick testimony in a misguided effort to controvert. Plaintiffs suggest that because K.A.R. 7-36-9 had not been formally promulgated at the time the Kansas training video (originally prepared by the Oregon Secretary of State’s Office) was selected, Mr. Caskey could not have selected it based on his belief “that it most accurately reflected the standards and was the best training available at the time.” But one does not follow from the other. There is nothing inconsistent with Mr. Caskey saying in his affidavit that, after reviewing the Oregon video, he believed it to be easy to understand and that it was consistent with the regulatory standard being considered for Kansas (which was being actively drafted at that point and going through the regulatory approval process). Plaintiffs’ nitpicking yields no inconsistency.

Regardless, the issue Plaintiffs raise is immaterial. The precise timing of when the video was selected is irrelevant to the legal issues in this case. The key is that Mr. Caskey believes the video is easy to understand, that it accurately reflects the Kansas standards, and that it was the best available video. In fact, Mr. Caskey explained in his deposition that although the review standard in Oregon may be different than Kansas, the process of actually reviewing signature characteristics – which is what the training video focuses on – is functionally the same. Pls.’ MSJ, Ex. 6 (Caskey Dep. Tr.) at 152:13-152:24. Plaintiffs just opt to ignore this testimony because it is inconvenient for them.

SOF ¶ 43. Mr. Caskey’s testimony about the training videos used by other states is not hearsay and, even if it was, it could still be considered for purposes of summary judgment. *See* Defs.’ Resp. to Pls.’ Mtn. to Strike Caskey Decl. at 19; *see also id.* at 8. As for Plaintiffs’ additional statements regarding the Tennessee video, none of that is relevant. Whether Tennessee supplements it with directives from the Tennessee Secretary of State’s Office does not controvert this SOF.

SOF ¶ 52. In controverting this SOF, Plaintiffs rely on exhibits that are attached to their own Statement of Facts in their own (separate) motion for summary judgment. These exhibits were not part of Defendants’ summary judgment exhibits, nor do Plaintiffs include them as attachments to their response. They thus should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs’ procedural non-compliance and considers those exhibits, Defendants incorporate herein their responses to Plaintiffs’ Statements of Facts – specifically, ¶¶ 317(a)-(b), 325(b), 345, and 374 – that address those exhibits. *See* Dkt Index No. 240.

More substantively, Plaintiffs claim to controvert this SOF but then cite evidence that does not controvert anything. Plaintiffs are essentially making a legal argument that because a handful of voters allegedly received notice of a signature mismatch a few days after an election, this fact somehow equates to the voter not being provided the same time to cure a signature as an in-person voter. But that is a false equivalent, even if true. The voter has the same deadline to cure a signature

as an in-person voter does to produce ID, i.e., the county canvass. Some voters may vote earlier than others (whether by mail or in person). Given that the county canvass is the date at which the county certifies the election, that date is the latest day on which curing can be accomplished. Nothing in Plaintiffs' evidence controverts these statements. Plaintiffs are making irrelevant legal arguments, not controverting facts.

Regardless, none of this is material to the legal issues in this case. K.A.R. 7-36-9 requires three attempted contacts and a mailing and gives the longest time possible to cure – up until the county canvass. The fact that some voters may ignore county phone calls or county mailings, that voters submit mail ballots late in the process, or even that a county election official may not have closely adhered to the regulation in a handful of cases (over the course of two general elections) does not affect whether the SVR satisfies the standards set in *LWV II*. Plaintiffs' arguments do not affect Defendants' entitlement to summary judgment.

SOF ¶ 64. Plaintiffs' response does not actually controvert this SOF but instead introduces erroneous facts to try to distract and confuse the Court. In doing so, it relies on SOF ¶ 351 from their own (entirely separate) motion for summary judgment. This citation is not evidence and should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court considers this additional fact, Defendants expressly incorporate their response to SOF ¶ 351. *See* Dkt Index No. 240. In any event, the additional fact Plaintiffs seek to introduce is immaterial to the legal issues to be decided in this case. *See Acord*, 58 Kan.App.2d at 757. The number of ballot rejections due to signature mismatches reported prior to the SVR even taking effect is irrelevant.

SOF ¶ 65. In controverting this SOF, Plaintiffs rely on facts and exhibits that are attached to their own Statement of Facts in their own (separate) motion for summary judgment. These were not part of Defendants' summary judgment motion, nor do Plaintiffs include them as attachments to their response. They thus should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs' procedural non-compliance and considers these materials – which largely come from SOF ¶ 262, 265 of Plaintiffs' summary judgment motion – Defendants incorporate their responses thereto. *See* Dkt Index No. 240.

More substantively, K.A.R. 7-36-9(g)(3) mandates that when election officials conduct signature verification, “[a]ll signatures that match those in the voter registration database shall be accepted.” There is no suggestion this is not happening. Instead, Plaintiffs seek to introduce a side argument that some voter signatures are not entered into ELVIS. They do so by saying they are controverting this SOF “to the extent” it states something different than it does. If Plaintiffs believed there were additional material facts that needed to be added, they should have done so. But simply creating a new argument in response to an otherwise valid statement of uncontroverted fact is inconsistent with K.S.A. 60-256(e)(2). In any event, none of the additional facts are material to the legal issues to be decided in this case anyway. *See Acord*, 58 Kan.App.2d at 757.

SOF ¶ 66. Same reply as to SOF ¶ 65.

SOF ¶ 67. In attempting to controvert this SOF, Plaintiffs rely on facts and exhibits that are attached to their own Statement of Facts in their own (separate) motion for summary judgment. These were not part of Defendants’ summary judgment exhibits, nor do Plaintiffs include them as attachments to their response. They thus should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs’ procedural non-compliance and considers those materials – which largely come from ¶¶ 443-452, 460 of Plaintiffs’ summary judgment motion – Defendants incorporate their responses thereto. *See* Dkt Index No. 240.

Moreover, neither Mr. Vargo’s statement nor any of the additional facts Plaintiffs seek to introduce here are material to the legal issues to be decided in this case anyway. *See Acord*, 58 Kan.App.2d at 757. Indeed, the issue of what evidence (if any) a state must demonstrate to justify an election anti-fraud safeguard like a signature verification requirement is a *purely legal issue*, as set forth in detail in Defendants’ summary judgment motion and reply brief in support thereof.

In any event, Plaintiffs do not even controvert Mr. Vargo’s testimony. In response to the question, “Is there any mechanism, other than signature verification review, to be sure that a – that the person who submits an advance ballot is the same person that – to whom the advance ballot was sent?” Mr. Vargo answered, “Not that I can think of.” Plaintiffs maintain that his answer did not mean what he said. This contention is meritless and does not warrant further comment.

SOF ¶ 68. Plaintiffs do not really controvert Mr. Howell’s testimony. And their assertion that he *only* testified about one issue involving a mail ballot signature is untrue. At first, Mr. Howell testified about one specific incident but then stated that he has “had conversations with law enforcement about things that [he] thought looked very, very strange.” Pls.’ Ex. 18 (Howell Dep. Tr.) at 70:8-17. Plaintiffs ignore the majority of that paragraph.

Regardless, Mr. Howell’s testimony about fraud he has seen or not seen during his tenure as Shawnee County’s Election Commissioner is immaterial to the legal issues to be decided in this case anyway. *See Acord*, 58 Kan.App.2d at 757. Indeed, the issue of what evidence (if any) a state must demonstrate to justify an election anti-fraud safeguard like a signature verification requirement is a *purely legal issue*, as set forth in detail in Defendants’ summary judgment motion and reply brief in support thereof.

SOF ¶ 69. As an initial matter, Mr. Caskey’s testimony is admissible for the reasons stated in Defendants’ Response to Plaintiffs’ Motion to Strike the Caskey Declaration. Moreover, in attempting to controvert this SOF, Plaintiffs rely on statements of fact and exhibits that are attached to their own Statement of Facts in their own (separate) motion for summary judgment. These exhibits were not part of Defendants’ summary judgment exhibits, nor do Plaintiffs include them as attachments to their response. They thus should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See* Part III.A. below. To the extent the Court excuses Plaintiffs’ procedural non-compliance and considers those exhibits – which largely come from ¶¶ 149-164, 170, 197, 220, and 447-48 of Plaintiffs’ summary judgment motion – Defendants incorporate their responses thereto. *See* Dkt Index No. 240.

Regardless, neither Mr. Caskey's statement nor any of the additional facts Plaintiffs seek to introduce here are material to the legal issues to be decided in this case anyway. *See Acord*, 58 Kan.App.2d at 757. Indeed, the issue of what evidence (if any) a state must demonstrate to justify an election anti-fraud safeguard like a signature verification requirement is a *purely legal issue*, as set forth in detail in Defendants' summary judgment motion and reply brief in support thereof. As for the information regarding Dr. Mohammed, not only is it entirely non-responsive to this SOF, but it is also irrelevant to this case for the further reasons set forth in Defendants' *Daubert* motion.

SOF ¶ 75. Plaintiffs' claim that the NCSL's summary of other states' laws is inadmissible is frivolous. First, the NCSL table includes statutory citations to each of those states' laws. There was thus no need for *any* witness testimony; Defendants could have simply cited the relevant statutes. Second, this Court is required to take judicial notice of "public statutes in force in every state." K.S.A. 60-409(a). Third, Plaintiffs misunderstand evidentiary obligations in a summary judgment motion. The evidence offered in support of a summary judgment motion need not be "submitted 'in a form that would be admissible at trial.'" *Trevizo v. Adams*, 455 F.3d 1155, 1160 (10th Cir. 2006) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)). The fact offered simply must "ultimately be [able to be] presented at trial in an admissible form." *Id.* In other words, "the party submitting the evidence [must] show that it will be possible to put the information, the substance or content of the evidence, into an admissible form." *Brown v. Perez*, 835 F.3d 1223, 1232 (10th Cir. 2016) (quoting 11 James Wm. Moore et al., *Moore's Federal Practice–Civil* § 56.91 (3d ed. 2015)). The status of laws in other states easily falls within that category.

Regardless, the fact that other states have signature verification laws is immaterial to the discrete legal issues before the Court. *See Acord*, 58 Kan.App.2d at 757. So none of this matters.

SOF ¶ 76. Defendants mistakenly indicated that eight states, rather than three, require notarization on mail ballots. Defendants apologize for this inadvertent typographical error. With respect to the remainder of Plaintiffs' response to this SOF, Defendants reiterate their reply to SOF ¶ 75 above. The fact that (and number of) other states that require notarization of mail ballots is immaterial to the legal issues in this case.

