No. 25-3138

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

VOTEAMERICA and VOTER PARTICIPATION CENTER,
Plaintiff-Appellees,
v.
SCOTT SCHWAB, *et al.*,
Defendant-Appellants.

On Appeal from the United States District Court for the District of Kansas
Case No. 2:21-CV-02253

AMICUS CURIAE BRIEF OF PUBLIC INTEREST LEGAL FOUNDATION IN SUPPORT OF APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel for amicus states that the Public Interest Legal Foundation is a non-profit organization. It has no stock or parent corporation. As such, no public company owns 10% or more of its stock.

/s/ Kaylan Phillips
Kaylan Phillips

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INTERESTS OF *AMICUS CURIAE*

The Public Interest Legal Foundation (the "Foundation") is a non-partisan, public interest organization whose mission includes working to protect the fundamental right of citizens to vote and preserving election integrity across the country. The Foundation has sought to advance the public's interest in having elections free from unconstitutional burdens and discrimination. At the state level, this is best done by ensuring that state laws enacted by each state's legislative branch are constitutional. It is also done by monitoring judicial actions that intrude into the delegated responsibilities of the legislative branch. This case is of interest to the Foundation as it is concerned with protecting the sanctity and integrity of American elections and preserving the proper Constitutional balance of state control over elections.

The Foundation has extensive experience in election law litigation and is involved in such cases throughout the nation. The Foundation has filed *amicus curiae* briefs in cases on various election-related issues and has been involved in cases determining the legality and constitutionality of state election practices. *See, e.g.*, Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Appellants, *Merrill v. Milligan*, 2022 U.S. S. Ct. Briefs Lexis 1410 (2022); Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Appellants, *Rucho v. Common Cause*, 2019 U.S. S. Ct. Briefs LEXIS 539 (2019); Brief of Public

Interest Legal Foundation as *Amicus Curiae* in Support of Appellees, *Lichtenstein v. Hargett*, Case No. 22-5028 (6th Cir. 2022); Brief of Public Interest Legal Foundation as *Amicus Curiae* in support of Appellants, *VoteAmerica v. Schwab*, 121 F.4th 822 (10th Cir. 2024).

All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or part, and no person other than *amicus* or its counsel has made a monetary contribution intended to fund the preparation or submission of the brief.

SUMMARY OF ARGUMENT

The Constitution explicitly provides State legislatures with authority to regulate the "Times, Places and Manner of holding Elections[.]" U.S. Const. art. I, § 4, cl. 1. The Kansas Legislature exercised its constitutional authority in passing a reasonable election integrity law.

Kansas has an important regulatory interest in ensuring clean and smooth-running elections by minimizing confusion, enhancing public confidence, and effectuating orderly and efficient election administration as well as deterring voter fraud. Kansas need not wait for widespread fraud and confusion, or put forth empirical evidence of fraud and confusion, before enacting legislation to protect its elections and electorate.

Even so, the record reflects confusion caused by the pre-filled applications demonstrating Kansas' important state interest in enacting the legislation at issue.

ARGUMENT

I. Kansas Has an Important Regulatory Interest in Ensuring Election Integrity.

Reasonable and nondiscriminatory restrictions, like the law passed by the Kansas Legislature and challenged here, are justifiable because of a state's important regulatory interests in ensuring a fair and honest election.

> Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process.

Burdick v. Takushi, 504 U.S. 428, 433 (1992) (internal citations and quotations omitted).

State laws regarding "the registration and qualification of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). "Nevertheless, the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." *Id.*

It is well-settled that "[a] State indisputably has a compelling interest in preserving the integrity of its election process." *Purcell v. Gonzalez*, 549 U.S. 1, 4

(2006) (internal citations and quotations omitted); *see also Burson v. Freeman*, 504 U.S. 191, 199 (1992) (affirming that "a State has a compelling interest in protecting voters from confusion and undue influence"); *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 672 (2021) ("One strong and entirely legitimate state interest is the prevention of fraud.").

