

**IN THE STATE COURT OF KANSAS
DISTRICT COURT OF SHAWNEE COUNTY**

LEAGUE OF WOMEN VOTERS OF
KANSAS, LOUD LIGHT, KANSAS
APPLESEED CENTER FOR LAW AND
JUSTICE, INC., and LOIS CURTIS
CENTER,

Plaintiffs,

v.

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

Defendants.

Case No. SN-2021-CV-000299

**PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

COMES NOW League of Women Voters of Kansas, Loud Light, Kansas Appleseed Center for Law and Justice, Inc., and Lois Curtis Center (collectively, "Plaintiffs"), by and through counsel, and pursuant to Kansas Supreme Court Rule 141(c), hereby provide this reply in response to Defendants' Response to Plaintiffs' Motion for Summary Judgment filed on January 9, 2026 ("Defs.' Resp.") and in support of Plaintiffs' Motion for Summary Judgment filed on November 14, 2025 ("Pls.' Mot."). For the reasons stated herein, the Court should grant Plaintiffs' Motion. Both Parties agree the case should be resolved on summary judgment, and the uncontroverted facts establish both Plaintiffs' standing and success on the merits of their claims.

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INTRODUCTION

Plaintiffs' Motion for Summary Judgment put forward a robust record establishing how Kansas's Signature Verification Requirement (the SVR) operates across Kansas counties. It included (1) testimony from county officials, the Secretary of State's Office, Plaintiffs, and voters who have been disenfranchised by the SVR, (2) records from the Secretary's Office regarding the implementation of the SVR, (3) business records from more than two dozen counties regarding how they apply and enforce the SVR, and (4) testimony from experts in election administration and signature authentication.

In response, Defendants controvert very few facts, instead contending (erroneously) that most of Plaintiffs' facts are "immaterial" to the questions this Court need answer. But Defendants' argument is at odds with the tests this Court must apply under the majority opinion in *League of Women Voters v. Schwab* ("LOWV III"), 318 Kan. 777, 549 P.3d 363 (2024), under which Plaintiffs' evidence is not only material, but establishes that the SVR cannot survive. Defendants similarly distort the law in arguing (again) that Plaintiffs lack standing, attempting to impose requirements from Article III that have never been required by Kansas courts and ignoring the conclusions of Kansas' higher courts in this very case.

Now that the Court has Defendants' response, it is plain that Plaintiffs are entitled to summary judgment on both their equal protection and due process claims. In this reply, Plaintiffs focus specifically on why summary judgment must enter *based solely on the facts that are wholly uncontroverted or not properly controverted* (i.e., facts Defendants allege are controverted but cite no record evidence in support, as required by Rule 141).¹ Given the strength of the uncontroverted material facts, the Court should grant Plaintiffs' Motion for Summary Judgment.

¹ In the rare instances where Plaintiffs cite to a controverted fact or a fact that is objected to on admissibility grounds, Plaintiffs expressly say so.

ARGUMENT

In response to Plaintiffs' Motion for Summary Judgment, Defendants do not actually controvert the majority of Plaintiffs' asserted facts. Instead, Defendants overwhelmingly acknowledge that the facts are uncontroverted, or claim they are "uncontroverted, but immaterial." But the latter assertion relies on Defendants' unsustainable legal arguments, which repeatedly ask the Court to apply tests other than those that the Kansas Supreme Court held governs here.

Where Defendants do purport to "controvert" Plaintiffs' facts, they repeatedly fail to identify anything that actually controverts them. But Rule 141 requires that a party opposing summary judgment *must*, for any factual assertion that is controverted, "concisely summarize the conflicting testimony or evidence and any additional genuine issues of material fact that preclude summary judgment," providing "precise references" to the same in the relevant responsive paragraph. Kan. Sup. Ct. R. 141(b)(1)(c)(i)–(ii); *see also Slaymaker v. Westgate State Bank*, 241 Kan. 525, 531, 739 P.2d 444, 450 (1987). Defendants repeatedly violate this basic requirement. Such facts are not properly controverted.

Defendants also attempt to convince the Court—yet again—to apply some standard other than the one applied by the higher courts in this litigation and find that Plaintiffs lack standing. But as this Court already recognized, the Kansas Supreme Court remanded this case for adjudication on the merits, and did not reverse the Kansas Court of Appeals' finding that Plaintiffs had sufficiently alleged standing. Now Plaintiffs have introduced evidence that proves their standing on multiple independent grounds—including those already found to be sufficient. And Defendants fail to controvert Plaintiffs' standing-related facts with *anything* of evidentiary value. As a result, their revived (and repetitive) attacks on Plaintiffs' standing must (again) be rejected.

On the merits, Defendants attempt the same sleight of hand, but this Court is bound by both binding Kansas Supreme Court precedent (including in this very case) and the Kansas Rules, which

require rejection of Defendants' arguments. Applying the test set out by the majority in *LOWV III* for Plaintiffs' equal protection claim, the evidence is undisputed that the SVR lacks objective standards for rejecting a ballot and for applying several of its other key provisions (indeed, for many provisions, there is no standard at all). The evidence is also undisputed that Kansas fails to achieve reasonable uniformity on a host of issues regarding the SVR's implementation, spanning from what ballots get flagged for rejection (and ultimately not counted, if not cured), to how those ballots can be cured so that they will count. Defendants' arguments on Plaintiffs' due process claim fare no better. Indeed, Defendants put forward *no evidence* that Kansas guarantees voters timely notice of the need to cure their ballot, and they admit that certain counties do not allow ballots identified for rejection under the SVR to be counted unless the voter physically appears in person—a requirement that all but takes away their right to vote by mail and fails to provide them with a meaningful opportunity to cure.

In sum, the record before the Court, even limited to the facts that are not actually in dispute, requires that summary judgment be entered in favor of Plaintiffs on both of their remaining claims and that a permanent injunction issue enjoining the enforcement of the SVR.

I. DEFENDANTS DO NOT COMPLY WITH RULE 141

Repeatedly, Defendants' Response fails to comply with Kansas Supreme Court Rule 141, which requires parties opposing summary judgment to controvert facts with "precise" citations to admissible evidence in the record. Defendants ignore this basic and fundamental requirement again and again, and the Court should accept Plaintiffs' facts as uncontroverted where Defendants fail to properly convert them. Nor should the Court rely on any part of Defendants' expert reports or affidavits unless they are specifically cited to by Defendants in response to Plaintiffs' facts. To do otherwise would permit Defendants to evade the clear requirements for responding to summary judgment and prejudice Plaintiffs who have properly focused on the arguments that Defendants

actually do make on the evidence they cite, rather than some possible argument they might make in the future.

A. The Court should accept Plaintiffs' facts as uncontroverted where Defendants fail to properly controvert them with evidence in the record.

It is well established that a party cannot comply with Rule 141(b) “by merely stating that the facts are ‘controverted’ or ‘contested.’” *State ex rel. Stephan v. Commemorative Servs. Corp.*, 16 Kan. App. 2d 389, 401, 823 P.2d 831, 841 (1991). Instead, a party that means to controverts facts in opposing summary judgment must “concisely summarize the conflicting testimony or evidence” for each contested fact, providing the “precise references to pages, lines and/or paragraphs . . . of the portion of the record” upon which it relies to contend the fact is controverted. Kan. Sup. Ct. R. 141(b)(1)(C)(i)–(ii), (a)(2); *see also Slaymaker*, 241 Kan. at 531 (“To oppose a motion for summary judgment, a party must actively come forward with something of evidentiary value to establish a material dispute of fact.”). But many of Defendants’ attempts to “controvert” Plaintiffs’ facts do not comply with this requirement; instead, they simply assert the fact is controverted without providing evidentiary support to render it so. Take the following example:

Pls.’ SOF ¶ 158: At a minimum, ten to fifteen signature samples are recommended for an accurate signature determination to account for an individual’s signature variability, given proper examination conditions. For writers who are elderly, have poor health, have a disability which impacts their handwriting, or simply do not have a consistent and developed signature (including many of today’s young adults), a larger number of signature samples may be required to determine their range of variation. Ex. 4, Mohammed Aff., Ex. A ¶¶ 36, 125.

Defendants’ Response: Controverted and immaterial. Kansas is not attempting to conduct forensic signature examination. Rather, election officials are trained to conduct a limited, non-forensic comparison of signatures for the sole purpose of identifying potential inconsistencies that trigger notice and an opportunity to cure. Assertions concerning the difficulty, uncertainty, or methodological rigor of forensic handwriting analysis are thus irrelevant.

Defendants' Response is replete with similar examples. *See, e.g.*, Defs.' Resp. to Pls.' SOF ¶¶ 25, 29, 30, 48, 53, 62, 112, 113, 143, 159 (citing to just a few examples in Defendants' Response); *see also* Ex. A to Pls.' Reply in Support of Pls.' SOF (summarizing in chart form which facts fall into this category). Under Rule 141, this is insufficient to render these facts "controverted."

Defendants' attempts to "controvert" Plaintiffs' facts in violation of Rule 141(b) take a few different improper approaches. First, Defendants repeatedly fail to controvert an asserted fact with record evidence, instead simply asserting that the fact is controverted before pivoting to legal argument. For example, Defendants repeatedly assert that a fact stated and supported by Plaintiffs is "controverted," but then proceed only to argue that the evidence is "immaterial" or "irrelevant." *See, e.g.*, Defs.' Resp. to Pls.' SOF ¶ 458 (in response to fact about the presence (or lack thereof) of voter fraud in Kansas, which cites to expert testimony, Defendants respond "controverted," but fail to identify any testimony or evidence that actually controverts it, instead arguing that the opinion is irrelevant). Materiality or relevancy is a legal question, not a factual question. *See, e.g., Long v. Turk*, 265 Kan. 855, 865, 962 P.2d 1093, 1099 (1998) (whether there is material evidence to preclude summary judgment is a legal question). In another similar example of this improper approach, Defendants respond to a specific fact about how Plaintiff Loud Light would use its resources if it did not have to contend with the threat to its constituents' voting rights posed by the SVR, with only legal argument. *See, e.g.*, Defs.' Resp. to Pls.' SOF ¶ 33 ("Controverted. Nothing in the SVR imposes any duty or burden on Loud Light, nor does it require Loud Light to spend any resources."). This type of argument proliferates through Defendants' response.

Defendants' attempt to claim that facts are controverted based solely on legal argument is clearly improper, and renders these facts uncontroverted under the plain terms of the Rule. It is

well established that, “[t]o oppose summary judgment, the opposing party must actively come forward with something of evidentiary value to establish a disputed material fact.” *Kastner v. Blue Cross & Blue Shield of Kansas, Inc.*, 21 Kan. App. 2d 16, 22, 894 P.2d 909, 915 (1995). Legal arguments do not suffice to make a fact “controverted.” *Simmons v. Porter*, 45 Kan. App. 2d 177, 181–82, 245 P.3d 1091, 1094–95 (2011) (finding defendants’ response to statements of fact were “legal arguments that do not change the uncontroverted nature of facts”), *overturned on other grounds by Simmons v. Porter*, 298 Kan. 299, 312 P.3d 345 (Kan. 2013); *see also Watchous Enterprises, LLC v. Pac. Nat’l Cap.*, No. 6:16-cv-01432-DDC, 2020 WL 6078170, at *3 (D. Kan. Oct. 15, 2020) (similar).

Defendants’ second approach is to assert that a fact in Plaintiffs’ statement of facts is controverted and then baldly assert a “fact” to the contrary, without any citation to record evidence that supports Defendants’ asserted fact or controverts Plaintiffs’ fact. Take, for example, Defendants’ repeated claim that the Plaintiff organizations are not harmed by the resources they have dispersed in attempting to ensure that the Kansas voters they serve are not disenfranchised by the SVR because “[t]his sort of activity has always been a party of the organization’s work, even before the challenged statute and regulation were adopted.” *E.g.*, Defs.’ Resp. to Pls.’ SOF ¶ 29. Defendants do not attempt to support that factual assertion with anything from the record that actually shows that it is true—not discovery responses, not deposition testimony, nothing. They simply invite the Court to assume it, on their word. This does not properly render those facts controverted. *See Kan. Sup. Ct. R. 141(b)(1)(C)(i)–(ii), (a)(2); Slaymaker*, 241 Kan. at 531.²

² These specific examples are doubly improper because, not only do Defendants fail to cite any evidence that actually supports their purported factual assertion, they are also a variation of the controvert-with-legal-argument approach described above, because they attempt to draw in Defendants’ (erroneous) legal argument that Plaintiffs can only have standing if a law requires them to engage in entirely brand new work to avoid its repercussions. As Plaintiffs explain *infra* §

Defendants' third improper approach is to attempt to "controvert" Plaintiffs' facts specifically supported by expert testimony, in response to which Defendants repeatedly violate not only Rule 141 but long-standing Kansas Supreme Court precedent limiting how expert testimony may be properly contested in litigation. That precedent holds that expert opinions are "considered conclusive, absent a contrasting opinion offered by another expert in the field." *City of Arkansas City v. Bruton*, 284 Kan. 815, 840, 166 P.3d 992, 1008 (2007). As a result, expert testimony cannot be contradicted by "nonexpert opinion" by lay witnesses, *id.*, let alone simply by the argument of counsel. Yet, repeatedly, that is exactly what Defendants do in their response to Plaintiffs' facts based on expert testimony. Instead of specifically identifying a contrasting opinion from another expert in the field, Defendants attempt to "controvert" these facts by offering only argument from defense counsel as to why the Court should not accept the opinion testimony.

Take, for example, Defendants' attempt to controvert facts supported by the testimony of Dr. Linton Mohammed, a well-respected expert in handwriting and signature verification, who offered testimony about signature development in young adults and the likelihood that those voters will have their signatures rejected at higher rates than more mature adults with settled signatures. *See, e.g.*, Defs.' Resp. to Pls.' SOF ¶ 19. Defendants claim this is "controverted," but fail to support it with opposing expert testimony and simply provide argument from defense counsel. *See id.*³ Indeed, Defendants respond to Plaintiffs' expert testimony not with any opinion testimony from a

II(A), this is not correct even as a matter of federal law, and it is not appropriate under the higher courts' prior rulings in this case.