SOF ¶ 77. In attempting to controvert this SOF, Plaintiffs rely on statements of fact and exhibits that are attached to their own Statement of Facts in their own (separate) motion for summary judgment. These exhibits were not part of Defendants' summary judgment exhibits, nor do Plaintiffs include them as attachments to their response. They thus should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See Part III.A.* below. To the extent the Court excuses Plaintiffs' procedural non-compliance and considers those exhibits – which largely come from ¶¶ 453-456 of Plaintiffs' summary judgment motion – Defendants incorporate their responses thereto. *See Dkt Index No. 240.*

More substantively, Plaintiffs' argument that Mr. Caskey's testimony is inadmissible is incorrect for the reasons stated in Defendants' Response to Plaintiffs' Motion to Strike the Caskey Declaration (at pages 13-15). In addition, Plaintiffs' "evidence" does not controvert Mr. Caskey's testimony. Whether Dr. Mayer believes the skepticism was warranted does not controvert the fact that skepticism occurred. Indeed, Dr. Mayer's testimony is irrelevant for the reasons set forth in Defendants' *Daubert* motion seeking to strike his testimony.

In any event, Plaintiffs' arguments in this SOF response are all immaterial. A state has the right to enact laws that it believes increase voter confidence, regardless of the views of a political scientist or any other member of the public. And the State need not produce empirical evidence of its interest in adopting such legislation, as Defendants have underscored (with ample case law to back the point up) in both their summary judgment motion and reply brief.

SOF ¶ 78. For the reasons stated in Defendants' Response to Plaintiffs' Motion to Strike Mr. Caskey's Declaration (at pages 13-15), Mr. Caskey's affidavit testimony on this issue is not hearsay. Plaintiffs' hearsay argument is legally baseless.

SOF ¶ 79. For the reasons stated in Defendants' Response to Plaintiffs' Motion to Strike Mr. Caskey's Declaration (at pages 9-10) on this issue is not expert testimony. Regardless, Mr. Caskey's testimony about the difficulty of identifying advance mail ballot fraud is immaterial to the legal issues to be decided in this case. *See Acord*, 58 Kan.App.2d at 757. Indeed, the issue of what evidence (if any) a state must demonstrate to justify an election anti-fraud safeguard like a signature verification requirement is a *purely legal issue*, as set forth in detail in Defendants' summary judgment motion and reply brief in support thereof. And the answer is that the State need not provide any evidence at all.

Moreover, in attempting to controvert this SOF, Plaintiffs rely on statements of fact and exhibits that are attached to their own Statement of Facts in their own (separate) motion for summary judgment. These exhibits were not part of Defendants' summary judgment exhibits, nor do Plaintiffs include them as attachments to their response. They thus should not be considered in evaluating whether to grant summary judgment for Defendants in this motion. *See Part III.A. below.* To the extent the Court excuses Plaintiffs' procedural non-compliance and considers those exhibits – which largely come from ¶¶ 171-173, 184-186, 187-189, 195-197 – Defendants incorporate their responses thereto. *See Dkt Index No. 240.*

As for the testimony of Dr. Mohammed that Plaintiffs seek to introduce in their response, that testimony is irrelevant for the reasons articulated in Defendants' *Daubert* motion regarding Dr. Mohammed.

III. – Argument

A. – Plaintiffs' Attempt to Bootstrap Facts from Their Own Summary Judgment Motion Is Improper

Before turning to the merits, a key threshold procedural deficiency in Plaintiffs' response brief must be highlighted. In responding to Defendants' Motion for Summary Judgment, Plaintiffs did not submit any statement of additional material facts, as required by Kansas Supreme Court Rule 141(b). Instead, they attempt – without acknowledgment or authority – to rely on alleged “facts” asserted in their own *entirely separate* cross-motion for summary judgment. That approach

is impermissible. The law is unequivocal that the two motions must be analyzed independently of each other. *See Banner Bank v. First Am. Title Ins. Co.*, 916 F.3d 1323, 1326 (10th Cir. 2019) (“Cross-motions for summary judgment are treated as two individual motions for summary judgment and held to the same standard, with each motion viewed in the light most favorable to its nonmoving party.”). “[T]he district court can consider both motions in the same hearing or rule on them together in the same order,” but it “must separately consider each motion on its own.” *Kesters Merch. Display Int’l, Inc. v. SurfaceQuest, Inc.*, ___ F.4th ___, 2026 WL 35198, at *3 (10th Cir. Jan. 6, 2026) (citations omitted).

Although none of the facts Plaintiffs cite are material to the legal issues in this case anyway, Plaintiffs cannot incorporate facts from their own summary judgment motion into their response to Defendants’ summary judgment motion. (Nor, incidentally, did they ever explicitly indicate were doing so.) Those facts, then, cannot be considered in evaluating Defendants’ motion.¹ *See Lopez v. Davila*, 63 Kan. App. 2d 147, 152-53, 526 P.3d 674 (2023) (district court did not abuse its discretion in relying on moving party’s statement of uncontroverted facts where non-movant “cut corners” under Kansas Supreme Court Rule 141(b) by failing to cite to specific facts in the record and instead referenced his own earlier motion for partial summary judgment motion and reply to the same); *Martin v. City of Topeka*, No. 127,715, 2025 WL 2631390, at *1-3 (Kan. App. 2025) (no abuse of discretion in deeming moving party’s allegations of uncontroverted fact admitted where responding party did not “concisely summarize the conflicting evidence” but instead “cited 25 paragraphs of his own statement of facts,” which forced the district court to sift through irrelevant information and “thwarted the district court’s purpose”); 10A Wright & Miller,

¹ In the event the Court opts not to enforce this rule, then Defendants expressly incorporate herein their response to Plaintiffs’ cross-motion for summary judgment and their response to Plaintiffs’ statement of facts. Those two documents further reinforce why summary judgment is appropriate for the Defendants.

Fed. Prac. & Proc. Civ. § 2720 (4th ed.) (“The court must rule on each party’s motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard.”).

While Defendants are entitled to summary judgment regardless of whether the factual allegations from Plaintiffs’ cross-motion are considered, their necessary exclusion makes the case for granting Defendants’ motion all the clearer.

B. – Defendants’ Arguments are Supported by Admissible Evidence in Accordance with the Rules

Plaintiffs first mischaracterize both the context and purpose of Defendants’ evidence as well as the applicable legal standard governing summary judgment motions. Pls.’ Resp. at 21-23. Plaintiffs accuse Defendants of relying on speculation and unsupported assertions to support their motion. Untrue. The Court can and must consider any reasonable inferences that are natural progressions from the evidence, particularly when they are grounded in common sense. While “[a]n inference cannot be based upon evidence which is too uncertain or speculative or which raises merely a conjecture or possibility[.]” inferences that reasonably flow from admissible evidence are appropriate and should be considered on a summary judgment motion. *Estate of Pemberton v. John’s Sports Ctr., Inc.*, 35 Kan. App. 2d 809, 822, 135 P.3d 174 (2006).

Plaintiffs take issue with Defendants’ reference to the video used to train all Kansas county election officials who perform signature verification. Plaintiffs fault Defendants for not including the training video from either Kansas or California in their statement of uncontroverted facts. But Plaintiffs miss the point. Defendants’ evidence included an affidavit and deposition testimony of Bryan Caskey (Defs.’ MSJ, Exs. 1 and 2), wherein Mr. Caskey describes the training received by Kansas election officials. The training includes instruction on procedures and standards that are implemented in practice and closely align with California’s published SVR standards. Defs.’ MSJ,

Ex. 1 at ¶ 25. To the extent Plaintiffs are complaining that Defendants did not introduce into the summary judgment record all the granular details of the signature verification training, none of that is relevant here, as Defendants explained at length in their *Daubert* motion seeking to exclude the testimony of Dr. Linton Mohammed.

Election officials are not responsible for conducting forensic level examinations, which utilize stringent scientific methods and techniques to analyze signatures in the investigation and prosecution of crimes. Although Plaintiffs urge the Court to evaluate Kansas' signature verification process as if election officials were conducting full-blown forensic investigations and seek to hold such officials to unreasonable expectations that even the best skilled forensic document examiners could not achieve in criminal matters, that is simply not the purpose of the SVR. Plaintiffs attempt to drag the Court down a path in which the adequacy of the training become the focus of the legal analysis, but that would be wholly unwarranted. The relevant constitutional inquiry is not whether county officials receive training that mirrors forensic protocols; it is whether Plaintiffs have come forward with admissible evidence that the SVR is administered in a non-uniform, standardless manner or that voters are denied meaningful notice and a meaningful opportunity to cure. Plaintiffs offer no such evidence.

Plaintiffs next argue that the Court should disregard Defendants' reliance on Johnson County's census details when asserting that certain cure procedures used in smaller counties may be unworkable in higher-volume jurisdictions. Pls.' Resp. at 21. Apparently, Plaintiffs would have the Court reject common sense. Reasonable inferences based on Johnson County's population size, combined with evidence of Johnson County's volume of ballots are appropriate for this Court to consider. Johnson County's immense size (compared to every other county in the State), and the fact that it processes significantly more advance mail ballots than other counties, surely supports

the inference that mandating every procedural convenience offered in much smaller counties is not always feasible there and could disrupt uniform and orderly administration.

Plaintiffs' objection to Defendants' reference to the alternative voting methods available to voters is equally flawed. Pls.' Resp. at 21-22. The options available to voters are plainly stated in statute. Kansas law, for example, explicitly permits disabled voters to have any third party of their choice sign on their behalf merely by executing an affidavit (including the one contained on the outside of every ballot envelope). *See* K.S.A. 25-1121(b)-(c). This is reflected in Defs.' SOF ¶ 40. Particularly in a facial challenge like the one presented here, Plaintiffs' suggestion that such an argument can carry the day only if Defendant identifies each individual voter for whom such alternative option is available is absurd.²

Plaintiffs further contend that “[t]o know whether the SVR operates ‘uniformly’ throughout Kansas would require actual examination of county practices,” yet Defendants did not cite to much of the material Plaintiffs collected from various counties during discovery. Pls.' Resp. at 22. This argument makes no sense and reflects a fundamental misunderstanding of how summary judgment works. First, the information Plaintiffs collected was irrelevant. Second, Plaintiffs' insistence that Defendants must “prove” uniform statewide administration by examining the practices of every county flips the burden of proof on its head. *Plaintiffs* bear the burden of establishing constitutional violations, and *they* must come forward with evidence that Kansas' signature-verification and cure processes are administered pursuant to standardless criteria with no semblance of uniformity or in a manner that deprives voters of meaningful notice and a meaningful opportunity to cure. In the absence of competent evidence of a constitutionally material departure from the statutes and

² Plaintiffs additionally claim that some of Bryan Caskey's statements are inadmissible. Defendants address those arguments, which are devoid of merit, in their separately filed response to Plaintiffs' motion to strike or exclude the testimony from Mr. Caskey. *See* Dkt Index No. 243 (filed Jan. 23, 2026).

regulation that control these procedures, Plaintiffs’ demand that Defendants produce some sort of county-by-county audit is legally baseless and represents no ground to deny summary judgment.

