

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

VOTEAMERICA AND VOTER )  
PARTICIPATION CENTER, )

*Plaintiffs,* )

vs. )

Case No. 2:21-cv-2253-KHV-GEB

SCOTT SCHWAB, in his official capacity as )  
Secretary of State of the State of Kansas; )

DEREK SCHMIDT, in his official capacity as )  
Attorney General of the State of Kansas; and )

STEPHEN M. HOWE, in his official capacity )  
as District Attorney of Johnson County, )

*Defendants.* )

**DEFENDANTS' ANSWER**

Defendants Scott Schwab, Derek Schmidt, and Stephen Howe, each sued in their official capacities and acting by and through the undersigned counsel, submit this Answer and affirmative and other defenses to Plaintiffs' Complaint. Unless expressly admitted, Defendants deny each and every allegation in the Complaint, including any allegations in the Introduction, unnumbered and numbered paragraphs, titles, headings, and subheadings. Defendants also deny all allegations for which they lack knowledge or information sufficient to form a belief about the truth of the allegation. Paragraph headings and titles are included in this Answer only for the purposes of organization and reference. Any statutes, regulations, case law, documents, or data cited in the Complaint speak for themselves. Defendants reserve the right to amend and supplement this Answer as appropriate or necessary.

**Introduction**

1. Paragraph 1 to Plaintiffs' Complaint does not set forth factual allegations to which a response is required. The paragraph asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations.

2. The first two sentences of Paragraph 2 assert legal conclusions to which no response

is required. To the extent a response is required, Defendants deny the allegations and the Kansas statutes governing advance balloting by mail speak for themselves. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in third and fourth sentences of Paragraph 2 and, on that basis, deny them.

3. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations contained in Paragraph 3 and, on that basis, deny them.

4. Defendants deny the allegations contained in Paragraph 4.

5. Paragraphs 5-12 assert legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

#### Jurisdiction and Venue

6. Paragraphs 13-15 are admitted.

#### Parties

7. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in Paragraphs 16-34 and, on that basis, deny them.

8. In Paragraph 35, Defendants admit that Scott Schwab is the Secretary of State. The remainder of this Paragraph constitute legal conclusions to which no response is required. The statutes that are quoted in these paragraphs speak for themselves.

9. In Paragraph 36, Defendants admit that Derek Schmidt is the Attorney General. The remainder of this Paragraph constitute legal conclusions to which no response is required. The statutes that are quoted in these paragraphs speak for themselves.

10. In Paragraph 37, Defendants admit that Stephen M. Howe is the District Attorney of Johnson County. The remainder of this Paragraph constitute legal conclusions to which no response is required. The statutes that are quoted in these paragraphs speak for themselves.

#### General Allegations

11. Paragraphs 38-39 constitute legal conclusions to which no response is required. The statutes that are quoted in these paragraphs speak for themselves. To the extent a response is required, Defendants deny the allegations.

12. Defendants admit in Paragraph 40 that the official advance mail ballot application form promulgated by the Secretary of State was publicly available online on the websites of the Secretary of State and Johnson County election office. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the remainder of Paragraph 40 and, on that basis, deny them.

13. Paragraph 41 is admitted.

14. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations contained in Paragraph 42 and, on that basis, deny them.

15. Paragraph 43 is admitted.

16. Defendants admit that Paragraph 44 accurately quotes the press release issued by Defendant Schwab on July 30, 2020. Defendants lack sufficient knowledge or information to form a belief about the truth of the remaining allegations in this Paragraph 42 and, on that basis, deny them.

17. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in Paragraphs 45-47 and, on that basis, deny them.

18. Paragraph 48 is admitted.

19. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 49 and, on that basis, deny them.

20. Paragraph 50 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

21. Defendants admit in Paragraph 51 that the Kansas Legislature overrode the Governor's veto to enact H.B. 2332, and that the statute takes effect January 1, 2022. The remainder of this Paragraph asserts legal conclusions to which no response is required.

22. Paragraphs 52-58 assert legal conclusions to which no response is required. The statutes quoted in these paragraph speaks for themselves. To the extent a response is required, Defendants deny the allegations.

23. Defendants deny the allegations in Paragraph 59.

24. Paragraphs 60 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

25. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 61 and, on that basis, deny them.