³ This omission is not surprising, as Defendants' experts did not contest this fact. To the contrary, Mark Songer, who the State hired to respond to Dr. Mohammed, stated in his report that he was *not contesting* Dr. Mohammed's testimony regarding "the fundamentals of conducting forensic signature comparisons," Defs.' Ex. J (Songer Report) at 10, nor did he offer anything that controverted Dr. Mohammed's conclusions regarding the signature development of young adults. Defendants may not avoid a finding that this evidence is uncontroverted by disputing it with nothing more than the argument of counsel.

qualified expert, but with Defendants' counsel's attempts to summarize academic articles cited by Plaintiffs' experts and announce what those articles do or do not show. *See, e.g.*, Defs.' Resp. to Pls.' SOF ¶ 191 (Defendants attempting to "controvert" Dr. Mohammed's testimony with academic articles). This approach is improper for a host of reasons. But chief among them is that, because Defendants' counsel are not experts, they are all the more likely to misunderstand the import of those articles. Indeed, Defendants' counsel *does* misunderstand the findings of the academic articles they attempt to interpret, as explained in Plaintiffs' Reply to those assertions. *See, e.g.*, Pls.' Reply to Defs.' Resp. to Pls.' SOF ¶ 191. It is for that reason, among many, that Kansas courts have found that nonexpert testimony cannot suffice to contradict expert testimony. *See Bruton*, 284 Kan. at 840; *see also* K.S.A. 60-456(a) (lay opinion testimony improper if it is based on "scientific, technical, or other specialized knowledge").

In sum, Defendants "*must*" identify admissible evidence that actually controverts an asserted fact to properly controvert it. Kan. Sup. Ct. R. 141(a), (b) (emphasis added); *see also Slaymaker*, 241 Kan. at 531; "Rule 141 is not just fluff—it means what it says and serves a necessary purpose." *Commemorative Servs. Corp.*, 16 Kan. App. 2d at 401 (quoting *McCullough v. Bethany Med. Ctr.*, 235 Kan. 732, 736, 683 P.2d 1258, 1261 (1987)). As a result, it is meant to be "strictly enforced," such that "[a] statement that is not properly controverted with citation to factual authority is deemed admitted." *Id.*; *see also Danes v. St. David's Episcopal Church*, 242 Kan. 822, 830, 752 P.2d 653, 659 (1988) (noting district court's decision to deem a party to have admitted contentions of fact when not properly controverted under Rule 141 "will not be disturbed on appeal without a clear showing of abuse"). This is also consistent with K.S.A. 60-256, which requires an opposing party to "set out specific facts showing a genuine issue for trial," and if the opposing party fails to do so, to enter summary judgment "against that party." K.S.A. 60-256(e)(2).

Defendants' failure to cite admissible evidence to controvert Plaintiffs' facts is particularly inexcusable in this case. Defendants are represented by sophisticated counsel, and when Defendants requested more time to respond to Plaintiffs' statement of facts, the Court accommodated that request, granting them nearly three months to prepare their response to Plaintiffs' Motion. Defendants' failure to come forward with admissible evidence to contest the majority of Plaintiffs' facts indicates not oversight or mistake, but the simple fact that Defendants cannot contest them on the record compiled in this case, a reality that they should not be able to avoid with legal argument or contrary assertions of unsupported facts.

For ease of the Court, Plaintiffs attached as Exhibit A to Plaintiffs' Reply in Support of Plaintiffs' Statement of Facts a summary chart that identifies which of the parties' asserted facts are uncontroverted, not properly controverted, facially controverted, or objected to on a legal basis. "Not properly controverted" is the terminology Plaintiffs use for the facts that Defendants allege are "controverted" but cite no record evidence in support, as required by Rule 141. For all of the reasons discussed, the Court should treat such facts as uncontroverted.

As that exhibit demonstrates, this case is ripe for summary judgment: Of Plaintiffs' 760 facts, more than 55% are wholly uncontroverted, and more than 70% are either wholly uncontroverted or are not properly controverted in whole or part. Less than 15% of all of Plaintiffs' facts are facially controverted. As Plaintiffs show throughout this brief, the uncontroverted facts are more than enough to entitle them to summary judgment.⁴

⁴ By "facially controverted," Plaintiffs mean that Defendants claim a fact is controverted and cite record evidence, but their evidence or testimony that does not actually controvert the fact. Plaintiffs respond to these instances in their Reply to Defendants' Response to Plaintiffs' Statement of Facts; however, for the purposes of this Reply Brief, Plaintiffs set them aside and show how summary judgment is warranted even if the Court *only* looks to the facts that are either wholly uncontroverted or not properly controverted because they fail to comply with Rule 141. Plaintiffs do not concede that facts that are facially controverted (that is, Defendants at least cite *something*

B. The Court should not rely on the portions of Defendants’ expert reports or witness affidavits that Defendants do not put forward.

Although Defendants did not rely on any expert reports in moving for summary judgment, in Response to Plaintiffs’ Motion, Defendants now submit to the Court the full reports of Dr. Lonna Atkeson, Dr. Sasha Aravkin, and Mr. Mark Songer, as well as witness affidavits from Mr. Caskey, Mr. Howell, and Ms. Schmidt. In their Response to Plaintiffs’ Statement of Facts and Response Brief, however, Defendants barely rely on these materials. Defendants cite their experts’ reports only a handful of times and even then often only to cabin what Defendants intended their experts to testify about. *See, e.g.*, Defs.’ Resp. to Pls.’ SOF ¶¶ 200, 213–215, 287. Defendants similarly barely cite to the affidavits of Mr. Caskey, Mr. Howell, or Ms. Schmidt in making their actual arguments, citing only a handful of paragraphs from those affidavits. *See, e.g.*, Defs.’ Resp. to Pls.’ SOF (entire response citing only Paragraphs 11 and 17 of Mr. Howell’s affidavit).

Defendants’ approach—which puts voluminous materials before the Court without actually relying on them—undermines the spirit and purpose of Rule 141, which is “to identify ‘what facts are or are not controverted’ or ‘on what evidence the parties rely,’” putting the responsibility on the *parties* to identify and rely on the evidence that they contend creates a genuine issue of material fact. *Bank of America, N.A. v. Inda*, 48 Kan. App. 2d 658, 670, 303 P.3d 696, 705 (2013); *see also* Kan. Sup. Ct. R. 141(b)(1)(C)(i)–(ii), (a)(2) (requiring a party responding to summary judgment to “concisely summarize the conflicting testimony or evidence” and “provide precise references” to the “pages, lines, and/or paragraphs” supporting that fact). As a result, the Court is only required “to consider the parts of the record that have been cited by the parties in

in the factual record to dispute them) or facts that are to be objected to on admissibility grounds should be omitted from the Court’s analysis—only that they are not necessary to entitle Plaintiffs to summary judgment.

compliance with Rule 141.” *Acord v. Porter*, 58 Kan. App. 2d 747, 757, 475 P.3d 665, 677 (2020). Indeed, it is axiomatic that a party’s failure to brief an issue and put forward pertinent, supporting authority renders any such argument abandoned. *Cf. State v. Williams*, 298 Kan. 1075, 1083–84, 319 P.3d 528, 535 (2014).

Although Rule 141(e) gives the Court discretion to consider other materials in the record, it should not do so in this case, where Defendants made a deliberate decision not to rely on expert testimony *at all* in moving for summary judgment—an even now to rely on those reports (and their witness affidavits) only sparingly. Indeed, Defendants themselves suggest that they do not expect the Court to rely on evidence they do not actually cite, identifying this as a reason that the Court should not strike the challenged portions of Mr. Caskey’s first affidavit. *See* Defs.’ Opp’n to Pls.’ Mot. to Strike at 2 (Jan. 23, 2026) (asserting that “Defendants did not even cite, let alone rely upon, in their summary judgment motion the bulk of Mr. Caskey’s statements referenced in Plaintiffs’ motion”).⁵ Their failure to rely on these materials to affirmatively construct their case—much less to identify, explain, or defend their relevance or how they should be used or applied here—reflects the reality that those reports and affidavits are not that helpful to them. In light of the voluminous amount of paper already before the Court, Plaintiffs make the same assumption as Defendants—that the Court will not rely on these materials unless Defendants specifically cite to them—and as a result do not more broadly moved to strike Defendants’ expert reports at this stage.⁶

⁵ Defendants now submit an additional—and nearly identical—affidavit from Mr. Caskey in support of their Opposition to Plaintiffs’ Motion. For the same reasons that the similar portions of Mr. Caskey’s first affidavit were inadmissible, so too are the second, and Plaintiffs will file a supplemental motion to address that together with this reply.

⁶ Should the Court intend to rely on uncited portions of Defendants’ expert reports in resolving summary judgment, Plaintiffs should have an opportunity to oppose the substance of that testimony. Plaintiffs reserve the right to move to exclude Defendants’ experts in whole or in part in advance of trial.

For the Court's benefit, Plaintiffs have included redacted copies of each of Defendants' expert reports and witness affidavits which identify only the expert and affidavit testimony upon which Defendants specifically cite and rely upon in their papers. *See* Exs. A-F.

II. PLAINTIFFS HAVE STANDING.

Defendants again attack Plaintiffs' standing, and in doing so again rely on federal law and ignore the Kansas Supreme Court's mandate. As that Court has repeatedly emphasized, Kansas's standing requirements are straightforward and undemanding, applying a two-part test that requires only a showing of (1) "a cognizable injury," and (2) "a causal connection" between the injury and the challenged conduct. *Gannon v. State*, 298 Kan. 1107, 1127, 319 P.3d 1196, 1212–13 (2014). (Only the injury prong is challenged here.) The Kansas Supreme Court has been plain, moreover, that Kansas's standing test is *not* equivalent to the federal courts' more demanding Article III standard. *See, e.g., League of Women Voters of Kansas v. Schwab*, 317 Kan. 805, 813, 539 P.3d 1022, 1028 (2023); *Kansas Bldg. Indus. Workers Comp. Fund v. State*, 302 Kan. 656, 679–80, 359 P.3d 33, 50 (2015).

Applying the Kansas standard, the Court of Appeals found *in this case* that Plaintiffs sufficiently alleged standing based on direct harm to them as organizations. *League of Women Voters of Kan. v. Schwab* ("LOWV I"), 63 Kan. App. 2d 187, 203, 525 P.3d 803, 819 (2023). This Court previously found that conclusion was necessarily part of the Supreme Court's mandate when it reversed and remanded this matter to allow Plaintiffs "their full opportunity to prove up their [equal protection and due process] claims as a matter of evidence in the district court." *LOWV III*, 318 Kan. at 807; *see also* Order Denying Defs.' Renewed Mot. to Dismiss at 7–8 (Mar. 27, 2025) ("The Supreme Court in *LOWV III* chose not to disturb the Court of Appeals ruling on Plaintiffs' standing to challenge the signature verification requirement - while reversing other aspects of the Court of Appeals decision regarding signature verification. This is a strong indication that the

Supreme Court believed Plaintiffs had standing to challenge the signature verification requirement; otherwise, the Supreme Court would have had no jurisdiction to address as it did the additional arguments about due process and equal protection.”). Thus, Plaintiffs have standing if they have introduced evidence to support the relevant allegations they made at the motion to dismiss stage. They have done so through ample evidence, none of which Defendants actually controvert. Instead, Defendants yet again attempt to persuade the Court to adopt a different standing test, but as this Court has already correctly found, it cannot do that. *See id.*

Plaintiffs have standing not only under the direct organizational injury grounds already found sufficient by the higher courts, but also separately and independently on associational grounds. Indeed, courts have repeatedly recognized that any voter who is subject to a voting law that puts restrictions on their right to have their vote counted—even if they can comply with the law—has standing to challenge it. This is true even under Article III’s more demanding standard for standing. Thus, Plaintiffs have associational standing to challenge the SVR on behalf of their members and constituents who are subject to a law that threatens to disqualify their ballot. This is an independent basis for standing, separate and apart from the one already recognized by—and mandated in—this case by the Kansas Court of Appeals and Kansas Supreme Court.

A. Plaintiffs have direct organizational standing.

As the Court of Appeals held in this case, under Kansas law, an organization is injured where government action perceptibly impairs its ability to carry out its mission. *LOWVI*, 63 Kan. App. 2d at 203. Applied to the circumstances here, that Court found that the Plaintiffs have standing if they show “that they encourage advance voting and that they will have to divert resources from their other voter assistance activities to ballot cure programs to prevent voters from being disenfranchised by the new signature matching requirement.” *Id.* at 204. Although only one plaintiff need have standing, *see* Pls.’ Mot. at 5 (citing cases), the evidence establishes that multiple

Plaintiffs do. The standing issue has already been litigated ad nauseum. To avoid further contributing to the hundreds of pages that the Court must review in this case, Plaintiffs offer just a few examples of how this standard is clearly met here.

Take Loud Light, an organization that serves young voters in particular and encourages their political participation through advance voting. Pls.’ SOF ¶ 9 (uncontroverted); Pls.’ SOF ¶ 11 (uncontroverted for this principle). Because of the SVR, Loud Light has invested staff time and resources into learning how it operates, Pls.’ SOF ¶ 30 (uncontroverted for this principle), so that it may attempt to educate voters about how to cure their ballots when they have been flagged for signature mismatch, Pls.’ SOF ¶ 21 (uncontroverted for this principle). It has also required Loud Light to expend time and resources responding to voters’ concerns about whether it is safe to vote by advance ballot at all given the possibility of rejection under the SVR. Pls.’ SOF ¶ 27 (uncontroverted). If Loud Light “did not have to focus on helping voters cure their ballots for signature mismatch issues in the period of time leading up to the county canvasses, Loud Light would instead shift its focus to constituent engagement work such as election debriefs and reviewing analytics on voter turnout to gauge the success of its pre-election programming,” and would be able to use those resources to invest in other important programs and initiatives, such as its Get Out the Vote work, *see* Pls.’ SOF ¶¶ 32–33 (not properly controverted). This is exactly the showing that the Kansas Court of Appeals held was required to demonstrate standing in this case: a showing “that they encourage advance voting and that they will have to divert resources from their other voter assistance activities to ballot cure programs to prevent voters from being disenfranchised by the new signature matching requirement.” *LOWVI*, 63 Kan. App. 2d at 204.

Defendants’ only response is to argue that the law does not actually “require” Loud Light to do anything and that, even if it did, Loud Light did this type of work before, but both are legal

arguments that misapply Kansas standing law and the prior rulings in this case. Nothing in the Kansas Court of Appeals’ opinion, for example, required Plaintiffs to show that the law “required” them (in a legal sense) to conduct this work. *See id.* at 204 (finding Plaintiffs have standing because “they encourage advance voting and that they will have to divert resources from their other voter assistance activities . . . to prevent voters from being disenfranchised by the new signature matching requirement”). As to the Secretary’s contention that the Plaintiffs lack standing if the work they do to combat the SVR’s threats to voters is of the same type of work that they engaged in before, the Kansas Court of Appeals *anticipated* that the Plaintiffs would have to pull resources from pre-existing “voter assistance activities” to combat the SVR. *Id.* And, even federal courts have rejected this argument in applying Article III’s more demanding standard. *See, e.g., Common Cause Ind. v. Lawson*, 937 F.3d 944, 952 (7th Cir. 2019) (affirming standing where organizations must “increase the time or funds (or both) spent on certain activities to alleviate potentially harmful effects of” the challenged law); *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1267 (N.D. Ga. 2019) (rejecting argument that diversion of resources to pre-existing “get-out-the-vote activities and voter-education programs” was inadequate); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1333 (N.D. Ga. 2018) (rejecting argument that Plaintiffs lack standing because they infuse resources into pre-existing programs); *see also Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1166 (11th Cir. 2008) (rejecting contention that resources incurred to combat the harmful effects of a law do not qualify as “injuries” if they are undertaken “voluntarily”).