The record shows that Kansas’ signature-verification and cure procedures are prescribed by generally applicable statewide statutes and regulations that govern election officials across the State. Those statewide legal requirements are the relevant evidence of how the process is designed and administered as a matter of law. Plaintiffs’ response offers no competent evidence establishing that county officials disregard those statewide standards in a way that creates constitutionally significant non-uniformity.

C. – Defendants Did Not Misconstrue the Applicable Standard for Plaintiffs’ Facial Challenges

In Section II of their response, Plaintiffs seek to dilute the well-established standard for facial relief. Plaintiffs wrongly assert that Defendants “misconstrue” or “mischaracterize” what must be shown to invalidate the SVR on its face. Pls.’ Resp. at 23-24. To the contrary, Defendants accurately state the governing principles for facial challenges and correctly analyze Plaintiffs’ facial challenge under controlling constitutional standards. While Plaintiffs try to downplay the steep hill they must overcome to succeed on their facial challenge, the “no set of circumstances” formulation set forth in *State v. Jones*, 313 Kan. 917, 931, 492 P.3d 433 (2021) (quoting *United States v. Salerno*, 481 U.S. 739, 749 (1987)) has not been overruled and continues to be cited by courts as the benchmark for facial constitutional challenges.

In fact, the U.S. Supreme Court recently reaffirmed this test in *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024). The Court distinguished between First Amendment cases and other constitutional attacks, noting that, where First Amendment rights are not implicated, “a plaintiff cannot succeed on a facial challenge unless he establishes that no set of circumstances exists under which the law would be valid, or he shows that the law lacks a plainly legitimate sweep.” *Id.* at 723

(cleaned up) (citing *Salerno*, 481 U.S. at 745, and *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008)). By contrast, in First Amendment cases, the “Court has lowered that very high bar” and “substituted a less demanding though still rigorous standard” to “provide breathing room for free expression.” *Id.* (citing *United States v. Hansen*, 599 U.S. 762, 769 (2023)) (internal alterations omitted). In the First Amendment arena, the focus is on whether “a substantial number of the law’s applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Id.* (internal alterations omitted). The Kansas Supreme Court also reinforced this standard recently in a non-First Amendment case. *State v. McCray*, __ Kan. __, 579 P.3d 126, 130 (2025) (“[F]or the State to prevail in a facial challenge [based on the Second Amendment], it need only demonstrate that the law is constitutional in at least some applications.”) (citing *United States v. Rahimi*, 602 U.S. 680, 693, 701 (2024)). In this case, of course, the First Amendment has no role.

Plaintiffs cite the Tenth Circuit’s decision in *Doe v. City of Albuquerque*, 667 F.3d 1111, 1127-28 (10th Cir. 2012), as if it undermines *Salerno*’s “no set of circumstances” test. Pls.’ Resp. at 25. Not only does that fly in the face of the Kansas Supreme Court’s decision in *Jones*, but *Doe* involved a *First Amendment* attack on a prohibition against registered sex offenders from entering the city’s public libraries. And not only was the First Amendment implicated, but so too was an allegedly fundamental right, specifically, the fundamental right to receive information. *Id.* at 1115. Neither is implicated here.³ See *LWV II*, 318 Kan. at 799 (“The dissents cannot point to anywhere in the Kansas Reports where this court held that section 2 protects a fundamental right to vote. It

³ The Kansas Supreme Court has also recognized a limited exception to the *Salerno* test in Fourth Amendment cases. *State v. Ryce*, 303 Kan. 899, 915, 368 P.3d 342 (2016) (citing *City of Los Angeles v. Patel*, 576 U.S. 409, 417-19 (2015)). But the Court has never deviated from *Salerno*’s directive in evaluating facial challenges outside the context of the First or Fourth Amendment. Plaintiffs’ effort to disregard *Jones*, therefore, by citing *Patel* falls flat. See Pls.’ Resp. at 26, 28.

simply is not there.”). And whatever the Tenth Circuit thought the law was on this issue in 2012, the U.S. Supreme Court’s recent clarification (or one might say “doubling down” on) its precedent regarding the standard governing facial attacks in *Moody* has put the issue to rest.

Plaintiffs also seize on the Kansas Supreme Court’s statement in *LWV II* that “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.” *Id.* at 805 Plaintiffs treat the phrase “no voter” as if it announced some novel, zero-tolerance rule for facial invalidation. That reading is untenable. In context, it is clear the Court was merely articulating the familiar equal protection requirement that election rules be administered pursuant to objective standards rather than arbitrary discretion. Yet under Plaintiffs’ nonsensical theory, the Court transformed facial review into a militant demand for perfection – a regime under which the alleged misapplication of a generally applicable rule to a *single voter* would invalidate the entire statutory scheme. If true – and there is no conceivable way it is – the Court would have had to radically expand facial relief, effectively converting any isolated deviation into grounds to strike down Kansas’ signature-verification framework statewide (not to mention a vast array of other election statutes). This would invite chaos and cast doubt on the validity of Kansas elections themselves. And the Court would have done all this *sub silentio* no less. No reasonable interpretation of *LWV II* supports such a bizarre conclusion.

Plaintiffs repeatedly emphasize that the Supreme Court remanded their facial challenge to allow them an opportunity to develop evidence in the district court, and they attempt to transform that procedural reality into a substantive claim that the Court somehow relaxed the governing standard for facial constitutional challenges. This argument has no merit. Facial challenges remain difficult to prove precisely because they require a showing that the challenged law is unconstitu-

tional on its face – i.e., incapable of constitutional application – rather than merely susceptible to dispute in isolated circumstances. The Court’s decision to permit further proceedings on remand did not alter that settled principle. It simply afforded Plaintiffs the chance to test their allegations under the governing equal protection framework and attempt to prove the sweeping constitutional defect they claimed existed. Plaintiffs’ failure to do so does not mean the facial challenge standard has been “watered down”; it means Plaintiffs have not carried their burden.

Plaintiffs construct another straw man by suggesting that Defendants improperly focus on voters other than those who are directly impacted by the SVR. False. Defendants pointed out in their initial summary judgment motion the absurdity – and legal invalidity – of Plaintiffs’ theory that the injury to voters from the SVR is not simply the potential rejection of their ballots, but the cure process itself. Defs.’ MSJ at 26-30. Moreover, the flimsiness of Plaintiffs’ case is borne out by undisputed statistics that focus exclusively on individuals to whom the SVR applies, i.e., voters who vote via advance mail ballot. And those numbers reveal that, of the approximately 300,000 Kansans who voted by mail over the course of two general elections in 2022 and 2024, only 224 ballots were rejected due to an uncured signature mismatch. Nor is there any evidence in the record – notwithstanding Plaintiffs’ gratuitous speculation on page 27 of their response – that more than a half-dozen of those ballots were even potentially rejected wrongfully by county election officials. The fact that a signature mismatch identified by county election officials was subsequently cured by the voter certainly is no evidence that the original signature was incorrectly deemed to be a mismatch or that the law lacks objective standards.

At most, Plaintiffs identify a few anecdotal instances, involving a handful of voters over the course of four separate elections (the 2022 General Election, a 2023 municipal Election, the 2024 Presidential Primary, and the 2024 General Election), where voters claim their advance mail

ballot was improperly rejected due to a signature mismatch. As explained above, however, only *systemic defects* in the law can justify striking down the SVR across the board. The SVR operates as a reasonable and constitutional method of verifying mail ballots, and Plaintiffs' scarce examples of human error or misapplication do not establish otherwise.

Despite adopting extremely lenient standards to control the analysis of Plaintiffs' claims, the Supreme Court opted to remand this case given the minimal burden that a litigant must overcome to get past a K.S.A. 60-212(b)(6) motion to dismiss. *LWV II*, 318 Kan. at 807. And it did so without even considering how the critical implementing regulation impacts the merits of those claims because Plaintiffs filed this lawsuit before the statute even took effect and more than a year before the Secretary of State was able to adopt the regulation. But now that the record is developed, it overwhelmingly favors the SVR's constitutionality. Plaintiffs have produced nothing in the record that would justify a facial invalidation of this statute.

D. – Defendants are Entitled to Summary Judgment on Plaintiffs' Equal Protection Claims

In reading Plaintiffs' response to Defendants' request for summary judgment on the equal protection claims, one could be forgiven for thinking that *LWV II* represented a major victory for Plaintiffs and that the Kansas Supreme Court adopted a new legal standard that overwhelmingly tilted the scales in favor of litigants advancing facial challenges. That interpretation is wholly implausible.

1. Legal Standard Governing Equal Protection Claim

Plaintiffs contend that Defendants ignore the standard articulated by the Supreme Court in *LWV II*. Pls.' Resp. at 28-33. That is categorically false. It is the Plaintiffs who seek to mislead as to what the Supreme Court did. The Supreme Court held:

Equal protection requires similarly situated individuals should be treated alike. *It does not require that all persons receive identical treatment, but only that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.* To comply with equal protection in the context of providing “proper proofs” of the right to be a qualified elector, 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. *LWV II*, 318 Kan. at 805 (emphasis added) (internal quotations and citations omitted)

Plaintiffs all but ignore the quoted italicized language. Instead, they myopically focus on a rhetorical question the Court posed when summarizing the standard, i.e., whether the SVR and its implementing regulations “achieve reasonable uniformity.” They do so as part of their misguided theory that a disparate impact test must be at play. Such an argument, however, collides with fifty years of established jurisprudence to the contrary.

Plaintiffs insist the standard articulated above represented a brand new, non-deferential standard, ignoring traditional equal protection framework, including, apparently, the methodology announced in *Rivera v. Schwab*, 315 Kan. 877, 894, 512 P.3d 168 (2022), just two years before. Pls.’ Resp. at 29. The Supreme Court did no such thing. In fact, the Court in *LWV II* underscored that its “*decision does not conflict with any of our past precedent*, though we are more precise and rigorous in how we concretely describe our constitutional provisions and how they function together to guarantee and protect the people’s constituting decision to form a government of limited and delegated powers.” *LWV II*, 318 Kan. at 799 (emphasis added).