26. Paragraphs 62 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

27. The allegations contained in Paragraph 63 are legal conclusions that attempt to construe Kansas statutes and thus do not require a response. The statutes speak for themselves. To the extent a response is required, Defendants deny the allegations.

28. Paragraphs 64 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

29. The statutes in Paragraphs 65-66 speak for themselves and require no response. To the extent these Paragraphs attempt to interpret the statutes, the assertions are legal conclusions to which no response is required. To the extent any further response is required, Defendants deny the allegations.

30. The statute quoted in Paragraph 67 speaks for itself and requires no response. The value-laden judgment of the statute's impact is not a factual allegation, but to the extent a response is required, Defendants deny the allegations.

31. The statute quoted in Paragraph 68 speaks for itself and requires no response. To the extent a response is required, Defendants deny the allegations.

32. Paragraphs 69 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

33. Defendants deny the allegations in Paragraph 70.

34. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 71 and, on that basis, deny them.

35. Paragraphs 72 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations. As far as how Plaintiffs will adapt

to H.B. 2332, that is a matter on which Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations, and on that basis, deny them.

36. The statutes quoted in Paragraph 73 speak for themselves and require no response. This paragraph also asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the State has no compelling interest or rational basis for enacting the prohibitions contained in H.B. 2332.

37. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the first sentence of Paragraph 74 and, on that basis, deny them. With respect to the second sentence of that Paragraph, Defendants deny that the prohibitions in Section 3(k)(2) of H.B. 2332 do not meaningfully address and are not narrowly tailored to address conceivable errors in election administration.

38. Paragraph 75 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

#### Causes of Action

##### *Count I – Freedom of Speech*

39. Defendants incorporate by reference as if fully set forth herein their answers and responses to Paragraphs 1-76 of Plaintiffs' Complaint.

40. Paragraph 77 asserts legal conclusions to which no response is required.

41. Paragraph 78 asserts legal conclusions to which no response is required.

42. Paragraph 79 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that Plaintiffs' distribution of advance mail ballot applications to voters constitutes core political speech.

43. Paragraph 80 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that H.B. 2332 unconstitutionally curtails Plaintiffs' freedom of speech.

44. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the first sentence of Paragraph 81 and, on that basis, deny them. Paragraph

81 also asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that H.B. 2332 unconstitutionally curtails Plaintiffs' freedom of speech.

45. Paragraph 82 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that H.B. 2332 unconstitutionally curtails Plaintiffs' freedom of speech.

46. Defendants deny the allegations in Paragraph 83.

47. Paragraph 84 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the "Out-of-State Distributor Ban" unconstitutionally curtails Plaintiffs' freedom of speech.

48. Paragraph 85 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the "Out-of-State Distributor Ban" represents an unconstitutional speaker-based restraint.

49. Paragraph 86 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the "Out-of-State Distributor Ban" represents unconstitutional viewpoint discrimination.

50. Paragraph 87 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

51. Paragraph 88 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the "Out-of-State Distributor Ban" severely burdens Plaintiffs' First Amendment rights to engage in election-related speech and that any restrictions in the statute are not necessary or justified by legitimate state interests.

52. Paragraph 89 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Personalized Application Prohibition represents a severe and discriminatory burden on Plaintiffs' First Amendment rights.

53. Paragraph 90 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Personalized Application Prohibition amounts to an unconstitutional content-based restriction on Plaintiffs' First Amendment rights.

54. Paragraph 91 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Personalized Application Prohibition burdens core political speech and that the State has no compelling, substantial, or rational basis for adopting this restriction.

55. Paragraph 92 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

56. With respect to Paragraph 93's allegations regarding Plaintiffs' supposed fears of prosecution, Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations and, on that basis, deny them. This Paragraph also asserts legal conclusions to which no response is required. To the extent a response is required, however, Defendants deny the allegations.

57. Paragraph 94 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

*Count II – Freedom of Speech*

58. Defendants incorporate by reference as if fully set forth herein their answers and responses to Paragraphs 1-95 of Plaintiffs' Complaint.

59. Paragraph 96 asserts a legal conclusion to which no response is required.

60. Paragraph 97 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Ballot Application Restrictions in H.B. 2332 directly and severely burden Plaintiffs' associational rights under the First Amendment.