That said, the Court could not credit Defendants’ contention that the Plaintiffs “already use their resources to perform the very activities for which they now claim they are going to have to divert funds,” Defs.’ Resp. at 77, in any event, because it is *entirely unsupported* by any admissible evidence. *See supra* § I(A). In support of that contention, which Defendants make repeatedly in

their response to Plaintiffs’ Statement of Facts related to the Plaintiffs’ organizational activities, Defendants cite nothing—not deposition testimony, not written discovery responses, nothing. They merely invite this Court to assume, on nothing more than Defendants’ word, that because the Plaintiffs already serve voters in some way, they have not changed their activities in response to the SVR. Defendants’ assertion does not make it so, and it is not true.

Indeed, *even if* brand new activity were required to establish standing—and, as discussed, it is not—the record is uncontroverted that the Lois Curtis Center (LCC) has taken new actions in response to the SVR. LCC serves individuals with a broad array of disabilities and has promoted advance voting among its constituents. *See* Pls.’ SOF ¶¶ 54, 57 (uncontroverted for these principles). After the SVR was enacted, LCC began operating a voter education and support program to provide disabled voters with information about the SVR, assist them by obtaining signature stamps to ensure they can produce consistent signatures, advise them on simplifying their signatures, and help them secure voter assistants—all to prevent ballot rejection under the SVR. *See* Pls.’ SOF ¶ 61 (uncontroverted); Pls.’ SOF ¶ 62 (not properly controverted); Pls.’ SOF ¶¶ 66–68 (uncontroverted). In light of the resources LCC has invested in these new programs to prevent ballot rejection as a result of the SVR, LCC has had to scale back other important initiatives, including GED courses and legal clinics. *See* Pls.’ SOF ¶ 69 (not properly controverted).

Defendants also recycle other arguments that have been already rejected, including that the Court’s analysis must change following the U.S. Supreme Court’s decision in *Food and Drug Administration v. Alliance for Hippocratic Medicine* (“FDA”), 602 U.S. 367 (2024). Not only has the Kansas Supreme Court made repeatedly clear that Kansas courts apply their own standing test, the mandate rule does not allow this Court to change its approach, even if *FDA* changed Kansas law (which of course it did not). *See State v. Kleypas*, 305 Kan. 224, 297, 382 P.3d 373, 425 (2016)

(“Kansas cases have not recognized the power of a district court to unilaterally depart from the mandate, even when a change in the law has occurred.”). Defendants also misread *FDA*’s impact, even on federal standing jurisprudence, describing it as a “dramatic” change in the law, Defs.’ Resp. at 75, when by its own terms it reaffirms longstanding precedent related to organizational standing in federal courts, *see FDA*, 602 U.S. at 395 (reaffirming approach applied in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)). Since *FDA*, multiple federal courts, including courts considering challenges to election laws by organizations like the Plaintiffs here, have continued to find that they have standing on materially indistinguishable facts. *See, e.g., League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 189 (D.D.C. 2025) (finding Article III standing, even after *FDA*, where nonprofit organizations alleged challenged executive order would force them to “update educational information that they provide to prospective voters” and require them “to invest additional resources in training their staff and volunteers”); *March for Our Lives Idaho v. McGrane*, 749 F. Supp. 3d 1128, 1138–39 (D. Idaho 2024) (applying *FDA* and finding organizational standing to voter organization challenging voting law).

In short, Plaintiffs have more than sufficiently established that they have standing to challenge the SVR based on their own organizational injuries.

B. Plaintiffs also have associational standing.

Plaintiffs also independently have standing to challenge the SVR on associational grounds. Even putting aside Defendants’ (incorrect) insistence that Loud Light and Kansas Appleseed cannot assert associational standing, *but see Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 345 (1977) (holding organization could sue on behalf of constituents even though they were not formal members); *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 280

(3d Cir. 2014) (rejecting a “formalistic” assessment of membership), Defendants do not dispute that the League and LCC both have members for the purposes of associational standing.

It is uncontroverted, for example, that the League is a formal membership organization with more than 1,000 dues-paying members, the majority of whom are registered voters. *See* Pls.’ SOF ¶ 3 (uncontroverted). It is also “uncontroverted that the League has members who vote by advance ballot for reasons such as advanced age or disability.” Defs.’ Resp. to Pls.’ SOF ¶ 5. It is similarly undisputed that that LCC is directed by and serves constituents with disabilities, *see* Pls.’ SOF ¶¶ 54–55 (uncontroverted), voters for whom LCC believes advance ballots are essential, *see* Pls.’ SOF ¶ 57 (uncontroverted for this principle). Defendants nonetheless contest that *none* of their members would have standing to sue to challenge the SVR in their own right, *see* Defs.’ Resp. at 71, but that argument is wrong as a matter of law—both under Kansas precedent and even federal courts’ more demanding standing jurisprudence.

Plaintiffs cited in their Motion (but Defendants fail entirely to address), extensive case law establishing the basic principle that registered voters have standing to challenge laws that regulate how they may cast a ballot. *See* Pls.’ Mot. at 8–9 (citing cases); *see also People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179, 1198 (N.D. Ala. 2020) (“[A] voter always has standing to challenge a statute that places a requirement on the exercise of his or her right to vote.”). This is true even if the voter can overcome the threat the challenged law poses. *See, e.g., Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1351–52 (11th Cir. 2009) (holding even if voters “possessed an acceptable form of photo identification, they would still have standing to challenge” voter identification law).

Indeed, the Tenth Circuit rejected this same argument when the Secretary made it six years ago in *Fish v. Schwab*, 957 F.3d 1105, 1119–20 (10th Cir. 2020), finding that even a voter who *could* comply with proof of citizenship law had standing to challenge it. *See id.* (citing *ACLU of*

New Mexico v. Santillanes, 546 F.3d 1313, 1319 (10th Cir. 2008), and *Common Cause/Ga*, 554 F.3d at 1351–52). The same is necessarily true under Kansas Supreme Court precedent, which makes clear that anyone who is either injured by a law or *threatened with injury* has standing to challenge it. *Hodes & Nauser, MDs, P.A. v. Stanek*, 318 Kan. 995, 1002, 551 P.3d 62, 70 (2024). If a voter is threatened with injury by a law that requires them to produce proof of citizenship to register or bring identification to the polls (even if they have that proof or identification), Kansas voters are surely threatened with injury by the SVR, which may ultimately cause the rejection of their ballot, *even if they do everything they are directed to by Kansas law* in casting that ballot.

Defendants imply that the only voters who would have standing to challenge the SVR are those who show they are almost certain to be “erroneously” disenfranchised by it. Defs.’ Resp. at 71. But that is wrong. Not only are all advance voters subject to the law (and thus threatened by it), the Kansas Supreme Court made clear in *LOWV III* that *all* mail voters are entitled to have their ballot’s validity evaluated under a system that complies with equal protection, whether or not their ballot is ultimately rejected. *See* 318 Kan. at 805 (“To comply with equal protection . . . any proper proofs devised by the Legislature must be capable of being applied with reasonable uniformity upon objective standards so that *no voter* is subject to arbitrary and disparate treatment.” (emphasis added)). And all mail voters are also entitled to have constitutionally adequate procedures in place, regardless of whether they are ultimately disenfranchised.⁷

Defendants’ reliance on *Memphis A. Philip Randolph Institute v. Hargett*, 978 F.3d 378 (6th Cir. 2020), is misplaced for several reasons. That court found that the plaintiffs in that case

⁷ In addition, *LOWV III*’s holding that “no voter” should be “subject to arbitrary and disparate treatment,” is not limited to total disenfranchisement. A voter who must attempt to cure their ballot because it is arbitrarily flagged for rejection (while a similarly situated voter one county over is not subject to the same burden) is also subject to arbitrary and disparate treatment.

lacked standing because their “allegations boil[ed] down to fear of the ever present possibility that an election worker will make a mistake,” and they failed to show that such errors were “inevitable.” *Id.* at 389 (quotation omitted). But in this case, the Kansas Supreme Court has recognized that Kansas voters face cognizable harm *anytime* their ballots are subject to a law that does not provide objective standards for their disqualification. *See LOWV III*, 318 Kan. at 805. Thus, Plaintiffs’ members have an injury that flows not only from the fact that they are subject to the SVR but also from the structure of the law itself. None of these injuries, moreover, are based on unsupported hypotheticals, and each is concrete and non-speculative.

That said, Plaintiffs here *have* shown that errors in applying the SVR *are* inevitable. Indeed, the undisputed evidence shows that election officials repeatedly make errors in applying the SVR, which have resulted not only in burdens on lawful voters but also their disenfranchisement. *See* Pls.’ SOF ¶¶ 385, 389, 395, 403, 405, 416, 436–437 (uncontroverted that ballots of lawful voters were rejected for signature mismatch, despite their signatures being authentic). Further, and as Defendants concede—in fact, *they affirmatively argue*—not even trained experts can always tell whether a signature is authentic. Pls.’ SOF ¶ 169 (uncontroverted); *see also* Defs.’ Resp. at 58 (arguing, “even forensic examiners make mistakes when verifying signatures, *so it is likely that [Kansas] election officials will make mistakes as well*”) (emphasis added). In other words, even Defendants agree that such errors are “inevitable.” And Plaintiffs’ members are not only subject to the SVR as voters; many of those members are particularly vulnerable to disenfranchisement under it, due to disabilities and other conditions that can impact their signatures. *See, e.g.*, Defs.’ Resp. to Pls.’ SOF ¶ 5 (uncontroverted that the League has disabled members who vote by advance ballot); Pls. SOF ¶ 55 (uncontroverted that LCC has members with Parkinson’s disease, cerebral palsy, and muscular dystrophy); Pls. SOF ¶ 271 (uncontroverted that *Defendants’ expert* testified

that such diseases would make it difficult for a voter to sign in a consistent manner). For all of these reasons, it is obvious that Plaintiffs' members would have standing to sue in their own right.

Plaintiffs' suit also does not require the participation of individual members. Although Defendants attempt to recast Plaintiffs' claims as challenges to the treatment of individual voters, *see* Defs.' Resp. at 72, that characterization is incorrect. Plaintiffs do not seek relief based on whether any particular voter received notice that their signature had been flagged for rejection or whether any particular voter's ballot was ultimately improperly rejected. Plaintiffs challenge the structure of Kansas's particular signature verification regime. And under binding Kansas Supreme Court precedent, resolution of Plaintiffs' claims turns on facts concerning how the SVR is administered on a statewide basis. This is not an as-applied challenge requiring individualized proof of injury, and it does not require individual voter participation.⁸

Plaintiffs also are not required to identify a specific member by name to establish associational standing. No Kansas case has ever required it, and Defendants simply ignore binding Kansas precedent that found standing without it. *See Kansas Nat'l Educ. Ass'n v. State*, 305 Kan. 739, 742, 387 P.3d 795, 799 (2017) (finding standing where "[n]o individual association members [were] named as parties"). The argument is also not well founded, even under federal law. *See, e.g., Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 270 (2015) (holding where a reasonable "inference" can be drawn that an organization has members who will be impacted by a challenged law, it need not identify an individual member by name). This is also true in the

⁸ Defendants also continue to misstate what Plaintiffs must show to succeed in this facial challenge. The legal tests that this Court must resolve are set out in *LOWV III*; they do not require Plaintiffs to show "no circumstances" under which the SVR would be valid. Defs.' Resp. at 4. But even if that were the standard, Plaintiffs would meet it. *See* Pls.' Resp. to Defs.' Mot. at 23–28. Because Plaintiffs extensively address this argument in their Response to Defendants' Motion, *see id.*, they do not repeat those arguments here.

signature verification context. *See, e.g., Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017, 1030 (N.D. Fla. 2018) (finding organizations had standing to challenge signature matching laws even where they did not identify specific members that had their ballots rejected, where the harm alleged was not speculative because the law had in fact disenfranchised voters).

But even if this were a silent requirement never before applied in Kansas law, the League has identified a particular member by name, who votes by advance ballot and suffers from muscular dystrophy, putting her squarely at the mercy of the SVR and at heightened risk of disenfranchisement under it. *See* Pls.’ SOF ¶ 6 (objected to on admissibility grounds). Indeed, *Defendants’ own expert* testified that diseases or syndromes that affect muscular control will make it more difficult for a voter to produce a consistent signature. *See* Pls.’ SOF ¶ 271 (uncontroverted). Nor is it hearsay for the League’s former Co-President to testify that one of the organization’s members has muscular dystrophy—that is not a medical diagnosis, but an observable fact. A lay witness may testify about manifest medical conditions that are readily apparent to anyone. *Hiatt v. Groce*, 215 Kan. 14, 21, 523 P.2d 320, 325 (1974).

In any event, under a proper application of the law, it does not even matter if the voter identified by the League has a heightened risk of disenfranchisement under the SVR; it is enough that she is subject to it and her ballot could be flagged for rejection under it. *See, e.g., Fish*, 957 F.3d at 1120. In sum, even if Plaintiffs need name a member, that requirement would be satisfied.

For all these reasons, the Court should reject Defendants’ standing challenge.

III. THE SIGNATURE VERIFICATION REQUIREMENT VIOLATES THE KANSAS CONSTITUTION’S EQUAL PROTECTION PROTECTIONS.

This Court must apply the test set forth by the Kansas Supreme Court in *LOWV III* for Plaintiffs’ equal protection claim: namely, whether the SVR “achieve[s] reasonable uniformity on objective standards.” 318 Kan. at 807. Plaintiffs are entitled to summary judgment on that claim

even if the Court *only* considers the facts that are not actually controverted, either because Defendants concede them, or because they assert only legal arguments or unsupported facts in response. *See supra* § I(A) (discussing failures in Defendants’ briefing); *see also* Ex. A to Pls.’ Reply ISO Pls.’ SOF (chart summarizing positions on the parties’ asserted statements of fact).