Nothing in *LWV II* suggests that the Kansas Supreme Court sought to craft an alternative state law test that dispenses with the element of intentional discrimination. Indeed, the Court’s invocation of a standard under which “proper proofs” like an SVR must be administered with “reasonable uniformity” and “objective standards” so that similarly situated voters are not subject to “arbitrary and disparate treatment” echoes familiar federal equal protection principles dating back many decades. Courts regularly use language such as “uniformity,” “objectivity,” and “arbi-

trariness” to describe how purposeful discrimination manifests in the administration of laws, particularly in the election context. *See LWW II*, 318 Kan. at 805-06 (citing cases). Those concepts do not replace the need to show intentional unequal treatment; they help determine whether such purposeful discrimination exists.

Plaintiffs next suggest that the Supreme Court issued a series of drive-by rulings, rejecting (without ever actually addressing) certain arguments that Defendants now raise on remand. That argument is indefensible and completely at odds with how judicial precedent works. “[I]f an issue is not argued, or though argued is ignored by the court, or is reserved, the decision does not constitute a precedent to be followed.” *United Food & Com. Workers Union v. Albertson’s, Inc.*, 207 F.3d 1193, 1199 (10th Cir. 2000) (citations omitted). “In order for a decision to be given stare decisis effect with respect to a particular issue, that issue must have been *actually decided* by the court.” *Id.* at 1200 (emphasis added) (citation omitted). *Sub silentio* “rulings” (or whatever else one might call an issue that was never actually addressed by the appellate court) simply do not bind a lower court. *Cf. Wilkins v. United States*, 598 U.S. 152, 160 (2023) (“If a decision simply states that the court is dismissing ‘for lack of jurisdiction’ when some threshold fact has not been established, it is understood as a ‘drive-by jurisdictional ruling’ that receives no precedential effect.”) (citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 511 (2006)) (cleaned up); *Trump v. CASA, Inc.*, 606 U.S. 831, 845 n.7 (2025) (“Like a drive-by-jurisdictional ruling, implicit acquiescence to a broad remedy has no precedential effect.”) (quotation omitted); *accord Kan. Fire & Safety Equip. v. City of Topeka*, 317 Kan. 418, 434 531 P.3d 504 (2023).

Prior to the Court’s decision in *LWW II*, Defendants did urge the Court to apply *Anderson-Burdick* balancing in evaluating all of Plaintiffs’ claims. True, the Court of Appeals rejected that position in favor of the strict scrutiny theory pushed by Plaintiffs. But the Supreme Court rejected

the Court of Appeals’ reasoning and granted Defendants’ Petition for Review. At that point, the Court of Appeals decision became null and void, something Plaintiffs refuse to acknowledge. *See* Kan. Sup. Ct. R. 8.03 (“If a petition for review is granted, the Court of Appeals decision has no force or effect.”). And the test the Supreme Court ultimately adopted – which is substantially more deferential to the State than anything that either Plaintiffs or Defendants even proposed – is in no way inconsistent with either a general reasonableness standard (the hallmark of equal protection review where no intentional discrimination is at play) or *Anderson-Burdick* balancing.

Plaintiffs aver that the Court “cannot properly apply” a standard tethered to rational basis, *Anderson-Burdick*, discriminatory intent analysis, or *Bush v. Gore*, 531 U.S. 98 (2000), because the Kansas Supreme Court supposedly created a standalone test: “Does the signature requirement . . . achieve reasonable uniformity on objective standards?” Pls.’ Resp. at 32. But the Supreme Court did not announce a free-floating, *sui generis* “uniformity test” divorced from equal protection doctrine. Plaintiffs’ reading collapses the Court’s actual holding into a single rhetorical formulation while ignoring the Court’s doctrinal anchor: equal protection is concerned with similarly situated voters and forbids arbitrary and disparate treatment, i.e., unequal treatment in application, not the existence of inevitable human judgment. In fact, our Supreme Court explicitly cited *Bush* when articulating its equal protection test. *LWV II*, 318 Kan. at 805-06.

Viewed in its proper doctrinal context, the Supreme Court’s formulation is best understood as a gloss on, not a departure from, traditional equal protection standards. In the discrete setting of voter qualification procedures, the requirement that “proper proofs” be capable of uniform and objective application simply denotes what the intent requirement means when applied to election administration systems. Arbitrary procedures and knowingly inconsistent treatment can give rise to an inference of purposeful discrimination because they reflect a decision to administer the law

unequally among similarly situated voters. But the plaintiff continues to bear the burden of proving intentional disparate treatment in order to prevail on an equal protection cause of action.

LWV II does not eliminate, dilute, or modify that foundational requirement. In other words, the opinion must be read in harmony with the established equal protection standard rather than in isolation from it. No reasonable jurist could conclude that the SVR or its implementing regulations were designed, or are administered, in a manner that intentionally subjects similarly situated voters to unequal or arbitrary treatment.

Moreover, as Defendants explained in Part III.C., Plaintiffs' "no voter" theory collapses the distinction between facial and as-applied claims. Equal protection requires objective, reasonably uniform administration, not a guarantee that no voter will ever experience an erroneous or disputed application. Isolated mistakes, if they occur, may support as-applied relief; they do not render the statute unconstitutional on its face. Plaintiffs seem to believe the Supreme Court imposed a strict liability theory where identical treatment of voters may not be mandated, but perfect elections are. That blinks at reality and is clearly not the case.

Far from undertaking a radical rewrite of its equal protection jurisprudence, the Supreme Court in *LWV II* adopted a standard that is extraordinarily flexible and relatively easy for the State to meet. That is fully consistent with how nearly all courts have addressed such claims in the election law context. They recognize that virtually all laws and regulations in this sphere inevitably affect an individual's right to vote. But there must be deference to the legislature in adopting these laws and to election officials in administering them. "Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; 'as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.'" *Burdick*

v. Takushi, 504 U.S. 428, 433 (1992) (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). Plaintiffs’ insistence that the Court ignore this well-entrenched principle is dangerous and should be flatly rejected.

Plaintiffs attempt to evade the persuasive weight of uniform appellate authority upholding materially similar signature verification regimes by insisting those cases are “irrelevant” because they applied standards from *Anderson-Burdick* or *Bush v. Gore* and/or arose in different procedural contexts. Pls.’ Resp. at 32-38. But those distinctions miss the point. Defendants cited the cases they did for a more basic proposition that Plaintiffs’ theory cannot survive: equal protection does not require mathematical precision in election administration, and uniform standards may yield different outcomes without becoming unconstitutional.

Start with *Lemons v. Bradbury*, 538 F.3d 1098 (9th Cir. 2008). Plaintiffs argue that *Lemons* is of “limited usefulness” because it involved petition signatures rather than ballot signatures, and it relied on *Anderson-Burdick* and *Bush*. Those distinctions are immaterial here. Even in the petition context, *Lemons* stands for core propositions Plaintiffs cannot escape: “uniform standards can produce different results,” and “isolated discrepancies are insufficient to demonstrate the absence of a uniform standard.” *Lemons*, 538 F.3d at 1106-07. Those propositions defeat Plaintiffs’ attempt to constitutionalize any county-by-county variation or any disagreement about whether a particular signature matches. As for *Lemons*’ invocation of *Bush*, it is hard to see how Plaintiffs thinks this helps them. Indeed, the Kansas Supreme Court adopted a far more deferential standard for equal protection than the U.S. Supreme Court did in *Bush*, a point that Justice Rosen explicitly noted in his dissent. *LWV II*, 318 Kan. at 827 (Rosen, J., dissenting).

Or consider *Election Integrity Project California, Inc. v. Weber*, 113 F.4th 1072 (9th Cir. 2024). Plaintiffs insist that *Weber* is a poor analog because it involved post-election decertification

efforts and because California has more detailed statutory protections (presumption, beyond-a-reasonable-doubt, etc.) for signature verification than does Kansas. The key to *Weber*, however, is that it rejected the same equal protection “non-uniformity” theory that Plaintiffs argue here.

Plaintiffs’ attempt to distinguish *Weber* as somehow requiring California-level regulatory detail misunderstands the constitutional standard the Ninth Circuit applied. The court there expressly rejected plaintiffs’ equal protection claim challenging the State’s vote-by-mail system because “California’s election rules and county officials’ practices pursuant to those rules satisfied the rudimentary requirements of equal treatment and fundamental fairness.” *Id.* at 1093 (quoting *Gore*, 531 U.S. at 109). The Ninth Circuit did not hold that any specific level of textual detail or a particular procedural checklist is a constitutional prerequisite; instead, it applied the *Bush* principle that equal protection demands only that election rules meet the “minimum requirement for nonarbitrary treatment of voters.” *Id.* at 1089. The critical factors present in *Weber*, which the panel found “more than sufficient” to uphold California’s signature verification process, were “a uniform standard for determining when a signature must be rejected; a uniform process for matching signatures; a designation as to who is authorized to verify signatures; detailed and specific considerations for elections officials to follow when comparing signatures; and multiple, independent layers of review.” *Id.* at 1093. All of those same features are present in Kansas.

Weber confirms that the relevant constitutional inquiry is not whether a state’s regulation enumerates every possible factor that officials might consider, but whether the system *as a whole* satisfies the baseline requirement of equal treatment and fundamental fairness. Plaintiffs’ emphasis on California’s more granular text, as compared to Kansas’s SVR framework, does not convert *Weber* into a “most detailed wins” rule; nothing in the Ninth Circuit’s holding suggests that a facial

challenge could succeed simply because one state’s regulatory language happens to be broader or more detailed than another’s.

As an aside here, Plaintiffs’ treatment of *Weber* highlights a broader problem with their presentation: they studiously avoid confronting the real-world record in Kansas. As noted, across two statewide general elections since the SVR and implementing regulation were adopted, only 224 advance mail ballots were ultimately rejected for an uncured signature inconsistency, out of roughly 300,000 Kansans who voted by mail. Plaintiffs instead attempt to distract the Court with a tour of other states’ procedures and regulatory minutiae. But ground truth matters. A statewide system producing such vanishingly small adverse effects is powerful evidence that Kansas’ SVR is, in practice, administered with the “reasonable uniformity” and non-arbitrary treatment that equal protection requires, not the kind of pervasive arbitrariness Plaintiffs’ theory depends on.⁴

Plaintiffs also argue that *Richardson v. Texas Secretary of State*, 978 F.3d 220, 235-41 (5th Cir. 2020), is “inapposite” because it “reached a variety of legal holdings” on which the Kansas Supreme Court has supposedly “reached an opposing conclusion,” including whether voters have a liberty interest in having a mail ballot counted and whether notice is required before rejection. Pls.’ Resp. at 37. But that objection proves too much. Even if Kansas provides broader protections on certain procedural questions, that does not make *Richardson* irrelevant to the central proposition

⁴ Incredibly (or perhaps not given their lack of any real answer to the tiny number of ballots rejected under Kansas’ SVR), Plaintiffs claim the number of ballots rejected is not even relevant to the legal issues in this case. Pls.’ Resp. at 51. It is true that the ‘injury in fact’ in an equal protection case “is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.” *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003) (quoting *N.E. Fla. Chapter, Associated Gen. Contractors of Am. v. Jacksonville*, 508 U.S. 656, 662 (1993)). But there is no materially unequal treatment here. And it is inexplicable in a case where the adverse impact of the SVR on voters – particularly the adverse impact from trivial differences in how certain counties administer the signature verification and curing processes – has been virtually non-existent since it was adopted in 2021 that Plaintiffs can argue with a straight face that Kansas voters have been denied equal treatment under the law.

for which Defendants cite it: signature verification itself is a constitutionally permissible election-integrity mechanism, and the burdens associated with it are “neither so serious nor so frequent as to raise any question about the constitutionality” of the requirement. *Richardson*, 978 F.3d at 237.