61. Paragraph 98 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the "Out-

of-State Distributor Ban” prohibits Plaintiffs from associating with Kansas voters, inhibits them from recruiting, consulting, and otherwise associating with Kansas-based organizations, or impedes their ability to associate with local partner organizations.

62. Defendants deny the allegations in Paragraph 99 that the Personalized Application Prohibition interferes with Plaintiffs’ associational rights under the First Amendment. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the last sentence of Paragraph 99 and, on that basis, deny them as well.

63. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the last sentence of Paragraph 100 and, on that basis, deny them. To the extent that this Paragraph also contains legal conclusions, those require no response, but to the extent a response is required, Defendants deny them.

64. Paragraph 101 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Ballot Application Restrictions in H.B. 2332 impose a severe burden on the Plaintiffs’ associational rights under the First Amendment.

65. Paragraph 102 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Ballot Application Restrictions not narrowly tailored to serve compelling state interests.

66. Paragraph 103 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Ballot Application Restrictions not rationally related to legitimate state regulatory interests.

67. Paragraph 104 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

*Count III – Overbreadth*

68. Defendants incorporate by reference as if fully set forth herein their answers and responses to Paragraphs 1-105 of Plaintiffs’ Complaint.

69. Paragraph 106 asserts a legal conclusion to which no response is required.



70. Paragraph 107 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Ballot Application Restrictions are unconstitutionally overbroad.

71. Paragraph 108 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Ballot Application Restrictions impermissibly chill Plaintiffs' protected speech rights.

72. Paragraph 109 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

73. Paragraph 110 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Personalized Application Prohibition is violated if an advance mail ballot application is solicited by a voter rather than by the Defendants.

74. Paragraph 111 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

75. Paragraph 112 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

*Court IV – Dormant Commerce Clause*

76. Defendants incorporate by reference as if fully set forth herein their answers and responses to Paragraphs 1-113 of Plaintiffs' Complaint.

77. Paragraph 114 asserts a legal conclusion to which no response is required.

78. Paragraph 115 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations.

79. Paragraph 116 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation that the Out-of-State Distributor Ban directly regulates interstate commerce.

80. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the last sentence of Paragraph 117 and, on that basis, deny them. To the extent

that this Paragraph also contains legal conclusions, those require no response, but to the extent a response is required, Defendants deny them and specifically deny that the Plaintiffs are engaged in commerce within the meaning of the Dormant Commerce Clause.

81. Paragraph 118 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Out-of-State Distributor Ban violates the Constitution.

82. Paragraph 119 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Out-of-State Distributor Ban violates the Constitution.

83. Paragraph 120 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Out-of-State Distributor Ban infringes on Congress' Commerce Clause authority.

84. Paragraph 121 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the State has no legitimate justification for the Out-of-State Distributor Ban.

85. Paragraph 122's first sentence asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation and specifically deny that the Out-of-State Distributor Ban constitutes a substantial burden on interstate commerce. With respect to the second and third sentences of this Paragraph, Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the last sentence of Paragraph 117 and, on that basis, deny them. With respect to the final sentence of the Paragraph, the statutory text speaks for itself.

86. Defendants deny the allegations in Paragraph 123 that there are no State/local interests that would justify the Out of State Distributor Ban or that the alleged burdens imposed by this statute outweigh such State/local interests.

87. Paragraph 124 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations and specifically deny that the Out-

of-State Distributor Ban involves a national interest in elections that extends beyond any local concerns.

88. Paragraph 125 asserts a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations.

**AFFIRMATIVE AND OTHER DEFENSES**

89. Defendants incorporate by reference as if fully set forth herein their answers and responses to Paragraphs 1-125 of Plaintiffs' Complaint.

90. Plaintiffs fail to state a claim upon which relief can be granted.

91. Plaintiffs lack standing to challenge H.B. 2332 and/or to seek the relief requested in their Complaint.

**DEMAND FOR RELIEF**

WHEREFORE, having fully answered the allegations in Plaintiffs' Complaint, Defendants request that (a) judgment be entered dismissing Plaintiffs' Complaint and (b) this Court grant the Defendants such other relief as it deems just and equitable.

Respectfully Submitted,

By: /s/ Bradley J. Schlozman  
Bradley J. Schlozman (KS Bar #17621)  
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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I certify that on December 9, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to the e-mail addresses on the electronic mail notice list, including counsel for the Plaintiff.

By: /s/ Bradley J. Schlozman

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