A. The test for Plaintiffs’ equal protection claim is the one stated in *LOWV III*.

For the reasons discussed in Plaintiffs’ Response to Defendants’ Motion for Summary Judgment, this Court should reject out of hand Defendants’ suggestion that this Court ought to apply rational basis, *Anderson-Burdick*, or intentional discrimination standards to Plaintiffs’ equal protection claim. *See* Pls.’ Resp. to Defs.’ Mot. at 29–32. These were arguments Defendants made to both the Kansas Court of Appeals and the Kansas Supreme Court, *without success*. *See id.* at 30. Defendants’ suggestion that the Kansas Supreme Court nonetheless adopted these arguments *sub silentio* is utterly implausible, particularly because that Court explicitly set forth a specific test for this Court to apply on remand. Specifically, the Court remanded to give Plaintiffs an “opportunity to test the signature requirement *against the proper legal standard*: Does the signature requirement (and its implementing regulations and policies, such as those promulgated in K.A.R. 7-36-9, K.A.R. 7-36-7 [2023 Supp.], and K.A.R. 7-36-3) achieve reasonable uniformity on objective standards . . . ?” *LOWV III*, 318 Kan. at 807 (emphasis added). Despite that explicit instruction, Defendants suggest—rather bewilderingly—that whether the SVR “achieve[s] reasonable uniformity” was meant to be a “rhetorical question” that this Court need not actually answer. Defs.’ Resp. at 5. The suggestion is fanciful.

Defendants’ suggestion that this Court should instead look to cases like *Rivera v. Schwab*, 315 Kan. 877, 894, 512 P.3d 168, 180 (2022), for the proper equal protection standard is nonsensical. *Rivera* predates *LOWV III*; it would make no sense to jettison the Supreme Court’s explicit directions *in this case* based on an earlier case concerning entirely different issues. The

cases are distinguishable on their face. *Rivera* applied federal equal protection jurisprudence to a partisan gerrymandering claim where the alleged injury was vote dilution. In doing so, the Court emphasized that, while a redistricting plan may affect the relative value of an individual's vote, it “does not infringe on a stand-alone right to vote.” *Id.* at 892 (emphasis added). In contrast, the SVR does in fact infringe on that right directly, burdening voters whose ballots are flagged for rejection and even threatening disenfranchisement if they do not learn about the problem or are unable to ultimately meet whatever standards their county imposes to cure. The *LOWV III* decision articulated a different equal protection test to apply under the Kansas Constitution in these specific circumstances. This Court is obliged to apply that test.⁹

By its plain terms, the *LOWV III* test requires that the standards for rejecting a ballot must have sufficient specificity and objectivity to ensure that “similarly situated individuals” will be treated alike. 318 Kan. at 805. As the uncontroverted evidence establishes, the SVR thoroughly fails this test several times over. Among other things, Plaintiffs’ undisputed evidence demonstrates that the SVR lacks objective standards for rejecting a ballot. *See infra* § III(B)(1). As Plaintiffs show, under the SVR, election officials can look at the exact same signature and come to diametrically different conclusions about whether it should be accepted. *See, e.g.,* Pls.’ SOF ¶¶ 219–220, 222–224 (all uncontroverted). And under the SVR, voters whose ballots are flagged as inconsistent have wildly different opportunities to cure those ballots based on the whims and preferences of their county. *See, e.g.,* Pls.’ SOF ¶¶ 330(c)–(f) (uncontroverted).

⁹ *See also Farley v. Engelken*, 241 Kan. 663, 671, 740 P.2d 1058, 1063–64 (1987) (confirming Kansas Supreme Court can create different legal tests when interpreting the Kansas Constitution compared to analogous provisions of the U.S. Constitution).

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

The SVR fails both parts of the *LOWV III* test for Plaintiffs' equal protection claim: (1) it fails to put forward objective standards for rejecting ballots, and (2) it fails to achieve reasonable uniformity (i.e., to treat similarly situated voters alike) across a number of important areas. A finding on either front entitles Plaintiffs to summary judgment on this claim.

1. The uncontroverted evidence establishes that key provisions of the Signature Verification Requirement lack objective standards.

First, the undisputed evidence establishes that the SVR lacks objective standards for determining whether a voter's signature is a "match" with the signature on file, allowing signatures that are "generally uniform or consistent" (that is, not requiring signatures to be identical), but permitting the rejection of signatures that have "multiple, significant, or obvious" differences from those on file. *See* Pls.' Mot. at 14–22 (citing K.A.R 7-36-9(a)(2), (4)).

The regulation itself is silent as to what it means for a signature to be "generally uniform or consistent," or for a signature to have "multiple, significant, or obvious" differences. K.A.R 7-36-9(a)(2), (4). And the state's YouTube video training—which is the *only* required training before election officials may disqualify ballots under the SVR, Pls.' SOF ¶ 229 (uncontroverted for this principle)—does *not* provide an answer to any of these questions, including what it means for a signature to be "generally consistent," or to have "multiple, significant, or obvious" differences under the SVR. *See* Pls.' SOF ¶ 234(c) (uncontroverted); Pls.' SOF ¶ 237(a)-(b) (not properly controverted).¹⁰ It is undisputed that the Secretary has not issued any written guidance that answers

¹⁰ Defendants argue that the state's video training "further fleshes this standard out." Defs.' Resp. at 19. They cite no evidence for this, and it is not true. Indeed, the video training does not even *apply Kansas law* because it is entirely lifted from the State of Oregon. *See* Pls.' Mot. at 16–17. And although Mr. Caskey's affidavit contends "the video was updated to train on signature verification to specifically address Kansas' signature verification law and associated regulation," Defs.' Ex. A. ¶ 28, as Mr. Caskey admitted in his deposition, all that means is that Kansas

any of these questions. *See* Pls.’ SOF ¶ 134 (uncontroverted on this principle), ¶ 208(b)–(d) (uncontroverted), ¶ 211(b)–(c) (uncontroverted). As a consequence, what constitutes a “significant” or an “obvious” difference is left to the eye of the beholder, the very definition of a subjective standard. *Cf.* Black’s Law Dictionary (12th ed. 2024) (defining “objective” as “of, relating to, or based on externally verifiable phenomena, as opposed to an individual’s perceptions, feelings, or intentions”).

As the Kansas Supreme Court suggested in its opinion, the “unmoored use” of key terms, combined with “haphazard interpretations . . . in official guidance,” *Minn. Voters All. v. Mansky*, 585 U.S. 1, 16–17 (2018), together fail the objectivity test.¹¹ That is precisely the case here. Defendants do not show that these terms have ever actually been explained, or that the Secretary has attempted to define them (much less in some uniform fashion). Nor could the Secretary even offer coherent *unofficial* clear guidance as to what these terms mean and when a ballot should consequently be rejected. As Plaintiffs showed, and Defendants do not dispute, State Elections Director Caskey testified that multiple differences between signatures do not *require* rejection; instead, it matters what the differences are and depends on “context.” Pls.’ SOF ¶ 214(b) (uncontroverted). But he did not explain which differences matter or what context matters. *See* Pls.’ Ex. 6, Caskey Dep. Tr. 118:9–20. Similarly, Mr. Caskey testified that a *single significant* difference would necessarily merit rejection; he said it would again require “context,” in that “it

“updated” the training in September 2025 to include a one-minute voiceover that reads the text of K.A.R. 7-36-9(a)(2) and (a)(4) (the definitions of “match” and “inconsistent”), but then the video “moves straight into the Oregon video.” Pls.’ SOF ¶ 237(a) (not properly controverted). The updated training video still fails to define what it means for a signature to be “generally uniform and consistent” or to have “multiple, significant, or obvious” differences under Kansas law. Pls.’ SOF ¶ 237(b) (not properly controverted).

¹¹ Defendants criticize Plaintiffs for citing *Mansky*, calling it “particularly unhelpful” to resolving the claim. Defs.’ Resp. at 12. But it was the Kansas Supreme Court that cited *Mansky* in discussing the standard on remand for Plaintiffs’ equal protection challenge. *See LOWV III*, 318 Kan. at 807.

depends on what” the “significant” difference is. Pls.’ SOF ¶ 215(d) (uncontroverted). But he again did not explain what that context was or what a significant difference is. *See* Pls.’ Ex. 6, Caskey Dep. Tr. 120:4–14. Similarly, when asked whether a single “obvious” difference would permit the rejection of a signature as inconsistent, he responded: “Depends on what the - what ‘obvious’ means” without offering an explanation of what it means for a difference in a signature to be “obvious.” Pls.’ SOF ¶ 216(b) (uncontroverted for this principle); *see also* Pls.’ Ex. 6, Caskey Dep. Tr. 120:19–121:2.

Defendants dance around the proper legal standard, largely attempting to avoid the standard that the Kansas Supreme Court directed this Court to apply in *LOWV III* in favor of one that Defendants simply make up: which asks how “lenient” the SVR allegedly is, rather than focusing on its “objectivity.” *See* Defs.’ Resp. at 11, 15. Defendants also argue that because the words “consistent,” “significant,” and “obvious” are everyday words, they somehow inherently “provide sufficient guidance to election officials and voters alike.” Defs.’ Resp. at 13. But the words “special” and “beautiful” are also terms of everyday usage and “part of the vocabulary of ordinary civic life,” Defs.’ Resp. at 13–14—that does not make them objective standards.

And while Defendants admit that an “objective” criterion is one that “directs officials to evaluate identifiable facts,” *see* Defs.’ Resp. at 19, they then fail entirely to explain how that standard is met in the case of the SVR. Whether a difference in a signature is “significant” or “obvious” is not an identifiable fact. It is a subjective, personal opinion, as Kansas county election officials openly admit. When asked, “Do you think that different people might come to different conclusions about what constitutes a significant difference between signatures?” Johnson County Election Commissioner Sherman answered, “As stated before, yes. I think folks will come to different conclusions based off the same signature and reference guidelines.” Pls.’ SOF ¶ 215(f)

(uncontroverted); *see also* Pls.’ SOF ¶ 216(c) (Riley County Clerk agreeing different people might come to different conclusions about what constitutes an obvious difference between two signatures) (not properly controverted).

The closest Defendants come to attempting to explain the SVR’s standard (relying on the argument of counsel, not any record evidence) is to claim that it is an attempt to “distinguish[] trivial or explainable variations from meaningful discrepancies.” Defs.’ Resp. at 19. But that standard exists nowhere in the regulation or in official guidance from the State. Furthermore, a standard that simply directs election officials to reject signatures with “meaningful discrepancies” vs. “trivial variations” is still not objective because what is a “meaningful discrepancy” or a “trivial variation” in a signature is actually a very complicated question, one that experts spend years training to be able to properly discern. *See* Defs.’ Resp. to Pls.’ SOF ¶¶ 149–151 (uncontroverted); ¶¶ 156–164 (not properly controverted). Without that extensive training or very explicit and clear direction on a whole host of issues about signature verification that Kansas does *not* provide *any* meaningful guidance or training on, *see, e.g.*, Pls.’ SOF ¶ 229 (uncontroverted for this principle), Pls.’ SOF ¶ 237(a)-(b) (not properly controverted), this is simply a direction to follow one’s gut as to what is meaningful and what is trivial. And the answer to that question will vary from one person to the next. This was evidenced by the testimony of the county election officials who repeatedly came to different conclusions about the same signatures in applying the SVR. *See infra* § III(B)(2).

For all of these reasons and those discussed elsewhere in Plaintiffs’ briefing, *see* Pls.’ Mot. at 14–22; Pls.’ Resp. to Defs.’ Mot. at 45–47, the lack of objective standards for determining whether a signature is a “match” to the signature on file should alone entitle Plaintiffs to summary judgment on their equal protection claim. But Plaintiffs also proved—and Defendants do not offer

evidence controverting—that other key provisions of the SVR also are not governed by objective standards. Plaintiffs recount just a few of them here.

Comparison to the signature on file. As Plaintiffs’ Motion demonstrated, although K.S.A. 25-1124(h) mandates that a signature must “match” “the signature on file in the county voter registration records,” Kansas has no laws or standards that govern when or how signatures are to be added to a voter’s registration record, or even what signature the SVR refers to when it speaks of the signature “on file.” Pls.’ SOF ¶ 260 (uncontroverted). Defendants do not dispute that “counties have not received written guidance from the state mandating when a voter’s signature must be added to their registration record,” Pls.’ SOF ¶ 260 (uncontroverted), resulting in county-specific “workflows” for when a signature will be added to the voter’s file. Pls.’ SOF ¶ 260 (uncontroverted).

Defendants’ response does not controvert these facts. Instead, Defendants argue that “[t]he 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).” Defs.’ Resp. at 27. This grossly overstates K.A.R. 7-36-9(g)(1)’s requirements. In reality, K.A.R. 7-36-9(g)(1) simply states: “The voter’s signature shall be compared to as many recorded signatures as possible from the voter registration database.” Plaintiffs agree that this language requires election officials to compare a voter’s signature to everything that is *recorded in the database*. But as Defendants have otherwise not disputed, *there are no laws or standards* that govern when or how signatures are to be added to a voter’s registration record *in the first place*. Pls.’ SOF ¶ 260 (uncontroverted).

The promise that Kansas election officials will compare to all “recorded” signatures is an empty promise if county election officials do not record those signatures. The fact that Shawnee

County voluntarily records many forms of signatures, *see* Defs.’ Resp. at 27, is good for Shawnee County voters (and might explain why that County routinely has a comparatively low rate of rejection, *see* Pls.’ SOF ¶¶ 355(c), 360 (uncontroverted that Shawnee County had lowest non-zero rate of rejection in 2022 and 2024), but the evidence proves that is not a global practice. *See, e.g.*, Pls.’ SOF ¶ 265(g) (uncontroverted that, in Riley County, the “overwhelming majority” of voters have “one” comparator on file: their voter registration card). The reason that these practices can vary so dramatically is because there is simply not an objective standard or process in place to get signatures “on file,” something Defendants cannot and do not actually dispute.

Defendants wrongly suggest that Plaintiffs are arguing that an equal protection violation inherently arises because “some voters . . . have more signatures on file than others.” Defs.’ Resp. at 29. It matters *why* that happens and the failure to have objective standards (indeed, in this instance, even *any standards*) for recording voters’ signatures creates a structural problem, making it highly unlikely that similarly situated voters will be treated the same when their signature is compared to the signatures “on file”—the very foundation of any signature verification system.

Applying and enforcing the disability exception. As Plaintiffs showed, *see* Pls.’ Mot. at 26–30, although K.S.A. 25-1124(h) creates a statutory mandatory exemption from signature verification for voters who have a disability that prevents them from (1) signing the ballot envelope at all, or (2) having a consistent signature, neither the statute nor the regulation provides any standards at all (much less objective ones) for that exemption’s application and enforcement. As Defendants do not dispute, there is no written guidance or manual explaining how to apply the disability exception, *see* Pls.’ SOF ¶ 134 (uncontroverted for this principle), and Kansas’s “training” video does not address it whatsoever, *see* Pls.’ SOF ¶ 234(b) (uncontroverted).