The Supreme Court in *Crawford v. Marion Cnty. Election Bd.* found that:

> There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process. While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear.

553 U.S. 181, 196 (2008).

This Court has also recognized that these important state interests, "constitute the very backbone of our constitutional scheme—the right of the people to cast a meaningful ballot." *Utah Republican Party v. Cox*, 885 F.3d 1219, 1236 (10th Cir. 2018).

In a nearly identical case involving a nearly identical law, the Northern District of Georgia found that the state had a compelling interest in reducing voter confusion, enhancing voter confidence, and increasing electoral efficiency to justify a statute that says, "[n]o person or entity . . . shall send any elector an absentee ballot application that is prefilled with the elector's required information." *VoteAmerica v.*

Raffensperger, 2025 U.S. Dist. LEXIS 174577, at **3, 40 (N.D. Ga. Sep. 8, 2025) (quoting GA. CODE ANN. §21-2-381(a)(1)(C)(ii) (2021)); *VoteAmerica v. Raffensperger*, 696 F. Supp. 3d 1217, 1233 (N.D. Ga. 2023) (explaining "[i]t is well-settled" that "decreasing voter confusion, combatting complaints of fraud and increasing election integrity" are "compelling state interests").

The district court correctly found that protecting voters from confusion, preventing fraud, and preserving the integrity and administration of the electoral process are compelling state interests. *See* App.IV 801, 803 805.[1] However, the district court erred by finding that "specific findings" of harm were necessary to justify the enactment. App.IV 808-809 n.28.

II. Kansas May Enact Prophylactic Legislation to Protect Election Integrity Without Putting Forth Empirical Evidence of Fraud and Confusion.

It is well established that States do not have to wait for fraud or confusion, or put forth evidence of the existence of fraud or confusion, before enacting preventative legislation. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 194-95 (1986) ("We have never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access."); *see*

[1] References to the Appendix include the volume number (e.g., App.IV) followed by specific page number.

also Timmons v. Twin Cities Area New Party, 520 U.S. 351, 364 (1997) ("Nor do we require elaborate, empirical verification of the weightiness of the State's asserted justifications."). The Supreme Court in *Burson* reasoned that:

> [B]ecause a government has such a compelling interest in securing the right to vote freely and effectively, this Court never has held a State "to the burden of demonstrating empirically the objective effects on political stability that [are] produced" by the voting regulation in question.

Burson, 504 U.S. at 208-09 (quoting *Munro*, 479 U.S. at 195).

The Supreme Court in *Crawford* upheld the State's remedy to prevent voter fraud (photo identification) even though "[t]he record contain[ed] no evidence of any such fraud actually occurring in [the State] at any time in its history." *Crawford*, 553 U.S. at 194. The *Crawford* Court recognized, "There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election." *Id.* at 194 (internal citations omitted).

Other circuits have found states have an important interest in preventing voter fraud without specific evidence of fraud. The Fourth Circuit in *Middleton v. Andino* found that "South Carolina is not required to produce evidence of voter fraud to demonstrate it has a legitimate interest in maintaining the integrity of its elections." 976 F.3d 403, 405 n.* (4th Cir. 2020). The Eleventh Circuit similarly recognized that requiring evidence of voter fraud to justify prophylactic measures does not follow Eleventh Circuit or Supreme Court precedents. *League of Women Voters of*

Fla. Inc. v. Fla. Sec'y of State, 66 F. 4th 905, 925 (11th Cir. 2023) (citing *Greater Birmingham Ministries v. Sec'y of Alabama*, 992 F.3d 1299, 1334 (11th Cir. 2021) and *Crawford*, 553 U.S. at 192-97).

In any event, Kansas has put forth evidence that validates its important state interests in the prohibition on pre-filled applications.