Plaintiffs’ emphasis on Texas’ allegedly “very different approach to mail-voting” likewise does not aid their facial challenge. *Richardson*’s reasoning does not depend on any unique feature of Texas law; it rests on the common sense and widely accepted premise that states may adopt reasonable measures to ensure the integrity of absentee and mail voting, and that the Constitution does not forbid election rules merely because they impose the “usual burdens of voting.” *Id.* That principle is important because Plaintiffs’ approach would effectively transform every signature verification regime into a constitutional violation whenever a small number of voters (or, in Plaintiffs’ telling, even a single voter) encounter(s) difficulties – an outcome that *Richardson* expressly rejects and that cannot be reconciled with the Kansas Supreme Court’s instruction that the relevant inquiry is whether Kansas’ “proper proofs” are *capable* of being applied with reasonable uniformity on objective standards so that voters are not subject to arbitrary and disparate treatment. *LWV II*, 318 Kan. at 805.

2. Kansas’ Legitimate State Interests in the SVR

In a stunning reversal of their longstanding litigation position, Plaintiffs now *concede* that evidence of the State’s justification for the SVR is irrelevant to any claim at issue in this case. Pls.’ Resp. at 38-42. Defendants underscored this point at page 40 of their summary judgment motion, citing numerous U.S. Supreme Court and federal appellate decisions – going back many decades – that hold that states are not required to justify their prophylactic measures to decrease occasions for voter fraud. Defendants also noted (at page 38 of that same motion) that the Kansas Supreme Court had already recognized *in this case* that the SVR serves legitimate and important purposes

by protecting against invalidly cast ballots by ineligible voters. *LWV II*, 318 Kan. at 802-803. In light of this well-entrenched case law, why did Plaintiffs insist on engaging in protracted discovery on this issue? Why did Plaintiffs devote numerous pages of their own cross-motion for summary judgment complaining that Defendants had not produced evidence of voter fraud in Kansas? Why did Plaintiffs retain an expert witness to press this irrelevant point? Indeed, the Court will recall that Defendants highlighted the absence of any need for evidence on this issue at the discovery hearing held on May 9, 2025, yet Plaintiffs adamantly insisted otherwise. *See* Dkt Index No. 99 (Journal Entry and Order from Hearing, allowing Plaintiffs to pursue discovery on this issue).

Plaintiffs, of course, argue this information is irrelevant because they know Kansas has legitimate – and indeed compelling – reasons for enacting the SVR; their only off-ramp, then, is to claim that the standard adopted by the Kansas Supreme Court in *LWV II* imposes some sort of strict liability results test, the folly of which Defendants explained in Part III.D.1. Defendants, on the other hand, contend that there is no need for this evidence because of firmly established U.S. Supreme Court precedent making clear that states have no legal obligation to produce empirical evidence of their interests in these election integrity measures. Since both parties agree on this point, there is no need to burden the Court with a prolonged discussion.⁵ Besides, Plaintiffs mostly cite to their own motion for summary judgment and their own statement of facts that accompanied that motion. As noted at the outset, that is procedurally improper and none of those materials can

⁵ One point, however, is worth raising here because it illuminates how skeptical this Court should be of Plaintiffs' citations. On page 42 of their response brief, Plaintiffs cite *Duke v. Cleland*, 5 F.3d 1399, 1405 n.6 (11th Cir. 1993), for the notion that "[t]he existence of a state interest . . . is a matter of proof." But the U.S. Supreme Court has held repeatedly – in cases post-dating the *Duke* decision – that states are *not* required to provide "empirical verification of the weightiness of [their] asserted justifications" in the context of electoral regulations. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997); *accord Crawford v. Marion Cnty. Election Bd*, 553 U.S. 186, 194 (2008); *see also Vet Voice Foundation v. Hobbs*, 564 P.3d 978, 989-90 (Wash. 2025) (rejecting the same argument in challenge to Washington's signature verification law). In fact, the Eleventh Circuit itself has rejected Plaintiff's contention. *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 925 (11th Cir. 2023).

be considered here. To the extent the Court elects to ignore this basic procedural flaw, however, Defendants addressed Plaintiffs' arguments in their response to Plaintiffs' motion for summary judgment and their accompanying response to Plaintiffs' statement of facts, Dkt Index Nos. 239-40, and expressly incorporate those arguments herein.

E. – Plaintiffs Identify No Material Dispute of Fact as to Objective Standards or Reasonable Uniformity Regarding their Equal Protection Claim

Plaintiffs next endeavor to identify disputes of material fact that might preclude granting summary judgment to Defendants. Pls.' Resp. at 44-52. This effort falls short for multiple reasons. First, as described in more detail below, Plaintiffs misrepresent the record and focus on facts that are irrelevant to the legal issues in this case. Second, most of the facts and arguments Plaintiffs raise are from their own summary judgment motion and statement of facts, neither of which can be simply referenced in their response to Defendants' summary judgment motion. The motions are entirely separate and must be considered on their own.

Most importantly, however, Plaintiffs seek to shift the summary judgment burden by insisting that Defendants must affirmatively "prove" statewide uniformity through a county-by-county showing. That is not the K.S.A. 60-256(b) inquiry. *Plaintiffs* bear the burden of proving a constitutional violation, and even at this stage, *Plaintiffs* must identify evidence from which a reasonable factfinder could find that Kansas' SVR and cure procedures are administered pursuant to standardless criteria or in a manner that deprives voters of meaningful notice and a meaningful opportunity to cure. Defendants have shown the State supplies uniform standards for the signature verification and curing processes. To avoid summary judgment, Plaintiffs must come forward with evidence of constitutionally material departures from those standards or evidence of arbitrary, standardless administration. They have failed to do so, either via complete omission or by offering

evidence that Defendants have shown is completely immaterial. Either way, Plaintiffs have failed to meet their burden to avoid imposition of summary judgment.

Plaintiffs' suggestion that Defendants cannot prevail by pointing to the statewide regulation and statutory safeguards because there would have been no purpose for remand is triply flawed. To begin with, the implementing regulation, K.A.R. 7-36-9, was not even adopted until after the district court dismissed Plaintiffs' claims at the pleadings stage; the Supreme Court thus expressly declined to address the regulation's impact in the first instance inasmuch as no lower court had considered it. In addition, remand served the straightforward purpose of allowing Plaintiffs the opportunity to marshal evidence against both the SVR and the regulation to attempt to show that the system is incapable of being applied with reasonable uniformity upon objective standards. But after full opportunity for discovery, Plaintiffs have still failed to produce competent proof of the sort of arbitrary and disparate treatment that could sustain a facial equal protection challenge.

Plus, Defendants have not simply pointed to the regulation and called it a day. To the contrary, Defendants have refuted all of Plaintiffs' allegations with either record evidence or by highlighting the immateriality of the asserted facts. Plaintiffs' remand argument is ultimately an effort to convert equal protection into strict liability for election administration, demanding perfect uniformity in outcomes rather than the Constitution's actual requirement of reasonably uniform, non-arbitrary administration. This position is irreconcilable with *State v. Butts*, 31 Kan. 537, 555, 2 P. 618 (1884), as the Court in explained in *LWV II*. 318 Kan. at 804.

1. K.A.R. 7-36-9 Applies Objective Standards

Kansas employs a uniform standard across the State to determine whether voter signatures on advance mail ballot envelopes will be deemed to "match" voter signatures on file in ELVIS. K.A.R. 7-36-9(a)(4). The regulatory standard is built on objective criteria; there is nothing arbitrary

about it.

Even putting to the side the robust cure process that dramatically reduces the prospect of any voter's ballot being incorrectly rejected due to an erroneous signature mismatch determination, *id.* at § 7-36-9(b)-(d), not to mention the regulatory requirement that at least two separate officials must concur in a mismatch assessment before the cure process is even triggered (rather than the ballot simply being counted), *id.* at § 7-36-9(g)(4), Plaintiffs' excessive subjectivity argument assumes that only a review process guaranteeing near mathematical precision can survive constitutional scrutiny. That is illogical. Plaintiffs are equating the involvement of human judgment with the absence of objective criteria. Nothing in *LWV II* dictates such a counterfactual concept.

The law is replete with objective standards that necessarily involve some degree of evaluative decision-making. An "objective" criterion is simply one that directs officials to evaluate identifiable facts, cabins discretion, and provides a reviewable framework for determining compliance. It is not, and never has been, synonymous with a purely mechanical formula. Courts routinely uphold standards that require judgment while remaining objective in the constitutional sense. For example, determinations of "reasonable suspicion," "probable cause," "materiality," and "reasonable care" all require factfinders to assess context, weigh observable characteristics, and ultimately make judgments. These standards remain "objective" not because they *remove* all discretion, but because they *guide* it.

The same principle applies here. K.A.R. 7-36-9 instructs election workers to compare observable handwriting characteristics to assess whether a ballot envelope signature is generally uniform with the voter's signature on file and to find inconsistency only when differences are "multiple, significant, or obvious." This language provides substantive constraints by identifying the threshold at which variances justify further action. By distinguishing trivial or explainable

variations from meaningful discrepancies, the regulation channels the exercise of judgment toward consistent, statewide application. Far from conferring unfettered discretion, it imposes a structured standard that can be, and is, trained and applied uniformly across counties. Other than referencing a handful of trivial differences in how counties of different sizes handle certain verification or cure issues at the periphery, Plaintiffs offer nothing that contradicts that point.

Moreover, courts have long recognized that legislatures and agencies are not obligated to supply specialized definitions for terms that can be readily understood by their common and ordinary meaning. See *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989); *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972) (“Condemned to the use of words, we can never expect mathematical certainty from our language.”); *State v. Haskell*, 50 Kan.App.2d 1146, 1154, 337 P.3d 705 (2014) (“[C]ourts engaged in statutory interpretation are required to apply that ordinary meaning unless the context requires a more technical term.”). Words like “obvious,” “multiple,” and “significant” are not technical or esoteric. They are terms of everyday usage that provide sufficient guidance to election officials and voters alike. “It will always be true that the fertile legal imagination can conjure up hypothetical cases in which the meaning of (disputed) terms will be in nice question,” *Grayned*, 408 U.S. at 110 n.15 (citation omitted), but that doesn’t make the text unconstitutional.