The Parties' summary judgment briefing has only brought into sharp focus the lack of standards for the SVR's disability exception. Although Plaintiffs' Motion identified *many* questions that the statute and regulation (and Defendants' briefing) leave unanswered, *see* Pls.' Mot. at 26–30, here Plaintiffs focus on just one: How the disability exemption applies to those who cannot make a consistent signature, and how the lack of standards means that *even the Secretary* cannot decide what is required for the exemption's application. In Defendants' Response to Plaintiffs' Statement of Facts, Defendants stated it was “uncontroverted” “that voters who have a disability preventing them from having a signature consistent with the one on file *are required to sign the ballot envelope.*” Pls.' SOF ¶ 278 (uncontroverted) (emphasis added). That statement cited deposition testimony of Mr. Caskey, the State Elections Director, and Mr. Sherman of Johnson County, both of whom testified that the voter *is still required to sign* the ballot envelope *if* they have *any* physical “capacity” to sign, even if they cannot make a consistent signature. *See id.* (uncontroverted). As Plaintiffs pointed out, while that position is consistent with the language on Kansas's ballot envelope (which states a voter can use a voter assistant to sign on their behalf *only if* the voter is “physically unable” to sign), it raised the important question of *how* counties would know, when reviewing the ballot envelope, that the voter was unable to make a consistent signature and exempt them from signature verification under the plain text of the SVR, instead of just marking the signature “inconsistent” and flagging it for rejection. *See* Pls.' Mot. at 26–29.

Defendants take an entirely different position, however, in their own Motion for Summary Judgment and in their Response Brief. In those submissions, Defendants state that, “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,’” Defs.' Resp. to Pls.' Mot. at 33, implying that such a voter need not sign themselves and instead should use a voter assistant.

See also Defs.’ Mot. at 24 (asserting, a voter who has “a disability or illness that prevents her from either signing the ballot or signing consistent with her signature(s) on file” should “have a third party execute an affidavit (including the one contained on the outside of every ballot envelope) and sign on the voter’s behalf”). This is a striking change in position. Yet, as Plaintiffs pointed out in their Response to Defendants’ Motion, the reason the Secretary’s answer for how the SVR applies to voters who cannot make consistent signatures can change so significantly (in a matter of weeks, no less) is that *there is no standard* for applying that exemption. *See* Pls.’ Resp. to Defs.’ Mot. at 47–49.

This is no small thing. The SVR’s disability exception is critical to ensure that it is not arbitrarily disenfranchising voters who cannot sign their name in a consistent manner due to any number of common disabilities. *See* Pls.’ SOF ¶¶ 55, 181, 271 (all uncontroverted). And the substance of the Secretary’s new position is as untenable as the first. It requires that a voter who *can* sign, but cannot make a consistent signature, somehow successfully intuit that not being able to make a consistent signature means that they qualify for the exception that the ballot envelope says applies for voters who are completely “physically unable to sign.” *See* Pls.’ SOF ¶ 274 (uncontroverted for this principle). As another court encountering a nearly identical situation in North Dakota explained, that position is absurd:

Following the Secretary’s logic, voters are charged with not only knowing whether they are able to produce consistent signatures, but also with knowing that such inconsistency renders them entirely ‘unable’ to sign their name. In essence, the Secretary expects voters to read the minds of election officials before deciding to affix a signature on an absentee ballot.

Self Advoc. Sols. N.D. v. Jaeger, 464 F. Supp. 3d 1039, 1053 (D.N.D. 2020). Even worse, here, Defendants are not only asking Kansas voters who cannot make consistent signatures to make those same judgment calls, they are also asking those voters to have their voter assistant swear,

under penalty of perjury, to the voter's "physical *inability*" to sign, as well. *See* Pls.' SOF ¶ 274 (uncontroverted for this principle) (emphasis added). As Defendants admit, "it is uncontroverted that the envelope has not yet been updated to not include the additional language about inconsistent signatures." Defs.' Resp. to Pls.' SOF ¶ 275.

The State's failure to implement the statute's disability exemption and the lack of any real standards for its application leaves the fate of disabled voters' ballots up to chance, with no clear way to ensure that they can be the beneficiary of an exemption they are expressly entitled to under statute. *See* K.S.A. 25-1124(h). For this reason, too, the Court should hold the SVR lacks objective standards consistent with equal protection.

"Curing" a ballot flagged for rejection. As Plaintiffs showed, *see* Pls.' Mot. at 31–32, neither the statute nor the regulation provides objective standards for curing an alleged signature mismatch. The statute provides no objective standard at all, requiring only that the voter be given the "opportunity to correct the deficiency." K.S.A. 25-1124(b). And the regulation simply says that a voter's signature deficiency "may" be corrected "by providing an updated signature consistent with the signature on file." K.A.R. 7-36-9(d)(1). As Plaintiffs pointed out:

Those standards introduce the same questions as before. What does it mean for a signature to be consistent? Judged by whom and how? How can that signature be provided? And what if—e.g., because of a disability, health, or simply because the voter's signature has evolved—the voter is *not* able to produce a consistent signature to the one on file? Does the regulation require the rejection of that voter's ballot, even if the county now has reason to believe the ballot envelope signature to be genuine? Again, the statutes, the regulation, and the training do not say.

Pls.' Mot. at 31–32.

Defendants do not attempt to answer these questions, nor do they contend that they are answered by the regulation or any other written guidance from the Secretary. *See* Defs.' Resp. at 36. Indeed, Defendants' only response is to call Plaintiffs' questions "rhetorical hypotheticals." *Id.*

But that is not correct. These are the first questions that any county would need to answer to institute even the most basic cure process. *What does it mean for a signature to be consistent? How can a voter provide that signature? What if the voter cannot make a consistent signature with the one on file?* Indeed, Kansas law itself recognizes that some voters are incapable of producing consistent signatures. *See* K.S.A. 25-1124(h). What then? Is the voter simply out of luck? Not only are there no objective standards for this provision, there are functionally no standards *at all*.

Finally, Defendants suggest that, if Kansas's system is unconstitutional, "every signature verification regime in the country would have to be invalidated." Defs.' Resp. at 20. That is nonsense. First, a Kansas state court decision could not invalidate anything other than a Kansas law. But Defendants' argument also implies that Kansas's SVR has the same standards as other states. It does not. For example, Defendants persist in insisting that Washington State's signature verification standards, which were upheld under a different legal standard under a different state constitution, are "almost identical" to Kansas's. Defs.' Resp. at 22. They are not.

In addition to its substantively more protective notice and cure procedures (which Plaintiffs have already addressed in detail, *see* Pls.' Resp. to Defs.' Mot. at 53–54), Washington also has more robust criteria than Kansas for when a signature can be rejected in the first place. For example:

- Washington has an express presumption *in the law itself* "that the signature on the ballot declaration is the voter's signature" that must be applied at "each stage of the signature verification process." Wash. Admin. Code 434-261-051(2). *But see* K.S.A. 25-1124(h) (no presumption); K.A.R. 7-36-9 (no presumption).
- Washington requires signature verifiers to take specific criteria into account when judging whether a signature is a match. Wash. Admin. Code 434-261-051(3). *But see* K.S.A. 25-1124(h) (no such criteria); K.A.R. 7-36-9 (no such criteria).
- Washington requires signature verifiers to "accept signatures if the appearance of a discrepancy can reasonably be explained by the following: (a) A shaky signature that could be health-related or the result of aging; (b) The voter's use of a variation of the

voter's full name, such as the use of initials, including or omitting a middle name, or substituting a middle name for a first name; (c) A change in the voter's signature over time; (d) A signature written in haste; (e) A signature in the voter's registration record that was written with a stylus pen or other electronic signature tool, which may result in a thick or fuzzy quality; (f) A writing surface that was hard, soft, uneven, or unstable; (g) The voter has a limited history of fewer than three ballots returned; and (h) Any other reasonable factor." Wash. Admin. Code 434-261-051(5). *But see* K.S.A. 25-1124(h) (no such instruction); K.A.R. 7-36-9 (no such instruction).¹²

Moreover, the Washington Supreme Court did not evaluate Washington's standard under any claim that is at issue here, *see Vet Voice Found. v. Hobbs*, 564 P.3d 978 (Wash. 2025) (addressing those plaintiffs' claims under the Washington Constitution's freedom of elections clause, privileges and immunities clause, and substantive due process clause, *none of which* is at issue here). Here, the Kansas Supreme Court has spoken expressly to the test that must be applied to the SVR under the Kansas Constitution's equal protection provisions and that test asks specifically about the objectivity of the standards imposed by the law—something that the Washington Court did not have to consider in its case. *See id.*¹³

In sum, under the test that this Court is bound to apply under the Kansas Constitution and at the direction of the Kansas Supreme Court, the uncontroverted evidence establishes that the SVR does not comply with equal protection because it does not contain "objective standards" for

¹² It is true that Washington also has one standard resembling Kansas's, in that it permits rejection when the signature has "multiple, significant, *and* obvious discrepancies" from the signature on file. *See* Defs.' Resp. at 22 (citing Wash. Admin. Code § 434-261-053(2)(b)). Not only should that standard be read alongside the broader context and protections of Washington's law, even on its own it is *still* more protective of voters than Kansas's standard—which permits the rejection of signatures that have "multiple" differences *or* a "significant" difference *or* an "obvious" difference. *See* K.A.R. 7-36-9(a)(2).

¹³ Defendants similarly contend that California has "almost identical" procedures that have been upheld. *See* Defs.' Resp. at 22. As with Washington's standards, this is simply not true. Plaintiffs have already responded to these arguments, and do not repeat them here. *See* Pls.' Resp. to Defs.' Mot. at 33–36 (distinguishing California's signature verification standards as well as the legal tests under which California's system was evaluated in the case cited by Defendants).

its application. *LOWV III*, 318 Kan. at 807. This alone entitles Plaintiffs to summary judgment on their equal protection claim.

2. The uncontroverted evidence establishes that the Signature Verification Requirement fails to achieve reasonable uniformity.

Under the test required by *LOWV III*, the SVR must also “achieve reasonable uniformity” across Kansas counties to comply with equal protection. 318 Kan. at 807. The uncontroverted evidence establishes that the SVR fails that part of the equal protection standard, too.

First, the evidence is both overwhelming and uncontroverted that, in applying the SVR, election officials fail to achieve reasonable uniformity in deciding which signatures to accept and which to reject. Plaintiffs proved, and Defendants do not dispute, that county election officials, when showed the real signatures (and real signature exemplars produced by their counties) of Kansas voters, as well as the hypothetical signatures and exemplars of fictional individuals, routinely came to different conclusions about whether the signatures under examination were a “match.” *See* Pls.’ Mot. at 33–39. Specifically, it is wholly uncontroverted that:

- Although Douglas County officials rejected the ballot envelope signature of Douglas County voter Kenton Felmlee as “inconsistent” and Riley County Clerk Vargo agreed with that determination, both the Johnson County and Shawnee County Election Commissioners would have accepted Mr. Felmlee’s ballot signature as a “match.” Pls.’ SOF ¶ 219 (uncontroverted).
- Although Dickinson County rejected the (known authentic) ballot envelope signature of Dickinson County voter Elizabeth Anderson as “inconsistent,” and Riley County and Johnson County officials agreed with that determination, the Shawnee County Commissioner likely would have accepted the ballot signature as a “match.” Pls.’ SOF ¶ 220 (uncontroverted).
- Although the Riley County Clerk would have rejected the signature of hypothetical voter “Gerald Ford” as “inconsistent,” the Johnson and Shawnee County Commissioners would have accepted his signature as a “match.” Pls.’ SOF ¶ 222 (uncontroverted).
- Although the Riley County Clerk and Johnson County Commissioner would have rejected the signature of hypothetical voter “Jimmy Carter” as “inconsistent,” the Shawnee County Commissioner would have accepted it as a “match.” Pls. SOF ¶ 223 (uncontroverted)

- Although the Riley County Clerk and Shawnee County Commissioner would have rejected the signature of hypothetical voter “Daniel” as “inconsistent,” the Johnson County Commissioner would have accepted it as a “match.” Pls.’ SOF ¶ 224 (uncontroverted).

These divergent outcomes are not surprising in light of the wholly unobjective standard that Kansas county election officials must use to judge whether a signature “differs in multiple, significant, or obvious respects,” K.A.R. 7-36-9(a)(2), which leaves them to their own devices to attempt to implement such standards. Indeed, it is yet more confirmation that the standard of whether to reject a ballot is not an objective one. *See supra* § III(B)(1).

In asking this Court not to consider this testimony (which again, is uncontroverted), Defendants mischaracterize its purpose. Plaintiffs never asked the “deponents to opine on whether the signatures were ‘authentic’ based on one exemplar,” as Defendants contend. Defs.’ Resp. at 41–42. Indeed, Plaintiffs did not ask the officials whether the signatures were “authentic” at all; rather, Plaintiffs simply asked whether they would deem the signature “inconsistent” or a “match” under the SVR. *See* Pls.’ SOF ¶¶ 219–220, 222–224 (all uncontroverted). And for the real Kansas voters (Mr. Felmlee and Ms. Anderson), Plaintiffs provided all of the exemplars that their county had produced for them (three for Mr. Felmlee and one for Ms. Anderson) for the election officials to conduct the same comparison. *See* Pls.’ SOF ¶¶ 219–220 (uncontroverted).

Although Plaintiffs *separately* had information on whether some of these signatures were authentic, and provided that information to the Court to show that the determination of “inconsistency” is not a good gauge for *inauthenticity*, *see* Pls.’ Mot. at 47–48, the primary purpose of these questions was to determine whether Kansas county election officials would reach the same conclusions on whether a signature exhibited “multiple, significant, or obvious” differences from the comparator signature when provided the same information and applying the same SVR standard. They repeatedly did not. Although Defendants protest that this does not take into account

the cure process, *see* Defs.’ Resp. at 43, it need not do so to reveal whether a county’s decision to reject a ballot in the first place—the trigger that will determine whether a voter will be required to go through the cure process to save their lawful, valid ballot from rejection—is likely to “achieve reasonable uniformity.” 318 Kan. at 807. As the uncontroverted evidence proves, it is not.