III. Kansas Has Put Forth Evidence Demonstrating the Law Serves Important State Interests.

While not necessary, Kansas did put forth evidence of specific problems necessitating the legislation. The record indicates the Plaintiffs-Appellees used inaccurate or stale information when preparing the nearly 508,000 mailings they sent, App.III 602-¶47, 605-606-¶¶67-74, and Kansas put forth written testimony from the Office of the Kansas Secretary of State asserting:

> Leading up to the 2020 general election, state and county election officials were inundated with calls from confused voters who submitted an advance by mail ballot application but continued to receive unsolicited advance ballot applications from third parties.

App.IV 778.

The district court even acknowledged that the State presented evidence of voter confusion and frustration. App.IV 802.

To the extent the district court requires Kansas to prove that the confusion was caused by prefilling the application, as opposed to receiving the application, to determine the law is "narrowly tailored," the district court creates a new evidentiary

burden above and beyond what is required of Kansas. Again, the Supreme Court has never required states to "'demonstrat[e] empirically the objective effects on political stability that [are] produced' by the voting regulation in question." *Burson*, 504 U.S. at 208-09 (quoting *Munro*, 479 U.S. at 195).

While not necessary to meet the State's burden, the record reflects voters were, *in fact*, confused by the pre-filled applications. This Court in *VoteAmerica v. Schwab* noted the Shawnee County Election Commissioner Andrew Howell explained that "duplicate and inaccurately prefilled advance voting ballot applications resulted in telephone calls, letters, e-mails, and in-office visits from voters regarding what they had received from VPC" and "[s]ome of those voters who thought the prefilled applications originated with the county election office were 'confused' by them." 121 F.4th 822, 830 (10th Cir. 2024). Kansas Elections Director Bryan Caskey said he "received many calls from county election officials who complained that their offices were receiving pre-filled advance voting ballot applications in which the information on the form did not match the data in [the Election Voter Information System]" and "he spoke with 'many voters who expressed their anger, confusion, and frustration over the pre-filled advance voting ballot applications that they were receiving from third-parties such as VPC.'" *Id.* at 829-30.

The evidence Kansas put forth here bears a substantial similarity to the evidence the court in *Raffensperger* found was sufficient to show "more than a theoretical" state interest in preventing voter confusion. *Raffensperger*, 696 F. Supp. 3d at 1233 (evidence of state interest in preventing confusion included affidavits from voters concerned about errors in prefilled applications); *see also Raffensperger*, 2025 U.S. Dist. LEXIS 174577, at *39 (finding important state interest based on evidence that "voters raised concerns about fraud when they received prefilled applications").

The United States Supreme Court makes clear that, "this Court never has held a State 'to the burden of demonstrating empirically the objective effects on political stability that [are] produced' by the voting regulation in question," *Burson*, 504 U.S. at 208-09 (quoting *Munro*, 479 U.S. at 195), and "[w]hile the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear." *Crawford*, 553 U.S. at 196. Requiring anything more in this case is foreclosed by Supreme Court precedent and defies the logic and importance of prophylactic legislation to protect a state's electorate and elections.

CONCLUSION

For the foregoing reasons, *amicus* Public Interest Legal Foundation respectfully requests that this Court reverse the district court's order.

Dated: November 14, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(b), because it contains 1,986, less than half of the 13,000 words permitted for a principal brief of a party, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

The brief also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point type.

Dated: November 14, 2025

/s/ Kaylan Phillips
Kaylan Phillips

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTIONS

I hereby certify that with respect to the foregoing:

(1) all required privacy redactions have been made per 10th Cir. R. 25.5;

(2) that the ECF submission is an exact copy of those documents; and

(3) the digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program, Bitdefender Endpoint Security Tools Antimalware, and according to the program is free of viruses.

/s/ Kaylan Phillips
Kaylan Phillips

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2025, I electronically filed the foregoing using the Court's CM/ECF system, which in turn caused electronic notifications of such filing to be sent to all counsel of record.

/s/ Kaylan Phillips
Kaylan Phillips