As the Supreme Court has explained, “[w]ords inevitably contain germs of uncertainty and . . . there may be disputes over the meaning of such terms. . . . [T]here are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.” *Broadrick v. Oklahoma*, 413 U.S. 601, 608 (1973)

(citations omitted). The law demands only that a regulation give a person of ordinary intelligence a reasonable opportunity to understand what is prohibited or required, not that it eliminate all discretion or provide absolute precision. Because these terms are well within the vocabulary of ordinary civic life, the absence of bespoke definitions does not render them unconstitutionally vague. The interpretation Plaintiffs propose, on the other hand, would manufacture unworkable mini-tests that no Kansas county employs, would introduce significant confusion, and would likely lead to far more ballots being rejected.

In fact, Kansas' standard is clearer and more administrable than other jurisdictions. Kansas defines an "inconsistent" signature as one that "differs in multiple, significant, *or* obvious respects" from the voter's signature on file. K.A.R. 7-36-9(a)(2) (emphasis added). Many other states define an inconsistent signature as one that differs in "multiple, significant, *and* obvious respects" from the signature on file. *See, e.g.*, Wash. Admin. Code § 434-261-053(2)(b); Cal. Election Code § 3019(c)(2); Nev. Rev. Stat. § 293.269927. By using the disjunctive "or," Kansas sensibly recognizes that a signature may be plainly unreliable even if it does not differ in *every* conceivable way. Conjunctive standards requiring differences that are simultaneously "multiple, significant, *and* obvious," on the other hand, invite confusion and incongruous results.

Firing off a series of rhetorical questions, Plaintiffs muse about potential misapplications that are untethered to how the regulation works in practice. Pls.' Resp. at 45-46. But constitutional review does not proceed by chasing hypothetical windmills. The Kansas Supreme Court has held that a challenged statute "comes before the court cloaked in a presumption of constitutionality." *Leiker v. Gafford*, 245 Kan. 325, 363-64, 778 P.2d 823 (1989). The Court reinforced this point in *Matter of A.B.*, 313 Kan. 135, 484 P.3d 226 (2021), where it explained: "This court presumes that statutes are constitutional and resolves all doubts in favor of passing constitutional muster. If there

is any reasonable way to construe a statute as constitutionally valid, this court has both the authority and duty to engage in such a construction.” *Id.* at 138 (quoting *State v. Bollinger*, 302 Kan. 309, 318, 352 P.3d 1003 (2015)). And it again so held just two months ago. *McCray*, 579 P.3d at 130 (“Appellate courts generally presume statutes are constitutional and resolve all doubts in favor of a statute’s validity.”). The same principle holds true of regulations. *Mitchell v. Petsmart, Inc.*, 291 Kan. 153, 168, 239 P.3d 51 (2010) (“Regulations an administrative agency is authorized to adopt are presumed valid, and the party challenging a regulation bears the burden to establish its invalidity.”). The challenging party has the burden of proving that the law clearly violates the Constitution. *Leiker*, 245 Kan. at 363-64.⁶ This burden “is a ‘weighty’ one,” *Downtown Bar & Grill, LLC v. State*, 294 Kan. 188, 192, 273 P.3d 709 (2012), and Plaintiffs have failed to meet it by a wide margin.

Nor does the fact that different election officials might not share the same opinion about a particular signature render the SVR process unconstitutional. While Plaintiffs strive aggressively to avoid it, common sense must be part of the equation. Human beings are not automatons. It is inevitable that certain signature verifiers will do a better job than others, but that is not constitutionally significant. *Lemons*, 538 F.3d at 1107 (minor deviations in signature rejection rates of different counties do not constitute an equal protection violation). As one court noted, “[a]rguable differences in how elections boards apply uniform statewide standards to the innumerable permutations of ballot irregularities, although perhaps unfortunate, are to be expected.” *N.E. Ohio Coal. for the Homeless v.*

⁶ In *Hodes & Nauser, MDs v. Schmidt*, 309 Kan. 610, Syl. ¶ 2, 440 P.3d 461 (2019), the Court held that a presumption of constitutionality did not exist in cases involving suspect classes or fundamental interests. Two years later, however, in *Matter of A.B.*, 313 Kan. at 138, the Court retreated from that position and applied the presumption. This Court need not reconcile any apparent tension here. First, there are no suspect classes involved here. Second, the mode of voting selected by the legislature does not implicate any fundamental right. Third, Plaintiffs’ claims all fail even in the absence of a presumption of constitutionality.

Husted, 837 F.3d 612, 636 (6th Cir. 2016). Objective standards are designed to minimize subjectivity, but they still require judgment in their application.

Plaintiffs effectively insist that *any* role for human judgment amounts to unconstitutional subjectivity. Under their reasoning, however, every signature verification regime in the country would have to be either invalidated or rendered non-functional. No jurisdiction employs the mechanical checklist that Plaintiffs demand for a signature review process involving mail ballots. The parties agree that signature evaluation is often contextual: pen type, writing surface, health, speed, and posture all can affect a signature's appearance. A workable standard must allow election officials to recognize these natural variations while still identifying significant deviations. The concern in *LWV II* was *arbitrary and unbounded* discretion, not discretion *guided by structured criteria*. Kansas achieves the proper balance, pairing guided criteria with a cure process that further minimizes any risk of arbitrary rejection.

2. Trivial Differences Between County Signature Verification Procedures Do Not Reflect the Absence of Objective Standards

Plaintiffs pivot from the general to the specific and criticize five distinct components of the signature review process: “(1) what signatures are part of the ‘file’ to which ballot signatures are compared; (2) the process 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.” Pls.’ Resp. at 47-48. Plaintiffs do not bother to flesh out any of these arguments; they simply refer back to contentions in their own summary judgment motion. But as Defendants previously noted, this is wholly improper and provides the Court an independent basis to summarily reject this entire line of attack. Regardless, Defendants will address each point in turn; all collapse under minimal scrutiny.

a. Comparison to the Signature on File

Plaintiffs first complain about the variance that may exist in the number of signatures that are part of the “file” to which advance mail ballot envelope signatures are compared. The law is clear, however, that every signature a voter has submitted, or that some other state agency has transmitted, to the county election office since the voter’s registration will be considered in the review process. K.A.R. 7-36-9(g)(1). If *any* signature in that database matches the signature on the advance mail ballot envelope, the ballot will be counted. *Id.* § 7-36-9(g)(3).

Plaintiffs have not identified a single example – ever – in Kansas where a county election office failed to retain an exemplar signature of a voter, which subsequently caused the erroneous flagging of the voter’s advance mail ballot as a signature mismatch. And even if they somehow could come up with an example, that would not cut it for establishing a facial violation.

Even if all the evidentiary defects were ignored, however, the issue still would not matter. It is inevitable that some voters will have more signatures on file than others. Some individuals, for example, may have only recently registered to vote, which means their file likely will contain nothing other than a registration card. Other voters might have applied on numerous occasions for an advance mail ballot or perhaps submitted a new signature card in connection with a residential change or a prior signature cure, meaning their file could contain a plethora of exemplars. It is inconceivable that such differences constitute an equal protection violation.

b. Procedure for Disqualifying Ballots

Plaintiffs next complain that counties require a different number of election officials to agree that a ballot envelope signature might be inconsistent with all signatures on file in the voter registration database. It is a mystery why Plaintiffs think this fact furthers their claim. K.A.R. 7-36-9(g)(4) dictates that “at least two election officials who have been trained by the secretary of

state shall agree that the signatures [on a mail ballot envelope] are inconsistent” before the cure process is triggered. No one disputes that all counties comply with this requirement.

Nor is there evidence of any injury (or even conceivable injury for that matter) flowing from this slight procedural disparity. In the 2024 General Election, Shawnee County required two election officials to agree that a ballot envelope contained a signature mismatch before launching the cure process, Riley County required three, and Johnson County required four. Pls.’ SOF ¶ 298. At the end of the day, Shawnee County rejected *one* ballot due to a signature mismatch. Riley County rejected *zero*. And Johnson County – which had more than five times as many mail votes as the other two counties combined – rejected a mere twelve. Defs.’ MSJ, Ex. 1 (Attach. 1B).

The bottom line is that Plaintiffs place unwarranted weight on this entirely insignificant issue. The equal protection clause is not offended simply because jurisdictions adopt modest procedural variations that do not burden voters or create disparate outcomes, especially when they are easily explainable by differences in population. What matters is that *no* voter’s ballot is set aside based on the unilateral judgment of a single election worker. Kansas law ensures that signature mismatch determinations are made collectively, by more than one trained official, thereby reducing the risk of error. Whether that collective body consists of two, three, or four individuals is simply immaterial. The precise number does not alter the constitutional analysis, particularly given that every voter is afforded robust cure opportunities before a ballot can be rejected. The existence of a multi-person review process, coupled with guaranteed notice and an opportunity to cure, eliminates any meaningful risk of arbitrary disenfranchisement and undermines Plaintiffs’ claim of unequal treatment.

c. The Disability Exception

Plaintiffs additionally take aim at the SVR's accommodation for disabled voters. Pls.' Resp. at 47-49. Plaintiffs argue there is confusion and differential standards among the counties, but the record largely reflects otherwise. Once again, the problem is that Plaintiffs are reading statutory terms in isolation rather than *in pari materia* as is required.

Under K.S.A. 25-1124(h), "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." But this does not mean that a disabled voter's mail ballot envelope need not contain any signature at all. Nor does it mean that a disabled voter could submit a mail ballot with a clearly inconsistent signature and still have the ballot counted without procuring a third party to execute the assister's affidavit language on the ballot. No county interprets the law in the manner that Plaintiffs contemplate. Indeed, Plaintiffs' proposal would be an invitation for fraud, and the system would become vulnerable to third-party ballot harvesting or unauthorized submissions on behalf of disabled persons.

K.S.A. 25-1124(h) is, and must be, read in tandem with K.S.A. 25-1124(c), which allows a "voter who has a disability preventing the voter from signing . . . the form on the ballot envelope" to "request assistance by a person who has signed a statement required by [K.S.A. 25-1124(e)] . . . in signing . . . the form on the ballot envelope if the voter has a disability preventing the voter from signing." If a third party executes the affidavit on the ballot envelope and signs on behalf of the voter, then the voter obviously has not signed the envelope consistent with his/her signature on file. But the ballot will be counted because there are sufficient indicia that no fraud is afoot. Why? Because a third party has now affirmed under penalty of perjury that the voter expressly

instructed the third party to sign the ballot envelope on the voter's behalf. K.S.A. 25-1124(e); K.S.A. 25-1128(d); K.A.R. 7-36-9(g)(5).