The Court should also reject Defendants’ implication that the county officials deposed in this matter were not competent to testify about the signature verification process now that Defendants are unsatisfied with their testimony. In their own witness disclosures, Defendants identified Mr. Howell, Mr. Sherman, and Mr. Johnson as witnesses who would “testify as to the policies and procedures his office uses for processing advance mail ballots, *reviewing whether signatures on the ballot envelopes match the signatures on file in the voter registration database*, and administering the regulation governing this process (including its provisions relating to exceptions for signature mismatch requirements and the ‘cure’ process).” Defs.’ Initial Witness Disclosures at 2–3 (May 2, 2025) (emphasis added). Each of these witnesses testified that they had conducted signature matching before, and each has watched the required video training, which is all anyone must do before applying the SVR in Kansas. *See* Pls. Ex. 5, Johnson County Ex., Sherman Dep. Tr. 120:25–121:3; Pls.’ Ex. 14, Riley County Ex., Vargo Dep. Tr. 128:8–11; 129:3–6; Pls.’ Ex. 18, Shawnee County Ex., Howell Dep. Tr. 43:3–11, 88:4–12; Pls.’ Ex. 6, Caskey Dep. Tr. 143:15–23; Defs.’ Resp. to Pls.’ SOF ¶ 233. When “trained” election officials attempt to apply the same standard and come to diametrically different results based on the same information, they are *not* “achiev[ing] reasonable uniformity on objective standards.” *LOWV III*, 318 Kan. at 807.¹⁴

¹⁴ It is untrue, as Defendants imply, that signature verification is only conducted by “specialized senior staff with extensive experience.” Defs.’ Resp. at 42–43. Indeed, Defendants did not dispute that Kansas uses seasonal and temporary workers to conduct signature verification. *See* Defs.’ Resp. to Pls.’ SOF ¶ 298(b) (uncontroverted that all members of the mail ballot review board in Johnson County who review signatures are “non-full-time staff”). The county officials deposed in

Second, the record is undisputed that Kansas does not achieve reasonable uniformity in other key elements of the signature verification process. Defendants do not dispute, for example, that the Secretary’s counsel has advised counties that it was “[their] call” on whether to permit the canvassing board to count ballots that have “inconsistent” signatures but were not cured, *see* Pls.’ SOF ¶ 300 (uncontroverted). Although Defendants argue that “[a]ny divergence between counties on this issue has no impact on voters,” Defs.’ Resp. at 38, that is plainly untrue. The canvassing board’s role is to make a final decision on which ballots to count. *See* Pls.’ SOF ¶ 299 (uncontroverted). When one county counts ballots flagged for “inconsistent” signatures under the SVR, even if not cured, and another county does not, it cannot be said that “similarly situated” voters have been treated alike consistent with equal protection, *LOWV III*, 318 Kan. at 805.

Although Plaintiffs have pointed out many more differences in counties’ signature verification processes, *see* Pls.’ Mot. at 39–44, among the most meaningful are the differences in how the counties allow a voter to “cure” their ballot after it has been flagged under the SVR, to save it from rejection (and themselves from disenfranchisement). The uncontroverted evidence shows that, although voters in some counties have multiple options to cure their ballot (including *e.g.*, by mail, text, email, or even a home visit from election officials), *see* Pls.’ SOF ¶ 330(d), (e), (f) (uncontroverted), in other counties, voters can only cure their ballots by physically appearing before their county election office, *see* Pls.’ SOF ¶ 330(c) (uncontroverted). Defendants do not dispute the differences, they simply attempt to justify them as “logical” or “explainable.” Defs.’ Resp. at 40. Plaintiffs’ Response to Defendants’ Motion for Summary Judgment explained why the differences between these methods of curing were not “trivial,” as Defendants claimed, *see*

this matter, who oversee those offices, are surely as competent to testify about signature verification decisions as those staff. Indeed, Defendants identified them as witnesses who could speak to exactly that. *See* Defs.’ Initial Witness Disclosures at 2–3 (May 2, 2025).

Pls.’ Resp. to Defs.’ Mot. at 50–51, and the differences matter immensely: many voters vote by mail *because* it is difficult (and in some cases impossible) for them to appear in person to do so. *See* Pls.’ SOF ¶ 367 (not properly controverted). Indeed, in creating the permanent advance voter list, Kansas itself recognized that there is an entire class of mail voters who vote by mail because they have a permanent disability or illness that prevents them from voting in person. *See* Pls.’ SOF ¶¶ 82, 84 (uncontroverted).

Finally, the undisputed evidence establishes that the rates of rejection under the SVR have varied dramatically between counties. It is undisputed, for example, that counties with roughly the same number of advance mail ballots (Shawnee and Wyandotte, with 7,057 and 6,715 such ballots respectively), differed in their rejection rates under the SVR by a factor of 18, with Shawnee having the much lower rate. *See* Pls.’ SOF ¶ 355(c) (uncontroverted). These rates of rejection only further confirm that Kansas counties are *not* “achiev[ing] reasonable uniformity” in the application of the SVR, *LOWV III*, 318 Kan. at 807, a conclusion that is obvious from the rest of the record, which includes evidence that Kansas election officials cannot even agree whether to reject the same ballots, and take vastly different approaches to how voters can ultimately cure their ballots once they are flagged for rejection under the SVR.

C. Kansas’s stated interests in the law are irrelevant to the equal protection determination.

The Parties appear to agree that this Court need not undertake an examination of Kansas’s interests in the SVR to resolve this case on summary judgment. *See* Pls.’ Mot. at 44 (“[T]he State’s interest in the SVR is not relevant to whether it complies with equal protection under the applicable two-part test”); Defs.’ Resp. at 43 (“Defendants believe this Court need not even undertake an evaluation of Kansas’s interests in the SVR . . .”). Therefore, although there are some controverted facts about the State’s interests in the SVR, none should preclude summary judgment. *See N. Nat.*

Gas Co. v. ONEOK Field Servs. Co., 296 Kan. 906, 934, 296 P.3d 1106, 1124 (2013) (“A disputed question of fact which is immaterial to the issue does not preclude summary judgment.”).

As a matter of record, however, Plaintiffs have *never argued*, as Defendants now claim, that, “even if the SVR satisfies the ‘reasonable uniformity on object standards’ test promulgated by the Kansas Supreme Court,” it would still violate under equal protection if the State lacked sufficiently strong interests in it. Defs.’ Resp. at 43. Plaintiffs argue nearly the opposite—that if the SVR *does not* “achieve reasonable uniformity on objective standards,” the State’s purported interests in the law cannot save it. *See* Pls.’ Mot. at 44. Because Plaintiffs’ Response to Defendants’ Motion for Summary Judgment thoroughly addressed the purported state interests that Defendants claim in the SVR (arguments that Defendants recycle nearly verbatim here), Plaintiffs do not repeat those responses here. *See* Pls.’ Resp. to Defs.’ Mot. at 42–44 (addressing Defendants’ arguments on alleged voter fraud, orderly elections, and public confidence). Plaintiffs merely observe that, after this case has been pending for years and the parties undertook months of discovery, Defendants still have not identified a single incident of fraud that was or could have been prevented by the SVR. Whether or not Defendants have any obligation to produce such evidence, it is highly suggestive that the SVR is not essential to the state’s election integrity; to the contrary, the record establishes that it undermines it. *See* Pls.’ Mot. at 44–49; Pls.’ Resp. to Defs.’ Mot. at 39–44.

IV. THE SIGNATURE VERIFICATION REQUIREMENT VIOLATES THE KANSAS CONSTITUTION’S GUARANTEE OF DUE PROCESS.

A. *LOWV III* requires the Court to determine if the Signature Verification Requirement guarantees reasonable notice and a meaningful opportunity to cure.

At the outset, the Court should reject Defendants’ contention that the Kansas Supreme Court did not already find a liberty interest in the right to vote in *LOWV III*. *See* Defs.’ Resp. at 2. At least for the purposes of this case, the issue is settled. On initial appeal from this Court, the

Court of Appeals held that this Court “erred by ruling that the signature matching requirement did not implicate a liberty interest entitled to procedural due process.” *LOWV I*, 63 Kan. App. 2d at 217. Although Defendants urged the Supreme Court to reverse on that basis and hold that the right to vote did not implicate a liberty interest, *see* Pls.’ Ex. B to Pls.’ Resp. to Def. Mot. at 22–24, the Court declined to do so, holding instead that Plaintiffs had stated a valid procedural due process claim, reversing this Court’s conclusion to the contrary, and remanding to determine what protections were due to Kansas voters. *See LOWV III*, 318 Kan. at 806–07.

Because procedural due process protections do not apply *unless* a party has a valid property or liberty interest, there can be no serious doubt the Kansas Supreme Court concluded that Plaintiffs had cleared that hurdle when it remanded this claim for full adjudication on the merits, whether or not it expressly said so. *See In re J.D.C.*, 284 Kan. 155, 166, 159 P.3d 974, 982 (2007) (“In reviewing a procedural due process claim, we must first determine whether a protected liberty or property interest is involved. If it is, then we must determine the nature and extent of the process due.”). Defendants’ apparent contention that the question was left open for this Court to consider anew—after the Court of Appeals had already reversed this Court on that basis, and the Supreme Court affirmed that holding—is simply not plausible. Thus, this Court has no basis to consider the various cases Defendants cite holding there is no liberty interest in the right to vote, which are the same cases and arguments Defendants put forward at the Kansas Supreme Court when they unsuccessfully made the argument the first time. *Compare* Defs.’ Resp. at 51–52, *with* Pls.’ Ex. B to Pls.’ Resp. to Def. Mot. at 23.

And while Defendants’ Motion for Summary Judgment appeared to advocate a lower standard for resolving Plaintiffs’ procedural due process claim, the parties now appear to agree on at least the basic legal standard. As Defendants themselves now state, “[the Kansas Supreme

Court] made clear that due process is satisfied where voters receive reasonable notice of an apparent mismatch and an opportunity to cure it in a meaningful manner.” Defs.’ Resp. at 2. Plaintiffs agree that is the standard. *See LOWV III*, 318 Kan. at 806 (“To comply with due process guarantees, any proper proofs devised by the Legislature must include reasonable notice to the voter and an opportunity to be heard at a meaningful time and in a meaningful manner . . .”); *see also id.* at 807 (The League has made a colorable claim—accepting the allegations in the petition as true—that . . . the notice and cure provisions are not reasonable”).¹⁵

For that reason, the fact that Kansas provides *some* notice and *some* opportunity to cure does not on its own mean that the SVR passes constitutional muster. Yet this is the implication that Defendants make when they compare Kansas’s system to those that were struck down on procedural due process grounds for failing to provide, as Defendants accurately summarize, “no, or almost no, opportunity to correct mismatches.” Defs.’ Resp. at 53 (citing cases). But none of those cases stand for the proposition that the only way a law can fail due process is if it has effectively no opportunity to cure; to the contrary, as the courts hearing those cases explained, the constitutionality of those states’ systems was not a close call; they obviously failed to comply with the “bare-minimum requirements of procedural due process.” *Self Advoc. Sols. N.D.*, 464 F. Supp. 3d at 1053; *see also id.* at 1052 (explaining the state’s lack of notice and cure opportunity “all but ends the inquiry” of the system’s constitutionality).

And, once again, in this case it is the Kansas Supreme Court’s decision that controls, and as that decision makes clear, simply providing *some* notice or *some* opportunity to cure is not enough; if that were sufficient, there would have been no reason to remand the case on this question

¹⁵ Despite agreement on the basic legal standard, the Parties appear to disagree how this standard should be applied, with Defendants advocating that this Court should utilize *Anderson-Burdick* to resolve the question. Plaintiffs address these arguments *infra* § IV(B).

at all—the fact that the law contemplated *some* notice and cure process on its face would have been sufficient. *See* K.S.A. 25-1124(b) (“The county election officer shall attempt to contact each person who submits an advance voting ballot where there is no signature or where the signature does not match with the signature on file and allow such voter the opportunity to correct the deficiency before the commencement of the final county canvass.”); K.S.A. 25-1124(h) (requiring signature verification to occur “[s]ubject to the provisions of subsection (b)”). The question for this Court, instead, is whether the notice and cure process provided by the SVR is in fact *reasonable* and *meaningful*. *See LOWV III*, 318 Kan. at 806.

Defendants’ sweeping generalization, devoid of any context or developed argument—that “[f]ederal and state appellate courts have also regularly turned away due process challenges to signature verification laws on the merits,” Defs.’ Resp. at 53—fails to grapple with the legal and factual distinctions between the cases Defendants cite and the ones here. As Plaintiffs have already noted, several of the cases Defendants cite do not even involve procedural due process challenges. *See* Pls.’ Resp. to Defs.’ Mot. at 52–54 (distinguishing *Vet Voice Foundation v. Hobbs*, 4 Wash. 3d 383, 407, 564 P.3d 978, 991 (2025), as a *substantive* due process case); *id.* at 38 (distinguishing *Arizonans for Second Chances, Rehabilitation, & Public Safety v. Hobbs*, 249 Ariz. 396, 409, P.3d 607, 620 (2020), as a case involving whether signatures were required to be collected in person, rather than online, far from the issues present here); *id.* at 32–37 (distinguishing *Election Integrity Project California, Inc. v. Weber*, 113 F.4th 1072 (9th Cir. 2024), *Richardson v. Texas Secretary of State*, 978 F.3d 220 (5th Cir. 2020), and *Lemons v. Bradbury*, 538 F.3d 1098 (9th Cir. 2008)). Nor did *Memphis A. Philip Randolph Institute v. Hargett*, 978 F.3d 378 (6th Cir. 2020), reject the plaintiffs’ procedural due process claim “on the merits,” as Defendants contend. *See* Defs.’ Resp.

at 53. To the contrary, the court in *Hargett* expressly did *not* reach the merits of the plaintiffs’ due process claim. *See* 978 F.3d at 389–91.

This Court must resolve this case on its own facts. And, as demonstrated below, the uncontroverted facts entitle Plaintiffs to summary judgment on this claim.

B. The uncontroverted evidence demonstrates the Signature Verification Requirement fails to comply with procedural due process.

Because due process is not a rigid concept but rather “calls for such procedural protections as the particular situation demands,” *Int. of A.S.*, 319 Kan. 396, 402, 555 P.3d 732, 739 (2024) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)), Plaintiffs proposed that this Court use the *Mathews* test—as the Kansas Supreme Court has done so in every procedural due process case that Plaintiffs have been able to identify—to determine precisely what process is due under these circumstances. *See, e.g., In re J.D.C.*, 284 Kan. at 166–67 (applying *Mathews* test and noting, “[t]he type and quantity of procedural protection that must accompany a deprivation of a particular property right or liberty interest is determined by a balancing test, weighing: (1) the individual interest at stake; (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the State’s interest in the procedures used, including the fiscal and administrative burdens that any additional or substitute procedures would entail”); *Int. of B.H.*, 64 Kan. App. 2d 480, 490, 550 P.3d 1274, 1284 (2024) (“Kansas courts adopted the three-part balancing test from *Mathews* to determine the nature and extent of what due process requires.”); *State v. Wilkinson*, 269 Kan. 603, 608–09, 9 P.3d 1, 5 (2000) (applying *Mathews* to determine what process is due); *Murphy v. Nelson*, 260 Kan. 589, 598–99, 921 P.2d 1225, 1233 (1996) (same). These factors simply inform a court’s understanding of what process is reasonable and thus “due” under the Constitution. If the risk of erroneous deprivation is high, more process is due; if, by contrast, the risk of erroneous deprivation

is low, less process is due. *See, e.g., Mathews*, 424 U.S. at 344 (noting, “procedural due process rules are shaped by the risk of error inherent” in the decision-making process).

Although Defendants contend the Kansas Supreme Court “rejected the *Eldridge* test,” Defs.’ Resp. at 52, they do not cite anything that actually supports this claim. Nor do they identify anything in *LOWV III* that contradicts *Mathews*. Even more perplexingly, despite having admitted that *LOWV III* “made clear that due process is satisfied where voters receive reasonable notice of an apparent mismatch and an opportunity to cure it in a meaningful manner,” Defs.’ Resp. at 2, Defendants later ask this Court to jettison that test and apply the federal *Anderson-Burdick* standard instead, which asks something else entirely (*i.e.*, whether the burden on the voter can be justified by the state’s interest in imposing that burden under a sliding scale of scrutiny dependent on the magnitude of the burden). *See, e.g.*, Defs.’ Resp. at 52 (arguing, “due process attacks on voting processes are best analyzed under a balancing test along the lines of *Anderson-Burdick*”). But that is a test that the Kansas Court of Appeals and Kansas Supreme Court rejected. *Compare* Ex. A to Pls.’ Resp. to Defs.’ Mot. at 25 (Defendants arguing that a singular “*Anderson-Burdick* [standard] provides the proper standard of review” to all of Plaintiffs’ claims), *with LOWV I*, 63 Kan. App. 2d at 208 (rejecting *Anderson-Burdick* as “a federal test based on the federal Constitution” and declining to apply it to any of Plaintiffs’ claims), *aff’d in part, rev’d in part, LOWV III*, 318 Kan. at 806–07 (declining to apply *Anderson-Burdick* despite the State’s request).

Indeed, rather than apply *Anderson-Burdick* to all of Plaintiffs’ claims (as Defendants argued it should), the Kansas Supreme Court set forth separate tests to resolve Plaintiffs’ right-to-vote, equal protection, and procedural due process claims. *See generally LOWV III*, 318 Kan. 777. For this reason, *Richardson v. Texas Secretary of State*, 978 F.3d 220 (5th Cir. 2020), and all of the other federal cases that Defendants cite that allegedly reject *Mathews v. Eldridge* and use

Anderson-Burdick instead to resolve voting-related procedural due process claims, *see* Defs.’ Resp. at 52–53, are simply not applicable here.¹⁶

In short, the Kansas Supreme Court remanded this claim to this Court to conduct a due-process specific analysis of what protections are due to Kansas voters, *LOWV III*, 318 Kan. at 806–07, a question that Kansas courts routinely answer by applying *Mathews*. Applied to these circumstances, if Plaintiffs have shown that the risk that a voter’s ballot will be erroneously rejected is substantial (that is, the risk that a county will reject a voter’s ballot even if the voter’s signature is authentic), and the uncontroverted facts requires that conclusion, *see infra* IV(B)(2), then the cure process must be extremely robust to counter that risk. This is not a controversial concept. Defendants themselves repeatedly point to the existence of the cure process as a way to wave away any shortcomings in the rest of the signature verification process. *See, e.g.*, Defs.’ Resp. at 58 (Defendants noting “the cure procedures are specifically intended to account for the lower level of expertise election officials possess compared to forensic document examiners”).

¹⁶ Although it is immaterial to the resolution of Plaintiffs’ procedural due process claim, Defendants incorrectly cite *Memphis A. Philip Randolph Institute v. Hargett*, 978 F.3d 378, 387–88 (6th Cir. 2020), for the proposition that the Sixth Circuit has rejected the use of *Mathews* in election law challenges brought under the U.S. Constitution. *See* Defs.’ Resp. at 53. To the contrary, the Sixth Circuit expressly reserved the question in *Hargett*, *see* 978 F.3d. at 390–91 (“[W]e do not now resolve the question of whether *Anderson-Burdick*’s ‘single standard’ encompasses procedural due process claims.”), and it noted that the Circuit had previously applied *Mathews* to such cases. *See id.* at 390. This is an unsettled debate among the federal courts, and contrary to Defendants’ implication otherwise, many *do* routinely apply *Mathews* (and not *Anderson-Burdick*) to procedural due process claims in the voting context—including in challenges to signature verification laws. *See, e.g.*, *Frederick v. Lawson*, 481 F. Supp. 3d 774, 793–94 (S.D. Ind. 2020) (resolving procedural due process challenge to signature verification system under *Mathews*); *League of Women Voters of S.C. v. Andino*, 497 F. Supp. 3d 59, 69–70 (D.S.C. 2020) (same), *appeal dismissed and remanded*, 849 F. App’x 39 (4th Cir. 2021); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018) (same); *Self Advoc. Sols. N.D.*, 464 F. Supp. 3d at 1053 (same); *Martin*, 341 F. Supp. 3d at 1338 (same). But the debate over whether *Anderson-Burdick* should be used for some or all equal protection claims that arise in the voting context under the U.S. Constitution and are litigated in federal court, is simply not a debate that is properly before this Court.

In the alternative, if the Court disagrees with applying the *Mathews* test, under the test that even Defendants admit *LOWV III* mandates—that voters must “receive reasonable notice of an apparent mismatch and an opportunity to cure it in a meaningful manner,” Defs.’ Resp. at 2—it is plain from the uncontroverted evidence discussed below that the SVR fails to guarantee either of these things. In other words, under either possible applicable test, Plaintiffs are entitled to summary judgment. The *Mathews* factors only underscore the strength of that conclusion.

1. The private interest is enormous.

The first *Mathews* factor—“the individual interest at stake,” *Wilkinson*, 269 Kan. at 609, is enormous, and this Court should find it weighs in favor of Plaintiffs. Other than contending that the right to vote is not a protected liberty interest, which is incorrect for the reasons explained *supra* § IV(A), Defendants do not engage this argument whatsoever. But as the Kansas Supreme Court held in *LOWV III*, the right to suffrage “is an expressly enumerated right, [entitled to] the strongest possible constitutional protections.” 318 Kan. at 800.

2. The uncontroverted evidence establishes that Kansas’s signature verification system creates an intolerable risk of erroneous disenfranchisement.

In the signature verification context, erroneous disenfranchisement occurs when election officials reject a voter’s signature based on a conclusion that the signature was “inconsistent” with the voter’s signatures on file, when the signature was in fact an authentic signature from the voter. At times, Defendants appear to contest this basic concept, contending that it is not erroneous so long as election officials genuinely identify a “difference” between the ballot envelope signature and the signature on file for election officials. *See, e.g.*, Defs.’ Resp. at 55–56 (defending election officials’ rejections of the ballots of Phillips, Anderson, and Moore, and arguing, “[i]t of course, possible that [Ms. Moore’s] signature was authentic, but that does *not* mean election officials erroneously assessed that the signature on the ballot envelope was inconsistent with the signature

on file”). But that is *not* the question before this Court. The question is whether the SVR creates an intolerable risk of erroneous deprivation of the liberty interest at stake and these voters are good examples of how a signature can look quite different from the one on file, and yet be authentic given the inherent variability of signatures. Indeed, these voters’ stories illustrate how the SVR creates an intolerable risk that lawful voters’ ballots will be flagged for rejection, *even if* election officials are following the statute’s direction rejecting signatures that have “multiple,” “obvious,” or “significant” differences from the ones on file.

In evaluating the risk of erroneous disenfranchisement, Defendants also misunderstand Plaintiffs’ due process arguments. Plaintiffs are not arguing that Kansas election officials must be held to the standards of forensic document examiners, *see* Defs.’ Resp. at 58, or that the State’s failure to adequately train and screen signature reviewers is necessarily itself a procedural due process violation, *see* Defs.’ Resp. at 62. Plaintiffs agree that the ultimate legal question on their due process claim is whether voters receive reasonable notice and a meaningful opportunity to cure before their ballot is rejected. *See supra* § IV(A). But the extent of what process Kansas voters are due is informed, in part, by the likelihood that election officials will make the “wrong” decision (that is, that they will reject the authentic ballot of a lawful voter). *See Mathews*, 424 U.S. at 344 (noting, “procedural due process rules are shaped by the risk of error inherent” in the decision-making process). For that reason, Kansas’s poor training and failure to screen officials for form blindness—which can impact one’s ability to even *discern* differences in signatures—are essential to the due process analysis. Similarly, Plaintiffs are not criticizing Kansas for accepting digital signatures on voter registrations or on advance ballot applications. *See* Defs.’ Resp. at 21. But there are inherent differences between wet-ink signatures (those on ballot envelopes) and digital signatures (such as those executed on voter registrations at the DMV), and it is uncontroverted that

those differences “can easily lead to error.” *See* Defs.’ Resp. to Pls.’ SOF ¶ 18 (uncontroverted), ¶ 257 (uncontroverted for this point).

Plaintiffs put forward facts establishing both the inherent difficulty of signature verification, as well as several different features of Kansas’s approach that substantially raise the risk that election officials will reject the authentic signature of lawful voter when they judge a signature to be “inconsistent.” *See* Pls.’ Mot. at 56–65. Although Defendants contest the *relevance* of many of these factors to the procedural due process analysis, they do not actually contest most of the underlying facts. Defendants do not contest, for example, that signature verification is a notoriously difficult practice. This is because no one writes their signature the same way twice, and a variety of factors contribute to differences in handwriting. Pls.’ SOF ¶¶ 146–47 (uncontroverted), Pls.’ SOF ¶¶ 152–55 (uncontroverted). Age, health, disability, mental state, the writing surface used, and more can contribute to differences in one’s signature, Pls.’ SOF ¶¶ 152–55 (uncontroverted), and the ability to reliably differentiate between natural variation in one’s signature (present in an authentic signature) and fundamental differences (suggesting an inauthentic signature) is a practice that takes years of training and skill, in addition to sufficient signature comparators and time for examination. Pls.’ SOF ¶¶ 149–151 (uncontroverted); Pls.’ SOF ¶¶ 156–164 (not properly controverted). As Defendants concede—and even affirmatively argue—not even trained experts can always tell whether a signature is authentic. Pls.’ SOF ¶ 169 (uncontroverted); *see also* Defs.’ Resp. at 58 (arguing “even forensic examiners make mistakes when verifying signatures, *so it is likely that Kansas election officials will make mistakes as well*” (citation modified) (emphasis added)). Indeed, as courts have recognized, “even if election officials uniformly and expertly judged signatures, rightful ballots still would be rejected just

because of the inherent nature of signatures.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1320 (11th Cir. 2019).

The inherent difficulty of signature verification is heightened by the conditions under which it is performed under the SVR. The task is performed by laypersons, who are more likely than trained experts to (erroneously) determine that authentic signatures are not genuine, Pls.’ SOF ¶ 168 (uncontroverted), and who are not even screened for form blindness, a condition that does not affect normal eyesight but would impair an individuals’ ability to make reliable determinations regarding whether signatures display differences, Pls.’ SOF ¶ 249 (not properly controverted). Those laypersons are asked to make judgments about whether or not the voter signed their own ballot in matter of seconds, Pls.’ SOF ¶ 298(b)(iv) (uncontroverted), and often have limited samples (or only one sample) to compare the signature to, *see* Pls.’ SOF ¶¶ 263–264, 265(f)–(g), 267 (uncontroverted or not properly controverted), perhaps because there are *no rules* regarding when counties must add voters’ signatures to the database, *see* Pls.’ SOF ¶ 260 (uncontroverted); *see also supra* § III(B)(1). Kansas officials are also asked to make their judgments about whether to accept or reject signatures with exceptionally limited training—a 46-minute YouTube video. *See* Pls.’ SOF ¶ 237 (not properly controverted). As other courts have recognized, these facts unquestionably raise the risk of erroneous disenfranchisement. *See Saucedo*, 335 F. Supp. 3d at 217 (recognizing “the task of handwriting analysis by laypersons . . . is fraught with error”); *see also League of Women Voters of S.C.*, 497 F. Supp. 3d at 69–70 (noting “the high risk of erroneous deprivation of the right to vote by unskilled and untrained election officials attempting to match voters’ signatures”); *Frederick*, 481 F. Supp. 3d at 796 (noting the “real risk of erroneous rejection” in the signature matching context).

Perhaps most importantly, despite the inherent variability of signatures, Kansas nonetheless permits the rejection of a voter's signature if it "differs in multiple, significant, or obvious respects" from the signature on file. K.A.R. 7-36-9(a)(2). Yet "an individual's signature 'might differ in multiple or significant or obvious respects, but such differences may reflect only variation in the individual's signature, and nothing more.'" Pls.' SOF ¶ 217(d) (quoting Ex. 4, Mohammed Aff., Ex. A ¶¶ 85–86) (not properly controverted); *see also* Pls.' SOF ¶¶ 467–68 (multiple county officials agreeing a determination of "inconsistency" is not a determination that the signature is inauthentic) (uncontroverted). The standard is simply not a reliable gauge for authenticity, whether performed by laypersons or experts alike. As other courts have recognized, without "functional standards to distinguish the natural variations of one writer from other variations that suggest two different writers," the risk of erroneous disenfranchisement is significant. *Saucedo*, 335 F. Supp. 3d at 206. Defendants do not contend that Kansas has such standards, and it does not.

3. The uncontroverted evidence establishes Kansas's system does not guarantee reasonable notice or a meaningful opportunity to cure.

Because Kansas lacks many procedural protections on the front end, it is critical that robust protections are in place on the backend to "achiev[e] the goal of ensuring that no qualified elector will have his or her vote 'not count.'" *LOWV III*, 318 Kan. at 803. To that end, this Court must closely scrutinize the State's notice and cure procedures to determine whether they are effectively designed to ensure the SVR does not "disenfranchise[] the genuine vote of someone who is qualified to vote." *Id.* at 802. The uncontroverted evidence establishes that the SVR neither guarantees reasonable notice nor guarantees a meaningful opportunity to cure.

The SVR first does not guarantee reasonable notice because, under both K.S.A. 25-1124(b) and K.A.R. 7-36-9(b), there is *no* timeline by which a voter is *required* to be notified of an alleged

mismatch and the need to cure. *See* Pls.’ Mot. at 66. Timeliness in notice is basic requirement that *many* states afford voters, *see* Pls.’ Mot. at 67, but the SVR fails to guarantee notice whatsoever. Defendants argue that the fact that a ballot does not need to be cured until the county canvass somehow makes the cure period inherently reasonable, *see* Defs.’ Resp. at 54, but the problem is that voters are not guaranteed that they will be notified meaningfully before the canvass—or at all. Under the plain terms of the SVR, Kansas counties have *no* obligation to alert voters of the need to cure within any specific timeline after rejecting their ballot. As a consequence, the undisputed evidence demonstrates that some Kansas voters are not receiving timely notice (or any notice whatsoever) of the need to cure before their ballot is rejected. *See* Pls.’ SOF ¶¶ 391, 409 (both uncontroverted).