As far as what disabilities qualify for the exception, every election official deposed in this case testified consistently that counties do not question a voter's self-designation as suffering from a disability or illness. SOF ¶ 19. No county requires voters to identify their disability. Whatever a voter says is simply accepted. How is that possibly an equal protection problem? If Plaintiffs want the State to be *more restrictive* and *less accommodating* of disabled voters, they will need to come up with a new representative because none of the current Plaintiffs would have standing to pursue such an argument.

Rather than asserting legitimate arguments, Plaintiffs resort to a game of hyper-technical semantics. They note that K.S.A. 25-1124(h) carves out an exception for voters whose disability prevents them from either signing the ballot or from signing consistent with the voter's signature on file. But K.S.A. 25-1124(c), they insist, only permits a third party to sign on the voter's behalf if the voter "has a disability preventing the voter from signing." Under their aggressive theory, a disabled voter who is paralyzed from the waist up might be unable to sign the ballot envelope altogether. By contrast, a voter with Parkinson's disease might be able to *physically* sign the ballot envelope, but he might not be able to sign *consistent* with his signature on file in ELVIS, which could have been signed many years earlier before he contracted the disease. Plaintiffs argue that some third parties are reluctant to sign the assister attestation on the ballot envelope if the voter on whose behalf they are signing is physically able to sign but simply cannot sign in a manner consistent with his signature on file.

As a threshold matter, this argument cannot carry the day on Plaintiffs' equal protection claim because they are raising a *facial* challenge to the SVR. Plaintiffs are clearly unable to show

that Kansas' signature verification framework is unconstitutional in all its applications, i.e., that *no* circumstance exists in which the SVR can operate constitutionally. Nearly all of the State's voters, including the disabled, can and do readily comply through either their personal signature, the statutory disability accommodation available to those unable to sign, or the cure process that follows any mismatch determination. Plaintiffs' reliance on edge-case hypotheticals cannot support the extraordinary remedy of facial invalidation. *See Hill v. Colorado*, 530 U.S. 703, 733 (2000) ("[S]peculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute when it is surely valid in the vast majority of its intended applications.") (quotation omitted).

Furthermore, Plaintiffs' attempt to manufacture a statutory inconsistency is predicated on an artificially cramped reading of K.S.A. 25-1124(c). When the statute is read as a whole, K.S.A. 25-1121(c) and K.S.A. 25-1124(h) are easily harmonized: a voter whose disability prevents him/her from producing a signature *that satisfies legal requirements* – including consistency with the signature on file – is functionally “unable to sign” for purposes of K.S.A. 25-1121(c). And K.S.A. 25-1124(h) confirms rather than contradicts this understanding by expressly acknowledging that a disability may prevent a voter from signing at all *or* from signing consistently. Plaintiffs' interpretation not only disregards the obligation to construe statutory provisions in harmony, but it would also create the very ambiguity they accuse the State of imposing.

d. Use of Machines in Signature Verification

Plaintiffs next speculate that because K.S.A. 25-1124(h) allows for signature verification by machine, different counties theoretically might have different standards. Pls.' Resp. at 30-31. But there is no evidence in the record that *any* county in Kansas uses machines to conduct the signature verification process. Defendants are certainly not aware of any.

e. Curing Process

Finally, Plaintiffs take issue with minor differences in how counties allow voters to cure apparent signature mismatches. Pls.’ Resp. at 49-51. Most differences, however, are completely logical. Plaintiffs lament, for example, that certain county election offices allow voters to cure a signature mismatch via email, mail, text, or fax, while Johnson County does not. *Id.* at 50. The concern is trivial. While home visits are extremely rare, the sheer size of Johnson County renders such an option unfeasible there. The logistical realities of scale, the need for uniformity and transparency, and the heightened risk management demands of a large jurisdiction provide sound and practical rationale for Johnson County’s in-person cure requirement. *See Mays v. LaRose*, 951 F.3d 775, 788-89 (6th Cir. 2020) (“[O]ne county, or even several counties, cannot speak for all of [the State’s] counties. So just because [one] County has enough staff to accommodate . . . requests . . . without imposing a greater burden does not mean that [the State’s] other counties will be able to as well.”). It cannot be repeated often enough: for purposes of equal protection, “reasonable uniformity” does not mean identical treatment. Plus, the notion that a new floor is set anytime an election official in some county in the State goes above and beyond the minimum constitutional threshold is absurd.

f. Frivolous Extrapolation Theory

Plaintiffs conclude with a percentage-based extrapolation argument that proves nothing. Pls.’ Resp. at 51-52. They highlight two small counties (Franklin and Rooks) which rejected seven and two ballots, respectively, in the 2024 general election based on uncured signature mismatches. Plaintiffs then compare those rejection percentages to larger counties and suggest the difference demonstrates a lack of “reasonable uniformity.” But when the underlying numbers are that small – only 688 voters cast mail ballots in Franklin County in 2024 and only 140 did so in Rooks County

– common sense tells you that percentages are inherently volatile and can swing dramatically based on *de minimis* changes in raw counts. Defs.’ MSJ, Ex. 1 (Attach. 1B). That kind of small-sample variation does not establish anything constitutionally meaningful, and it certainly does not show arbitrary and disparate treatment.

More fundamentally, Plaintiffs’ argument depends on speculation rather than evidence. The actual number of ballots rejected in Kansas’ larger counties is undisputed. Plaintiffs cannot ignore those real-world outcomes by hypothesizing that rejection totals “would have been” higher if larger counties had rejected ballots at the same rate as a statistically insignificant sample in Franklin or Rooks County. *See Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 671 (2021) (“The size of any disparity matters. And in assessing the size of any disparity, a meaningful comparison is essential. What are at bottom very small differences should not be artificially magnified.”) (citing *Frank v. Walker*, 768 F.3d 744, 752 n.3 (7th Cir. 2014)); *Lemons v. Bradbury*, 538 F.3d 1098, 1106-1107 (9th Cir. 2008) (minor deviations in the signature rejection rates of different counties do not constitute an equal protection violation). Equal protection analysis turns on what the SVR *actually* does, not on hypothetical projections built from tiny denominators. Speculation about imagined outcomes cannot overcome undisputed evidence of actual outcomes. In sum, Plaintiffs have fallen far short in their effort to avoid summary judgment on their equal protection cause of action.

F. – Plaintiffs Identify No Material Dispute of Fact on their Due Process Claim

Turning to the due process claim, Plaintiffs miss even more widely of the mark. Recall the highly liberal standard the Kansas Supreme Court held governs this issue: “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." *LWV II*, 318 Kan. at 806. In other words, does Kansas offer voters "reasonable notice of defects and an opportunity to cure?" *Id.* at 807. That is not a difficult standard to meet, as Justice Rosen acknowledged in his dissent, *see id.* at 828 (Rosen, J., dissenting), and it is inconceivable that the SVR, after taking into account the detailed cure procedures set forth in K.A.R. 7-36-9, could be construed not to satisfy this test.

1. Mathews v. Eldridge Test Does Not Apply

Plaintiffs disregard this holding and instead propose a three-part balancing test under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Pls.' Resp. at 54-55. But our Supreme Court rejected that theory when formulating the standard in *LWV II*. The Court highlighted that the legislature's broad constitutional authority to require "proper proofs" under Article 5 underpins the State's powerful interests in the SVR and the substantial flexibility the State enjoys in implementing that process. *LWV II*, 318 Kan. at 805-06. Plaintiffs have no right to relitigate that issue on remand.

Nor did the *LWV II* majority state that it was embracing a liberty interest in the right to vote. The *dissent* certainly suggested the majority had done so, *id.* at 828 (Rosen, J., dissenting), but nowhere in the majority opinion did the Court so hold. For good reason. Such a holding would conflate the concept of property rights with liberty interests. As the Fifth Circuit explained in rejecting an identical theory:

The [district] court concluded that because Texas has created a mail-in ballot regime, the State must provide those voters with constitutionally-sufficient due process protections before rejecting their ballots. That notion originated in *Raetzl* [*v. Parks/Bellmont Election Bd.*, 762 F.Supp. 1354 (D. Ariz. 1990)], in which the District of Arizona acknowledged that absentee voting is a privilege and a convenience, and yet concluded – without citation – [that] such a privilege is deserving of due process. In its defense, *Raetzl*'s reasoning resembles the principle animating *Goss v. Lopez*, 419 U.S. 565 (1975). *Goss* concluded that, "[h]aving chosen to extend the right to an education to people of appellees' class generally, Ohio may

not withdraw that right on grounds of misconduct, absent fundamentally fair procedures.” *Goss*, 419 U.S. at 574. Although several district courts have regurgitated *Raetzel*’s reasoning, the plaintiffs and the district court point to no circuit court that has embraced it.

And properly so. There is a problem with grafting *Goss*’s reasoning onto the voting context: *Goss* found two cognizable due process interests, namely a “property interest in educational benefits” and a “liberty interest in reputation.” *Goss*, 419 U.S. at 576. In context, *Goss*’s language about the state’s “[h]aving chosen to extend” benefits and being thus bound by due process came from its analysis of a “protected *property* interest.” *Id.* at 579 (emphasis added). *Raetzel*, however, concluded that “the right to vote is a ‘*liberty*’ interest.” *Raetzel*, 762 F.Supp. at 1357 (emphasis added). Thus, *Raetzel* grafted the Supreme Court’s reasoning concerning property interests onto a claimed liberty interest without providing any authority justifying that extension. We decline to adopt *Raetzel*’s extrapolation of Supreme Court precedent.

Richardson, 978 F.3d at 232-33 (cleaned up).

Even if there is a liberty interest, however, and even if the Kansas Supreme Court had not already rejected the *Eldridge* test (at least implicitly), its application would be inappropriate here. Once again, the Fifth Circuit spelled out why *Eldridge* has no role in the evaluation of electoral mechanics. *Richardson*, 978 F.3d at 234-35. To begin with, the U.S. Supreme Court has directed that due process attacks on voting processes are best analyzed under a balancing test along the lines of *Anderson-Burdick*, *id.* at 234, and the Kansas Supreme Court construes Sections 2 and 18 of the State Constitution as “coextensive” with their federal counterparts. *Rivera*, 315 Kan. at 894; *State v. Boysaw*, 309 Kan. 526, 537, 439 P.3d 909 (2019). More importantly:

The flaw in using *Eldridge* is that election laws, by nature, inevitably affect the individual’s right to vote. Under *Eldridge*, however, courts may accord the private interest at stake, namely the right to vote, significant weight. Therefore, the *Eldridge* test would inevitably result in courts’ weighing the pros and cons of various balloting systems, thereby tying the hands of States seeking to assure that elections are operated equitably and efficiently. Unlike *Eldridge*, the *Anderson / Burdick* approach recognizes that the state’s important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions. Because *Anderson/Burdick* – unlike *Eldridge* – appropriately accounts for the state’s interest in regulating voting, it provides the appropriate test for procedural due process claims challenging election laws.