Furthermore, the uncontroverted evidence shows that, even when counties *try* to notify voters, that notification is not necessarily effective. Given the length of time it can take mail to travel in Kansas, *see* Defs.’ Resp. to Pls.’ SOF ¶ 315 (uncontroverted), simply mailing a notice when voters are on a ticking clock is not reasonable. And if election officials are unable to make actual contact with voters by phone—a predictable problem because they do not have working phone numbers for large numbers of voters, *see* Pls.’ SOF ¶¶ 321–324 (uncontroverted)—they must take efforts to notify those voters in other ways, including by email (as long as county election official has that information).

Reasonable notice also requires that voters be notified at an address where they reasonably will receive it—that is, the address to which their ballot was sent, which may not be their permanent home address. *See* Pls.’ Mot. at 68. Defendants argue this is already required, *see* Defs.’ Resp. at 64, but it is not. The provision Defendants cite, K.S.A. 25-1123(a)(2), permits a ballot to be sent to a voter’s temporary residential address, but it does not require cure notices, let alone any

other communication, be sent to that address as well. As a consequence, voters like Kaylin Phillips have been sent letters of the need to cure their ballot flagged for rejection under the SVR to their permanent registration address, rather than the address where they actually were and to which they requested their ballot be sent. *See* Pls. SOF ¶ 318(b)–(c) (uncontroverted). This is not a one-off “mistake,” as Defendants contend. *See* Defs.’ Resp. at 64. It is illustrative of an obvious gap evident from the face of the law—one that impedes reasonable notice.

The SVR also does not ensure that voters will have a meaningful opportunity to cure, which means, *at a minimum*, not requiring them to appear in person to cure an alleged signature mismatch. As Defendants do not dispute, in previous elections, counties have *required* voters to come in-person to cure their alleged signature discrepancy—including from voters who were sick or disabled and unable to appear in person. *See* Pls.’ SOF ¶ 330(c)(i)–(iii) (uncontroverted for this principle). Although Defendants contend this policy has now been modified in Johnson County “in light of the attention Plaintiffs have brought to the issue,” Defs.’ Resp. at 61, that new policy will apply only if the voter is physically unable to appear “as a result of a disability.” Defs.’ Resp. at 61–62. Thus, it does not actually solve the problem. By its terms, even the revised policy does not apply to voters who are unable to appear in person because they are sick, out of the area, or simply lack the ability, because of lack of transportation or their job, to appear in person at the county office during business hours. These are many of the reasons that lead voters to vote by mail in the first place. Under the circumstances, in which a county has *erred* in determining that the voter did not sign their own ballot, requiring a mail-voter to appear in person to have their ballot counted all but takes away that voter’s right to vote by mail, which every voter in Kansas is entitled to do, *see* Pls.’ SOF ¶ 80 (unconverted); K.S.A. 25-1119.

Nor is there any guarantee that, even in Johnson County, its new (and highly limited) policy will stick. It is a voluntary policy, instituted by an Interim Election Commissioner who will not even be the Commissioner by the time of the 2026 general election. *See* Defs.’ Ex. K ¶ 6. It could well be withdrawn by her replacement, or withdrawn by the current Interim Election Commissioner herself as soon as this lawsuit is over. *But see Boddie v. Connecticut*, 401 U.S. 371, 375 (1971) (the existence of procedural due process turns on the “*guarantee* that one may not be deprived of his rights, neither liberty nor property, without due process of law” (emphasis added)).¹⁷

Defendants again cite the Fifth Circuit in *Richardson* to argue that requiring mail voters to appear in person to cure a mail ballot is reasonable, *see* Defs.’ Resp. at 60–61, but *Richardson* said no such thing. As the Court can see for itself from the text that Defendants quote, what *Richardson* said was that the act of having to sign a ballot envelope *generally* did not impose an unreasonable burden on the right to vote. *See* Defs.’ Resp. at 60–61 (quoting *Richardson*, 978 F.3d at 236–37). Plaintiffs are not contesting Kansas’s requirement that voters sign their ballot envelope. But even if *Richardson* can be read more broadly, it is not an appropriate case for this Court to apply for the reasons explained in Plaintiffs’ Response to Defendants’ Motion for Summary Judgment. *See* Pls.’ Resp. to Defs.’ Mot. at 37. Most notably, *Richardson* held, in considering a challenge under the federal constitution, that there is no liberty interest in voting and that voters are *not required to be notified* before their mail-in ballot can be rejected for an alleged signature inconsistency. *See Richardson*, 978 F.3d at 232–33, 238. It is clear, based on *LOWV III*, that the Kansas Constitution

¹⁷ All of this testimony about Johnson County’s new policy is also inadmissible, because it is based on the affidavit of a witness who was not disclosed and accordingly should be struck on that ground alone. *See* Mot. to Strike Aff. of Connie Schmidt (filed Feb. 2, 2026). But for the reasons discussed, it also does not ultimately change the due process analysis.

requires much more than the *Richardson* court concluded the federal constitution does before mail ballots can be discarded, making what *Richardson* held (in any regard) of very little value to this Court. *Richardson* is also an outlier. As Defendants’ own briefing highlights, *many* federal courts have invalidated signature verification regimes under the federal Constitution where those regimes fail to provide adequate notice before rejecting a voter’s mail ballot. *See* Defs.’ Resp. at 53–54 (citing *Saucedo*, 335 F. Supp. 3d 202; *Frederick*, 481 F. Supp. 3d 774; *League of Women Voters of S.C.*, 497 F. Supp. 3d 59; *Zessar v. Helander*, No. 05-C-1917, 2006 WL 642646 (N.D. Ill. 2006); *Martin*, 341 F. Supp. 3d 1326).

Finally, a meaningful opportunity to cure also requires that voters not be required to execute a “consistent” signature to the one on file to have their ballot counted. As Plaintiffs showed, and Defendants do not dispute, the *Secretary’s counsel* represented to the Legislature that all that would be required to have a ballot counted after it was flagged for an alleged inconsistency is for the voter to confirm that the signature was theirs. *See* Pls.’ SOF ¶ 112(c) (not properly controverted). That approach makes good sense. Not all voters are capable of executing consistent signatures with the ones on file, as Kansas’ disability exemption recognizes in the first place. *See* K.S.A. 25-1124(h); *see also Martin*, 341 F. Supp. 3d at 1339 (recognizing the risk that a genuine voter’s signature still may not “match” on a second attempt). If the purpose of the SVR is to ensure the authenticity of the ballot, verbal or written confirmation from the voter that they did in fact sign the ballot envelope serves that purpose. No more should be required.

Defendants again cite *Vet Voice Foundation v. Hobbs*, 4 Wash. 3d 383, 564 P.3d 978 (2025), claiming that it shows that courts have rejected “identical” due process attacks against other states’ signature verification laws. *See* Defs.’ Resp. at 56–57. But as Plaintiffs pointed out, *Vet Voice* rejected a *substantive* due process claim against Washington’s signature verification

procedures, not a procedural due process claim, and perhaps most importantly, Washington law has the *exact* procedures and protections that are missing from the SVR at issue here. *See* Pls.’ Resp. to Defs.’ Mot. at 53–54 (showing Washington requires timely notice, multiple forms of notification, and permits voters to have their ballots counted simply with verbal or written confirmation that they cast the ballot). Accordingly, the case does not help Defendants at all.

4. The uncontroverted evidence establishes the State has little interest in the existing procedures.

Defendants do not dispute that the SVR has disenfranchised genuine, lawful voters. *See* Pls.’ SOF ¶¶ 180, 403, 405, 416, 436–37 (all uncontroverted). Even Defendants’ *own witnesses* do not believe that most of the ballots that are ultimately not counted as a result of the SVR are fraudulent. *See, e.g.,* Pls.’ SOF ¶¶ 466, 469 (both uncontroverted). Requiring additional notice and cure procedures to help ensure that the ballots of lawful voters are actually counted *advances* the State’s interest in the integrity of its elections, it does not weaken it. *See, e.g., Saucedo*, 335 F. Supp. 3d at 220 (“[I]f anything, additional procedures further the State’s interest in preventing voter fraud while ensuring that qualified voters are not wrongly disenfranchised.”); *Lee*, 915 F.3d at 1325 (“[T]he state’s interest in preventing fraud is not in conflict with the voters’ interest in having their legitimately-cast ballots counted.”).

Defendants all but ignore these arguments. And but for the one exception that Plaintiffs address below, Defendants do not argue that it would be infeasible to implement the changes Plaintiffs contend are required to comply with procedural due process. Indeed, Defendants seem to argue that Kansas counties *are* voluntarily notifying voters timely, and that they *should* send cure notices to the address the voter’s ballot was sent. *See* Defs.’ Resp. at 63–64. The uncontroverted facts do not show that Kansas counties are actually doing these things; instead, they show the opposite, *see supra* § IV(B)(3), but even if Defendants were right, then it would be

no imposition at all for this Court to order both are required. Although Defendants argue that this Court still should not impose a timeliness requirement (speculating that “confusion, chaos, and never-ending litigation” would ensue if counties notified voters after 49 hours, instead of 48, *see* Defs.’ Resp. at 64), this is bald speculation (and not reasonable speculation, at that). Nor should the Court presume that counties will miss court-ordered deadlines. As Defendants themselves argue, the Court should presume that government officials perform their duties in accordance with the law, *see* Defs.’ Resp. at 63, a duty that they would have for the first time if the Court holds that procedural due process requires timely notice. And Defendants make no argument at all about whether counties should be required to contact voters through all means available to them (including phone, mail, and email if available to the county), something current Kansas law *permits* them to do, but does not *require* of them. *See* Pls.’ Mot. at 69 (citing K.A.R. 7-36-9(b)(2)(C)).

The only change Plaintiffs request that Defendants actually argue cannot be changed is the requirement that voters come in person to cure their ballots, and they make that argument only as it applies to Johnson County. *See* Defs.’ Resp. at 64. The only evidence that Defendants have submitted in support of that argument comes from Connie Schmidt, the Interim Johnson County Election Commissioner, who was not timely disclosed as a witness and whose testimony should accordingly be struck. *See* Pls.’ Mot. to Strike Schmidt Aff. (filed February 2, 2026); *see also supra* at 15 n.7. But even if the Court were to consider that testimony, it should give it very little weight.

Other large counties, such as Shawnee County, have managed to permit voters to cure without appearing in person without issue, *see* Pls.’ SOF ¶ 330(d)(i) (uncontroverted), and the fact that Johnson County is willing to modify the policy (though only as to voters with certain disabilities) suggests that Johnson County *is* also able to implement such a change. Defendants do

not actually explain how permitting voters to cure via telephonic or electronic means would perpetuate fraud, nor do they submit any evidence this has ever occurred, despite multiple Kansas counties permitting this kind of cure for quite some time. There is no reason counties could not simply count the ballots of voters who confirm, either orally or in writing, that the signature on the ballot is theirs, as other states permit voters to do, *see* Pls.’ Resp. to Defs.’ Mot. at 53–54, and as courts have previously ordered to comply with procedural due process, *see* Pls.’ Mot. at 72.

V. PLAINTIFFS PROPERLY PRESERVED THEIR RIGHT-TO-VOTE CLAIM FOR APPEAL

Defendants contend that Plaintiffs’ right-to-vote claim is foreclosed both by the mandate rule and law-of-the-case doctrine. Neither is true. Defendants also ignore the plain text of Plaintiffs’ Motion for Summary Judgment, which does not ask the district court to take any action on their right-to-vote claim at all.

While it is true that K.S.A. 60-2106 prohibits this court from revisiting decisions made by a higher tribunal, Plaintiffs have not asked this Court to do so. Instead, Plaintiffs have preserved the issue for appellate review. *See* Pls.’ Mot. at 74 (“Plaintiffs thus contend, and *preserve for appeal*, the argument that the SVR is unconstitutional under the Kansas Constitution because it burdens the right to vote and is not supported by a compelling state interest.” (emphasis added)). Preservation of an argument for appeal does not implicate—much less violate—the mandate rule.

Defendants’ reliance on the law of the case doctrine fares no better. As Defendants themselves have previously pointed out to this very Court and now conveniently ignore, the law of the case doctrine is “a discretionary policy” reflecting the general practice of the courts to refuse to reopen a matter already decided. Defs.’ Renewed Mot. to Dismiss at 3 (quoting *State v. Collier*, 263 Kan. 629, 631, 952 P.2d 1326 (1998)). But it does not “limit[] their power to do so.” *Id.* Indeed, Plaintiffs’ preservation of their right to vote claim fits squarely into a recognized exception

to the law of the case doctrine because the decision Plaintiffs preserve for appeal “was clearly erroneous and would work a manifest injustice.” *State v. Cheeks*, 313 Kan. 60, 66, 482 P.3d 1129, 1133 (2021) (quoting *State v. Kleypas*, 305 Kan. 224, 245, 382 P.3d 373, 396 (2016)).

In the end, Defendants do not dispute that, if Plaintiffs are correct and strict scrutiny does apply, the SVR could not survive it. Nor do Defendants even engage with Plaintiffs’ argument that the SVR violates the right to vote even under *LOWV III*. As Plaintiffs have explained, “the record demonstrates that the SVR violates Article 5 of the Kansas Constitution even under the test set forth by the majority in *LOWV III* because it is not reasonably related to the Legislature’s authority to institute proper proofs.” Pls.’ Mot. at 74. To this, Defendants have no response. But that is not ultimately a question that this Court need answer, but rather a question reserved for a reviewing court, should this matter proceed to an appeal.

CONCLUSION

The undisputed evidence establishes Plaintiffs’ entitlement to summary judgment on both Plaintiffs’ equal protection and due process claims. Plaintiffs’ Motion set forth the specific factors that entitle Plaintiffs to a permanent injunction, as well as the specific injunction that Plaintiffs request. *See* Pls.’ Mot. at 78–83. Defendants failed to address those arguments in their briefing. Should the Court find that Plaintiffs have standing and have shown actual success on the merits, Plaintiffs respectfully request the Court enter the permanent injunction found at pages 82–83 of Plaintiffs’ Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 2026, a true and correct copy of the above and foregoing was served on all parties by electronic transmission via the Court's electronic filing system and electronically mailed to all counsel of record.

/s/ Nicole M. Revenaugh

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