Richardson, 978 F.3d at 235 (cleaned up) (quotations omitted). This explains why every federal appellate court to address the issue has reached the same conclusion. *See Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1194-95 (9th Cir. 2021) (rejecting use of *Eldridge* test in election law challenges); *Memphis A. Philip Randolph Inst. v. Hargett*, 978 F.3d 378, 387-88 (6th Cir. 2020) (same); *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020) (refusing to apply *Eldridge* in constitutional attacks on voting law because doing so “would stretch concepts of due process to their breaking point”).⁷

Federal and state appellate courts have also regularly turned away due process challenges to signature verification laws on the merits. *See, e.g., Weber*, 113 F.4th at 1096-97; *Memphis A. Philip Randolph Inst.*, 978 F.3d 378 at 387-88; *Richardson*, 978 F.3d at 235-41; *Lemons*, 538 F.3d at 1102-05; *Vet Voice Found.*, 564 P.3d at 991-92; *Arizonans for Second Chances, Rehab. & Pub. Safety v. Hobbs*, 471 P.3d 607, 619-25, 631-32 (Ariz. 2020).

Meanwhile, the handful of district court cases striking down signature verification laws on due process grounds – assuming the cases were even properly decided – all involved procedures that offered voters no, or almost no, opportunity to correct mismatches. *See Saucedo v. Gardner*, 335 F.Supp.3d 202, 206 (D.N.H. 2018) (voters given neither notice of rejection nor opportunity to cure); *Frederick v. Lawson*, 481 F.Supp.3d 774, 782 (S.D. Ind. 2020) (same); *League of Women Voters v. Andino*, 497 F.Supp.3d 59, 66-67 (D.S.C. 2020) (same); *Zessar v. Helander*, No. 15-C-1917, 2006 WL 642646, at *1, 6 (N.D. Ill. 2006) (same); *Martin v. Kemp*, 341 F.Supp.3d 1326, 1329-32 (N.D. Ga. 2018) (voters with signature mismatch on absentee ballot envelope must either apply for new ballot prior to Election Day or vote in person). In marked contrast, Kansas gives

⁷ The only contrary decision of which Defendants are aware is a state court decision from a divided Pennsylvania Supreme Court. *See Ctr. for Coalfield Justice v. Washington Cnty. Bd. of Elections*, 343 A.3d 1178 (Pa. 2025). Invoking *Eldridge*, that case held that a voter who returns a defective mail-in ballot still has a right to vote a provisional ballot under Pennsylvania law. *Id.* at 1194-95 & 1208-1216.

voters notice of the mismatch determination and ample time – all the way up until the county canvass (as much as 13 days after the election, K.S.A. 25-3104), when the election is certified as final at the county level, *see* K.S.A. 25-3110 – to correct the deficiency.

Plaintiffs further complain that the Kansas regulation governing the signature verification and cure procedures does not include a specific timeframe in which voters must be contacted about curing an apparent signature mismatch. Pls.’ Resp. at 57-58. It is not the role of the judiciary to micromanage the legislature (or the executive branch in carrying out the legislature’s directives). Nor is the text that Plaintiffs trumpet from other jurisdictions the hallmark of precision (e.g., “promptly,” “as soon as possible,” etc.). In fact, the exactitude Plaintiffs propose would introduce confusion, chaos, and never-ending litigation. What, for example, would the consequences be if notification to a voter occurred within 49 hours rather than 48? What would happen if a county election office is overwhelmed with mail votes during a particular election cycle? What if the office is short-staffed on a particular day or two? Plaintiffs’ argument is amusing considering that the due process standard articulated by the Kansas Supreme Court – an “opportunity to be heard at a meaningful time and in a meaningful manner” – itself (quite appropriately) lacks the sort of specificity that Plaintiffs think is the highest virtue.

2. Distinctions with *Vet Voice Foundation v. Hobbs* are Mostly Illusory

Plaintiffs do not acknowledge the overwhelming federal appellate cases that have rejected the same sort of due process attack on signature verification laws raised here. Instead, Plaintiffs train their fire on Defendants’ reference to the Washington Supreme Court’s recent opinion in *Vet Voice Foundation*, which repudiated a facial attack on that state’s signature verification requirement. Plaintiffs distinguish that opinion on the ground that the court there addressed a substantive due process claim rather than a procedural due process theory. Pls.’ Resp. at 52-54. True enough, but that does not materially undermine its relevance to the issues before this Court. Plaintiffs’ due

process theory is premised on the assertion that Kansas' signature verification and cure procedures are constitutionally deficient because they allegedly fail to provide voters a meaningful opportunity to correct perceived signature issues. *Vet Voice* is directly instructive on why that theory fails in the context of a modern vote-by-mail system that provides notice and a cure process. And Plaintiffs' attempt to manufacture meaningful factual distinctions between Washington's procedures and Kansas' is tenuous at best.

To begin with, Plaintiffs' "timeliness" critique is unsupported by evidence. Plaintiffs speculate that Kansas counties may not timely contact voters. But other than a couple of anecdotes, which is obviously insufficient in a facial challenge, they do not identify any competent record evidence showing that counties are failing to provide notice and an opportunity to cure in a timely manner. The record, in fact, shows that Kansas counties do initiate cure procedures promptly upon identifying a signature inconsistency. Indeed, as Defendants noted in SOF ¶ 23, the only election officials that Plaintiffs questioned on this issue testified their counties nearly always process advance ballot envelopes within one day of receipt.⁸ Plaintiffs cannot defeat summary judgment with conjecture about hypothetical delays, particularly where they bear the burden of proving a due process violation.

Plaintiffs' effort to portray Washington's cure procedures as materially more robust than Kansas' is likewise misplaced. Washington's baseline requirement is written notice by letter; additional forms of outreach (phone, text, email) are contingent on the information being on file,

⁸ Blatantly misrepresenting the record, Plaintiffs suggest that election officials testified only that they review voters' signatures within 24 hours of receipt, not they initiate the cure process. Plaintiffs well know, however, that those election officials further testified that they make necessary contact with voters at the same time. Defendants pointed out this misstatement in their response to Plaintiffs' statement of facts. Defs.' Resp. to Pls.' SOF ¶ 311. While this was part of a separate motion, Plaintiffs have offered no evidence here that county election officials did *not* timely commence cure procedures following a signature mismatch determination (other than anecdotes about *two* voters allegedly not being contacted). Plaintiffs cannot manufacture a genuine issue of material fact by mischaracterizing or fabricating the record.

and text contact is further contingent on voter opt-in. *See* Wash. Admin. Code § 434-261-053. By contrast, K.A.R. 7-36-9 requires counties to attempt telephone contact if the voter's number is "reasonably available," and Kansas mandates at least three phone attempts regardless of whether the voter has opted into texting or whether an email address is available. In other words, Kansas' regulation requires more mandatory outreach than Washington's framework, not less. Plaintiffs' suggestion that Washington's procedures are categorically more protective therefore collapses on its own terms.

Finally, Plaintiffs overstate Washington's supposed "oral" cure option. The only oral verification Plaintiffs highlight relates to Washington's *secondary* identity-verification step, which occurs only after the voter has already provided a new written signature. *See* Wash. Admin. Code 434-261-053(5). Kansas does not require that secondary step at all. The relevant comparison is Washington's *primary* cure mechanism, which is functionally similar to Kansas' and, in key respects, less demanding of election officials than Kansas' mandatory outreach requirements. In any event, Plaintiffs' emphasis on marginal differences in cure mechanics misses the constitutional point. Kansas due process requires "reasonable notice of defects and an opportunity to cure[.]" *LWV II*, 318 Kan. at 807. The Constitution does not demand a frictionless cure process, and slight inconvenience is not a due process violation, particularly in the absence of evidence that Kansas voters are systematically being deprived of a meaningful opportunity to cure.

3. No Voters Have Been "Disenfranchised"

Plaintiffs gratuitously throw around the word "disenfranchised" every time they refer to a provision of K.A.R. 7-36-9 that they deem insufficiently precise or to a voter who they believe has been inconvenienced. But the Supreme Court squarely rejected this argument in *LWV II*, and it is telling that Plaintiffs continue to beat this dead horse. The Court noted:

[Plaintiffs] suggest[] there are instances when the failure of proof—a faulty signature match—disenfranchises a qualified elector. The *Butts* court recognized and addressed this practical reality:

“It is true isolated instances may occur where a party through absence or sickness is unable to register, and so loses his vote, but the same result may follow where any failure to produce the required evidence occurs. A naturalized foreigner may lose his naturalization papers, and the court where he was naturalized may be at the very extreme of the land, and so, for the lack of the legal evidence of his naturalization, he may lose his vote” *Butts*, 31 Kan. at 555, 2 P. 618 [1884].

Critically, *Butts* recognized that these are not truly disenfranchisements, but “in both cases, the matter is simply one of a lack of evidence.” 31 Kan. at 555, 2 P. 618. Noting that there is no “special virtue in the mere day of election,” *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. 31 Kan. at 555-56.

LWV II, 318 Kan. at 804.

Plaintiffs’ biggest (and ultimately insurmountable) obstacle is the *facial* nature of their claim. As the U.S. Supreme Court recently underscored:

[Plaintiff] chose to litigate these cases as facial challenges, *and that decision comes at a cost*. . . . Claims of facial invalidity often rest on speculation about the law’s coverage and its future enforcement. And “facial challenges threaten to short circuit the democratic process by preventing duly enacted laws from being implemented in constitutional ways. *This Court has therefore made facial challenges hard to win*.”

Moody, 603 U.S. at 723 (emphasis added) (quotations omitted). In short, Plaintiffs have not carried their burden to show a genuine dispute of material fact warranting trial on their due process claim.

IV. – Conclusion

Plaintiffs’ response fails to identify any genuine issues of material fact. The undisputed evidence reflects that Kansas’ SVR employs objective standards, is capable of reasonable uniform application, and affords voters constitutionally adequate due process. Accordingly, Defendants’ Motion for Summary Judgment should be granted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2026, a copy of the foregoing was filed electronically with the Clerk of the Shawnee County District Court via the Court's e-filing system, which caused the document to be sent via e-mail to all counsel of record.

/s/ Bradley J. Schlozman

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